



TELFA

Trans-European
Law Firms Alliance

SHARE/ASSET DEAL

A comparison for practitioners
working across borders



TELFA

Trans-European
Law Firms Alliance

**If you have any questions on this document,
please contact the co-chairs of TELFA Corporate Practice Group:**

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ABOUT TELFA

Trans-European Law Firm Alliance (TELFA) was founded in 1989 and born out of the need to serve clients doing business across the jurisdictions of Europe. TELFA member firms have more than 1000 lawyers throughout Europe. Through the sustained commitment of its members, TELFA has become one of the strongest alliances of independent law firms in Europe.

TELFA's vision is to create and maintain a network of independent law firms that share a similar ethos.

Just as the foundation of good service for our clients is built on strong personal relationships, so it is among the lawyers that make up the membership of TELFA. The lawyers in TELFA get to know one another through working together on client assignments and jointly contributing to TELFA working groups.

Also flexibility - either clients can have a single point of contact through which to engage lawyers throughout Europe, or a personal introduction to law firms in foreign jurisdictions, so that clients can feel comfortable with and assured in the service that they are to receive. All the member firms offer a partner led - not necessarily «partner does» - service; the firms ensure that clients have continuity of contact and are not passed from one lawyer to another.

TELFA members are sensitive to cultural differences and work hard to frame their advice in a way that is understandable, practical and « digestible » by their clients.

The member firms share resources, knowhow, technology and best practice whilst respecting the different requirements made of each firm by its local « bar rules ».


For TELFA clients this means that TELFA is not just a referrals network that operates like a brokerage clearing house; rather the TELFA brand stands for personal service, facilitating clients' needs for advice in what may be unfamiliar jurisdictions, so as to ensure the client feels safe in the knowledge that the firm is respected (and respectable) within their local jurisdiction.

TELFA firms can draw on and leverage the expertise and experience of its members so as to respond effectively and flexibly to the demands made by clients.

► More information about TELFA:
<http://www.telfa.law/>

TELFA firms benefit from a strong relationship with USLAW Network, Inc., with firms across all the United States, North and South America and China.

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Each section is prepared by a country specialist qualified to advise on the jurisdiction in question.

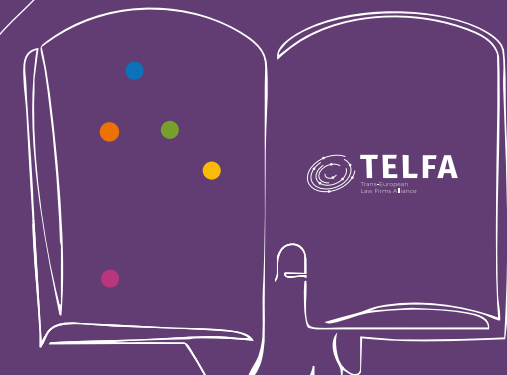
Contact details are provided at the end of this document.

All responsibility for the subject matter contained
herein lies with the country specialist firm, not with TELFA.

In the complex landscape of business transactions,
choosing the appropriate structure for your deal is vital.
The legal steps, taxation impact and risk profile for both buyer
and seller will be materially different. Among the crucial decisions
faced is the choice between a share deal and an asset deal.

This guide aims to provide an introduction to some of the key distinctions
between these two approaches, with a specific focus on their implications in
the diverse regulatory and legal environments across a range of jurisdictions.

Please note that, unless otherwise stated,
**this guide covers a acquisition of shares
or assets of private company**
but does not cover the acquisition of shares or assets of
listed, traded and public/joint stock companies.



SHARE DEALS VS. ASSET DEALS: UNVEILING THE CORE DISTINCTIONS

GENERAL	SHARE DEAL	ASSET DEAL
NATURE OF THE TRANSACTION	<p>▶ The buyer acquires ownership of the target company by purchasing its shares. The legal entity remains unchanged, and the buyer steps into the shoes of the existing shareholders.</p>	<p>The buyer selectively acquires specific assets and liabilities of the target business, rather than purchasing shares in the company. The legal entity of the target company may remain, or it might be dissolved after the transfer of assets.</p>
CONTINUITY OF THE LEGAL ENTITY/ SELECTION OF THE ASSETS TRANSFERRED	<p>▶ The target company continues to exist with the same legal structure, contracts, licenses, and obligations. There is no change in the ownership of the underlying assets and liabilities.</p>	<p>The buyer has the flexibility to choose which assets and liabilities they want to acquire, leaving behind those they do not wish to take on. This can include tangible assets, contracts, intellectual property, and more.</p>
CONTROL	<p>▶ The buyer gains control of the entire business, including its assets, liabilities, contracts, and employees, without the need for separate transfers or novations.</p>	<p>The buyer gains control on the assets, liabilities, contracts, employees, IP rights, etc. that are part of the asset deal. Contracts and agreements (including employee contracts) associated with the business may need to be individually transferred through novation or assignment, as the legal entity changes hands.</p>
DUE DILIGENCE SCOPE	<p>▶ Due diligence in a share deal must focus on the target company itself, its financials, contracts, assets, liabilities, and legal compliance.</p>	<p>Due diligence on an asset will generally only require an analysis of the asset being transferred, and to ensure that the seller can give good title and can meet claims. There is no need to consider the wider basket of risks.</p>



SHARE DEALS VS. ASSET DEALS: UNVEILING THE CORE DISTINCTIONS

At its essence, a share deal involves the transfer of ownership in a company through the sale of its shares. On the other hand, an asset deal involves the acquisition of specific assets and liabilities of a business rather than ownership in the company itself. The ramifications of opting for one over the other are manifold, impacting areas such as tax liabilities, employee considerations, and the level of control retained by the seller.

As we traverse the European continent and certain parts of the Americas, each jurisdiction presents a particular legal and regulatory framework, adding layers of complexity to the decision-making process. However, there are also clear themes, including a codified civil law tradition in most of continental Europe and the common law foundations of the United Kingdom, Ireland, Cyprus, and most parts of the United States and Canada. Whilst the intricacies of transferring good title to share and assets may differ significantly, there are some universal basic principles of risk allocation.

WHY THE DISTINCTION MATTERS: TAILORING STRATEGIES TO LOCAL REALITIES

Understanding the precise differences between these transaction structures becomes imperative as businesses seek to optimise their operations, mitigate risks, and capitalise on growth opportunities. The guide will delve into the specifics of each approach, exploring how the choice between share and asset deals impacts issues such as taxation, contractual obligations, employee rights, and the treatment of intellectual property.

Embark on a journey through the intricacies of business transfers across Europe and the Americas where we dissect the implications of share and asset deals in a country-by-country exploration. Equip yourself with the insights necessary to make informed decisions in the dynamic landscape of mergers and acquisitions across diverse and economically vibrant markets.



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ARGENTINA

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/PUBLIC RECORDS REGISTRATION)

For the transfer of shares, the following is required: (i) a private agreement; (ii) entry in the company's share register; and (iii) the issuance of share certificates signed by the company's legal representative. The transfer of shares of a corporation (Sociedad Annima) is not submitted to the Commercial Registry. For the transfer of quotas (Sociedad de Responsabilidad Limitada and other types of companies), the following is required: (i) a membership interest transfer agreement certified by a Notary if it is executed through a private instrument; and (ii) registration with the Commercial Registry.

Registration to Cadaster/Land Registry is required if target company owns real estate property because ownership remains the same.

In Argentina there is a significant difference on an asset deal, dependent upon whether the transaction involves a going concern or not.

A. Transfer of a going concern: This consists of the transfer of the facilities, stock of merchandise, name and trade name, clientele, right to the premises, patents, trademarks, industrial designs, honorary distinctions and all other rights deriving from commercial and industrial or artistic property. It also involves publication of edicts, notices to tax authorities and sellers creditors is required. The transfer of a going concern must be recorded in the Commercial Registry. In general, complying with this specific process prevents sellers liabilities to impact on the buyer.

B. Transfer of assets without following transfer of a going concern process and requirements: This consists of a simple contract with no specific process (unless the transfer of real estate and other registered assets is involved). The buyer may be exposed to the sellers liabilities if they do not follow the special process for the transfer of a going concern set out above.

TAX TREATMENT

A. Resident individuals tax: Taxed at 15%. Gross gain from the sale is determined by deducting the updated acquisition cost from the transfer price, using the index mentioned in the law from the acquisition date to the transfer date. The tax is self-declared annually.

B. Foreign beneficiaries tax (individuals and legal entities): Taxed at 15% on the capital gain (difference between the selling price and acquisition cost) or at 13.5% on the selling price at the option of the seller. The tax must be paid by the Argentine resident buyer. If the buyer is a non-resident, the tax payment is the responsibility of the legal representative domiciled in the country, or by the seller through a self-withholding mechanism.

C. Local companies tax: Taxed between 25% and 35% depending on the level of annual taxable profits. In this case, the gross gain is determined by deducting the updated acquisition cost from the transfer price, using the indices mentioned in the law, from the acquisition date to the transfer date. Companies self-declare the tax.

The results derived from the transfer of goodwill are subject to income tax. Movable goods that are part of the goodwill are subject to value added tax. Contracts are subject to stamp tax.



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ARGENTINA

SHARE DEAL

ASSET DEAL

LIABILITIES

- ▶ The target company remains the owner of its assets and all relevant liabilities remain with the target company. The buyer becomes the shareholder/quota-holder of the target company and all liabilities for all of the company's assets (including the real estate property, if any). It will indirectly affect the buyer (to the extent and depending on, the company type and its percentage of shareholding/quota-holding).

A. Transfer of a going concern: The buyer puts a limit to seller's liabilities when following the special proceeding established by law.

Limitations to liability exemptions: (i) tax liability for assessed and unpaid taxes; (ii) labour liability, including for seller's labour obligations related to relationships extinguished before the transfer; and (iii) social security liability for assessed and unpaid obligations.

B. Transfer of assets without following transfer of a going concern process and requirements: In general, both the buyer and seller shall remain jointly and severally liable for seller's debts.

REAL ESTATE

- ▶ The target company is the owner of the real estate property and the buyer is the shareholder/quota-holder of the target company. Obligations related to the real estate property affect the target company directly and the only shareholder/quota-holder indirectly. Technically there is no transfer of the asset, but only of the ownership/control of the target company.

Transfers of real estate property must be made by public deed and must be recorded in the registry.

In case of a real estate property any encumbrances refer to property itself. The new owner (indirectly via a share deal or directly via an asset deal) is exposed to any risks/actions that may affect the real estate property.

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

- ▶ The sale and purchase of shares/quota do not imply any transfer of business undertaking (because the employees of the target company continue to be employed by the company itself). Hence, no change in the employer occurs and no labour formalities related to a transfer of business undertaking need to be complied with.

The transfer of the establishment or activity does not require the express written acceptance of the worker, so the worker is obliged to continue his usual activity under the orders of the new employer and cannot refuse the change of employer. Further, there can be no objection to the transfer of the goodwill, as long as the fundamental characteristics of the employment contract remain unchanged. Art. 226 of the LCT: «the employee may consider the employment contract terminated if, as a result of the transfer of the establishment, he/she is prejudiced in such a way as to prevent the continuity of the employment relationship». The buyer and the seller of an establishment shall be jointly and equally liable for the obligations arising from the employment contract existing at the time of the transfer. The assignment of personnel without including the establishment requires the express written acceptance of the employee. Even in the event of such acceptance, the assignor and the assignee are jointly and severally liable for all the obligations resulting from the assigned employment relationship.

ARGENTINA

SHARE DEAL

ASSET DEAL

Transfer of a Going Concern

Transfer of assets without following transfer of a going concern process and requirements

SELLER'S PERSPECTIVE

PROS

- ▶ The seller sells the whole company including all its assets and liabilities. The process is simplistic excluding with respect of the difficulties or challenges of negotiating the deal, and antitrust filings when needed.

There are not many pros for seller in following this special proceeding.

Not following the process established by law for the transfer of a going concern involves a much simpler transaction.

CONS

- ▶ In general, the sale of shares do not represent relevant cons when compared to an asset deal.

A more time consuming (third-party consents required), and more complicated procedure.

seller's exposure is not adversely affected if not following the special proceeding.

BUYER'S PERSPECTIVE

PROS

- ▶ The buying of shares does not involve special proceeding other than a contract and -eventually and depending on the type of company- its registration with the registry of commerce.

It provides buyer with reasonable protection against hidden liabilities.

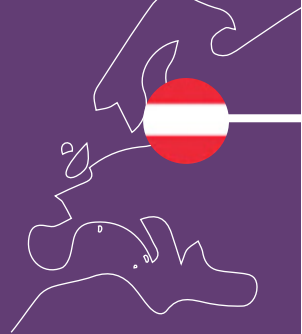
The process is simple.

CONS

- ▶ Obtaining the shares of a corporation hence obtaining its assets and liabilities. A thorough due diligence needs to be made.

The special proceeding needs to be followed, involving third parties (creditors) and tax authorities.

The seller's liabilities will impact on buyer.



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AUSTRIA

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)

- ▶ The transfer of shares of a limited liability company requires the entry into a notarial deed, which does not have to be disclosed to the Commercial Register. In the case of a limited liability company, the change of the shareholders must be registered in the Commercial Register, whereby the company register filing does not require notarisation. Registration to Cadaster/Land Registry is not required if company owns a real estate property, because ownership remains the same.

In an asset deal, the buyer takes over the assets belonging to the business, i.e. the assets and liabilities, with the associated contractual relationships (including employment relationships). The transfer may concern one or more assets (e.g. warehouse, real estate) or the transfer of an entire business (e.g. a business unit in its entirety of assets that are organised for the performance of a specific business activity). A business unit can also be transferred by means of a contribution in kind (usually to a new company which is then purchased).

The formalities of an asset deal depend on the nature of the asset (e.g. the contract for the purchase of a real estate property must be notarised and must be registered in the Land Registry).

TAX TREATMENT

- ▶ **A. Corporate tax (e.g. limited liability company):** Generally, it does not result in the disclosure of hidden reserves or goodwill because the identity of the target company is not affected. This is usually disadvantageous for the buyer, as there is no possibility of depreciating the acquisition costs. As a rule, tax-deferred hidden reserves are purchased in the company's assets.
- ▶ **B. Individual tax:** A share deal is generally advantageous from an income tax perspective (especially when selling shares in corporations), as the capital gain is only subject to the special tax rate of 27.5%. In addition, the sale of company shares is exempt from VAT, which means that there is generally no need to issue a «VAT-compliant invoice».

From a tax perspective, an asset deal can be particularly interesting from the buyer's point of view, as it offers the opportunity to write off the acquired hidden reserves and goodwill for tax purposes. It is essential that a VAT-compliant invoice is issued quickly in the case of an asset deal so that the seller can pay the VAT correctly and the buyer can claim the input tax deduction.

If real estate property is also transferred as part of the asset deal, real estate transfer tax of 3.5% and the Land Registry entry fee of 1.1%, in each case based on the purchase price plus any VAT (and any other ancillary obligations), are payable. In the case of high-value properties, this can mean a high tax burden and may be an argument in favor of a share deal.

LIABILITIES

- ▶ Only the ownership structure of the shares in the target company changes, the target company itself remains the owner of its assets and all relevant liabilities remain with the company. The buyer of the shares becomes shareholder of the target company and therefore all relevant liabilities for the entirety of the company apply depending on the company type and its percentage of total shares.

In the case of an asset deal, the buyer takes over the assets belonging to the business, i.e. the assets and liabilities, with the associated contractual relationships (including employment relationships). Section 38 of the Austrian Commercial Code (UGB) applies according to which the buyer generally assumes the legal relationships of the seller relating to the company (including rights and liabilities) at the time of the transfer of the company. The application of this Section 38 of the Austrian Commercial Code may be excluded by the contracting parties. Pursuant to Section 1409 of the Austrian Civil Code (ABGB), the buyer is directly liable to the creditors for the debts belonging to the company, which he knew or should have known at the time of the acquisition, up to the amount of the market value of the target company. However, the buyer is released from liabilities to the extent that he has already paid such debts up to the value of the target company. However, this provision may not be deviated from to the disadvantage of the creditors. Similar provisions apply with regard to tax liabilities and social security contributions.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property. All charges relating to real estate relate to the real estate itself. Therefore, the new owner (indirectly via a share deal or directly via an asset deal) is exposed to all risks/ actions that may affect the property. If the target company is the owner of domestic real estate, also a merger of shares in case of a share deal (at least 95% of the shares in one hand) results in real estate transfer tax of the property value.

The buyer becomes the owner of the real property, so any obligations related thereto affect the buyer directly.

EMPLOYEES
(ACQUIRED
RIGHTS
DIRECTIVE -
TUPE)

- ▶ In contrast to an asset deal, the sale of a company by way of a share deal generally has no impact on the employees of the target company. The employees continue to be employed by the same company and the buyer takes over all employees who are employed by the target company at the time of the acquisition.

The employment relationships with all rights and obligations are transferred ex lege to the buyer (3 AVRAG). Dismissals made by the buyer (and by the seller) without any other objective justification solely due to the transfer of the business are null and void. In the event of a transfer of business, the terms and conditions of employment generally remain in force. The employee may object to the transfer of their employment relationship under certain conditions. If the employee objects, their employment relationship with the seller shall remain unchanged.

SELLER'S PERSPECTIVE

PROS

- ▶ The sale of shares is generally easier to process. It constitutes a complete exit of the seller from the company's liabilities (except for other liability provisions in the purchase contract). Share deals may offer tax advantages, depending on the sellers individual tax situation.

Individual assets can be sold and the seller can continue the business with the remaining assets.

CONS

- ▶ The target company is sold together with all assets (tangible or intangible), as well as employees, know-how and all contractual relationships of the company, so that a (partial) continuation of the business is hardly possible. Consent of the other shareholders may be required for the sale of shares.

Significant administrative effort may be required as the assets must be transferred individually and must be listed specifically. A third party to a contract may object to the transfer of its contractual relationship within 3 months after notification; in the event of an effective objection, the contractual relationship with the seller shall continue to exist.

BUYER'S PERSPECTIVE

PROS

- ▶ The acquisition of a shareholding in the target company usually simplifies the transaction and can be completed faster (as individual assets do not have to be transferred). There is a change at shareholder level only (favorable contractual relationships generally remain in place; with the exception of those contracts that include a change of control clause).

Individual assets can be selected and purchased as required (cherry picking possible). The buyer can reduce their liability risks by selecting the assets to be purchased. By acquiring individual assets, the buyer can benefit from tax depreciation opportunities.

