

Deloitte Haskins & Sells

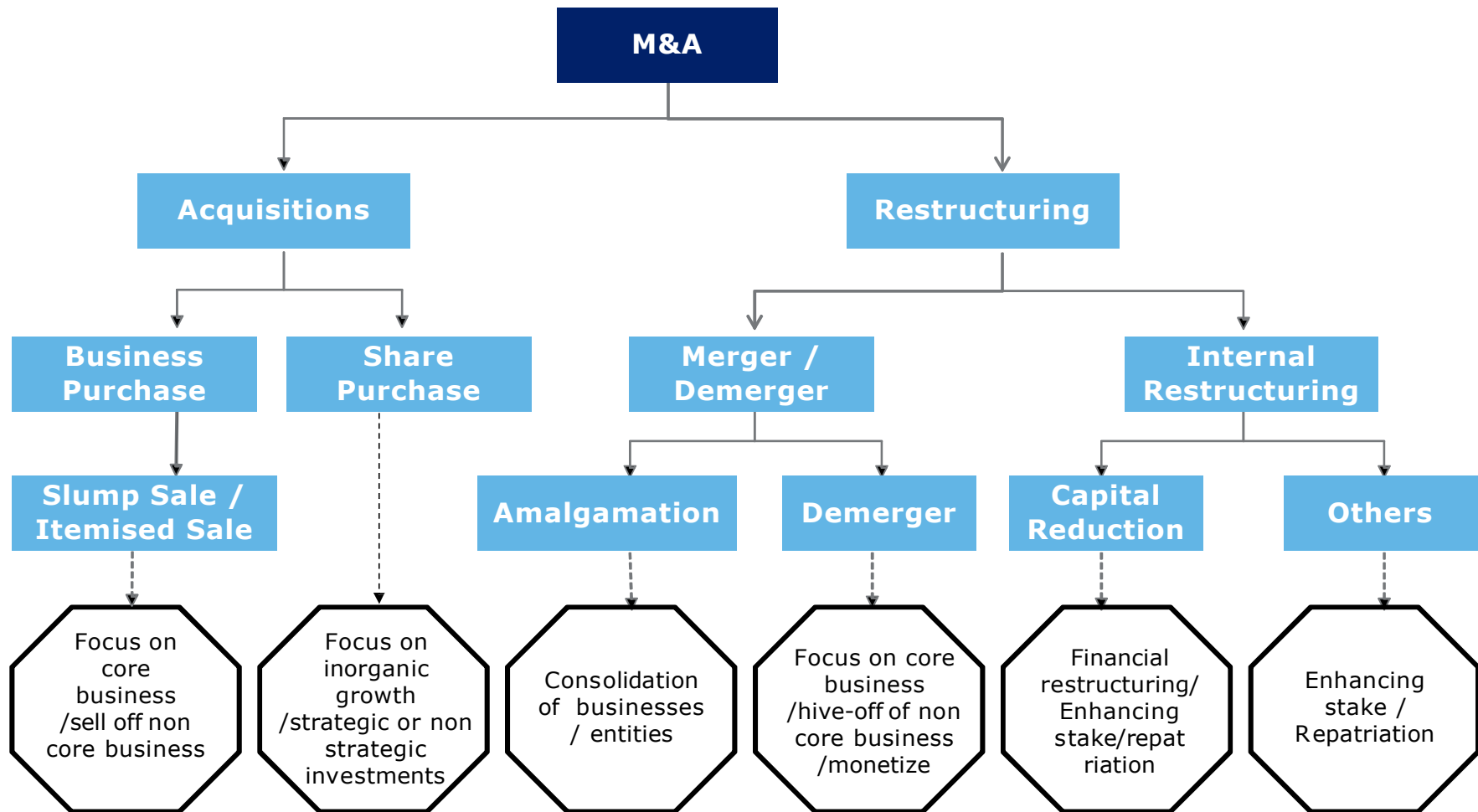


Business Restructuring

Tax aspects of M&As in India

