Deals under the Tax lens

SPA Negotiations – A Deep dive

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At the heart of every share acquisition is the Sale and Purchase Agreement (SPA), which documents the agreed commercial terms and forms the contractual foundation of the transaction. When viewed through a tax lens, SPA negotiations center around the following key areas:

Who bears the Tax bill post closing?

While the purchase price determines the value of the deal, the SPA determines who ultimately bears the economic burden of historical - and, in some cases, future - tax risks.

Why does the pricing mechanism matter?

— The SPA is primarily driven by the agreed pricing mechanism—either a locked box or completion accounts—with tax protections (among other things) layered on to protect both parties.

— A locked box fixes the purchase price using a historical balance sheet, providing price certainty, whereas completion accounts adjust the purchase price after closing to reflect the target's actual balance sheet at completion, providing balance sheet certainty.

— A locked box, focuses on defined permitted leakages to ensure value is not extracted between signing and completion and that any tax-related cash outflows are appropriately captured.

— By contrast, under a completion accounts structure, the focus shifts to ensuring that tax accruals and liabilities arising in the period between last balance sheet date and closing, are accurately reflected through post-completion purchase price adjustments.

Key SPA provisions that play a role in determining how tax risks are allocated between the parties:

— **Tax definitions**
Broad tax definitions help ensure that all relevant taxes, levies, interest, penalties, and fines are appropriately covered.

— **Tax warranties**
General warranties provide comfort on the seller's historical tax compliance and are broadly drafted to capture unknown risks, subject to disclosure. Specific tax warranties address particular issues or risks identified during due diligence, generally not covered by W&I insurance

— **Tax indemnities**
Allocate identified tax exposures to the seller if such risks materialize post-closing, without the need to prove a breach, unlike warranties.

— **Co-operation clauses**
Ensure seller support in case of future tax audits or information requirements relating to pre-closing periods

— **Limitation period**
Claim periods should align with the applicable statute of limitations to preserve recourse for tax exposures that arise within the audit window.

— **Tax claim procedure**
Sets out the mechanics for notifying, managing, and resolving tax-related claims, including conduct of disputes with tax authorities

— **Quantum / De-minimis/ Cap**
Sets thresholds for claims, including minimum claim size, aggregate thresholds, and overall liability caps for tax exposures.

Given the evolving tax landscape in the UAE, there are several matters that warrant robust coverage in the transaction documents, including:

- **QFZP status and eligibility** – potential exposure arising from historical non-compliance or loss of QFZP status identified during future audits.
- **Related party transactions** and transfer pricing – non-arm's-length arrangements giving rise to transfer pricing adjustments.
- **Pillar Two implications** – considerations arising where the target exits a Pillar Two group or becomes part of a Pillar Two group post-acquisition.
- **Place of Effective Management** – changes in management or decision-making arrangements may impact the tax residence status of certain entities.

Commercial reality - Same tax risk. Different seller. Different approach.

The allocation of tax risks is not determined solely by the SPA provisions themselves. In practice, the seller's profile often shapes the level of protection, recourse, and risk sharing that can be achieved.

Seller profile	Buyer considerations	Tailored SPA protections
Founders/ family businesses	Low comfort with recourse to individuals	Purchase price adjustments, Escrow arrangements, deferred consideration*
Corporate seller	Greater comfort based on financials and reputation	Broader warranty package, parent guarantees and specific indemnities
Private equity / distressed sellers	Limited recourse due to short fund life/ credit risk or insolvency priority	Greater emphasis on price adjustments and Warranty & indemnity insurance

*Deferred consideration and earn-out arrangements are commonly documented in the shareholders' agreement, which governs the parties' ongoing relationship following completion.

Warranty & Indemnity (W&I) Insurance - increasingly becoming part of the M&A toolkit in the Middle East.

— While long established in more mature M&A markets, W&I insurance is increasingly being adopted across the Middle East to **bridge recourse gaps** in transactions, where sellers seek a **clean exit** or limited post-closing liability

— Provides buyers with an alternative source of recovery for **unknown risks**, reducing reliance on seller recourse

— However, known tax exposures are typically excluded from the cover and continue to be addressed through specific indemnities or purchase price adjustments, reinforcing the importance of **comprehensive tax due diligence**.

The decision to pursue W&I insurance should ideally be made early in the transaction process, as this allows sufficient time to align underwriting requirements with the scope of tax due diligence, to ensuring a comprehensive scope is in place to satisfy insurer expectations.

Nilesh Ashar
Senior Managing Director, Head of Middle East Tax
nilesh.ashar@fticonsulting.com

Sameep Uchil
Senior Managing Director, M&A Tax, Middle East
sameep.uchil@fticonsulting.com

Zuhaib Khan
Senior Managing Director, Transaction Services, Middle East
zuhaib.khan@fticonsulting.com

Shefali Ganatra
Senior Director, Tax, Middle East
shefali.ganatra@fticonsulting.com

Pankati Mehta
Director, Tax, Middle East
pankati.mehta@fticonsulting.com

Alvaro Jimenez Bejarano
Director, Tax, Middle East
alvaro.jimenezbejarano@fticonsulting.com

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