CONS

- ▶ The buyer assumes all previous (potentially unknown) liabilities of the company (therefore performing appropriate due diligence is very important). Acquiring the entire company means the buyer has less flexibility in selecting assets and may need to assume undesirable liabilities.

Transferring individual assets can be time-consuming, complex and require a high administrative effort. Selecting certain assets may result in a loss of business relationships that exist with the original company (third party may object to transfer of contract). Potential liability of the buyer for company-related liabilities (see above under section Liabilities).

BELGIUM

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/PUBLIC RECORDS REGISTRATION)

- ▶ No filing with Companies Register is required for a transfer of shares by private agreement. Shares are either registered or dematerialised. Registered shares are legally transferred exclusively by annotation on the shareholders register. Dematerialised shares are transferred by moving the shares from one securities account to another. Share certificates do not represent title to the shares and there is no transfer of certificates.
Registration with the Cadaster/Land Registry is not required if the target company owns real estate property because there is no change of ownership of the real property.

An asset deal may consist of the transfer of one or more assets or in the transfer of a business (i.e. a business or a business branch, that is an ensemble of assets (which may include real estate properties) organised to carry out a certain business and capable to allow the continuation of such business also after relevant transfer). For the transfer of single assets, formalities depend on the nature of the asset. For instance, to transfer a real estate property, parties must execute a notarial deed which must be registered with the Tax Authority and competent Cadaster/Land Registry Office. The transfer of intellectual property usually requires registration with the IP Registration Office.

The transfer of a business, other than via operation of law (see below), does not require a Notarial Deed except that any transfer of real estate property requires such a Deed and registration with competent Cadaster/Land Registry Office. A business can also be transferred by operation of law through a contribution in kind. This requires the filing of a draft with the Companies Register and a waiting period of 6 weeks after publication before the contribution in kind is effected before the Notary Public.

TAX TREATMENT

- ▶ **A. Individual tax:** For the moment (tax treatment will change as from 1st January 2026), Sales of shares by Belgian resident individuals are tax exempt provided they qualify as an act of ordinary non-speculative management of private assets and provided the buyer is a Belgian or EU resident company which continues to own the shares for at least 12 months after transfer of the shares.
 - B. Corporate tax:** Sales of shares by Belgian companies are generally tax exempt provided the shares have been owned for at least 12 months prior to the sale and provided the shares represent at least 10% of total shares or with an acquisition value of at least 2.500.000.
- No financial transaction tax (Tobin tax) is payable on transactions which are not carried out via a stock market. No stamp duty is due on a transfer of shares.

CIT on the capital gain at the ordinary rate of 25%. Tax deferral available for assets which have been listed on the balance sheet for more than five years and where the purchase price is fully reinvested in qualifying assets within a period of 3 to 5 years. Indirect taxes depend on type of transaction. If a business is transferred, no VAT is due provided the buyer is, or becomes as a result of the transaction, a Belgian VAT tax payer.

Registration tax at a rate of 12.5% or 10%, depending on the location of assets, is due on the transfer of real estate. A registration tax of 0.2% is payable on the transfer of short to medium term real property leases. If the transferred assets do not include real estate no transfer tax or stamp duty is payable. Transfers of individual assets by a company can be subject to VAT. In certain circumstances the sale of new buildings, as defined, is subject to VAT and not to registration tax.



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BELGIUM

SHARE DEAL

ASSET DEAL

LIABILITIES

- ▶ The target company remains the owner of its assets and all relevant liabilities remain with the target company. Tax losses and other acquired tax benefits will remain available provided the target company continues to operate substantially the same business with all or some of the target company's employees.
The target company remains liable to its employees including in respect of the rights they have acquired or accumulated as a result of their past service with the target company (so-called *passif social*).

The buyer becomes the new owner and thus assumes direct responsibility for such liabilities. Prior to closing, the buyer must notify Belgian tax, VAT and social security authorities of the asset transfer agreement to avoid liability for unpaid taxes and social security contributions of the seller. In the case of transfer by operation of law, the buyer becomes a party to the agreements entered into for operating the business. Third party creditors may require the posting of a guarantee within 2 months of the publication of the transfer notice.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the owner of the real estate property.
In case of real estate property any charges or encumbrances are attached to the property itself. Assuming the charges or encumbrances are properly registered the new owner (indirectly via a share deal or directly via an asset deal) is exposed to any risks/actions that may affect the real estate property.

The buyer is the owner of the real estate property.

EMPLOYEES

- ▶ There is no transfer of a business undertaking so long as there is no integration into the buyer's business. Employees' consent is required but may be presumed. Information relating to the transaction must be supplied to any Works Council when knowledge of the transaction becomes public at the latest.

An asset deal implies a transfer of a business undertaking. Employees are automatically transferred with all their existing rights and obligations. Their consent to the transfer is not legally required. If trade union representation within the target company the appropriate trade union body must be informed and consulted prior to the final decision to transfer the business. If no trade union representation employees must be informed before the effective transfer.

SELLER'S PERSPECTIVE

PROS

- ▶ Capital gains are likely to be tax exempt (see *supra*). No taxes on transfer of shares. Seller in principle released from all liabilities in relation to the target company, including all liabilities to target company employees (*passif social*).

An asset deal avoids the need to negotiate a complicated share purchase agreement. Due diligence and warranty requirements of buyer are likely to be less extensive. No argument for buyer to reduce purchase price.

CONS

- ▶ The negotiation of the share purchase agreement is likely to be more complicated than for sale of assets. The purchase price is likely to be reduced to compensate for: (i) the tax-free nature of sale for the seller; and (ii) the inability of seller to depreciate purchase price.

Capital gains are taxable. Taxes are due on transfers of real estate property.



BUYER'S PERSPECTIVE

PROS	<p>There will likely be a reduction in purchase price because no capital gains tax for seller and only net assets purchased. The buyer automatically gets the benefit of existing agreements with third parties without any need to notify such parties. There are no taxes on transfer of shares. There are no environmental formalities in respect of real estate. The tax losses in target company remain available.</p>	<p>There is a possibility to depreciate for tax purposes purchase price including goodwill. Ordinarily, no tax liabilities are taken over. There is also a possibility to limit purchase to the particular business or assets and employees that are of interest. Consolidation of profits and costs (including transaction and financing charges) with the profits and losses of the business acquired automatically occurs.</p>
CONS	<p>The purchase price and any goodwill included may not be depreciated for tax purposes. The buyer acquires all historical and contingent liabilities, including tax liabilities, of the target company. Specific debt pushdown measures will probably be needed. Unless otherwise agreed, liability to all employees, including passif social, will be taken over.</p>	<p>The buyer may need to renegotiate agreements with third parties which, except in the case of a transfer by operation of law, do not automatically pass over to the buyer. The deal is usually less attractive to the seller than share purchase because of tax free nature of the latter for the seller. Any transfers of real estate property are taxed at 12 or 10%. The benefit of tax losses does not pass over to buyer.</p>

CZECH REPUBLIC

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)



Joint-stock company: For the transfer of shares by a private agreement, no filing with the Commercial Register is required in principle. Materialized (physical) shares are transferred by handing shares with transfer endorsement. The transfer must be annotated on the shareholders list. The transfer of dematerialized shares must be registered within the Czech Central Securities Depository.

Limited liability company: The transfer of the ownership interest by a private agreement (having notarized signatures) must be registered in the Commercial Register. Registration to Cadastral/Land Registry or other registry is not required if the target company owns a real estate property or other property because ownership remains with the relevant company.

TAX TREATMENT (WITH KIND CONTRIBUTION OF FORVIS MAZARS)



A. Individual tax: Capital gains derived by individuals are tax exempt if shares are held for more than 5 years (3 years for shares incorporated into securities as e.g. in case of a joint-stock company). As of 2025, the tax exemption is limited up to CZK 40 million of income received from sale of shares. If taxable, the capital gains are subject to 15 % / 23 % personal income tax (PIT).

B. Corporate tax: Capital gains derived by corporations are tax exempt based on the Czech participation exemption rules if: (i) the seller held at least 10 % share on the registered capital of the subsidiary for the period of at least 12 months; and (ii) both the shareholder and the subsidiary have specified legal forms listed in the EU Parent-Subsidiary Directive (including Czech limited liability company and Czech joint-stock company). Please note that other conditions apply. If taxable, the capital gains are taxed at 21 % in the general income tax base of the shareholder. Any tax attributes (e.g. tax losses) remain with the company. However, their future utilization may be subject to further conditions (as e.g. same activity test in case of tax losses). Sale of shares is not subject to Czech VAT. No transaction tax or stamp duty is imposed by the Czech tax legislation on share deal.

This taxation analysis for the Czech Republic has been kindly supported by Mazars.

SHARE DEAL



ASSET DEAL



An asset deal may involve either the transfer of one or more assets; or the transfer of a business undertaking (enterprise) (as a whole or part) consisting of tangible and intangible assets.

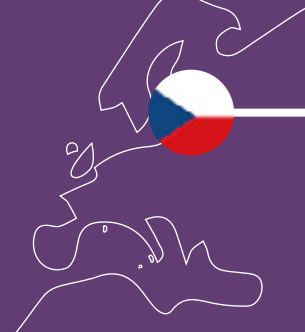
Single assets: formalities depend on the nature of the asset. E.g. in respect of a real estate property there must be an agreement with notarized signatures of both parties and it must be registered with Cadastral/Land Registry.

Transfer of business undertaking does not require a written form agreement; however, if the buyer is registered in the Commercial Register a written confirmation on the transfer must be filed with such a register. If there is a real estate property, there must also be a written agreement or confirmation of the transfer with notarized signatures of both parties, and it must be registered in the Cadastral/Land Registry. An undertaking can also be transferred by operation of law through a contribution in kind. This involves a Notarial Deed and registration with the Commercial Register.

Capital gains are generally subject to 21 % CIT (in standard CIT tax base) for corporations or 15 % / 23 % PIT for individuals. The tax base is calculated as the difference between sale price and tax residual values of assets. The profit / loss from sales may be offset against profit from other business activity of the seller. New tax acquisition values of assets are recognized by the buyer (i.e. step-up / step-down in the tax basis of asset is allowed). Certain special rules apply for purchase of business undertaking (enterprise), e.g. the buyer may take over the residual accounting values of assets recognized by the seller. The difference between the sale price of business and the value of transferred assets recognized by the buyer represents valuation difference / goodwill that should be depreciated for CIT purposes over 15 years (the depreciation charges are tax effective).

The tax (and other public law) liabilities, as well as tax attributes, may not be transferred to the buyer together with the assets / business and remain with the seller. Sale of individual tangible / intangible assets is generally subject to Czech VAT (exemptions may be applied e.g. for real estate after certain period elapsed since it was put in use). If the transaction is classified as sale of business as a going concern (undertaking) (in line with CJEU case law), the transaction is out of scope of Czech VAT (with no need to adjust the input VAT claimed by the seller). There is no transaction tax or stamp duty imposed by the Czech tax legislation on the asset transfer.

This taxation analysis for the Czech Republic has been kindly supported by Mazars.



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SHARE DEAL

ASSET DEAL

LIABILITIES

▶ The target company remains the owner of its assets, and all relevant liabilities remain with the target company. The buyer becomes a shareholder /quota-holder as it “only” purchases shares and does not directly purchase the target company’s assets and is not liable, in principle, for company’s obligations.

In the case of single assets transfer, the buyer shall be liable for liabilities and shall acquire claims relating to the acquired assets only. In case of a transfer of a business undertaking, in principle, the buyer becomes a creditor of all receivables (claims) and liable person for all debts pertaining to the transferred undertaking. It is not required to get creditors consent with the transfer. In case the transfer affects recoverability of claims, the creditor who did not consent with the transfer can apply to the court to decide that the transfer is not effective vis-a-vis such a creditor; such right can be exercised within 1 month from the day of the creditor becoming aware of the transfer; however, within 3 years from the effectiveness of the transfer at the latest.

REAL ESTATE

▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property. Any pledges, easements or encumbrances attached to the real estate property remain attached thereto following the share or asset deal. Therefore, the owner of such property (i.e. the company in case of share deal or a buyer in case of asset deal) shall be exposed to any risks relating to such property.

The buyer becomes the owner of a real estate property.

EMPLOYEES
(ACQUIRED
RIGHTS
DIRECTIVE -
TUPE)

▶ The status of employees is not affected by the transfer of shares / ownership interests. The employees should be informed on the transfer, once it occurs and only if such a transfer shall have impact on employees or the legal, financial situation of the company, its internal structure, etc.

The transfer of an undertaking in principle represents a transfer of the employer’s activity and implies an automatic transfer of all employees performing work within such an activity. The law obliges the seller and the buyer to inform employees (and the Trade Unions as the case may be) on the envisaged transfer and this notification duty must be fulfilled 30 days before such transfer becomes effective.

SELLER’S PERSPECTIVE

PROS

▶ It includes the sale of all assets in one document. Tax exemption of income may be achieved. Tax liabilities are transferred (i.e. remain with the company). No VAT imposed on the transfer of shares.

A single asset transfer enables the seller to further develop the remaining assets. Third parties cannot block the transfer of debts. Limited shareholders involvement. The transfer of an undertaking is out of scope of Czech VAT with no need to adjust the input VAT claim.

CONS

▶ The transfer document likely involves more complicated negotiations. The seller transfers all business and cannot further develop it. Approval of all shareholders may be required. Wide set of representations and warranties to be given by the seller.

Subject to the type of assets being transferred, there may be more transfer documents required including filing duties with registers. Further transfer formalities / third-party consent may be required. Liabilities usually stay with a seller. Generally, the transfer is subject to CIT / PIT and VAT (unless classified as transfer of business as a going concern (undertaking)).

SHARE DEAL

ASSET DEAL

BUYER'S PERSPECTIVE

PROS

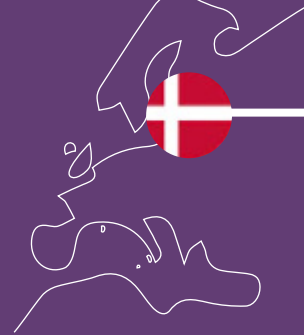
▶ The sale of all assets will be included in one document. The buyer acquires all assets (indirectly via acquiring shares). Tax losses and other tax attributes are transferred (i.e. remain with the company). There is no requirement for new SSHI registrations of employees.

The seller acquires only specific assets and not some other unwanted assets / no money wasted. There is likely a lower risk of acquiring hidden liabilities. Step-up / step-down in the tax basis of assets. Offset of purchase price against profit of the buyer (likely spread over several periods due to tax depreciation of assets). Tax deductibility of goodwill (valuation difference) from purchase of business. No legal succession (or cross-guarantees). Tax liabilities are not transferred from the seller. Employees may / may not be transferred with the assets. A need for new SSHI registrations of transferred employees.

CONS

▶ Higher risk of acquiring hidden liabilities / extensive set of warranties should be required from the seller. More complicated negotiations.
No step-up / step-down in the tax values of assets. No offset of purchase price against profit of the subsidiary. Tax non-deductibility of interest if the transaction is financed by a loan (both third party and related party loans). Tax non-deductibility of other costs related to the acquisition or holding of the subsidiary. Legal succession applies, i.e. tax / legal due diligence is essential.

Subject to the type of assets being transferred it may be necessary to have more transfer documents including filing duties with registers. There is likely a lower risk of acquiring hidden liabilities. No transfer of tax attributes (e.g. tax losses). Limitation to the tax deductibility of interest may apply if the transaction is financed by a related party loan (thin capitalization rule). It may impact historically awarded subsidies related to the assets.



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DENMARK

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)



A transfer of shares by private agreement requires filing with the Danish Business Authority if the transfer of shares or voting rights exceeds 5%. Information on the ownership of shares is publicly available in a database with the Danish Business Authority if an ownership exceeds 5%. The change in ownership must be recorded in the company's register of shareholders, which must be kept by the company in accordance with the Danish Companies Act. Shares are transferred by moving the shares from one securities account to another if shares are issued through a central security depository.

A transfer of assets may consist in the transfer of one or more assets or in the transfer of a business (i.e. a business or a business branch, that is an ensemble of assets, that may include a real estate property, organised to carry out a certain business and capable to allow the continuation of such business also after relevant transfer).

A transfer of intellectual property usually requires registration with the IP Registration Office. However, it depends on the nature of the intellectual property. A transfer of real estate requires registration with the Land Registrations Court and does thus not require a notarial deed.

TAX TREATMENT



Taxation generally occurs on the disposal of shares. Share transfers are taxed according to the rules on share taxation, as it is shares that are being transferred. Taxation depends on whether the seller is a natural person or a legal person.

For a natural person, share income up to an annual limit of DKK 61,000 (as of 2024) is taxed at 27%. Dividends and returns in excess of DKK 61,000 are taxed with a share top tax of 42%.

In the event of a transfer of assets, the selling company will be liable for tax on profit on the individual assets transferred, including taxation of recovered depreciation.

The taxation does, however, not affect the shareholders of the company directly.

LIABILITIES



The share transfer must be notified to the Danish Business Authority if the share transfer results in an ownership of more than 5%. Regardless of the size of the ownership share, the company's register of shareholders must be updated.

All other liabilities remain with the company, as the buyer becomes shareholder of the company. All liabilities will indirectly affect the shareholder.

The buyer of the assets becomes the new owner and assumes direct responsibility for any liabilities and obligations related to the asset in question.

REAL ESTATE



In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property.

Liabilities will affect the company directly and the shareholder indirectly.

The buyer of real estate assets becomes the owner of the real estate, and, thus, the obligations related to the real estate therefore directly affect the buyer.

EMPLOYEES
(ACQUIRED
RIGHTS
DIRECTIVE -
TUPE)

▶ The sale and purchase of shares do not imply any transfer of a business undertaking, as the employees continues to be employed by the company. As such, no change in the employer occurs and no labour formalities related to a transfer of business undertaking shall be complied with.

Any transaction implying a change of the employer is subject to Danish labour laws on transfer of business undertaking. As a general rule, the buyer assumes the rights and obligations that existed at the time of the transfer, if a business or part of it is transferred.
Dismissal due to the transfer of an undertaking or part thereof is not considered to be reasonably justified by the circumstances of the undertaking, unless the dismissal is due to economic, technical or organisational reasons resulting in changes in employment.

SELLER’S PERSPECTIVE

PROS

▶ The transfer includes selling the whole company including all its assets and liabilities.

The transfer can be limited to specific assets of the seller’s choice, and thus the seller retains ownership of other assets.