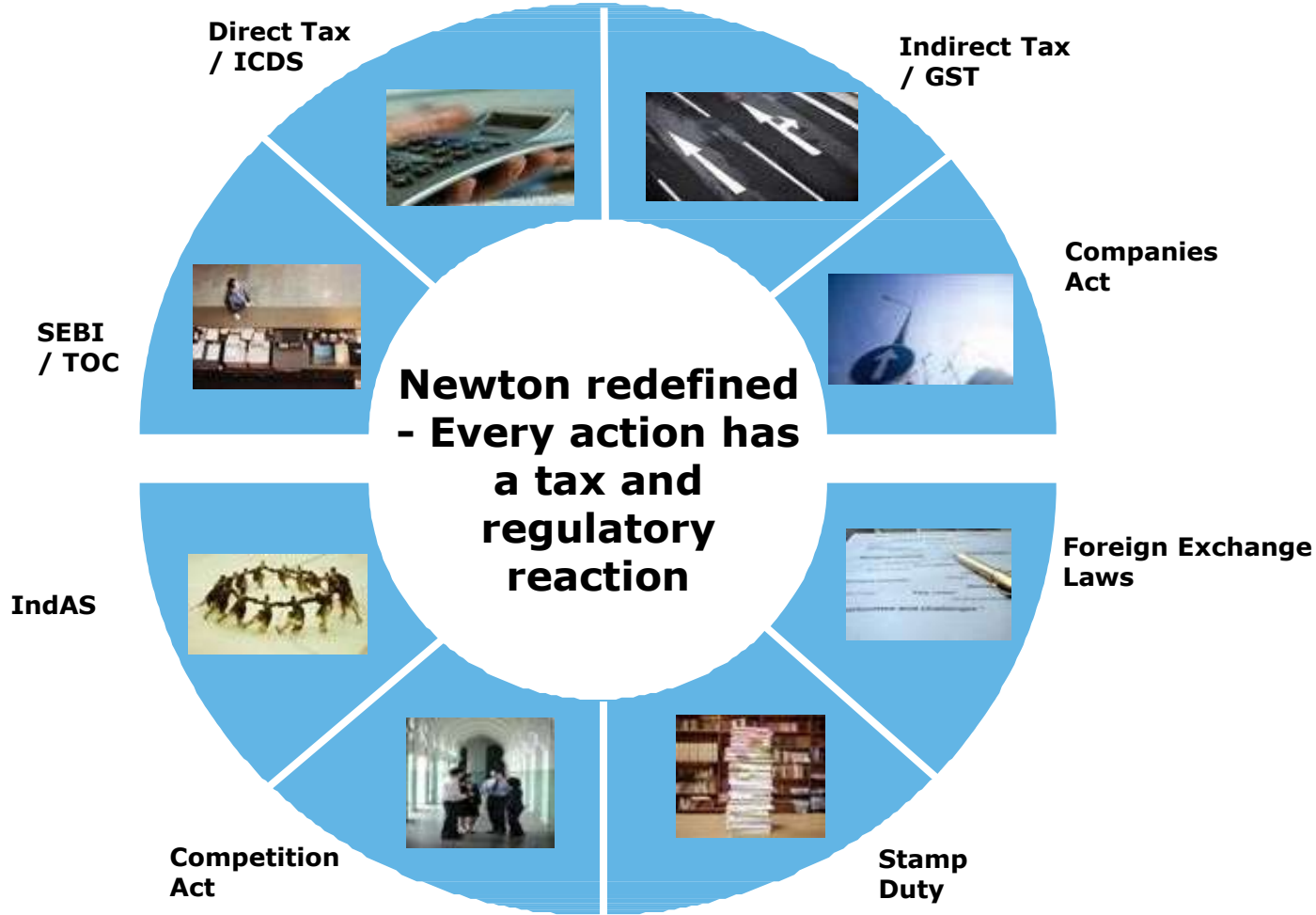
By Deepa Dalal
20 January 2018

Modes of M&A in India



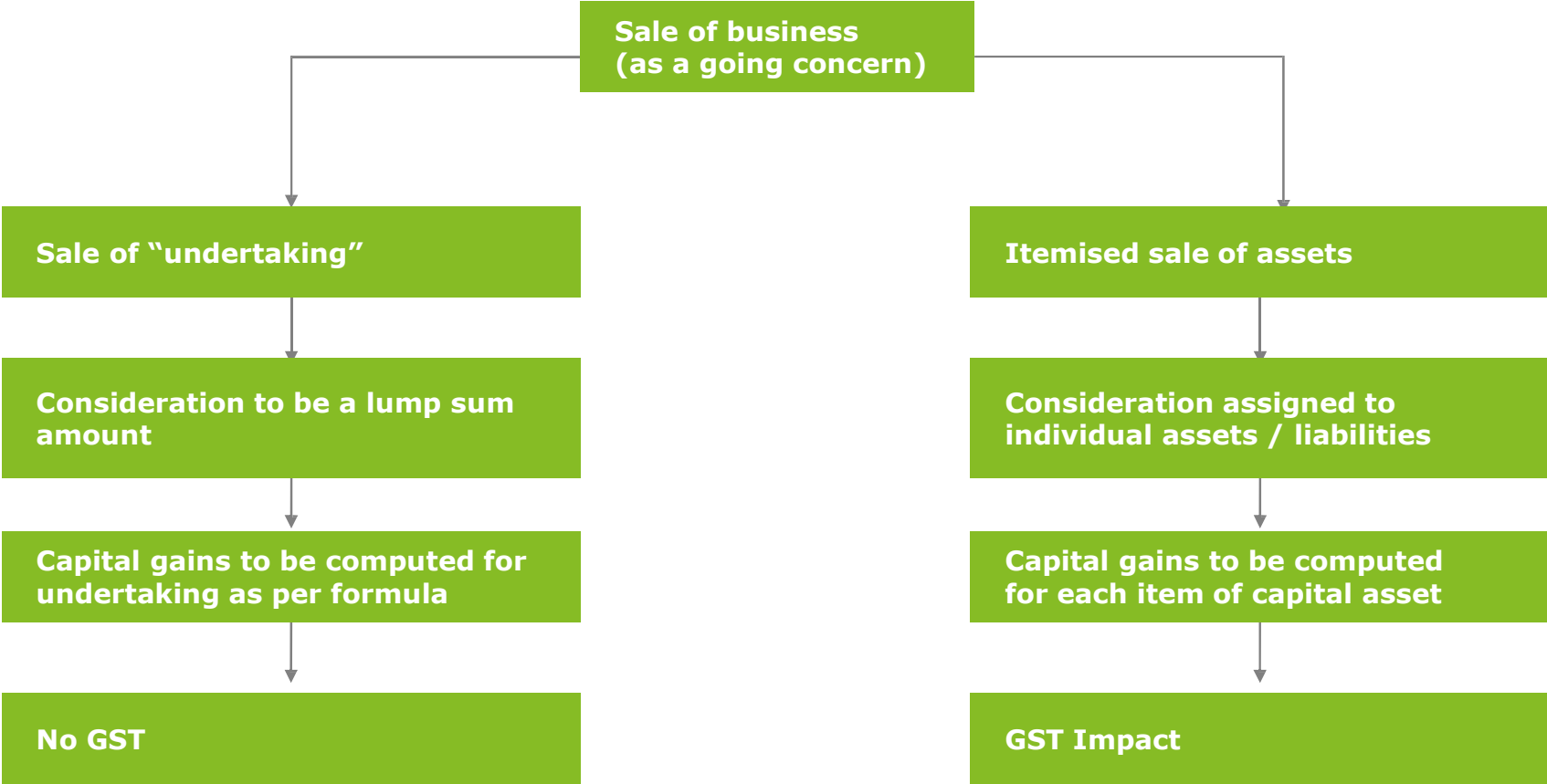
Legislative Framework of M&A in India

