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## Transaction structures of the Belarusian M&A market

# Taxation and accounting aspects have to be considered as well



A few weeks ago we published the [first article](#) of our three-part series about the Belarusian M&A market, focusing on the general economic and political framework of the Belarusian M&A market and on specifics of the transaction process. Now we would like to highlight issues of transaction structuring and the main transaction structures.

M&A transactions in Belarus are relatively straightforward overall, and in most cases do not require complicated transaction structures and processes – this is one of the main findings of the [Belarus M&A Deal Points Study](#) published this summer, aiming to **explore current practices in the Belarusian M&A market** as well as detect directions and opportunities for further development. The study summarises the results of research conducted by ten leading Belarusian law firms (including Sorainen, the Belarusian member of WTS Global).

### Transaction structures at foreign level

In most cases, the main transaction structuring question is whether to stay at the national level or involve holding or intermediary companies in different jurisdictions. The latter option **can be more beneficial if the Belarusian transaction is part of a larger international deal**, or if there are other significant reasons like regulatory specifics. Should the decision fall in favour of transaction structures on a foreign level, the main acquisition agreement will relate to a foreign company and will be governed by a foreign law, while the Belarusian part will be rather technical.

At the same time, when structuring a deal via foreign jurisdictions, it is important to keep in mind that from a tax standpoint, holdings are often not beneficial owners of income received from Belarusian sources. As a result, there **can be problems for the holdings in applying withholding tax benefits** set by double tax treaties in respect of dividends, interest and royalties.

### Transaction structures at national level

Contrary to acquisitions, mergers are not used in Belarus as a separate transaction method. **Local corporate regulations mainly see mergers as a way of restructuring business** and do not presume payment of consideration to the shareholders of the merging company in the course of the merger. Mergers are mainly used to restructure the target business prior to the acquisition or to merge the acquiring entity into a different buyer's entity (if the transaction structure provides for use of such an acquiring entity).

## Company form should be considered when deciding between transaction structures

Though the choice of suitable transaction structures for Belarus-related deals is usually easier than for some other markets, there are still several issues to consider. The company form of the target is one of the most notable.

Belarusian corporate law follows the approach of defining several company forms with the possibility of tweaking their parameters according to the needs of a specific business. The widespread company forms are unitary enterprise (UE), limited liability company (LLC), and joint-stock company, either open or closed (JSC). **Each of the forms has a relatively pre-defined set of regulatory and corporate formalities that must be complied with in the course of an M&A deal.**

**Unitary enterprises** require the transaction either to be structured as an asset deal, or provide for a preliminary change of the target's company form to LLC or JSC. The reason for this requirement is related to the specific legal status of UE: it does not have shares, and all its assets are owned by its founder. The only way to transfer a UE to a new owner is to transfer all its assets.

**Limited liability companies** provide for the highest level of flexibility when structuring the deal, and, by default, do not involve any additional requirements, except for a mandatory pre-emptive right of other shareholders to purchase the disposed shares.

**Joint-stock companies** are specific in a way that their shares are considered to be securities, therefore the transaction must be completed on the securities market and is subject to securities regulations. Closed JSCs also provide for mandatory pre-emptive rights.

## Considerable taxation aspects

**All transactions are taxable by default.** Certain transactions may benefit from preferential tax regimes, with an example of M&A deals being subject to [special High-Tech Park regulations](#). Namely, if the target is an HTP resident and the seller continuously holds the disposed shares for no less than 365 days, the applicable PIT and WHT rates are 0%.

Share acquisitions can be subject to either PIT, CIT or WHT. The taxable base is normally calculated as the difference between income from the transaction and expenses for acquiring the disposed shares, and/or contributions to the target's share capital. The **applicable rates are 13% for PIT, 18% for CIT and 12% for WHT.**

The taxation of asset transactions largely depends on the type of disposed assets and will most likely involve VAT in addition to income taxes. Specific taxation rules apply to the sale of an enterprise as an asset complex. Namely, the rules for income taxes will be similar to share acquisitions, but will also be subject to VAT.

Though a share acquisition might seem preferable to asset deals, it is not recommended to choose the former for tax-saving purposes only. Namely, in practice, some companies formalise real estate deals via share acquisitions to achieve VAT benefits. However, **from 1 January 2019 such deals are especially risky** due to the introduction of a general anti-avoidance rule into domestic tax legislation.

## Consideration

The vast majority of transactions have **cash as the only consideration**. Though there are no restrictions on the use of stock, this type of consideration is still uncommon for transactions structured at the Belarusian level.

## Accounting matters

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Please [click here](#) if you want to read the first part of our series about the **Belarusian M&A market**. In the last article in a few weeks' time, we will review the contractual terms of the transactions.

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