CONS

▶ The transfer includes selling the company (in part or in whole) including all liabilities but also all assets (tangible or intangible) as well as employees, know-how, etc. so there is no possibility to develop further business with such assets.

The transfer includes selling specific assets can reduce the value of other assets due to a lack of synergy.

BUYER’S PERSPECTIVE

PROS

▶ When buying shares of a company, the buyer becomes a shareholder in general and not just a new owner of a single asset.

The buyer can buy and obtain specific assets without becoming a shareholder and having to worry about the future of the company.

CONS

▶ The buyer is indirectly affected by the liabilities and obligations of the target company as a whole, thereby taking on a risk of a possible negative future for the target company.

The value of the purchased asset alone may be reduced as it now stands alone, whereas before it was part of a business with other assets (synergies).



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ENGLAND AND WALES

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)



There are no notarial requirements. The transaction will be evidenced by a share purchase agreement (SPA) and the transfer of legal title to shares effected by the delivery of a stock transfer form, which is then approved by the board of the target company which updates its register of members. However, the transaction will require an update of the target company's register of members and the public register of people with significant control.

Private company shares are transferred by the production of a transfer instrument, it being approved by the board of the target company and then the target company will update its register of members, subject to the payment of the transfer tax (called stamp duty).

TAX TREATMENT



Save for the availability of certain reliefs, the sale of shares is not a taxable event for the corporate which continues to be responsible for corporation tax in the usual way.

The buyer needs to carefully consider the taxation history of the target company and, in particular, the impact of any capital gain within the target company (the impact of this might lead to a price adjustment).

Stamp duty of 0.5% is chargeable on the share sale consideration. The seller will be chargeable to tax on any capital gain made on the sale.

LIABILITIES



The target company remains the owner of its assets and all relevant liabilities remain with it.

Tax losses and other acquired tax benefits may remain available, subject to detailed rules and, generally, provided that the target company continues the same trade without interruption. The target company retains all of its employees on same terms.

REAL ESTATE



In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property. Encumbrances on real estate run with the land and therefore cannot generally be neutralised through a disposal.

SHARE DEAL



ASSET DEAL



There are no notarial requirements. The transaction will be evidenced by an asset purchase agreement (ATA). The agreement will be the instrument under which title is transferred, but certain elements, such as real estate property and other registrable assets will need to be perfected through further documentation. No transparency register filing requirements.

The seller will be chargeable to tax on any capital gain made on the sale. The buyer will not assume the tax position of the seller. No transfer tax on assets other than SDLT on real estate.

No liabilities pass across to the buyer, unless specifically provided for in the contract. See specific comments in relation to employees.

Real estate property will be registered in the seller unless and until transferred to the buyer and (in the case of a lease of over 7 years), the Land Registry file is updated. Landlord consent is likely to be needed in respect of leasehold interests.

SHARE DEAL

ASSET DEAL

EMPLOYEES



Employees remain the employee of the target company. There is no change. Post- acquisition, it may be necessary or desirable to re-deploy target employees within the wider corporate group in order to deliver synergies.

Despite Brexit, the law contained in the Acquired Rights Directive remains through the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

The contracts of employment of all employees wholly or principally engaged in the undertaking (and most benefits) will pass by operation of law.

The parties need to follow procedure including consultation. If there is trade union representation within the target company the appropriate trade union body must be informed and consulted prior to the final decision to transfer the business. If no trade union representation employees must be informed before the effective transfer. The obligations are on the seller, all the buyer needs to do is advise the seller of its intentions post-transfer.

SELLER'S PERSPECTIVE

PROS



A share sale is a simpler transaction (ultimately all that is required to transfer title is a sock transfer form).

The seller might only wish to sell certain assets and might wish to retain the corporate company as it might still hold other valuable assets (which might include the availability of tax losses).

CONS



Given all assets, rights and liabilities transfer it is likely that the buyer will require a more detailed investigation of the target and seek detailed warranties and indemnities from the seller.

It is a more complex transaction, but often a necessary transaction for intra-group arrangements. There is less need for warranties and indemnities to allocate risk, because the assets being transferred and liabilities being assumed will be specifically stated.

BUYER'S PERSPECTIVE

PROS



The transaction is simple, clean, and there is no need to get drawn into consultation processes with employees.

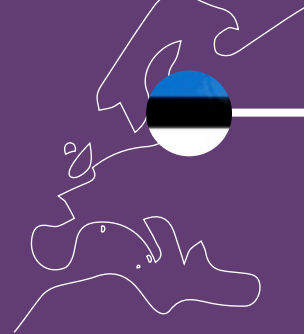
The buyer does not take on the trading history of the target company and it is easier for the buyer to rebrand/integrate the business if it is not a standalone corporate.

CONS



If assets are to be excluded, they need to be sold out before closing. The parties need to carefully consider warranties and indemnities.

It requires very detailed and precise analysis of those assets which are to be transferred and those assets which are to be excluded from the transaction.



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ESTONIA

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)



The share transfer procedure depends on the type of company (i.e., O which is a private limited liability company or AS which is a public limited liability company).
AS: A share purchase agreement for the purchase of shares may be entered into in any form (e.g. in a form which may be reproduced in writing, written form, etc.). The share transfer is carried out by transferring the shares from the securities account of the seller to the securities account of the buyer.
O: There are three different ways how a transaction for the purchase of shares should be carried out: (i) in case the list of shareholders is kept by the Estonian register of securities (optional), the share transfer is identical to the transfer of shares in an AS company; (ii) in case the list of shareholders is kept by the Commercial Register, the agreement for the transfer of title to the share must be in notarial form; and (iii) in case the share capital of the company is at least 10 000 and the shareholders have waived in the articles the mandatory notarial form for the transfer of the title to a share, it can be prescribed that a disposition for the transfer of a share shall be at least in a format which can be reproduced in writing.

TAX TREATMENT



The tax treatment may depend upon several conditions, e.g. the tax residence of the seller and nature of the target. The corporate income tax (CIT) only applies in case of distribution of profit which means that profits that are reinvested or retained are only taxed upon distribution. Thus, sale of shares of an Estonian company will not normally trigger immediate taxation with Estonian CIT.

SHARE DEAL



ASSET DEAL



The form of the agreement for the acquisition of assets depends largely on the assets being acquired. As an example, if the assets to be acquired also include immovables (real estate) in Estonia, such transfer of real estate property must be conducted in notarial form.

The tax treatment regarding corporate income tax (CIT) for an asset transaction is influenced, among other factors, by the type of assets involved and the tax residence of the seller. If the seller is a company based in Estonia, the sale of assets typically does not lead to CIT because in Estonia corporate profits are taxed only at the moment of distribution. If the seller is a non-resident, CIT treatment will vary based on the asset type. Specifically, if the assets being sold include immovables (real estate property) located in Estonia, the capital gains from such sale are usually subject to Estonian CIT.

Moreover, if the assets being transferred represent an enterprise or a structurally integral part of an enterprise (in Estonian: *kitis*) as defined under the Estonian law, such transaction falls outside the scope of the VAT regime. This implies that VAT is neither applicable nor does it affect the sellers right to deduct the input VAT.

LIABILITIES

▶ The liabilities and obligations of the target company are generally unaffected by a share purchase and continue to reside with the target company. Representations, warranties and indemnities are usually addressed in the transaction documents.

When assets are transferred as an enterprise or an organisationally whole part of an enterprise (hereinafter referred to as a business) as defined in Estonian law, all related obligations of the business automatically transfer to the buyer along with the assets, irrespective of the buyers awareness of such obligations. Its essential, thus, to establish whether such assets being transferred constitute a business. In the scenario of a business transfer, both the seller and buyer are jointly and severally (solidarity) liable for any obligations which have arisen before the transfer of the business and which, by the time of the transfer, have fallen due or will fall due within five years after the transfer.

REAL ESTATE

▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the immovables (real estate property).

The buyer becomes the owner of the immovables (real estate).

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

▶ The sale of a company by way of a share deal should have no effect on the target company's employees. All employees remain employed with the target company, and neither the target company nor the employee can derive any right from the share deal.

All employment relationships of the company or part of the company automatically transfer to the buyer (including accrued vacations, overtime, etc.), no consent of the employee to the transfer is required. The parties cannot cancel an employment contract due to the transfer of the enterprise. If the seller or the buyer of an enterprise intends, due to the transfer of the enterprise, to make changes affecting the situation of the employees, they must consult the trustee or, in their absence, the employees with the goal of reaching an agreement on the measures planned. Upon consultation, the trustee or the employees have the right to meet with the representatives of the seller and buyer of the enterprise, including members of the directing body, and make proposals relating to the measures planned with regard to the employees no later than within 15 days as of the submission of the notice specified above, unless a longer term is agreed upon. The seller and the buyer of the enterprise are required to justify any disregard for the proposals.

SELLER'S PERSPECTIVE

PROS

▶ To a certain extent, the transfer is a simplified transaction process with no need to individually transfer assets or agreements. It avoids complexities related to the transferability of licenses, permits and registrations. The transfer is potentially quicker and will have a more efficient transaction closing. Freedom to choose the moment of the transfer of title to the share(s).

The transfer gives the buyer the ability to select which assets are sold. The seller may be able to retain assets or liabilities which are not included in the sale. The parties may negotiate specific representations and warranties for the assets sold. The parties can bypass shareholders pre-emption rights or restrictions included in shareholder agreements.

CONS

▶ The consideration may be set at a lower price due to assumption of liabilities by the buyer or certain findings throughout due diligence. There is a risk of losing control over the company if not selling 100% of shares. Shareholders pre-emption rights may limit the pool of potential buyers and there may be other restrictions contained in the shareholders agreements.

It may be difficult to value and sell the individual assets compared to selling the company as a whole. Potential for contractual or regulatory complications in transferring certain licenses, permits or agreements; Potential negative impact on the remaining business due to the loss of key assets or operations.

BUYER’S PERSPECTIVE

PROS

- ▶ There will be minimal interruption to the target company's everyday operation. There is no need to separately examine the transferability of licenses, permits, registrations etc. All assets, rights and liabilities remain with the target company. Buyer has the freedom to choose the date of completion.
- The buyer has the Ability to specifically select which assets to acquire, avoiding unwanted liabilities. Integration of acquired assets into existing operations may potentially be straightforward. There is increased flexibility in negotiating terms for each asset, potentially optimising investment value.

CONS


- ▶ The buyer will assume all liabilities of the target company. The buyer may face restrictions or requirements from existing shareholder agreements and pre-emption rights of other shareholders could complicate or prevent the purchase of share(s). There may be notary fees (in case of a mandatory notarial form).
- The buyer needs to conduct extensive due diligence to identify and value each asset individually. There is a risk of not acquiring necessary operational synergies or missing critical assets. There may be legal and regulatory challenges in obtaining or transferring specific licenses and permits. There may be difficulties in achieving full operational functionality without the comprehensive business structure.



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FINLAND

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)

- There are no formal requirements for the deal structure in Finland and thus the parties may conclude the deal in any manner they desire. For example, there is no requirement to use notarial services, nor will the ownership change transfer be registered by the authorities (instead each company is required to keep a shareholder register).

Assets and liabilities need to be transferred in accordance with specific requirements, but for most assets the execution of a purchase agreement will suffice. Real estate property is an exception and requires that a notary is used.

TAX TREATMENT

- CIT:** Capital gains are generally subject to income taxation, in the case of corporations at the corporate income tax rate. An exemption to the general rule are shares that are part of a company's capital assets. On the other hand, any confirmed losses in the taxation of the target company will be lost if more than half of the shares are transferred. However, under special circumstances the Tax Administration can grant an exception to retain the losses.

CIT: Capital gains are generally subject to income taxation, in the case of corporations at the corporate income tax rate.

VAT: The transfer of a totality of assets is deemed not to be taxable for VAT purposes. If the transfer does not qualify as a totality of assets, the VAT treatment depends on the assets that are transferred.

VAT: Share transfers are not subject to VAT.

Transfer Tax: Only applicable in case the transferring assets include real estate or shares.

Transfer Tax: Share transfers are subject to transfer tax.

Exemptions may apply.

Exemptions may apply.

LIABILITIES

- All liabilities will remain with the debtor, i.e. the target company. Specific arrangements regarding all or certain (potential) liabilities can be made in the transaction documents by means of agreeing on indemnities. It might also be an option to have the seller takeover a liability if the creditor agrees thereto.

The buyer is not required to acquire the liabilities save for certain employee related liabilities.

REAL ESTATE

- Real estate property owned by the target company will indirectly be acquired (via the share deal), if not carved-out. Transfer tax is not applied.

Real estate property can be acquired separately from the seller. Transfer tax is applied.

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

Acquired Rights Directive - TUPE is not applicable.
All employees will remain employed by the target company.

TUPR directive is applicable. The employees (including their employment terms) will transfer automatically if a business or undertaking transfers to the buyer because of an agreement, a merger or split up.

SELLER'S PERSPECTIVE

PROS

- There is contractual freedom in respect of, among other things, limiting warranties, indemnities, liability arrangements etc. The purchase price is directly paid to the shareholders of the target company and not to the target company resulting usually in the case of a natural person in more favorable tax treatment than in an asset deal.

Assets, rights and liabilities regarding a business unit to be sold can be separated from other business units which will remain with the selling company.

CONS

- The buyer will conduct extensive due diligence investigations into the (shares of the) target company by the buyer and its advisors. The buyer will likely request security to be given by the seller and the target company regarding recovery of claims under the transaction documents.

There are specific requirements applicable to the transfer of assets, rights and liabilities. The contracting parties might not give its required consent to the contract takeover by the buyer from the selling company. The debtor might not give its required consent to the debt takeover by the buyer from the selling company.

BUYER'S PERSPECTIVE

PROS

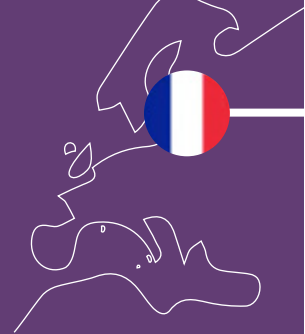
- Third party approvals are not normally required, i.e. the transaction can be concluded more quickly than an asset deal. If the shares in a holding company will be acquired, the shares in its subsidiaries will indirectly be acquired by the buyer (if not carved-out). The target company will likely not need to re-apply for any permits it holds at the time of transfer.

The buyer may cherry pick which assets it wishes to acquire, i.e. less attractive or risky assets and rights will not be transferred noting that the VAT exemption requirement is that a viable business is transferred.

CONS

- No cherry picking, i.e. the buyer acquires ownership of all of the target company's assets and liabilities. The majority shareholder will take into account the interests of the other / minority shareholder(s).

Acquired Rights Directive - TUPE might be applicable. There are specific requirements applicable to the transfer of assets, and rights and liabilities (e.g. IP assets, real estate assets etc.) The contracting party might not give its required consent to the contract takeover by the buyer from the selling company. The debtor might not give its required consent to the debt takeover by the buyer from the selling company. The buyer may need to re-apply for any existing permits as such permits will not automatically transfer with the assets.



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FRANCE

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)

- ▶ In a share deal, only a single form is required, but generally the parties enter into a share purchase agreement. Such agreement has to be registered.

Assets and liabilities need to be transferred in accordance with specific requirements applicable, but for most assets the execution of a purchase agreement will suffice. The agreement shall be filed with commercial court.

For real estate property, the agreement needs to be notarised.

In the event of the sale of a business (fonds de commerce), a creditor opposition procedure must be followed, during which the assets price is placed in an escrow account for a few weeks. This is done in practice to protect the buyer against any financial disputes, but it is not a legal obligation.

TAX TREATMENT

- ▶ **Registration fee:** There is a low registration fee (generally 0.1% of the share price for joint-stock companies (sociétés par actions)).
CIT: If two conditions are met (having acquired or subscribed to (i) equity securities (titres de participation) (ii) for a least two years), capital gains on the sale of shares are exempt from CIT, subject to the inclusion in taxable income of a share of costs and expenses equal to 12 % of gross capital gains. Capital losses are not deductible.
VAT: Not applicable.

Registration fee: There is a high registration fee (up to 5% of the assets price).

CIT: Capital gains are subject to corporate income tax.

VAT: The VAT treatment depends on the assets that are transferred and also depends on the taxpayers activity.

LIABILITIES

- ▶ All liabilities will remain with the debtor, i.e. the target company. Specific arrangements regarding all or certain (potential) liabilities can be made in the transaction documents by means of agreeing on indemnities. It might also be an option to have the seller takeover a liability if the creditor agrees thereto.

The buyer is not required to acquire the liabilities.

REAL ESTATE

- ▶ Real estate property owned by the target company will indirectly be acquired (via the share deal), if not carved-out. In case of real estate property any charges or encumbrances are attached to the property itself. Assuming the charges or encumbrances are properly registered the new owner (indirectly via a share deal or directly via an asset deal) is exposed to any risks/actions that may affect the real estate property.

Real estate property can be acquired separately from the seller.

FRANCE

SHARE DEAL

ASSET DEAL

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

- ▶ Acquired Rights Directive - TUPE is not applicable. All employees will remain employed by the target company.

Applicable if a business (fonds de commerce) is transferred, so that the employees, including their employment terms, will transfer automatically.

SELLER'S PERSPECTIVE

PROS

- ▶ Contractual freedom in respect of, among others, limiting warranties, indemnities, liability arrangements and so further. The asset price is directly paid to the shareholders of the target company and not to the target company.

Assets, rights and liabilities regarding a business unit to be sold can be separated from other business units which will remain with the selling company.

CONS

- ▶ Extensive due diligence investigations into the (shares of the) target company by the buyer and its advisors is required. Security to be given by the seller to the buyer and the target company regarding recovery of claims under the transaction documents.

The transfer process may be more complex given it involves the placement of the assets price in an escrow account for a few weeks following the transaction. There are specific requirements applicable to the transfer of assets. The contracting party might not give its required consent to the contract takeover by the buyer from the selling company. Debtor might not give its required consent to the debt takeover by the buyer from the selling company.

BUYER'S PERSPECTIVE

PROS

- ▶ Third party approvals are not normally required, i.e. the transaction can be concluded more quickly than an asset deal. If the shares in a holding company will be acquired, the shares in its subsidiaries will indirectly be acquired by the buyer (if not carved-out).

The buyer may cherry pick which assets it wishes to acquire, i.e. less attractive or risky assets and rights will not be transferred.