Snapshot of Indian laws impacting M&A

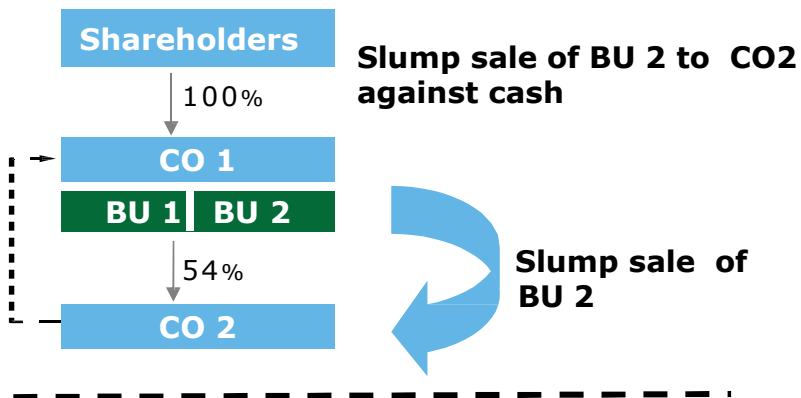
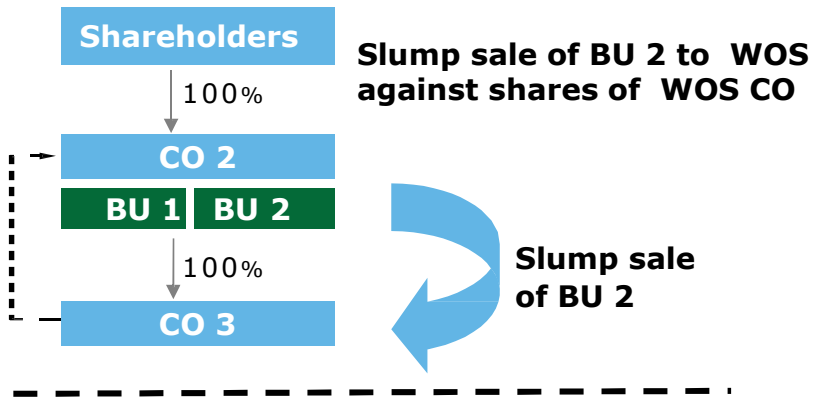


