



*The article looks into the method of structuring an M&A transaction in the UAE where the buyer acquires the assets and liabilities of the target company (or in certain instances, the assets and liabilities of a certain business segment operated by the target company)*



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**A**s transactional lawyers will know, there are two methods of structuring an M&A transaction. The first is to structure it as a share deal, where the buyer acquires the share capital of the target company, thereby acquiring ownership of the target company. The second method of structuring such a transaction is for the buyer to acquire the assets and liabilities of the target company (or in certain instances, the assets and liabilities of a certain business segment operated by the target company). This article focuses on the latter deal structure and the particular issues an asset deal raises in the United Arab Emirates (the UAE). It is not intended to be and is not an exhaustive summary of all issues that may be relevant. Advice must be sought in the context of a particular transaction.

### Asset deals and issues to consider

- **Local transfer agreement:** In the context of a cross-border asset deal, a key issue often asked is whether there is a requirement under UAE law for the parties to the transaction to also enter into a local agreement which governs only the transfer of the UAE assets and liabilities. This will depend on the extent to which the “master” sale and purchase agreement is adequate to cover any relevant UAE law issues. While there is no requirement in law to necessarily prepare a separate document to address UAE law matters, this is often preferred for the sake of simplicity so as to keep the master agreement focused on the key commercial issues, with local law issues to be addressed in a local asset transfer agreement. Such an arrangement is sometimes also preferred from an accounting perspective, particularly where a vendor has concerns or particular requirements with respect to the payment or allocation of the purchaser price in each jurisdiction.
- **Employees:** As with all asset deals, an essential consideration for the buyer will be to ensure that all employees that are associated with or involved in the target business transfer to the buyer. In the UAE, this raises unique considerations. Unlike many jurisdictions, there is no automatic transfer mechanism available to procure the transfer of the employment relationship for each such employee from the vendor to the buyer. On the contrary, the vendor will need to procure that the employment relationship between the vendor and each transferring employee is terminated and the employee paid his or her end of service dues in accordance with applicable law. The buyer will then need to ensure that it enters into new contracts of employment with each employee it wishes to acquire and, to the extent foreign (non-UAE nationals) are concerned, procure new UAE residence visas and work permits for each such employee. Where GCC nationals are concerned, the buyer will need to ensure that it procures work permits for each such employee, but will not need to procure UAE residence visas (as GCC nationals do not require UAE residence visas to work in the UAE). To the extent



the transaction involves employees who hold either GCC or UAE nationality, the parties will also need to make appropriate notifications to the UAE General Pension and Social Security Authority to ensure that the records of each such employee are updated to reflect the change in employment circumstances. It is also important to bear in mind that to the extent a UAE national is being transferred to the buyer, specific formalities (including notifications to the UAE Ministry of Human Resources and Emiratisation) apply and must be followed prior to the termination of the employment relationship with the seller.

- **Value-added tax:** With effect from 1 January 2018, the UAE introduced VAT at a rate of 5% on most taxable supplies of goods and services. The primary pieces of legislation concerning the levy and collection of VAT in the UAE are: (a) Federal Decree-Law 8 of 2017, (b) Cabinet Decision 52 of 2017, and (c) Federal Law 7 of 2017 (together the **VAT Legislation**). The Federal Tax Authority (the **FTA**), being the body in charge of collecting VAT and administering the VAT Legislation in the UAE, was created pursuant to Federal Law 13 of 2016. The FTA is now operational and is active in VAT-related matters. All taxable persons are required to register with the FTA to obtain a tax registration number (**TRN**) and to maintain accounting records.

In the context of an asset deal, a key concern of the parties is whether VAT is payable on the purchase price. In this regard, it is useful that UAE Federal Decree-Law 8 of 2017 (the **Decree Law**) provides that transfers of a discreet business unit as a “going concern” shall not be subject to UAE VAT, subject to certain conditions.

- **Intellectual property:** To the extent the transaction also concerns intellectual property that is registered with a UAE registry (there are trademark, patent and copyright registries maintained by the UAE Ministry of Economy), such intellectual property will need to be transferred to the buyer using a deed of transfer signed before a UAE notary public (or signed outside the UAE and then appropriately attested for use in the UAE) and then filed with the relevant registry. Such transfers have been known to take between 2 and 3 months and accordingly should be factored into the planning process for closing.

## Conclusion and summary

As is evident from the foregoing, an asset deal raises particular concerns and structuring considerations in the UAE. Parties should consult legal, tax and financial advisors at a very early stage to ensure that such transactions are structured in a manner so to be feasible from a UAE law perspective.



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