CONS

- ▶ No cherry picking, i.e. the buyer acquires ownership of all of the target company's assets and liabilities. The majority shareholder will take into account the interests of the other / minority shareholder(s).

Acquired Rights Directive - TUPE might be applicable. There are specific requirements applicable to the transfer of assets, and rights and liabilities (e.g. IP assets, real estate assets etc.) The contracting party might not give its required consent to the contract takeover by the buyer from the selling company. The debtor might not give its required consent to the debt takeover by the buyer from the selling company.



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GERMANY

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/PUBLIC RECORDS)

- The most common company type in share deals is the Gesellschaft mit beschränkter Haftung (GmbH). The transfer of GmbH shares requires notarisation. The notary must read the full transfer agreement (including annexes) to the parties, and substantial notarial fees apply.

Registration with the Commercial Register is not required. However, the updated list of shareholders (Gesellschafterliste) must be submitted to the register.

If the target company owns real estate, the ownership of the property remains unchanged and no land register entry is required.

Note: Share deals involving 90% or more of the shares in a real estate holding company are subject to German real estate transfer tax (Grunderwerbsteuer) under §§ 1(2a), (3) GrEStG.

Assets must be transferred individually. If the transaction includes real estate, the entire agreement must be notarised – not only the parts dealing with the property. If third-party contracts (e.g. leases, customer agreements) are to be transferred, consent may be required.

All transferred assets must be described with sufficient specificity (Bestimmtheitsgrundsatz). It is not possible to transfer “all assets” in a blanket clause.

If the asset deal involves a business as a going concern, the transaction may fall under § 25 HGB, meaning the buyer becomes liable for existing business debts – unless this is contractually excluded and the exclusion is notified to creditors.

TAX TREATMENT

- Share deals are often more favourable from a seller's tax perspective.

 - Corporate seller: 95% of capital gains are tax-exempt under § 8b KStG, resulting in an effective tax rate of approx. 1.5%.
 - Individual shareholder: Capital gains are taxed at a flat rate of 25% (Abgeltungsteuer), or partially exempt under the Teileinkünfteverfahren.
 - Grunderwerbsteuer: May apply if the company owns real estate and 90% or more of shares are acquired by one or several buyers acting in concert.

For the buyer, tax losses carried forward by the target company may be forfeited in whole or part under § 8c KStG (so-called “loss trafficking” rule).

- Profits from the sale of assets are subject to corporate income tax (CIT) and trade tax (combined approx. 30%).
- For the buyer, acquired assets can be written up to fair market value, creating future depreciation (Amortisationsvolumen).
- If real estate is included, real estate transfer tax applies (3.5–6.5%, depending on federal state).
- VAT may apply, unless the asset transfer qualifies as a “going concern” under § 1 Abs. 1a UStG (no VAT if business continues seamlessly).

LIABILITIES

- All liabilities remain with the target company. The buyer acquires the legal entity and thus assumes all visible and hidden liabilities. Proper due diligence and detailed warranties and indemnities in the SPA are crucial to manage this risk.

Liabilities are generally not transferred unless explicitly agreed. However:

- Under § 25 HGB, the buyer may be liable for prior business debts.
- Under § 613a BGB, employment contracts automatically transfer to the buyer.
- Public-law liabilities (e.g. tax, social security) may follow the business if not addressed in the agreement.

GERMANY

SHARE DEAL

ASSET DEAL

REAL ESTATE

- ▶ No direct change in real estate ownership occurs; the company remains the registered owner. However, encumbrances (e.g. mortgages, easements) remain attached to the property and may indirectly affect the buyer via the shareholding.

Real estate must be transferred by notarial deed and recorded in the land register. Any existing encumbrances remain in force and bind the new owner.

EMPLOYEES

- ▶ There is no transfer of employer – the legal identity of the company remains unchanged. Thus, the share deal does not trigger the application of § 613a BGB. Works council rights may be triggered only if post-closing changes to the business are implemented.

If the transfer qualifies as a business transfer under § 613a BGB, all employment relationships automatically transfer to the buyer, with existing terms intact. Employees must be informed in advance and may object to the transfer – in which case, they remain with the seller. Dismissals due to the transfer are generally invalid.

SELLER'S PERSPECTIVE

PROS

- ▶ More favourable tax treatment; relatively straightforward transaction; no need to reassign contracts or licences (unless change-of-control clauses apply).

Can carve out specific assets and retain others; often less liability exposure; clean break possible.

CONS

- ▶ Extensive due diligence and risk of warranty claims by buyer.

More complex execution; consents needed for asset and contract transfers; VAT may apply; possible double taxation if profits distributed.

BUYER'S PERSPECTIVE

PROS

- ▶ Acquisition of a fully operational business; continuity of contracts, employees and licences.

Can "cherry-pick" assets and avoid legacy liabilities; tax depreciation on acquired assets; no hidden corporate liabilities.

CONS

- ▶ Assumes all historical and future liabilities; difficult to exclude unwanted assets or risks.

Higher transaction complexity; need for third-party consents; no automatic transfer of licences or permits; employment law obligations apply.



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GREECE

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)

- ▶ Shares must be transferred by private agreement. There is no requirement to register with Cadastre/ Land Registry Office.

In an asset deal, the seller and buyer must enter into a notarial deed for the transfer of real estate property. The parties only need to enter into a private agreement for other types of assets. The parties must register the notarial deed (i.e. the transfer of the real estate property) with the Cadastre/ Land Registry Office.

TAX TREATMENT LIABILITIES

- ▶ Tax on the added value (initial acquisition value vs value on the date of the sale).

In the case of a real estate property, any encumbrances refer to the property itself. Therefore, the new owner (either via share deal or via asset deal) is exposed to any actions that may take place on the property in case of pre-existing encumbrances.

The buyer of shares becomes the shareholder of the target company and all relevant liabilities for the entirety of the target company apply depending on the type of company and its percentage of total shares. The target company remains the owner of the property and all liabilities related to asset ownership.

Property transfer tax is applied on the buyer of a real estate property (currently 3%). Transfer taxes and administrative fees for other categories of assets.

The buyer of the asset becomes its new owner and all liabilities related to asset ownership.

REAL ESTATE

- ▶ The legal person is the owner of the real estate property, and the buyer is the shareholder of the legal person. As a result, any obligations related to the real estate property affects the legal person directly and the shareholder indirectly as per applicable legislation.

The buyer becomes the owner of the asset. As a result, any obligations related thereto, affects the buyer directly as per applicable legislation.

GREECE

SHARE DEAL

ASSET DEAL

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

- ▶ The critical point for the consequences of a deal to the employees, is not its type (share or asset) but rather its actual effect. In order for the employees of a company to be affected by a transfer (share or asset), the deal should result in a Business Transfer. In case of no change to the employer or in case that the working conditions are not affected directly, no special provisions for employees, apply.
Employees involved in mergers fall under the protective provisions even if the employer is not changed by specific inclusion of mergers in the legislation providing protective measures for employees in cases of Business Transfers. Greek labour law continues to apply in all cases including protection against dismissals and unilateral deterioration of their employment conditions as well as all relevant rights granted to the employees.
Business Transfer occurs when:
there is a transfer of the economic entity and this entity;
keeps its identity under the new regime.
Share Deal: Transfer of shares may not lead to a Business Transfer as above.
Asset Deal: Simple Transfer of (tangible) assets may not lead to a Business Transfer as above.
In a Business Transfer, the employees of both companies need to be informed of the merger and its consequences, the employees being free to choose whether to continue under the new regime or not. For any change the employer needs to confer with the employees in advance.

SELLER'S PERSPECTIVE

PROS

- ▶ The seller can sell the whole incorporation including all liabilities thereof. The seller can sell only the specific asset.

CONS

- ▶ Selling the corporation (in part or in whole) including all liabilities thereof but also all its assets, tangible or intangible, as well as any future business prospect of the company, employees etc.

BUYER'S PERSPECTIVE

PROS

- ▶ Buying a corporation (in whole or in part) results in the buyer being majority shareholder and not only the new owner of a single asset. The buyer can choose to make a precise and specific purchase, obtaining a particular asset without becoming shareholder of a legal person with unknown future.

CONS

- ▶ Obtaining the shares of a corporation, which includes the total assets and liabilities of this corporation, includes the risk of any negative future course of the target company. The buyer can only obtain a single asset, whereas the asset could constitute a part of a larger scale purchase by way of a share deal.



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HUNGARY

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)



Limited Liability company: The transfer of shares must be in writing, but a simple private deed is sufficient (i.e. neither a public deed nor an attorney's countersignature is required). The contract does not have to be submitted to the Court of Registry, but the change of member must be submitted, within the framework of a registration of changes procedure (where legal representation is mandatory). The buyer, as the new member, will be entitled to the rights and subject to the obligations of the member vis--vis the company independently of the registration, from the date of notification of the company about the transfer. If a division of the share is necessary before the transfer, the division of the share requires the consent of the general meeting.

Joint-stock target company: The transfer of shares must be in writing, but a simple private deed is sufficient (i.e. neither a public deed nor an attorney's countersignature is required). The contract does not have to be submitted to the Court of Registry, only the person of that buyer, who acquires 50%, 75% or 100% of the shares in the company. Also that fact shall be indicated in the Company Registry, if the Deed of Foundation of the company restricts the transfer of shares. The transfer of a paper share is effected by means of a full or blank transfer note on the reverse of the share or on the back of the share.

The transfer of a share in dematerialised form requires, in addition to the contract of transfer or other legal title, the debiting of the seller's securities account and the crediting of the dematerialised security to the securities account of the buyer. A shareholder may exercise his/her rights as a shareholder vis--vis the company only if he/she is registered in the share register book.

SHARE DEAL



ASSET DEAL



An asset deal may involve either the transfer of one or more assets, or the transfer of a business as a whole enterprise (undertaking) or as a part of enterprise (i.e. an ensemble of tangible assets (that may include a real estate property or not), intangible assets, contracts, receivables and liabilities organised to carry out a certain business and capable to allow the continuation of such business also after the relevant transfer).

In case of single assets, required formalities depend on the nature of the asset. For example, in respect of: (i) a real estate property, there must be an agreement with notarised or countersigned by an attorney signatures of both parties, and it must be registered to the Land Registry; (ii) a trademark or patent, there must be an agreement with notarised or countersigned signatures of both parties, and it must be registered to the Trademark Registry; and (iii) know-how, there must be an agreement and the transfer of the relevant rights are required.

TAX
TREATMENT

- ▶ A. Individual tax: PIT rate of 15% of the exchange rate gain. Social contribution tax rate of 13% of the exchange rate gain, given, that the maximum of the tax base shall be 24 times the minimum wage (approximately 16,000 EUR).
- B. Corporate tax: CIT rate of 9% (the taxable amount is the difference between the value of the share according to the company's accounts and the amount of the purchase price). Parties will be exempt from tax if the acquisition of a specified amount of share has been notified to the National Tax Authority. No VAT is applicable. Target company with domestic real estate assets: If the buyer acquires shares in a target company with domestic real estate assets (whose 75% or more of assets is in domestic real estate or holds 75% or more of the shares, directly or indirectly, in such an entity), the obligation to pay the duty arises if the proportion of shares owned by the buyer, by his/her spouse (partner, child, parent or by an entity majority-owned by such person) or by a person in a related business relationship with them is 75% or more. The tax rate is 4% for each property up to HUF 1 billion, and 2% for the part of the market value exceeding HUF 1 billion, but not exceeding HUF 200 million (approximately EUR 500,000) per property.

Both real estate and movable property sales may be subject to CIT (15%), SCT (13%) (private buyer) or CIT (9%, legal entity buyer), depending on the conditions. When transferring real estate property, movable property (e.g. a motor vehicle) or rights of pecuniary value (e.g. a transfer of the right to exercise a beneficial interest), the buyer shall pay a property transfer duty. As a general rule, the rate of duty is 4% on the unencumbered market value of the acquired property, 4% per property up to HUF 1 billion, and 2% on the excess of the HUF 1 billion, but not more than HUF 200 million (approximately EUR 500,000) per property. VAT may be applicable. VAT can be avoided upon certain requirements are met and the buyer purchases the going concern to continue operating it.

LIABILITIES

- ▶ The target company remains the owner of its assets and all relevant liabilities remain with the company. The buyer becomes a shareholder /quota-holder, and it purchases only shares and not company's assets. The buyer is not liable, in principle, for the company's obligations where the liability of members is limited under the company form.

The buyer of the assets becomes the new owner, so all liabilities directly affect the buyer. The buyer shall be liable for liabilities and shall acquire claims relating to such assets only. In the case of the transfer of a going concern (as a whole enterprise or a part thereof) the buyer becomes a creditor of all receivables (claims) and the liable person for all debts pertaining to the transferred business. Accordingly, the buyer also steps into the agreements entered into for operating the business.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property. If the buyer acquires shares in a company with domestic real estate assets, duty payment obligation may arise as mentioned above.

The buyer becomes the owner of the real estate property (the change in title shall be registered in the Land Registry, and this action creates the ownership of the buyer), i.e. the buyer shall be liable from this point.

Any pledges, easements or encumbrances attached to the real estate property remain attached thereto following the share or asset deal. Therefore, the owner of such property (i.e. the company in case of share deal or a buyer in case of asset deal) shall be exposed to any risks relating to such property.

EMPLOYEES
(ACQUIRED
RIGHTS
DIRECTIVE -
TUPE)

- ▶ There is no change to the employing entity. However, the employer shall inform the employee of any change in a material term or condition affecting the employment relationship no later than the date on which the change takes effect. The terms and conditions of the employment agreement may only be amended by mutual agreement.

The rights and obligations arising from the employment relationship existing at the time of the transfer of an economic entity (an organised group of tangible or intangible resources) are transferred from the seller to the buyer (i.e. the new employer). Before the transfer, the seller employer shall inform the buyer employer of the rights and obligations arising from the employment relationships, non-competition agreements and study contracts affected by the transfer. The buyer employer shall inform the employee in writing on the day of the transfer of the change of employer and of the change in the terms and conditions of employment specified in the Labour Code. If the seller employer does not have a works council, the seller employer or, by agreement between the employers, the buyer employer, shall inform the employees concerned in writing of the relevant circumstances of the transfer at least fifteen days before the transfer. Employers shall negotiate with the works council in order to conclude an agreement.

SELLER'S PERSPECTIVE

PROS

- ▶ A share deal includes the sale of the whole / part of the company (including all its assets and liabilities) in one document. The assets, rights, licences, employees, established operations, know-how, etc., acquired through a share deal can have a greater value together than their value separately. No VAT is applicable.

A single asset transfer enables the seller to further develop the remaining assets. Third parties cannot block the transfer.

Limited shareholders involvement (though in some cases qualified shareholders / GMs approval may be necessary). A transfer of going concern can be excluded from VAT as mentioned above.

CONS

- ▶ The transfer document very likely involves more complicated negotiations. The seller transfers all of the business and cannot further develop it. Approval of all shareholders may be required. The buyer will ordinarily request a wide set of representations and warranties to be given by the seller.

Subject to the type of transferred assets, it may be necessary to have more transfer documents including filing duties with registers. Transfer formalities / third-party consent may be required. Liabilities usually stay with a seller. Generally, such a transfer will be subject to CIT / PIT, VAT unless classified as transfer of a going concern (undertaking) and, in certain cases, to duty.

BUYER'S PERSPECTIVE

PROS

- ▶ A share deal is the sale of the whole / part of the company (including all its assets and liabilities) in one document. The buyer acquires all assets (indirectly via acquiring shares). A share deal allows for continued operation of the company, licences and authorisations remain.

The subject of the sale can be better defined (the buyer does not buy unnecessary parts), and the price is correspondingly closer to the actual value of the assets.

CONS

- ▶ The buyer assumes some of the company's liabilities, operational risks, etc. Due Diligence needed, which increase the transaction costs. It may turn out that the company has undisclosed liabilities as hidden risks.

Subject to types of transferred assets, it may be necessary to have more transfer documents including filing duties with registers. An asset deal has a lower risk of acquiring hidden liabilities.



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IRELAND

CONTRACT FORM (NOTARIAL/PUBLIC RECORDS REGISTRATION)

- Under Section 261 of the Companies Act 2014, directors and company secretaries must notify their company if they when their acquire shares in the company. Share transfers must be presented for the application of stamp duty within 30 days of completion of the transaction. The Register of Members of a target company will also need to be updated and filed with the Companies Registration Office, but this can not be completed until stamp duty is applied. A new bank mandate should also be registered post completion. Changes in the companies registered office/offices should be filed within 14 days of completion.

TAX TREATMENT

- The stamp duty applicable on the transfer of shares of a company is 1%. The buyer will remain labile for historical tax liabilities such as Corporation Tax, VAT and PAYE. Tax indemnities/warranties will often be sought by the buyer. The consideration for the sale of the shares will also likely entail that the selling shareholder is subject to Capital Gains tax/ income tax, depending on the extent of this consideration. Outstanding tax losses will transfer and may be applied against taxable income in the next trading period.

LIABILITIES

- Liabilities of the target company are unaffected by the change in ownership. The buyer will also become liable for all tax benefits accrued by employees of the target company. Its often the case that warranties in the transaction documentation will put a cap or a de minimis threshold over these liabilities.

SHARE DEAL

ASSET DEAL

Registration and notarial requirements will vary depending on the asset itself. In the context of real estate property, a deed of novation or a deed of assignment of will have to be filed with the relevant land registration organisation. These documents will also need to be notarised If the asset in question is Intellectual property, the new owner will have to be registered with the Intellectual Property Office of Ireland.

If there is a group of assets are part of a business branch, these are frequently transferred into a new company entity which will be owned by the buyer. The relevant deeds of transfer will have to be notarised and stamp duty must be applied.

The rate of stamp duty and tax applicable in an asset sale will depend on the nature of the asset. If the asset is real estate, goodwill or book debts stamp duty may be payable up to a rate of 7.5% as per the Stamp Duties Consolidation Act 1999 as amended. In the event that the asset in question is real estate property, the buyer, unless they are able to obtain CG50A clearance certificate, will have to retain 15% of the purchase price and pay this to Revenue. The availability of a CG50A certificate does not apply to transactions below 500,000.

There are often two taxable events in the context of an asset sale:
1. When the asset is sold by the company it may be subject to CGT
2. Should any proceeds of the sale be distributed to the shareholders; this will usually be subject to income tax.

The buyer becomes the direct owner of the new asset and as such all the liabilities associated with this asset will transfer to the buyer.