Business acquisitions

Slump sale v. Itemised sale



Slump sale

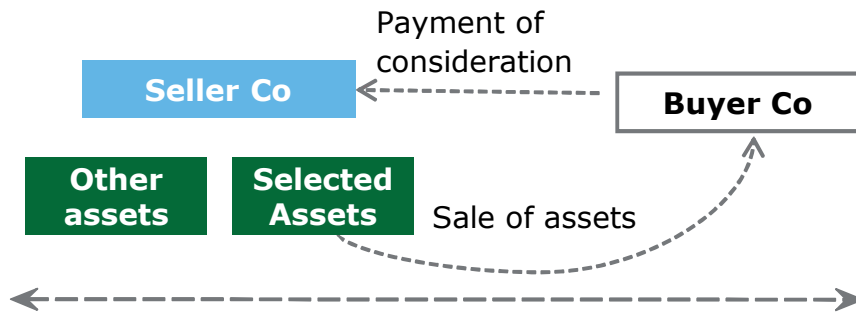


- Transfer of identified business from one company to another for a lump sum consideration
- In consideration, the buyer company to pay cash to the seller company
- Values not to be assigned to individual assets / liabilities during sale
- No Court approval required
- Undertaking defined to include –
 - A part of an undertaking
 - Unit or division of an undertaking
 - Business activity taken as a whole

Key tax considerations

- Special provision to compute capital gains on slump sale
- Tax net worth certificate to compute capital gains impact
- Will the transaction be regarded as a slump sale if certain assets or liabilities are not taken over by the purchaser?
- Can depreciation be claimed on the amount paid over and above the value of
- Tax deductions/exemptions (section 80-IA,80-IB,10AA) in the case of slump sale, whether will be transferred to the new company?
- Whether TP provisions would apply to a slump sale transaction?

Itemised - sale of Business



Post itemized sale scenario



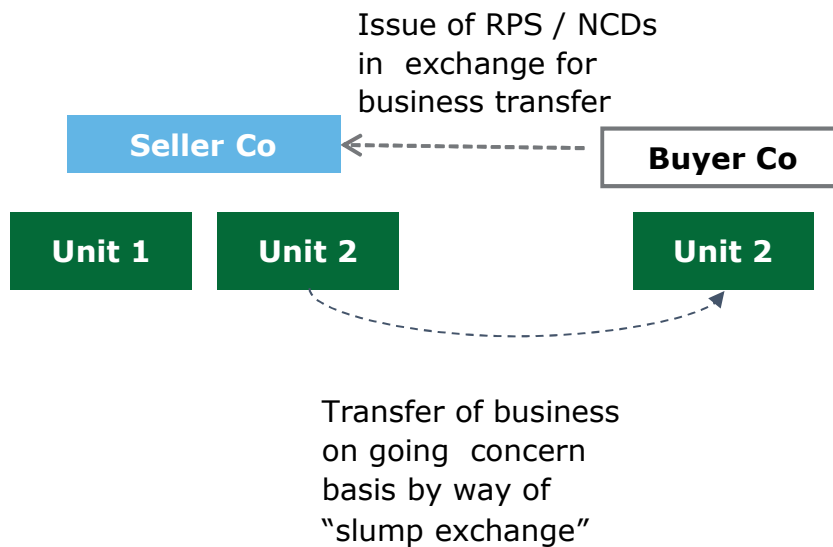
- Involves transfer of business wherein consideration is identified against each asset
- Not necessary what is transferred
- constitutes a business undertaking
- In consideration, the Buyer Co pays cash to the Seller Co
- No requirement for the Buyer Co to continue to undertake the business
- No Court approval required

Cherry Picking of assets and allocation of value to individual assets based on their inherent commercial advantage

Key tax considerations

- Transaction non-tax neutral
 - Gains arising on sale of capital assets taxed as Long/ short term capital gains depending on period of holding
- Provisions of Section 50 shall apply in the case of sale of depreciable assets that form a part of a block of assets
- Provisions of Section 50C apply in case of sale of capital asset being land / building
 - Stamp duty value to be considered as full value of consideration for computation of capital gains

Slump Exchange



Background / Transaction mechanics

- Seller Co to transfer Unit 2 to Buyer Co on a 'going concern' basis
- Buyer Co to issue RPS / NCDs in exchange for business transferred
- RPS / NCDs to be redeemed after an agreed period

Key Considerations

- IndAS and MAT impact to be evaluated
- Impact under GAAR
- Commercial rationale for slump exchange

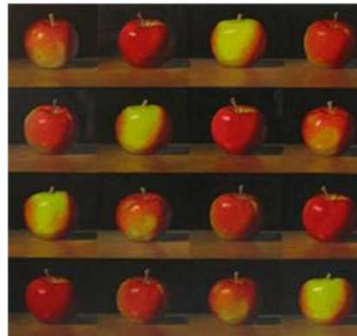
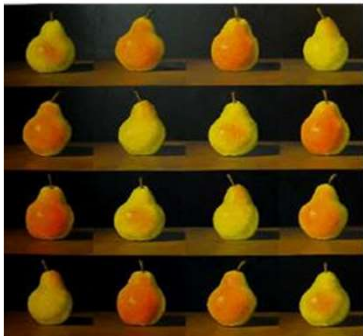
Whether 'slump exchange' can be regarded as 'slump sale' and taxed under Section 50B of the Act?

Demerger

What is demerger?



v/s



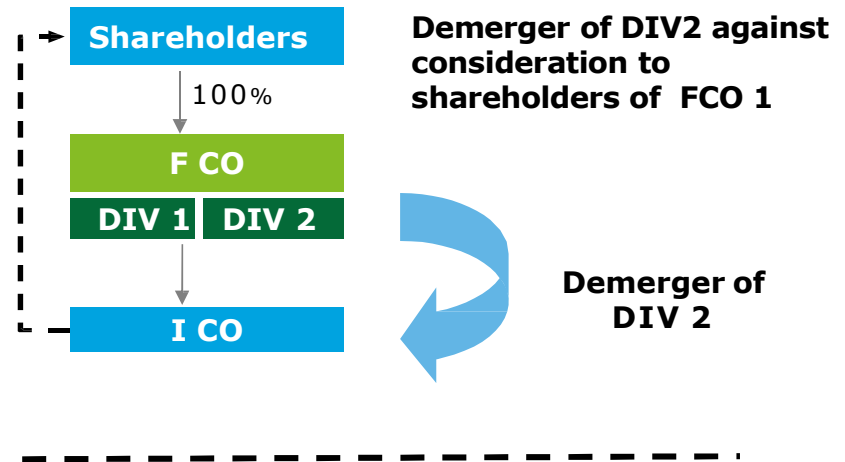
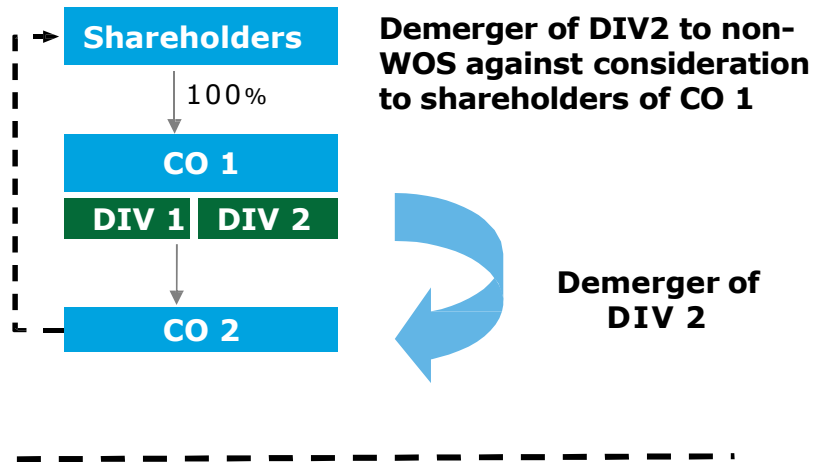
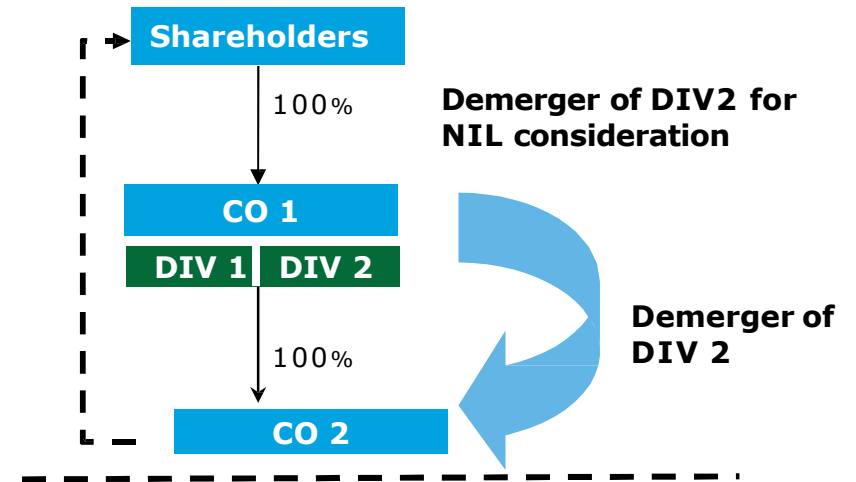
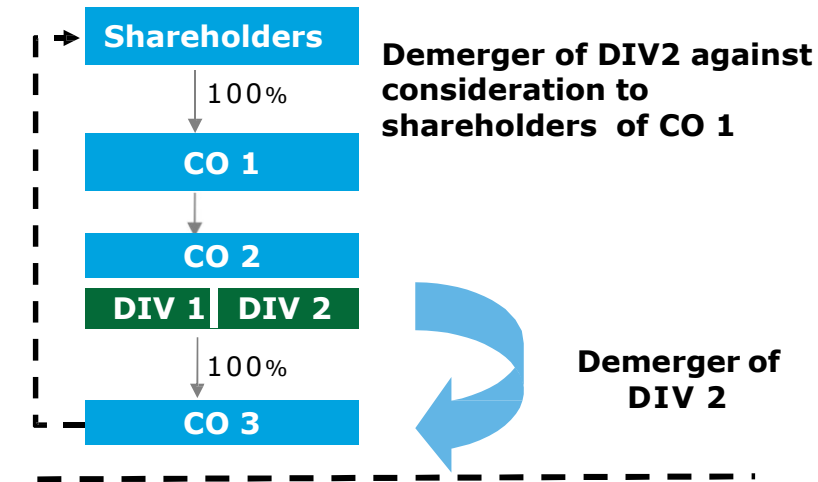
- Demerger involves transfer of identified business from one company to another
- In consideration, company which acquires business, issues shares to shareholders of selling company
- Demerger is a Court approved process similar to merger