One of the significant attractive aspects of an Asset sale as a deal structure is that the buyer is able to select which assets, and the associated liabilities which it wishes to purchase. The seller will remain liability to any liabilities not associated with the asset which the buyer is purchasing, unless negotiated otherwise.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property. The buying entity will then be subject indirectly to any encumbrances attached to the Property itself.

The buyer will become the legal owner of any asset subject to the deal and is as such subject directly to any encumbrances attached to the property itself.

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

- ▶ The legal status of the employees in the target company in general will remain unaffected as they will still remain under the employment of the target company and will retain all associated employment rights. The buyer therefore has no obligation to inform or consult with employees of the target company regarding the transaction itself.

The employees involved in the undertaking which transfers to the buyer will then become employees of the buyer. The TUPE Regulations also dictate that there are obligations on both the buyer and the seller as to how the transaction is handled, with regard to communicating and notifying employees of the transaction. It may be possible that in the event that the asset in question forms a distinct part of the business, it may be possible to only retain employees who are related to that distinct part of the business

SELLER'S PERSPECTIVE

PROS

- ▶ It is usually a cleaner transaction for the seller, as the seller is not left with any liabilities/risks associated with the business. The deal may be subject to indemnities/warranties in this regard, but these are usually subject to a cap or limit.

The ability to retain ownership of other assets in the company/continue the target company's operation. Any indemnity/warranty given will be on behalf of the target company, which in turn may afford the shareholders more personal protection. Generally, less overall risk associated with this form of transaction, as such less warranties/indemnities will need to be given.

CONS

- ▶ Directors of the target company may have to give personal guarantees with regard to potential future liabilities. The warranties and indemnities are likely to be more extensive. The buyer may seek a discount in the purchase price due to the increased risk associated with the potential presence of hidden liabilities.

There will be increased logistical complexity with regards to the transfer of contracts associated /necessary for the operation of the asset. The parties may need consent or renegotiation/novation from the third party for the asset to be a viable target for the buyer. The seller may need to obtain releases of security charged to the assets prior to completion.

BUYER'S PERSPECTIVE

PROS

- ▶ There is a general operational and procedural advantage to the fact that contracts, at least those which are not subject to a change of control clause, will be largely unaffected by the change of ownership of the target business. If a target company is acquired with ongoing tax losses, these losses may be utilised or carried forward as an asset to reduce the taxable income in the next trading period.

The buyer may be able to target or cherry pick specific assets or liabilities. This is particularly advantageous in comparison with a share deal as it allows for the avoidance of a large unquantifiable liability (i.e. a legal claim). This limited risk exposure, at least in comparison with a share purchase, means that less time and resources are usually required in the due diligence process.

CONS

- ▶ Resources spent in the due diligence stage will generally be higher than in an asset purchase scenario, as there is the potential of greater hidden liabilities.

There is a potential loss of goodwill tied to the purchase of an asset which may have derived a portion of its value in the context of the business it was purchased from. Third party contracts (i.e with suppliers and contractors) will need to be renegotiated/renovated and do not largely automatically transfer as with a share deal.



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ITALY

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)



The transfer of shares requires a private agreement. The transfer does not need to be filed with Companies Register (updated once per year in respect of a company's shareholders, upon filing of the annual financial statements). Parties will need to annotate the shareholders ledger. The endorsement of physical share certificates to be authenticated by a Notary Public.

Quota transfer deed to be authenticated by a Notary Public and filed with Companies Register within 30 days (chartered accountants can also handle it without a Notarial Deed). Registration to Cadaster/Land Registry is not required if company owns a real estate property because ownership remains the same.

TAX TREATMENT



CIT (Corporate Income Tax) on the capital gain at the ordinary rate of 24%. If certain requirements are met, 95% of capital gain exempted (Participation exemption regime). Save for participation exemption regime, the capital gain can be paid in five instalments. Generally, for industrial and commercial companies, capital gains are not subject to IRAP (regional tax on productive activities).

A financial transaction tax (Tobin tax) at a 0.2% rate applies to transfers of shares of joint stock companies in Italy, even if not carried out on financial markets. The transfer of shares/quota is exempt from VAT and a fixed registration tax of EUR 200 is due.

SHARE DEAL



ASSET DEAL



An asset deal may consist of the transfer of single assets (e.g. a real estate property) or the transfer of a going concern (i.e. a business or a business branch, that is an ensemble of assets that may include a real estate property or not organised to carry out a certain business and capable to allow the continuation of such business also after relevant transfer).

In the case of single assets, formalities depend on the nature of the asset (for instance to transfer a real estate property parties must execute a notarial deed which must be registered with Tax Authority and competent Cadaster/Land Registry Office). In case of a transfer of a going concern parties must execute a notarial deed to be registered with Tax Authority (and if it includes a real estate property, with competent Cadaster/Land Registry Office).

A going concern can also be transferred through a contribution in kind (typically into a newco then purchased or directly into the buyer). A sworn appraisal of the going concern is required and the contribution in kind is executed before the Notary Public.

CIT on the capital gain at the ordinary rate of 24%. It can be paid in five instalments. In the case of transfer of a going concern, capital gain/loss not relevant for IRAP. If a single asset is transferred, capital gain/loss may be relevant for IRAP. Indirect taxes depend on type of transaction. If a going concern is transferred, no VAT is applicable, registration tax applies on market value of transferred assets, including goodwill, net of liabilities transferred, as reported in the books.

Applicable tax rate depends on transferred assets, i.e. movable property, goodwill, etc. The tax rate is 3%. For real estate properties, the tax rate is 9%. The transfer of single assets (i.e. not a going concern), can be subject to VAT. If real estate property is transferred, registration and transfer taxes levied proportionally or in a fixed amount, depending if commercial or residential and on VAT regime applied.

LIABILITIES

- ▶ The target company remains the owner of its assets and all relevant liabilities remain with the target company. The buyer becomes shareholder/quota-holder of the company and all liabilities for the entirety of the company's assets (including the real estate property, if any) indirectly affect the buyer (to the extent, and depending on, the company type and its percentage of shareholding/quota-holding).

The buyer of the assets becomes the new owner, so all liabilities directly affect the buyer. In the case of a transfer of a going concern, the buyer also succeeds in the agreements entered into for operating the going concern. A third party may withdraw from agreement within 3 months from the date of the transfer notice if there is just cause, subject to liability of the seller. The buyer is jointly liable for going concern debts recorded in the official accounts accrued prior to transfer. The buyer is jointly liable, subject to benefit of prior enforcement towards seller and within limits of the going concern, for payment of tax and penalties for violations committed in the year of the transfer, the two aforementioned liabilities, and those already contested in such period. The buyer's obligation is limited to debts resulting, on the transfer date, from competent Tax Authority's records that are required to issue, upon request, a tax certificate on the existence of pending disputes and those already settled for which debts have not been satisfied. If tax certificate is negative, or not issued within 40 days of corresponding request, buyer is released.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property. Obligations related to the real estate property affects the company directly and the shareholder/quota-holder indirectly.
- In case of a real estate property any encumbrances refer to real estate property itself. The new owner (indirectly via a share deal or directly via an asset deal) is exposed to any risks/actions that may affect the real estate property.

The buyer is the owner of the real estate property, so any obligations related thereto affect the buyer directly.

EMPLOYEES
(ACQUIRED
RIGHTS
DIRECTIVE -
TUPE)

- ▶ The sale and purchase of shares/quota do not imply any transfer of business undertaking (because the employees of the target company continue to be employed by the company itself). As such, there is no change in the employer and no labour formalities related to a transfer of business undertaking need to be complied with.

Any transaction implying the change of the employer is subject to Italian labour laws on transfer of business undertaking.

The labour relationship shall continue with the buyer (new employer) under the same terms and conditions. The transfer of business undertaking does not constitute in itself a valid reason of dismissal. If concerned business/branch employs more than 15 employees, prior notification to the competent trade unions must be done, with transfer date, reasons, legal, economic and social consequences for employees and intended measures. Trade unions may request a consultation with seller and buyer. They shall act transparently and negotiate in good faith with trade unions. However, they can't prevent consummation of the asset deal.

SHARE DEAL

ASSET DEAL

SELLER'S PERSPECTIVE

PROS

- ▶ The seller is able to sell the whole company including all its assets & liabilities.

The seller will only sell specific assets/going concerns only, retaining ownership of other assets/going concerns.

CONS

- ▶ The seller is selling the company (in part or in whole) including all liabilities but also all assets, tangible or intangible, as well as employees, know-how, etc. There is no possibility to develop further business with such assets.

The sale of assets/going concerns may be strategic or allow synergies and thus reduces the value (goodwill) of the remaining assets/going concerns, while selling a company as a whole may result in higher revenue and/or in the advantage of transferring all liabilities.

BUYER'S PERSPECTIVE

PROS

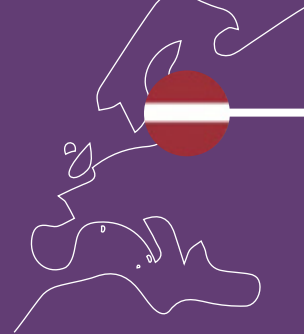
- ▶ Buying a company (in whole or in part) results in the buyer being shareholder/ quota-holder of the entire legal entity (already with all agreements/assets to operate), and not only the new owner of a single asset/going concern.

The buyer becomes the owner of a particular asset/going concern by paying a purchase price tailored on the value of such asset/going concern only, without becoming shareholder/quota-holder of the whole legal entity with an unknown business future.

CONS

- ▶ By obtaining all assets and liabilities of the target company, the buyer will undertake all risk associated with any negative future course of business.

By obtaining just a single asset/going concern that may constitute part of larger business or allow synergies with other non-transferred businesses and thus loose part of its value (goodwill) after its sale on standalone basis.



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LATVIA

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)



A share sale transaction must be concluded in writing and the SPA is a private document, that does not need to be provided for the public registration. The buyer and seller of the share have to submit a joint notice to the company's board and each shareholder regarding the transfer of shares adding the original or a copy of the transaction deed. If the shares held by a shareholder are sold, other shareholders have the right of first refusal, unless the articles of association provide otherwise.

For the registration of shares and disbursement thereof, for the reflection of transition of shares, as well as for the provision of the rights of shareholders the company has to keep a register of shareholders. The shareholder selling the shares, the buyer and the chairman of the board of the company whose shares are being sold, must sign the shareholder registry partition. The signatures have to be certified by a notary or signed with a qualified electronic signature. The new shareholder obtains their status from the moment they are entered in the register of shareholders. Entries in the Commercial Register are effective from the date of their publication.

TAX TREATMENT



Capital gain is determined by subtracting the acquisition value and the investment value of the capital asset during the holding of the capital asset from the disposal price of the capital asset. Personal income tax in the amount of 25,5% of the capital gain as calculated above must be paid. The tax reporting period depends on the amount of capital gain. The sale of shares transaction is not subject to VAT.

SHARE DEAL



ASSET DEAL



The law does not determine the form of the contract, therefore the form of the agreement depends on the parties. If the law stipulates that the registration of these assets to the new owner requires documentation, then the contract must be in writing. There are exceptions in respect of the purchase of real estate property. Depending on the transferred asset, entries in public registries may or may not be required.

In respect of intellectual property, it is important to determine, if the intellectual property (patent, trademark, design etc.) is registered. If it is registered, then the agreement for the transfer of intellectual property must be in a written form and the change of ownership must be registered in the public registers, being the the Patent Register, the Register of Trade Marks, the Register of Designs.

The Corporate Income Tax Law provides for tax payment to be generally postponed until the time when the profit is distributed or in another way directed to such expenses that do not ensure the further development of the taxpayer (i.e. application of tax has been moved from the moment of profit generation to the moment of profit distribution).

If the profit is reinvested or held in the company, the CIT is generally not payable. The tax base rate is 20% of the calculated taxable base. Upon determining the base taxable with the corporate income tax in the taxation period, the value of the object taxable with the corporate income tax shall be divided by a coefficient of 0.8.

Consequently, the effective tax rate is 25%. VAT applicability on the sale of individual assets depends on the type of asset being sold.

LIABILITIES

- ▶ A share purchase does not alter the liabilities and obligations of the company, as they remain the responsibility of the company itself.

If an undertaking of a company or an independent part of it is transferred to another owner, the buyer of the undertaking is liable for all the obligations of the undertaking or its independent part. However, in respect of those obligations which arose prior to the transfer of the undertaking or its independent part, and the terms or conditions for the fulfilment of which come into effect 5 years after the transfer of the undertaking, the seller of the undertaking and the buyer of the undertaking are jointly liable. In the case of the transfer of ownership of an undertaking of a company or an independent part of it, claims and other rights included in the undertaking or its part are transferred to the buyer of the undertaking. Remuneration for the liabilities can be stipulated in the transaction agreement. The parties can agree on a different distribution of liabilities, but is not binding on third parties.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property, therefore, there is no change to register in the Land Registry.

The agreement for the transfer of real estate property must be in writing. Only those who are registered in the Land Registry can be recognised as the owners of a real estate property. In order to register the transfer of ownership in the Land Registry, a request for corroboration must be submitted to the court. The signatures of the request for corroboration must be certified by a notary.

EMPLOYEES
(ACQUIRED
RIGHTS
DIRECTIVE -
TUPE)

- ▶ The sale of share capital in the target company has no effect on the company's employees as the company still remains as the employer.

Employees are affected in case of the transfer of an undertaking. In case other types of individual assets are sold, the employment legal relationship is not directly affected since the employer does not change.

Rights and obligations of the seller of an undertaking that arise from the employment relationship applicable at the moment of transfer of the undertaking are passed on to the buyer in regards to those employees who are affected by the transfer. Both the seller of an undertaking and the buyer of an undertaking have the obligation to inform the representatives of their employees, but if such do not exist, their employees, of the date of transfer of the undertaking or the expected date of transfer, the reasons for the transfer of the undertaking, the legal, economic and social consequences of the transfer, as well as of the measures that will be implemented with respect to employees.

The seller of an undertaking has to inform the employees, with no less than 1 month notice, when the transfer of the undertaking will occur. The buyer has to inform the employees, with no less than 1 month notice, when the transfer of the undertaking will start to directly affect the working conditions and employment provisions of his or her employees.

The transfer of an undertaking does not form of itself the basis for a notice of termination of an employment contract. Such provision does not restrict the right of an employer to give a notice of termination of an employment contract if such notice of termination is based on the performance of economic, organisational, technological or similar measures in the undertaking.

SHARE DEAL

ASSET DEAL

SELLER'S PERSPECTIVE

PROS

- ▶ A share deal is faster and more straightforward than an asset deal. The liabilities of the target company will remain with the target company.
- The seller can retain ownership of certain assets or divisions of the business that they wish to keep, allowing the continuity of business operations.

CONS

- ▶ Buyers frequently request a comprehensive set of representations and warranties from the seller, which requires time-consuming preparation of the list. Non-compete agreements are commonly part of the deal, ensuring that the seller refrains from competing, while the target company retains its proprietary knowledge and expertise.
- An asset deal may be more intricate, involving the assignment of specific assets and adherence to transfer formalities.

BUYER'S PERSPECTIVE

PROS

- ▶ A share deal can be faster and more straightforward than an asset deal, as it does not entail the direct transfer of employer of the employees, as well as no need for requirement for registering a new owner of the target company's assets. The share deal provides a much clearer distinction of liabilities and risk allocation between the buyer and the target companies within the buyer's portfolio.
- The buyer may be able to avoid assuming certain liabilities of the seller. This can help mitigate risk and limit exposure to unknown or contingent liabilities. Asset deals often involve clearer due diligence processes, as the buyer can focus on evaluating the individual assets being acquired rather than the entire business. Asset deals provide greater flexibility in structuring the transaction, allowing the buyer to tailor the deal to meet specific strategic or operational objectives.

CONS

- ▶ There is a risk of acquiring a company with undisclosed liabilities or off-balance sheet obligations. A share deal typically requires a thorough due diligence process as a preparatory step for the transaction.
- There can be various formalities associated with transferring assets, such as collecting documents to register the new owner. There may also be additional costs for the registration. The transfer of liabilities and legal obligations brings additional risks as the liabilities might transfer directly to the acquirer (buyer).



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LITHUANIA

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)



For shares in a private limited liability company, their transfer is subject to notarial approval only if either: (i) more than 25 % of shares are sold; or (ii) the purchase price is more than 14 500. Notarial form is not required if shares accounting is transferred to an external brokerage firm.

The title to the shares passes when the entry in the shareholders securities accounts is made (if the shares are intangible) or when an endorsement is made in a share certificate (if the shares are tangible).

Records of shareholders are kept in a public registry, but only for informative purposes. Registering a shareholder in such registry does not provide a right to title.

In case of a real estate property sale, the agreement must be in notarial form, and registration with the Real Estate Registry is required.

If a company is bought as an object, the agreement must be in notarial form, but is rarely used in practice as it is inconvenient due to numerous formal requirements.

If separate assets are bought, the transfer only needs to be documented in a simple written agreement. Registration in public records may or may not be required (e.g. registration is required for vehicle transfers but not for the acquisition of computers and other appliances).

TAX TREATMENT



Sale by resident individuals: Capital gain from the sale is determined by deducting the purchase price and compulsory payments from the sale proceeds. According to the Law on Personal Income Tax (PIT) of Lithuania, capital gains on the sale of the shares not exceeding 500 is non-taxable. Capital gains are taxed at a rate of 15% and the annual income exceeding 120 national average wage (228,324 in 2024) is taxed at a rate of 20%.

Sale by foreign beneficiaries (individuals and legal entities): If a foreign registered entity or individual (who is non-Lithuanian tax resident) sells the shares of a Lithuanian entity, capital gains are not subject to tax in Lithuania unless it is purely a real estate company. If so, capital gains may be subject to withholding tax at a rate of 15%.

Sale by local companies: According to the Corporate Income Tax (CIT) Law of Lithuania, capital gains, resulting from sale of shares by local entity, are calculated by deducting the purchase price from the share sale proceeds, and are subject to CIT at a rate of 15%. Capital gains resulting from the sale of shares of a company that is registered or otherwise organised in a State of the European Economic Area or in the State with which a treaty for the avoidance of double taxation has been concluded and applied and which is a payer of corporate or an equivalent tax, to another entity or an individual where the entity transferring the shares held more than 10% of voting shares in that entity for an uninterrupted period of at least 2 years, is non-taxable.

Share deals transaction is not subject to VAT.

According to CIT Law, when a company sells its business as a complex, the tax base is the difference between sale price of the assets and net asset value. This difference is subject to CIT at a rate of 15%.