Prominent demergers

- Wipro
- Bajaj
- TTML

News for tomorrow – IBC Assets

Demerger situations



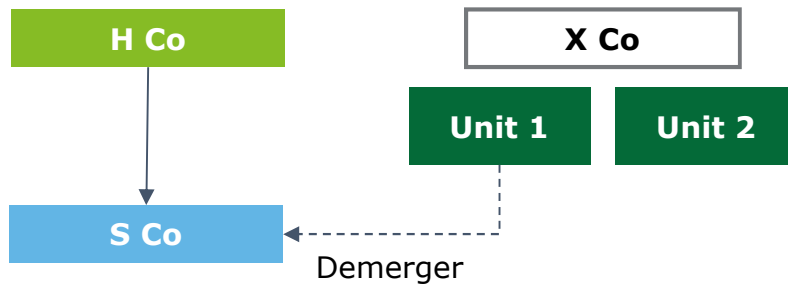
Key tax implications

- Tax neutral subject to fulfilment of conditions as per the Income Tax Act
- Carry forward & set off of losses/ unabsorbed depreciation relatable to demerged undertaking / division
- Depreciation allowable on proportionate basis
- Demerger expenses amortisable
- Cost of acquisition – to be split
- Period of holding

Other tax considerations

- What constitutes an 'undertaking'?
- Continuity of tax holiday benefits of the Demerged Co?
- Whether MAT credit allowed to transferred to the Resulting Co?
- Issue of cash on demerger?
- Applicability of transfer pricing provisions?

Non common control – Demerger



- X Co pursuant to a Scheme of Arrangement demerges its undertaking into S Co

IndAs

- Since the transaction is not a common control transaction the assets and liabilities of the undertaking will have to be recorded by S Co at its fair value
- Whether the demerger will be regarded as a tax neutral demerger ?
- Impact in the hands of shareholders?
- Transferor Co?
- Transferee Co?
- Cost step up on tax WDV of assets?

Mergers

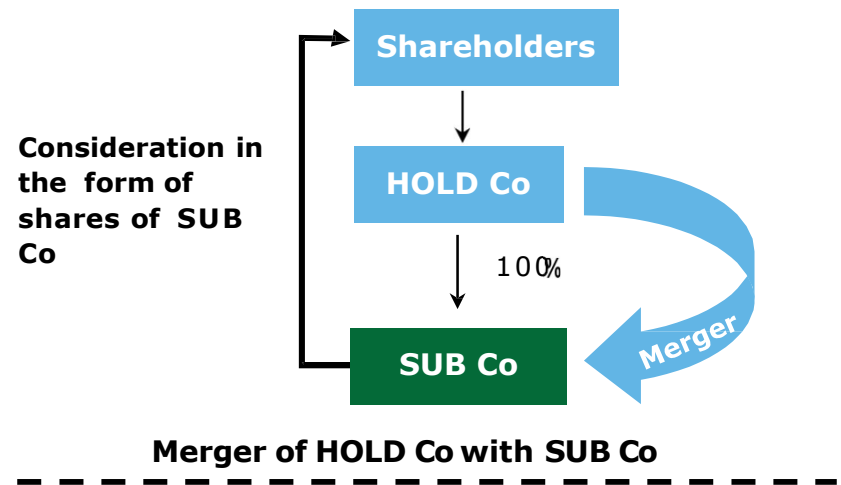
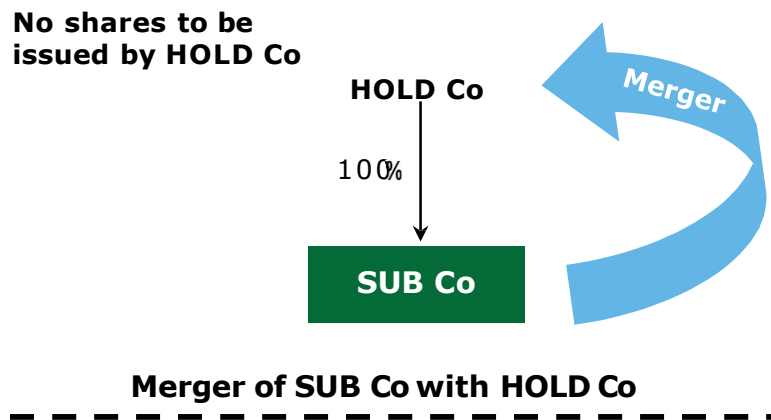
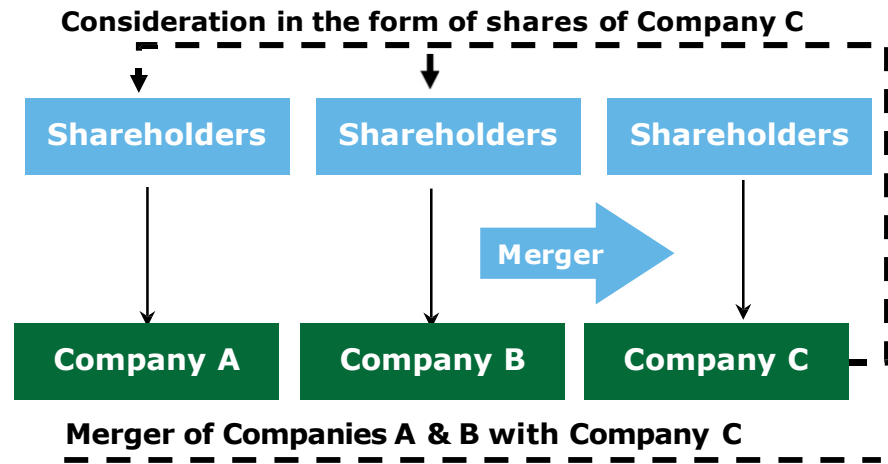
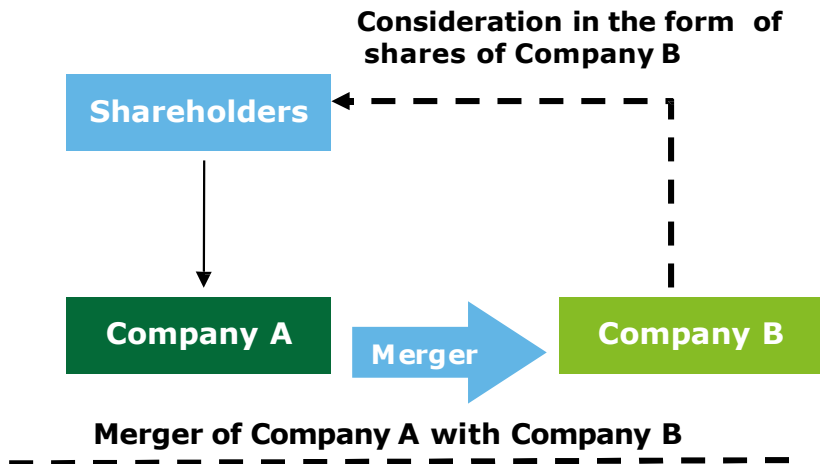
Merger

- Merger refers to consolidation of two or more entities
- Involves transfer of assets and liabilities from one or more transferor companies to a transferee company
- In consideration, the transferee company issues shares to the shareholders of transferor company

Prominent mergers

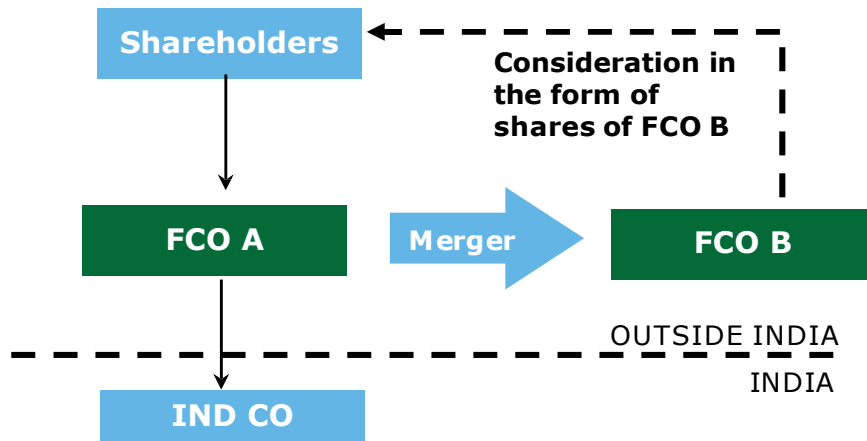
- Idea Cellular – Vodafone India
- IDFC – Capital First
- Pfizer – Wyeth
- Max Life – HDFC Life