When a company sells assets that cannot be considered as sale of business, then it is treated as a sale of separate assets from the tax perspective. Taxable income is calculated by deducting asset acquisition price from the sale proceeds that is subject to CIT at a rate of 15%.

If business as a complex is transferred, no VAT is due if the business is continued at a buyer. When separate assets are sold, VAT is applicable depending on a type of the asset.

LIABILITIES

- ▶ The liabilities and obligations of the target company are generally unaffected by a share purchase, and they continue to reside with the target company. Representations, warranties, and indemnities of the sellers are usually addressed in the transaction documents.

The buyer, as the legal successor of the seller, becomes fully liable for all asset/obligations/employment-related liabilities. Compensation for the automatic assumption of liabilities may be addressed in the transaction documents.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property.
- Real estate transfer tax and real estate capital gains tax may be triggered on the sale of the majority of the shares in a real estate company depending on the domicile of the real estate property.

The sale of real estate property is subject to a notarial agreement, which is registered within the Real Estate Registry. The new owner assumes all obligations a property owner may have before third parties. Prior obligations remain with the past owner (e.g., real estate tax, damages caused to third persons etc.).

EMPLOYEES
(ACQUIRED
RIGHTS
DIRECTIVE -
TUPE)

- ▶ The sale of a company by way of a share deal has, in contrast to an asset deal, in general no effect on the target company's employees.
- All employees remain employed with the target company, and neither the target company nor the employee can derive any right from the share deal.
- In case of contractual change of control provisions, the transaction may trigger certain rights of the employees, most often a right to terminate the contract or a right to renegotiate certain terms and conditions, but this has to be detailed in the agreements.

If, by virtue of a transaction, an act or a series of transactions or acts, a business or part of a business passes from one employer to another, the employment relationships of the employees of that business or part of the business will automatically pass to them. It is prohibited to change the terms and conditions of employment or to terminate the employment contract due to the transfer of the business or part of it. Termination can only happen on general grounds.

To ensure continuity of such employment relations, the seller shall be jointly and severally liable for 1 year after the transfer together with the buyer in terms of obligations towards employees.

The seller must inform its employees at least 10 business days before the transfer and, if the employee does not agree with the continuity of the employment relations, the seller must terminate the employment contract with at least 2 months severance pay (1 month if relations lasted less than 1 year).

SELLER'S PERSPECTIVE

PROS

- ▶ The transaction may be quicker and simplified in contrast to an asset deal. Employees do not have to be involved. The seller will sell the entirety of the corporation with liabilities attached.

The seller will only sell specific assets and may retain others. The seller may be able to keep know-how and continue with the business. In ordinary practice, there are less representations and warranties.

CONS

- ▶ Oftentimes, the buyers require an extensive list of representations and warranties from the seller side. There may also be non-compete obligations. The know-how is kept within the target company

The transaction may be more complicated (assigning specific assets and transfer formalities).

BUYER'S PERSPECTIVE

PROS

- ▶ The transaction may be quicker and simplified in contrast to an asset deal. Employees do not have to be involved. The target company is acquired with all know-how, employees and working

The scope of liability in respect of the target company is clear. By only acquiring assets instead of shares, the risk of off-balance and other hidden liabilities is mitigated.

CONS

- ▶ There is a risk of acquiring a company that has off-balance or other hidden liabilities, or the company may fail to perform. Business mechanisms need to be developed by the buyer after acquisition.

The transaction may be more complicated (assigning specific assets and transfer formalities).



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NORWAY

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/PUBLIC RECORDS REGISTRATION)

- ▶ Share deals are often the favourable choice in Norway over asset deals. Share deals enjoy complete agreement freedom, and does not require registration in a register as long as they involve an ordinary limited liability company. The share transfer shall be registered in the companys shareholders register after notice from the buyer.
Shares are transferred by completing all closing obligations in accordance with the share purchase agreements, where the legal protection act is notice to seller.
In public liability companies, shares are freely transferable, albeit with additional considerations due to their public nature.

Similar to share deals, asset deals also offer complete agreement freedom and do not require registration. The transaction may consist aof one or more assets, or the business as a whole.
Depending on the nature of the intellectual property, transfer of intellectual property may be subject for registration in Patentverket.
Transfer of real estate must be registered in «Kartverket».

TAX TREATMENT

- ▶ Individual sellers are subject to tax on any gains from the sale. The tax rate is 22 %.However, if the sellers are holding companies or regular companies, they may benefit from the «Fritaksmetoden», an exception to taxation.
There is no VAT applicable on the sale of shares.
Additionally, it's important to note that adjustment of the input value on assets within the company is not permitted.

Due to the fact that its the target company that is the seller of the asset, its the target company and not the shareholders that are liable for tax on profit.
Transfer of business as a whole is not subject to VAT. The sale of a company's operating assets is regarded as sales of goods subject to VAT, where as a general rule VAT must be calculated. The general rate for value added tax in Norway is 25%.
For larger assets, there will be a loss and advantage account. Significantly, larger assets with adjusted values over time may incur higher taxes.

LIABILITIES

- ▶ A comprehensive due diligence process is crucial to mitigate any potential liabilities, due to the fact that all liabilities remains in the company. However, it's important to note that all aspects of the liabilities are regulated within the share purchase agreement.

There will be no liability from any third parties in an asset deal.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property.

The document fees amount to 2.5% of the sales value. If the seller has adjustment obligations for aVAT purposes, the obligations must be transferred to the buyer. This is completed in a separate agreement. This makes it possible to reset the valuation of the building, reducing tax implications of a future transaction.

NORWAY

SHARE DEAL

ASSET DEAL

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

- There is no change of employer, and no TUPE formalities to observe.

Any transaction implying a change of the employer is subject to Norwegian labour laws on transfer of business undertaking. As a general rule, the buyer assumes the rights and obligations that existed at the time of the transfer, if a business or part of it is transferred. Exemption for collective agreement and pension schemes. Dismissal due to the transfer of an undertaking or part thereof is not in itself considered to be reasonably justified by the circumstances of the undertaking (but may follow due to economic, technical or organisational reasons).

SELLER'S PERSPECTIVE

PROS

- All liabilities are sold with the company, unless something else is stated in the share purchase agreement.
When a holding company sells shares, the sale will be within the exemption method (Fritaksmetoden») and tax-free.

It is the target company itself that sells the assets, shielding individuals from personal liability if they don't have a holding company.

If all assets in the company are sold, individuals is left with a holding company.

CONS

- The agreement often blocks the possibility to start up competing business in a period of 1224 months after the sell.
When a holding company sells a real estate limited company, the buyer will normally demand a reduction in the purchase price as a result of a reduced tax depreciation basis.

Tax on gains (22%).

BUYER'S PERSPECTIVE

PROS

- The new shareholder takes over the entire company and all assets.
Depending on negotiations, the buyer may have the purchase price reduced as a result of reduced tax depreciation.

The buyer receives a new and separate tax depreciation basis when purchasing real estate.

CONS

- There may be change of control clauses in third-parties agreements.

There may be a requirement for acceptance from contract parties to the company to transfer debtor.

The price on real estate will often be higher as a result of the tax depreciation rules.

POLAND

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/PUBLIC RECORDS REGISTRATION)



LLC (limited liability company): Shares in an LLC are transferred by private agreement with notarised signatures. In addition, changes in ownership must be reported to the Public Commercial Register and the share register kept by the target company (in both cases the updating of data has only declaratory effect).

JSC (joint-stock company): Shares are transferred by private agreement (written form is required), which becomes effective when the shareholders register of the target company is updated (the shareholders register is kept by the brokerage house).

Registration to Cadaster/Land Registry is not required if the target company owns real estate property because ownership remains the same. If the target company owns agricultural real estate property in Poland, the Polish public institution named KOWR may have the right of first refusal (where a conditional purchase agreement is required) in certain circumstances.

An asset deal may concern a single asset or several assets or the transfer of a business as a whole enterprise (undertaking) or its organised part (i.e. an organised set of tangible and intangible assets intended for conducting business activity, which may include in particular: the name of the enterprise, the ownership of immovables or movables, including equipment, materials, goods and products, rights under contracts for the tenancies and lease of immovables or movables and rights to use immovables or movables, concessions, licenses and permits, patents and other industrial property rights).

A. Individual assets: Depending on their nature, a different form may be required by law (e.g. for real estate property, a notarial deed is required). In the case of assets designated only as to their kind (unidentifiable), the transfer of the ownership requires in addition the transfer of the possession of those assets.

B. Enterprise (or its organised part): The signatures must be notarised (if one of the assets is real estate property, a notarial deed is required). Additionally, consent of third parties that have entered into an agreement with the business is required. An enterprise (or part of enterprise) can also be transferred by operation of law through a contribution in kind. This involves a notarial deed and registration with the Commercial Register.

TAX TREATMENT



As a rule, income derived from the sale of shares is subject to taxation at a rate of 19% CIT.

There are two main tax exemptions which may be applied with respect to sale of shares:

participation exemption provided for holding companies; or participation exemption provided for alternative investment funds.

The key requirement for benefiting from the tax exemptions is owning a specific percentage of shares for a set duration (either 10% or 5% over 2 years). The sale of shares is subject to a transfer tax at the rate of 1% of their market value (paid by the buyer). The tax liabilities of the target company cannot be limited or excluded in any way other than by virtue of agreement.

Income derived from the sale of assets, an enterprise or its organised part is subject to taxation at a rate of 19% CIT. The transfer of individual assets may be subject to VAT whereas the transfer of an enterprise or its organised part is exempt from VAT. The transfer of assets is not subject to VAT, nor is the transfer of an enterprise or its organised part upon sale, but should be subject to a transfer tax ranging from 1% to 2% of their market value (the tax is payable by the buyer). The buyer of single assets is not liable for the tax arrears of the seller. However, the buyer of an enterprise or its organised part is jointly and severally liable with the seller for any the tax arrears incurred by the seller related to the conducted business activity up to the acquisition date (this liability is limited to the value of the acquired enterprise or organised part).

GWW



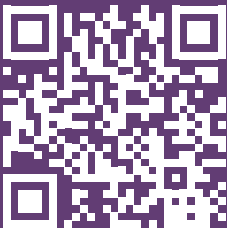
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POLAND

SHARE DEAL

ASSET DEAL

LIABILITIES

- ▶ The target company remains the owner of its assets and all relevant liabilities remain with the target company.

Generally, all liabilities need to be transferred individually, obtaining the consent of the respective third party. The buyer of an enterprise (or its organised part) shall be liable jointly and severally with the seller for the obligations of the latter connected with the running of the enterprise or the agricultural farm except for the case where, at the time of the acquisition, the buyer did not know about those obligations in spite of due diligence on his or its part (liability limited to the value of the acquired enterprise at the time of the acquisition. Such liability cannot be precluded or limited without the consent of the creditor.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property. Any pledges, easements or encumbrances attached to the real estate property remain attached thereto following the share or asset deal. Therefore, the owner of such property shall be exposed to any risks relating to such property. In the event of a sale of the Real Estate, all leases and rental agreements, in principle, pass to the Buyer.

The Buyer becomes the owner of a real estate.

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

- ▶ Transfer of shares do not lead to a transfer of an undertaking (an employing establishment) or a part of it to another employer. The employees remain employed with the existing employer. All rights and obligations arising from an employment relationship existing on the date of a transfer of shares remain unchanged.

Asset deal may lead to a transfer of an employing establishment or a part of it to another employer if it consists of a transfer of an undertaking (business entity) or an organised part of such undertaking.

A simple transfer of (tangible) assets without transfer of the employees or tasks performed by them may not lead to such transfer. In case of a transfer of an employing establishment or a part of it, a new employer, by operation of law, becomes a party to the previous employment relationships (on the same employment conditions). The employees (or trade union organisation, if such operates at the establishment) must be notified in writing, no later than 30 days prior to the expected date of transfer, inter alia, of the reasons of the transfer and the legal, economic and social consequences. Transfer of an employing establishment or a part of it cannot constitute a reason justifying termination of an employment relationship by notice by an employer. The employee may upon 7-day advance notification, terminate the employment relationship within 2 months from the date of transfer.

POLAND

SHARE DEAL

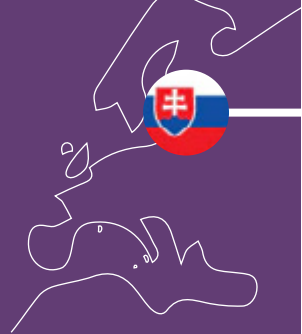
ASSET DEAL

SELLER'S PERSPECTIVE

PROS	<p>▶ In principle no liabilities in relation to the target company's contractors, including all liabilities to target employees. Apart from cases of agreements with change of control clauses, no need to transfer contracts individually. The parties may apply a CIT tax exemption provided for a holding company or an alternative investment company.</p>	<p>The seller may select which assets it wants to dispose of and retain ownership of other assets/enterprise.</p>
CONS	<p>▶ In the absence of a CIT tax exemption and with low acquisition costs of shares, there may be a significant income taxable base.</p>	<p>The seller is jointly and severally liable with the buyer for tax arrears related to the conducted business activity of an enterprise or its organised part.</p>

BUYER'S PERSPECTIVE

PROS	<p>▶ The buyer acquires all assets (indirectly via acquiring shares).</p>	<p>The buyer may select which assets it would like to acquire and whether it wants to assume certain liabilities. The buyer of assets is not liable for the tax arrears of the seller (does not apply to purchase of an enterprise or its organised part). The purchase of an enterprise or its organised part may create goodwill, which is subject to amortisation.</p>
CONS	<p>▶ There is a risk that the buyer acquires hidden liabilities. The tax liabilities of the target company cannot be limited or excluded in any way other than by virtue of agreement.</p>	<p>The buyer is jointly and severally liable with the seller for tax arrears related to the conducted business activity of an enterprise or its organised part. In principle, the transfer of all binding contracts related to transferred assets needs to be agreed with contractors (third party consent).</p>



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SLOVAK REPUBLIC

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)



The contract in respect of the transfer of shares must be in written form and the signatures of both parties must be verified by a notary. The change in shareholders in the limited liability company must be registered in the Commercial Register. The change in shareholders in a joint stock company only needs to be registered with the Commercial Register if it has one shareholder. The change in shareholders has to be notified to the Central Securities Depository. If a company owns real estate property, registration to the Cadastre is not required.

TAX TREATMENT



VAT is not applicable. Income tax is applicable.

LIABILITIES



The target company remains the owner of its assets and all relevant liabilities remain with the company. The buyer becomes a shareholder of the target company because it purchases the shares (not the target company's assets) and is therefore not liable for the obligations of the target company.

REAL ESTATE



In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property.

SHARE DEAL



ASSET DEAL



An Asset Deal may involve either the transfer of one or more assets or the transfer of a business as a whole enterprise (undertaking) or as a part of. The contract in respect of the transfer of assets must be in written form and the signatures of the seller must be verified by a notary. In case of transfer of one or more tangible assets the written form is not obligatory but it is preferred. In case of a transfer of a business as a whole or part of an enterprise, the written form is obligatory and the signature of seller and Buyer has to be verified. If the company owns real estate property, registration with Cadastre is required and the signature of the seller must be verified by the notary.

Sale of tangible / intangible assets is generally subject to VAT. Income tax is applicable.

In case of the transfer of a whole enterprise or a part thereof, the buyer becomes a creditor of all receivables (claims) and a liable person for all debts pertaining to the transferred business (save for those debts that the buyer was not or could not be aware of or which have been explicitly excluded from the transfer). Accordingly, the buyer also steps into the agreements entered into for operating the business. A creditors consent is not required to effect the transfer. In the absence of creditors consent with the transfer, a seller shall guarantee satisfaction of debts if they are not satisfied by the buyer.

In case of the transfer of one or more tangible assets the buyer acquires ownership right to these tangible assets, and obligations of the company are not transferred.

The owner of the real estate property changes as the buyer becomes the owner. The transfer has to be registered to the Cadastre.

SHARE DEAL

ASSET DEAL

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

- ▶ Employees are not affected by the share deal as the employer remains the same.

In case of the transfer of one or more tangible assets, the employees remain employed by the target company and if the buyer would like to acquire the employees, the existing employment agreement have to be terminated and new employment agreement entered into.

In case of the transfer of business as a whole enterprise or as a part of (according to the Labour Code) at the latest 1 month before the transfer will be realised the employer has to inform the Trade Union, or if the Trade Union does not exist, inform the employees, about: (i) the date of the transfer; (ii) the reasons of the transfer; (iii) the labour, economic and social consequences of the transfer for employees; and (iv) the planned transition measures applicable to employees.

SELLER'S PERSPECTIVE

PROS

- ▶ No VAT is payable. The tax liabilities remain with the company. It usually only involves one document (share purchase agreement).

There is limited shareholders involvement. The seller has the possibility to develop remaining assets that are not included in the transaction.

CONS

- ▶ After completion of the share deal, all the connections between the seller and the target company are severed. The transfer of shares may be excluded by the articles of association or the approval of other shareholders in the target company may be required by the articles of association. Usually, the seller has to give representation and warranties to the buyer.

Certain liabilities remain with the seller. The transaction is subject to corporate income tax (personal income tax) and VAT. There are usually more transfer documents that must be prepared.

BUYER'S PERSPECTIVE

PROS

- ▶ A share deal requires fewer documents. The buyer indirectly acquires all the assets of the target company. Tax liabilities will remain with the target company. There are no registration requirements in respect of employees.

There is a lower risk of hidden liabilities, as the buyer decides what assets it will acquire (if not whole enterprise is acquired). Tax liabilities are not transferred from the seller. The shareholders of the company are not parties to the contract, nor is their consent required.

CONS

- ▶ There is a higher risk of acquiring hidden liabilities as the buyer acquires all the liabilities of the company. More complicated negotiations and extensive due diligence is required.

There is likely a lower risk of acquiring hidden liabilities. There are no transfer of tax attributes (e.g. tax losses). For the transfer of contractual relationships, the consent of every contracting partners is required.



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SPAIN

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)

- ▶ The most common type of a company in Spain is a private limited company (Sociedad Limitada). The formalisation of the transfer of shares must be notarised. The Spanish Supreme Court has declared that this formal requirement is not essential for the perfection of the transmission, but only fulfils the function of a means of proof and of opposability of the transmission to the third parties. There is no registration requirement with the Commercial Register except where the target company is a single-member company or becomes a single-member company as a consequence of the transaction. The identification of the new shareholder and the transfer must be recorded in the shareholders Register Book.

An asset deal may involve the transfer of one or more assets or the transfer of a business undertaking.

Individual assets: Requirements in terms of formalities will depend on the nature of the asset (e.g. the transfer of a real estate property will require the formalisation before a Public Notary and the registration in the Land Registry Office or the transfer of machinery may be carried out in a private agreement).

Transfer of business undertaking: Unless the transfer includes real estate property, there are no specific requirements.

TAX TREATMENT

- ▶ Capital gains tax depends on the condition of the seller.
A. Corporate Income Tax (for companies): At a general rate of the 25% but, if certain requirements are met, it is possible to apply the double taxation exemption regime (95%).
B. Personal Income Tax (for natural persons): At a general rate between 19%-28%.

Capital gains tax depends on the condition of the seller.

A. Corporate Income Tax (for companies): At a general rate of the 25%. VAT is at a general rate of the 21% if the assets are not part of an autonomous economic unit (real estate property that forms part of an autonomous economic unit will be subject to Property Transfer Tax at a rate between 6% - 11%).

B. Personal Income Tax (for natural persons): At a general rate between 19% - 28%.

LIABILITIES

- ▶ The transfer of shares does not impact in the liabilities (these remain in the target company).

The buyer, as legal new owner of the assets, assumes direct responsibility for the liabilities arising with regards to the assets. There is a specific regimen of liability for the transfer of assets within the framework of a transfer of business undertaking (tax, labor and social security liability).

It could be necessary to request the consent of third parties (e.g. creditors) for the transfer of specific assets and formalise the subrogation of the buyer in the sellers liability or to provide specific guarantees in this respect.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property.

The buyer is the owner of the real estate property so, any liabilities and obligations related to the real estate property are assumed by the buyer directly.

EMPLOYEES
(ACQUIRED
RIGHTS
DIRECTIVE -
TUPE)

- ▶ The purchase of shares does not have, in general, an operational influence on the company, but a change of ownership of said shares. Hence no change in the employer occurs and no associated labour transfer requirements.

- A. Transfer of a single asset: Generally, will not result in any labour consequences.
B. Transfer of assets within the framework of a transfer of business undertaking (pursuant to article 44 of the Spanish Statute of the Employees (that is, a transfer that effects an economic entity that maintains its identity, understood as a set of means organised in order to carry out an essential or accessory economic activity): The buyer (new employer) is subrogated to the labour and social security rights and obligations of the previous one. The buyer and seller have joint liability for three years arising prior to the transfer which are not yet satisfied. The buyer must comply with employee information obligations in effect prior to the transfer.

SELLER'S PERSPECTIVE

PROS

- ▶ A share deal may be quicker and easier in terms of bureaucracy. It is favourable from a tax perspective if the exemption regime applies. It implies the transfer of the assets and the liabilities and (except contracts with change of control clauses), there is no need of negotiating the change of the ownership because it does not apply.

In an asset deal, the seller retains the control of other valuable components and/or maintain the legal entity and the activity without selling it entirely.

CONS

- ▶ There are certain requirements in terms of liability with respect to those contingencies that may arise that are especially burdensome for the transaction.

An asset deal may attract higher transaction costs and bureaucracy derived from the need to carry out the individualised transfer of each of the acquired assets. The parties may need to obtain the consents and approvals of contractual parties (e.g. from banks in case of financed assets) and related parties (e.g. from the General Meeting if the assets are considered as essential).

BUYER'S PERSPECTIVE

PROS

- ▶ A share deal may be quicker and easier in terms of bureaucracy. A share deal has less of an impact in contracts (except for those with change of control clauses). There is no interruption of the business (as the company remains operative) and the buyer may take advantage of the business history and relationships with customers and suppliers.

The buyer acquires assets without assuming all the associated debts and liabilities of the target company itself. There is increased transparency and control over the acquired assets facilitating their efficient integration into the buyer's operational structure.

CONS

- ▶ There is uncertainty in respect of the progress of the business and unknown liabilities and claims that may not be covered in the share purchase agreement.

An asset deal may attract higher transaction costs and bureaucracy derived from the need to carry out the individualised transfer of each of the acquired assets.



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SWEDEN

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)

- ▶ In a share deal, the shares are being transferred by a private agreement. A transfer of shares in the target company does not need to be registered per se, other than being entered in the company's share register. However, if changes are to be made to the target company's board of directors, the target company must hold a general meeting to decide on the composition of the board of directors and its signature. The changes made to the board of directors due to the share deal must be notified to the Swedish Registration Office.

For most assets transferred through an asset deal, there is no specific registration requirement. The assets are transferred by a private agreement. Depending on the nature of the asset sale, it may need to be registered with different authorities.

For some specific assets, such as real estate property, the change of ownership needs to be registered with the Land Surveyor by the buyer applying for a title deed with the Land Surveyor.

TAX TREATMENT

- ▶ **A. Corporate Tax:** If the seller is a Swedish company, capital gains on unlisted business-related shares are generally tax exempt (with some exceptions). There are several requirements for the shares to be considered business-related. First, it must be shares in a limited liability company or economic association (or equivalent foreign company form) which in turn is held by a limited liability company. Second, the shares must constitute capital assets and not inventory assets. Third, it must be shares in an unlisted company or in a listed company if there is a connection between the different companies' activities. If it is a listed company, the shares must have been held for at least one year before the disposal.

B. Individual Tax: Sales by shares of Swedish residents are taxable for the individual and the tax rate varies depending on whether the target company is listed or not and whether the shares are qualified because it is a closely held company. Non-qualified shares are taxed at 25% and qualified between 20% and 50%.

No VAT arises on the transfer of shares.

When the seller is a limited liability company, the net profit from the sale of the assets is taxed at a corporate tax rate of 20.6% (2025). The net profit consists of the total taxable profit on the sale of each asset included in the transfer. When calculating the profit, the proceeds should be reduced by any expenses related to the sale, such as brokerage and legal fees. The net result must be calculated based on which asset is sold, but the same tax rate is then applied to the result of the disposal. The profit remains in the company that sold the assets. This may then be taxed in a further step when the shareholders withdraw dividends from the company.

The buyer may be able to deduct 30% of the opening value of the inventory in the balance sheet plus the acquisition value of the inventory purchased during the year. Alternatively, the buyer may be able to deduct a depreciation allowance of such an amount that the taxable value is equal to the original cost of the equipment reduced by an annual depreciation of 20%. It is also possible to make an immediate deduction for the entire acquisition value in the case of equipment of lesser value or with a lifespan of maximum 3 years.

If an entire business is transferred, the sale is not subject to VAT. If, on the other hand, the transfer is not an entire business, then generally each sale is charged with VAT, with some exceptions such as real estate (see further about this below).

LIABILITIES

- ▶ The buyer, as the new shareholder of the target company, assumes the risk for all contractual and other liabilities pertaining to the target company. The new owner thus bears the risk for the shareholder value of the target company decreasing due to previous errors and omissions that occurred prior to the transaction, excluding those matters considered in the calculation of the purchase price (although the risk can be mitigated through warranties given by the seller).

The buyer acquires the liabilities pertaining to the assets included in the asset deal.

REAL ESTATE

▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property. The seller avoids capital gains tax in this way as the shares in the property-owning subsidiary are tax-exempt business shares. This can also be an advantage for the buyer as it avoids the stamp duty payable on a direct sale.

The buyer is the owner of the real estate. When acquiring real estate, stamp duty is normally payable when an application for a title deed is granted. The tax rate is usually 4.25% when the buyer is a legal entity. The tax is calculated on the purchase price or the taxable value of the property in the year preceding the year in which the title deed is applied for, whichever is higher. As a starting point, the seller and the buyer are jointly and severally liable to the state for payment of the stamp duty, but between the parties the buyer is responsible for the tax unless the parties have agreed that the seller should pay the tax.

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

▶ In a share deal, existing employment relationships are not affected. The employment conditions that the employees had with the seller continue to apply with the buyer regardless of the change of ownership.

If an entire business is transferred, employees have the right to continue working for the buyer under the same conditions as for the seller. However, it is required that the transfer includes an entire business and not only a limited scope of assets.

SELLER'S PERSPECTIVE

PROS

▶ Share deals are generally more advantageous for sellers than buyers from a tax perspective since unlisted business-related shares are tax exempt. No liabilities left for the seller.

It can be an advantage that not all assets need to be included in the deal. It also means that the due diligence process does not necessarily have to be as complex as in the case of a share transfer. Also, no shareholder resolutions are required to carry out a transfer of assets.

CONS

▶ Share deals generally require shareholder consent, except in situations where there are tag-along and drag-along clauses in shareholder agreements. If a share deal of a complex company is to be carried out, there is a risk that the buyer will want to keep the price down because of the risk they take in acquiring all the obligations and liabilities of the seller.

The asset deal may have tax consequences in that the profit goes into the seller's company and will be subject to corporation tax, but also to capital gains tax in the case of a dividend to shareholders, i.e., risk of double taxation.

BUYER'S PERSPECTIVE

PROS

▶ It can be an advantage to take over contracts and licenses that would be difficult to transfer through an asset deal. The buyer will be able to take over any already established brand and the business relationships that result from it.

An advantage of an asset deal is that the buyer does not take over responsibility for how the business was run before. Thus, it does not affect any tax liabilities, accounting violations, responsibility for any disputes, environmental violations etc., as it otherwise does in a share deal.

CONS

▶ A consequence of a share deal is that the buyer assumes the risk pertaining to how the company's operations have been conducted previously. All liabilities of the company, such as regarding tax, accounting violations, disputes, environmental violations etc. remain in the company and must be dealt with at the expense of the buyer (unless covered by warrants in the agreement).

For asset deals that do not constitute a sale of an entire business or entire branch of a business, each individual asset transferred is in principle subject to VAT on the purchase price. The VAT rate is often 25%, which means that there can be significant amounts involved in the transfer of assets. The VAT must be paid by the buyer (but can be deductible if the buyer is subject to VAT registration).



SWITZERLAND

SHARE DEAL

ASSET DEAL

CONTRACT FORM (NOTARIAL/PUBLIC RECORDS REGISTRATION)



A share deal requires a private agreement without any particular formal requirements. There is no registration requirement with the corresponding Commercial Registry, with the exception of transfers of quotas (limited liability company), for which the new quota holders must be registered. It is the most common private acquisition method in Switzerland.

Asset deals can be achieved in one of two ways: (i) by individually transferring the relevant assets, rights, and liabilities identified by the parties; or (ii) through a statutory asset transfer, where the relevant assets transfer by operation of law in accordance with the Swiss Merger Act.

(i) Private agreement, without any particular formal nor registration requirements.

(ii) All assets and liabilities listed in an inventory attached to the transfer agreement are transferred to the buyer by operation of law on registration of the transfer agreement with the commercial registry.

The transfer of real estate assets must be passed by public deed by a public notary and registered with the corresponding land registry.

Note that the assignment of commercial contracts needs the consent of the counterparties.

TAX TREATMENT



A share deal is usually more attractive for a Swiss tax resident seller, his/her profit on the selling price being tax exempted (tax free capital gain). The buyer can generally use the target company's carried-forward tax losses in Switzerland, even after the shares transfer. The buyer may not be able to offset financing costs against future profits of the target company. No tax consolidation is possible in Switzerland. However, indirect partial liquidation rules must be considered (i.e. no distribution of target company's funds that were distributable and not required for business purposes at the time of the acquisition within the next 5 years in order to avoid reclassification of the tax free capital gain for the Swiss domiciled private seller into taxable income). Transfer stamp duty (or security transfer tax) is due if taxable securities are transferred for consideration and if a securities dealer, as defined in the Swiss Federal Stamp Tax Act, is involved, either as a party or as an intermediary. No tax consequences will be triggered for the target company and no VAT arises on the transfer of shares.

If the buyer is a Swiss company, stamp duty may be due on further capitalization of the buyer company prior to acquisition.

Any difference between the sales price and the book value of the respective asset is subject to corporate income tax if that income cannot be offset against any existing tax loss carry-forwards. Additionally, the sale of real estate property may be subject to real estate capital gains tax depending on the location of the real estate property.

The buyer may be able to amortise the acquired assets tax effectively, including goodwill. The buyer may be able to offset financing costs against future profits of the transferred business. However, the buyer cannot use any losses carried forward by the seller.

From a VAT perspective the transfer of assets is basically subject to VAT. Depending on the transaction, the VAT due may be notified to the VAT authorities only.

If the buyer is a Swiss company, stamp duty may be due on further capitalization of the buyer company prior to acquisition. A tax ruling request prior to the transaction may be recommended, in particular in case of the transfer of an entire business (carve-out) or demerger.

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LIABILITIES

- ▶ The liabilities and obligations of the target company are generally unaffected by a share deal, and they continue to reside with the target company. Representations, warranties, and indemnities are usually addressed in the transaction documents.

The buyer, as the legal successor of the seller, usually becomes fully liable for all asset / obligations / employment-related liabilities. Compensation for the automatic assumption of liabilities may be addressed in the transaction documents.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property. Real estate transfer tax and real estate capital gains tax may be triggered on the sale of the majority of the shares in a real estate company depending on the domicile of the real estate property.

The transfer of real estate assets must be incorporated into a public deed by a public notary and registered with the corresponding land registry. The sale of real estate property may be subject to real estate capital gains tax and real estate transfer tax for the seller depending on the location of the real estate property.

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

- ▶ The sale of a company by way of a share deal has, in contrast to an asset deal, in general no effect on the target company's employees. All employees remain employed by the target company, and neither the target company nor the employee can derive any right from the share deal. In case of contractual change of control provisions, the transaction may trigger certain rights of the employees, most often a right to terminate the contract or a right to renegotiate certain terms and conditions.

There is an automatic transfer of all employment relationships of the company or part of the company to the buyer (including internal regulations, accrued vacations, overtime, etc.), without any further legal action. No consent of the employee to the transfer is required. Employees may refuse the transfer of employment relationship and terminate the employment agreement within the statutory (not the contractual) notice period (between 14 and 30 days).

SELLER'S PERSPECTIVE

PROS

- ▶ It is usually more attractive for a Swiss tax resident seller (tax free capital gain). The transaction is considered a clean break, that is, the seller is not left with any contingent liabilities. There is no need to inform or consult employees or their representative(s).

There is limited shareholders involvement, approval of all shareholders is not required (i.e. if dissenting minority shareholders are not prepared to sell their shares), despite if the asset deal actually corresponds to a de facto liquidation of the company.

CONS

- ▶ The transaction must have shareholders approval (with the exception of applicable shareholders agreement with drag-along clause).

There is a risk of double taxation for seller (i.e., corporate level + shareholder level). An asset deal is also may be more time consuming (third-party consents required as contracts are not automatically assigned) and more complicated (assigning specific assets and transfer formalities), as well as a prior tax ruling may be required.

BUYER'S PERSPECTIVE

PROS

- ▶ The operational and legal arrangements relating to the target company transfer to buyer (subject to indemnities and representations and warranties), therefore there is less risks of interruption of business and changing costs. There is also no forfeiture of any tax losses carried forward to the target company.

The buyer is purchasing selected assets, contracts, and assumption of selected liabilities only and therefore has increased control and no money is wasted on unwanted assets. An asset deal may also have beneficial tax treatment.

CONS

- ▶ Buyer acquires the target company with its entire history, including potential unknown liabilities and claims. Often worse tax treatment than sale of assets (transfer at book value, depreciation limited, LPI limitations).

Legal complexity of consummation of the asset deal. An asset deal has higher transaction costs and can take longer to complete.



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THE NETHERLANDS

CONTRACT
FORM
(NOTARIAL/
PUBLIC
RECORDS
REGISTRATION)

TAX
TREATMENT



The shares in question will be transferred by means of a notarial deed.



CIT:

Target company

The sale and transfer of the shares in a target company does not trigger the realization of taxable reserves of the target company. Tax loss carry forwards and forwarded non-deductible interest under the earnings stripping rules of the target company may be forfeited, but counterproof rules may apply.

Seller

If conditions are met, capital gains and losses realized upon the sale and transfer of the shares may be fully exempt from Dutch CIT pursuant to the participation exemption. Costs incurred in connection with the sale of the shares are not deductible for CIT purposes.

Buyer

Acquisition costs and other costs incurred in connection with the sale of the shares are not deductible for CIT purposes. Interest on intercompany loans used to finance the acquisition of the shares may not be deductible for CIT purposes, but counterproof rules may apply. If conditions are met, future dividends from and capital gains or losses on the shares acquired may be fully exempt pursuant to the participation exemption. The target company of which shares are acquired may have deferred tax liabilities or assets present.

VAT: The transfer of shares is either not taxable or exempt for VAT purposes.

RETT: The acquisition of shares in a so-called real estate entity may be subject to RETT. A legal entity is a real estate entity if (i) its assets, at the time of acquisition or within the previous 12 months, consist or have consisted for at least 50% of immovable property, (ii) at least 30% of that immovable property is located in The Netherlands and (iii) the entity has been, as a whole, wholly or predominantly (i.e. 70% or more) devoted to the acquisition, alienation or operation of immovable property. RETT is in principle due if the buyer has or acquires an interest in the real estate entity of at least one third. Certain exemptions may apply.

Stamp duties: No stamp duties apply.

SHARE DEAL

ASSET DEAL

Assets and liabilities need to be transferred in accordance with specific requirements applicable, but for most assets the execution of a purchase agreement suffices.

CIT:

Seller

Taxable profit is realized insofar as the (at arm's length) transfer price of the assets exceeds the tax book value thereof. Under circumstances such profits may be reserved for a limited period of time (the so-called reinvestment reserve).

Buyer

Acquisition costs are capitalized as part of the tax book value of the assets acquired and may be depreciated subject to the depreciation rules for CIT purposes.

VAT:

The transfer of going concern is deemed not to be subject to VAT. In the absence of a transfer of going concern, the applicable VAT treatment depends on the nature of the assets that are transferred.

RETT:

The acquisition of real estate located in the Netherlands or of rights associated with such property, as well as the acquisition of the beneficial ownership thereof, is subject to RETT. The buyer is liable for such RETT. Exemptions may apply.

LIABILITIES

- ▶ All liabilities will remain with the debtor (i.e. the target company). Specific arrangements regarding all or certain (potential) liabilities can be made in the transaction documents by means of agreeing on indemnities. It might also be an option to have the seller takeover a liability if the creditor agrees thereto.

The buyer is not required to acquire the liabilities.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property, unless it is carved out.

The assets can be acquired separately from the seller.