Domestic Merger Situations

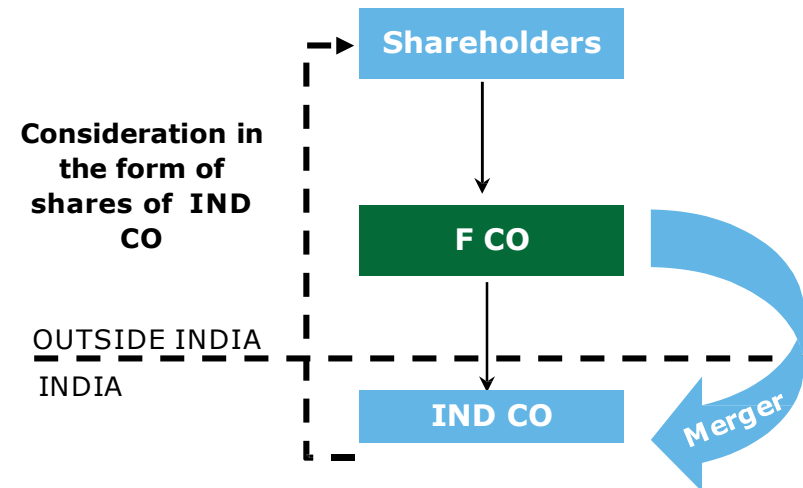


Cross Border Merger Situations

Merger of FCO A (holding IND CO) shares with FCO B

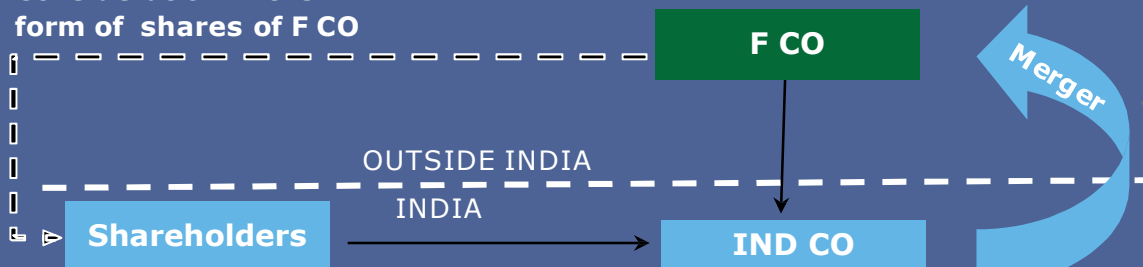


Merger of FCO with IND CO



Merger of IND CO with F CO – Outbound merger

Consideration in the form of shares of F CO



Companies Act 2013, permits this form of outbound merger (subject to fulfillment of prescribed conditions) which was previously not permitted under the Companies Act, 1956.

Key tax implications

- Tax neutral subject to fulfilment of certain conditions
- Carry forward & set off of losses / unabsorbed depreciation
- Depreciation allowable on proportionate basis
- Merger expenses amortisable over 5 years
- Cost of acquisition (COA)
- Period of holding
- COA of capital assets transferred to Transferee Co = Cost incurred by Transferor Co for acquiring such assets

Other tax considerations

- Appointed Date v. Effective Date
- Whether equity and preference shareholders should be issued equity and preference shares respectively on amalgamation?
- Tax holiday benefits
- MAT credit
- Change in shareholding – lapse of losses
- Goodwill on merger – Supreme Court in Smifs Securities
- Applicability of transfer pricing provisions

Questions?

Deloitte Haskins & Sells

This material has been prepared by Deloitte Haskins & Sells ("DHS"), on a specific request from you and contains proprietary and confidential information. This material may contain information sourced from publicly available information or other third party sources. DHS does not independently verify any such sources and is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such sources. The information contained in this material is intended solely for you. Any disclosure, copy or further distribution of this material or the contents thereof is strictly prohibited.

Nothing in this material creates any contractual relationship between DHS and you. Any mutually binding legal obligations or rights may only be created between you and DHS upon execution of a legally binding contract. By using this material and any information contained in it, the user accepts this entire notice and terms of use.

©2018 Deloitte Haskins & Sells