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

- ▶ Acquired Rights Directive - TUPE is not applicable. All employees will remain employed by the target company.

The employees, including their employment terms, will transfer automatically if a business or undertaking transfers to the buyer as a result of an agreement, a merger or split up.

SELLER'S PERSPECTIVE

PROS

- ▶ There is contractual freedom in respect of, among others, limiting warranties, indemnities, liability arrangements and so further.

Assets, rights and liabilities regarding a business unit to be sold can be separated from other business units which will remain with the selling company.

CONS

- ▶ The buyer will conduct extensive due diligence investigations into the (shares of the) target company by the buyer and its advisors. The seller will need to give security to the buyer and the target company regarding recovery of claims under the transaction documents.

There are specific / various requirements applicable to the transfer of assets, rights and liabilities. The contracting party might not give its required consent to the contract takeover by the buyer from the selling company. The debtor might not give its required consent to the debt takeover by the buyer from the selling company.

BUYER'S PERSPECTIVE

PROS

- ▶ Third party approvals are not normally required, i.e. the transaction can be concluded more quickly than an asset deal. If the shares in a holding company will be acquired, the shares in its subsidiaries will indirectly be acquired by the buyer (if not carved-out).

The buyer may be able to cherry pick assets, i.e. less attractive or risky assets and rights will not be transferred.

CONS

- ▶ The buyer cannot cherry pick assets, i.e. the buyer acquires ownership of all of the target company's assets and liabilities. Interests of the other / minority shareholder(s) must be taken into account by the majority shareholder.

Acquired Rights Directive - TUPE might be applicable. There are specific / various requirements applicable to the transfer of assets, rights and liabilities. The contracting party might not give its required consent to the contract takeover by the buyer from the selling company. The debtor might not give its required consent to the debt takeover by the buyer from the selling company.



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**VISIT
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TURKEY

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)



A. Joint Stock target company (JSC): As a rule, the transfer of shares without any issued share certificates (i.e. naked shares) is executed in written form (e.g. by way of a share transfer agreement). The transfer of bearer share certificates requires transfer of possession of the bearer share certificate and notification to the Central Securities Depository of Turkey. The transfer of registered share certificates requires transfer of possession of the registered share certificate validly endorsed.

B. Limited Liability target company (LLC): As a rule, the transfer of shares requires a notarised share transfer agreement, a resolution of the board of partners approving the share transfer, and registration with the Commercial Registry and announcement in the Commercial Registry gazette.

TAX TREATMENT



A. Individual tax (applicable where the seller is real person): In respect of a JSC, if the share certificates or interim certificates are issued and if the relevant shares have been held for at least two years, the seller is fully exempt; otherwise, capital gains are subject to income tax at usual rates (i.e. 15 to 40%). In respect of a LLC, there is no exemption, and the aforementioned usual rates apply.

B. Corporate tax (where the seller is a corporation): The usual rate is 25%. For shares in both a JSC and LLC irrespective of whether share or interim certificates are issued or not, an exemption on 75% of capital gains is applicable if relevant shares have been held for at least two years.

SHARE DEAL



ASSET DEAL



There are two major types of asset deals (corporate reorganisations such as merger, demerger are out the scope of this overview).

A. Individual asset deal: Individual assets are acquired through singular succession in accordance with general provisions of the law of obligations which requires separate transactions for the transfer of each asset taking into account the respective provisions (e.g. transfer of real estate requires a special written form to be executed by land registry, assignment of claim is subject to simple written form).

B. Transfer of a commercial enterprise: A commercial enterprise can be transferred as a whole, without the legal entity, through universal succession by way of a transfer agreement in written form to be registered with Commercial Registry and announced in the Commercial Registry gazette. Transfer of a commercial enterprise does not require separate transactions for the transfer of each asset. Further, unless otherwise stated in the transfer agreement, the following elements of business are deemed to be included in the transfer agreement: fixed assets, enterprise value, tenancy rights, trade name and other intellectual property rights, and other assets that are permanently attached to the business.

Tax issues are considered on a case-by-case basis; in Turkish law practice the decision for share or asset deal is often made under tax considerations.

A. Individual asset deal:

Personal income tax (where the seller is a real person): If the relevant real estate has been held for at least five years, the seller is fully exempt otherwise, capital gains are subject to income tax at usual rates (i.e. 15 to 40%).

Corporate tax (where the seller is a corporation): The usual rate is 25%. An exemption on 25% of capital gains is applicable if relevant real estate was acquired on or before 14 July 2023 and has been held for at least two years and was sold on or after 15 July 2023. Otherwise, there is no exemption, and the aforementioned usual rate applies.

TURKEY

SHARE DEAL

ASSET DEAL

LIABILITIES

- Agreements of a target company will continue to be valid and enforceable with the same terms in principle. However, agreements with change of control clauses, e.g. loan agreements with banks, may require obtaining approval from counter parties of agreements.
Neither seller nor Buyer is liable to third parties.
Regarding shareholders liability towards target company: sole obligation principle applies to JSCs as a rule, and sole obligation of shareholder is to pay share capital subscribed. Sole obligation principle does not apply to LLCs; obligation of additional payment (e.g. in case of loss of share capital) may be set out in the Articles of Association.

- A. Individual asset deal:** There is no special liability regime, neither towards third parties nor between seller and buyer, i.e. general provisions of law apply (e.g. defect liability between seller and buyer).
- B. Transfer of a commercial enterprise:** As a rule, the buyer automatically becomes liable for the debts of the commercial enterprise starting from the date of the announcement of the transfer agreement. The seller will continue to be (jointly) liable for existing debts for two years, i.e. creditor can take legal steps against both seller and/or buyer. According to the prevailing opinion in the doctrine, in principle, the transfer includes agreements regarding commercial enterprise however, acting conservatively, it is recommended to obtain approval from counter parties of agreements.

REAL ESTATE

- In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the real estate property.

- A. Individual asset deal:** Transfer of real estate requires a special written form to be executed by land registry.
- B. Transfer of commercial enterprise:** Unless otherwise stated in the transfer agreement, real estate property is deemed to be included in the agreement. The transfer of a commercial enterprise is subject to registration with the Commercial Registry and public announcement, however, it does not require separate transactions for the transfer of real estate properties. The Commercial Registry will notify the relevant land registries.

EMPLOYEES (ACQUIRED RIGHTS DIRECTIVE - TUPE)

- Employment agreements of a target company will continue to be valid and enforceable. As a rule, the change in ownership of the target company is not valid grounds for the termination of an employment agreement. However, if the new owner of the target company is planning to make material changes to the working conditions of certain employees, consent of such employees must be obtained in writing otherwise, such employees will not be bound by the proposed material changes.

- A. Individual asset deal:** The transfer of an employment agreement to another employer (the buyer) is subject to written consent of the employee. The transfer includes all rights and obligations regarding the employment agreement.
- B. Transfer of a commercial enterprise:** Employment agreements are automatically transferred to the buyer, along with all rights and obligations. Both the buyer and the seller are jointly liable for obligations which have materialised before the transfer and are due on the date of transfer. However, the sellers liability is limited to two years following the date of transfer. None of the seller, the buyer and the employees are authorised to terminate the relevant employment agreement as a result of the transaction. However, the material changes regulation mentioned in respect of share deals also applies to the transfer of a commercial enterprise.

SELLER'S PERSPECTIVE

PROS

- It is likely to be more attractive due to possible tax exemptions (i.e. in terms of capital gains).

It is possible to transfer part of a business and therefore more customisable (the same applies to the buyer).

CONS

- It includes comprehensive representations and warranties, share price adjustment etc.

In respect of individual asset deals, there is an increased administrative burden of transferring the assets (the same applies to the buyer). It can potentially include increased transactions costs (e.g. registrations fees) (the same applies to the buyer).

TURKEY

SHARE DEAL

ASSET DEAL

BUYER'S PERSPECTIVE

PROS

- ▶ The continuation of existing agreements, incentives etc and the continuation of licenses, permits etc. unless there are special provisions (i.e. in some regulated sectors) requiring renewal or change of such licenses and permits.

- A. Individual asset deal:** It is possible to acquire part of a business and cut itself off from historical actions and risks of the target company.
- B. Transfer of a commercial enterprise:** Some elements of a commercial enterprise may be excluded from the transfer.

CONS

- ▶ The buyer acquires the target company together with all its historic (tax etc.) liabilities. The buyer may indirectly acquire nonessential assets and, hence, potentially need to effect post-acquisition re-structuring.

- A. Individual asset deal:** The buyer may need to renegotiate related agreements, and since licenses and permits are issued under the name of the target company, the buyer may also need to renew or change such licenses and permits.
 - B. Transfer of a commercial enterprise:** The buyer will likely be required to renew or change licenses and permits.
- Generally, an asset deal potentially includes higher tax costs (stamp duty, transfer taxes etc.) for the seller. Tax attributes such as carried forward losses will remain with the seller.



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**VISIT
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USA

CONTRACT FORM (NOTARIAL/ PUBLIC RECORDS REGISTRATION)



No required contract forms for private companies, but US corps will have basic information registered with States where they are deemed to do business and with its beneficial owners with Federal FinCEN (unless exempt from reporting). Share deals involve the transfer of ownership of an entire entity through the sale of its capital stock, membership interests, or partnership interest, depending on the target company being sold. The buyer acquires all assets and liabilities housed within the target entity, without the need to list each asset and liability individually in the purchase agreement. Buyer also assumes all existing liabilities of the entity, which can include undisclosed or contingent liabilities. This necessitates a more complex set of representations and warranties that cover both general company matters and specific assets. One of the key advantages of an equity sale is that it often avoids triggering transfer restrictions that might apply in an asset sale. This is because the title holder to the assets does not change, reducing the need for compliance with transfer restrictions. However, a change in control can also trigger transfer restrictions based on contract law that require consent.

TAX TREATMENT



An equity deal involves the transfer of ownership interest in the business entity itself, such as stock in a corporation or membership interests in an LLC. The owner typically recognises capital gain on the sale of their equity interest. Long-term capital gain (for interests held over a year) is taxed at a lower rate than ordinary income. The buyer acquires the target entity with all its assets and liabilities, and the tax basis of the entity's assets generally remains unchanged. This means the buyer does not get the benefit of a stepped-up basis for depreciation purposes. Under certain circumstances, the parties can agree on an IRC 338(H)(10) tax election which treats the stock sale as a deemed asset sale for tax purposes and allows for the buyers step-up. In these cases, the seller may negotiate a gross up in the price to cover the additional taxes triggered.

Note that tax treatment may vary depending on whether the seller and buyer are taxed as a C corporation, S corporation or partnership. For example, capital gain on the sale of qualified small business stock in a C corporation held over five years by an eligible shareholder may be subject to an income tax exclusion up to the applicable limit.

SHARE DEAL



ASSET DEAL



In an asset deal, the buyer acquires specific assets and liabilities as outlined in the purchase agreement. This means that only the assets and liabilities explicitly mentioned in the contract are transferred to the buyer. Consequently, asset sales require detailed representations and warranties concerning the assets being sold. Additionally, because the title to the assets changes hands, documentation to evidence this transfer must be completed and consents or approvals may be required, which could potentially cause an increase to transaction costs and the amount of required documentation.

In an asset deal, the buyer directly purchases business assets, such as real property, personal property, and goodwill or other intangible assets. The entity recognises taxable income on the sale of these assets, which can be a mix of ordinary income and capital gain depending on the nature of the assets sold. For example, gains from the sale of inventory are treated as ordinary income, while gains from the sale of capital assets including goodwill are treated as capital gains. The parties may negotiate the allocation of purchase price reported on the asset sale. The buyer benefits from a stepped-up basis in the acquired assets, which allows for higher depreciation and amortisation deductions in the future. However, the seller may face double taxation if the business is a C corporation, as the corporation may pay entity-level taxes on the asset sale, and shareholders may pay tax on any subsequent distribution of proceeds. Note that tax treatment may vary depending on whether the seller and buyer are taxed as a C corporation, S corporation or partnership.

LIABILITIES

- ▶ Share deals transfer all liabilities of the target entity to the buyer. In an equity sale, the buyer acquires the target as a whole, meaning that all existing liabilities of the target, whether known or unknown, are transferred to the buyer. This can include contractual obligations, debts, and other liabilities the entity has incurred. Because of the potential liability, equity sales typically include a thorough diligence process and lengthy representations and warranties from the seller. Buyer may request indemnity for preclosing liabilities.

One of the key advantages of an asset deal is the ability to avoid inheriting unwanted liabilities. Asset buyers typically assume only those liabilities that are explicitly associated with the purchased assets. This means that the buyer can selectively acquire assets without taking on the seller's broader liabilities, which can include debts and other obligations. This is particularly beneficial in industries with significant potential liabilities, such as environmental liabilities in traditional resources sectors. However, there are exceptions where the buyer may be held liable for the seller's liabilities, such as when the transaction is deemed a de facto merger, the buyer is a mere continuation of the seller, or the transaction is fraudulent. But note, however, there are exceptions to avoiding all liabilities when the business is sold due to the concepts of successor liability and avoidance of fraud on creditors.

REAL ESTATE

- ▶ In a share deal, the buyer acquires ownership of the entire target company, meaning there is no change in the title holder of the assets, including the real estate property. Transferring real estate via a share deal generally does not require the parties to any record transfer on government records, which can simplify the closing by lowering transaction costs and reducing the amount of required documentation. Buyer will inherit all of target company's undisclosed or contingent liabilities, and as a result sellers are often asked to provide comprehensive representations, warranties, and indemnities regarding the physical condition and title of the target company's real estate assets. Transfer tax can result based on state law.

Transferring real estate via an asset deal causes the title holder to change, and as a result the parties will need to coordinate with the applicable government entities to ensure the transfer is properly recorded. Transfers via an asset deal often require compliance with transfer restrictions or notice requirements. The asset purchase agreement must specify the real estate assets to be acquired and will typically include comprehensive representations and warranties regarding the physical condition and title of the real estate assets. As with share deals, sellers in asset acquisition transactions are often asked to give broad indemnities for specific issues related to the property and title. Transfer tax can result based on state law.

EMPLOYEES
(ACQUIRED
RIGHTS
DIRECTIVE -
TUPE)

- ▶ In a share deal, the employment relationships and all contractual obligations, including those related to employees, remain intact with the new owner. The buyer inherits all the rights and liabilities of the target company, allowing for continuity in employment relationships and the retention of the target company's existing tax and contractual benefits. For example, the FTC recently enacted a rule prohibiting employers from entering into non-compete agreements with employees, but a narrow exception applies to pre-existing non-compete agreements with certain Senior Executives (defined as employees who make more than \$151,164 in annual base compensation and are employed in a «policy-making position»). In a share deal, the buyer may be able to avail itself to this exception and enforce the pre-existing non-compete agreements with Senior Executives.

There is no equivalent concept to TUPE in the USA.

Enforceability of non-solicit and non-compete agreements also vary by state in the sale of business for owners.

In an asset deal, the buyer acquires specific assets of the seller and typically does not assume the seller's employment related liabilities or obligations unless explicitly agreed upon. This means that existing employment relationships are generally terminated, and this termination may trigger certain notice requirements or have other consequences. The buyer may choose to offer new employment contracts to the employees they wish to retain. Asset buyers will be subject to the FTC's new rule against non-compete agreements. The exception allowing employers to enforce pre-existing non-compete agreements with Senior Executives will typically not apply because the existing employee agreements are all terminated before or at closing. Buyer is unable to enter into non-compete agreements with any of seller's employees. This is being challenged in court.

There is no equivalent concept to TUPE in the USA.

Enforceability of non-solicit and non-compete agreements also vary by state in the sale of business for owners.

SELLER'S PERSPECTIVE

PROS

- ▶ Share deals involve the transfer of ownership of the entire target entity, including all its assets and liabilities. This can be advantageous for the seller as it allows for a clean break from the business, transferring all responsibilities and ongoing concerns to the buyer. Additionally, sellers often enjoy more beneficial tax treat in a share deal.

In an asset deal, the seller can selectively choose which assets and liabilities to transfer, allowing them to retain certain assets or avoid specific liabilities. This can be beneficial if the seller wants to keep certain valuable assets or avoid transferring problematic liabilities. Additionally, asset deals often involve fewer representations and warranties, as they are limited to the assets being sold, which can simplify the transaction diligence and drafting process.

CONS

- ▶ Share deals often involve more complex representations and warranties, addressing both general company matters and the specific assets of the target company. This can increase the legal and due diligence costs associated with the transaction. Additionally, the fact that buyer assumes all liabilities of the target entity is usually less attractive to potential buyers and could negatively impact the sale price.

Asset deals may require more documentation to evidence the change of title holder for the assets, potentially increasing transaction costs and complexity. Furthermore, asset deals often trigger more transfer restrictions, as assignments of assets may require third-party consents or compliance with other contractual obligations. Sellers often incur less favorable tax consequences in asset deals.

BUYER'S PERSPECTIVE

PROS

- ▶ Share deals also allow the buyer to retain the target entity's existing contracts, employees, and tax attributes, which can be advantageous for continuity and operational efficiency.
Buyers typically can enforce noncompetition and nonsolicitation covenants based on reasonable time and scope in the sale of business context based on each state's laws.

In an asset sale, the buyer can selectively purchase specific assets and liabilities, which allows for greater control over what is acquired. This means the buyer can avoid taking on unwanted liabilities and can focus on acquiring only the assets that are most valuable or necessary for their business.











Buyers typically can enforce noncompetition and nonsolicitation covenants based on reasonable time and scope in the sale of business context based on each state's laws.

CONS

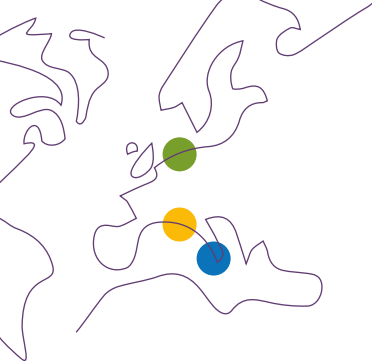
- ▶ Buyer also assumes all the liabilities of the target entity, which can include hidden or contingent liabilities that were not disclosed during the transaction. This can pose a significant risk if the target entity has substantial debts or legal issues. Additionally, the buyer does not get the benefit of a stepped-up basis in the assets of the target entity for depreciation purposes, unless a special tax election is made.












Asset deals often require detailed documentation to transfer the title of each asset, which can increase transaction costs and complexity.

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SHARE/ASSET DEAL

A comparison for practitioners working across borders



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