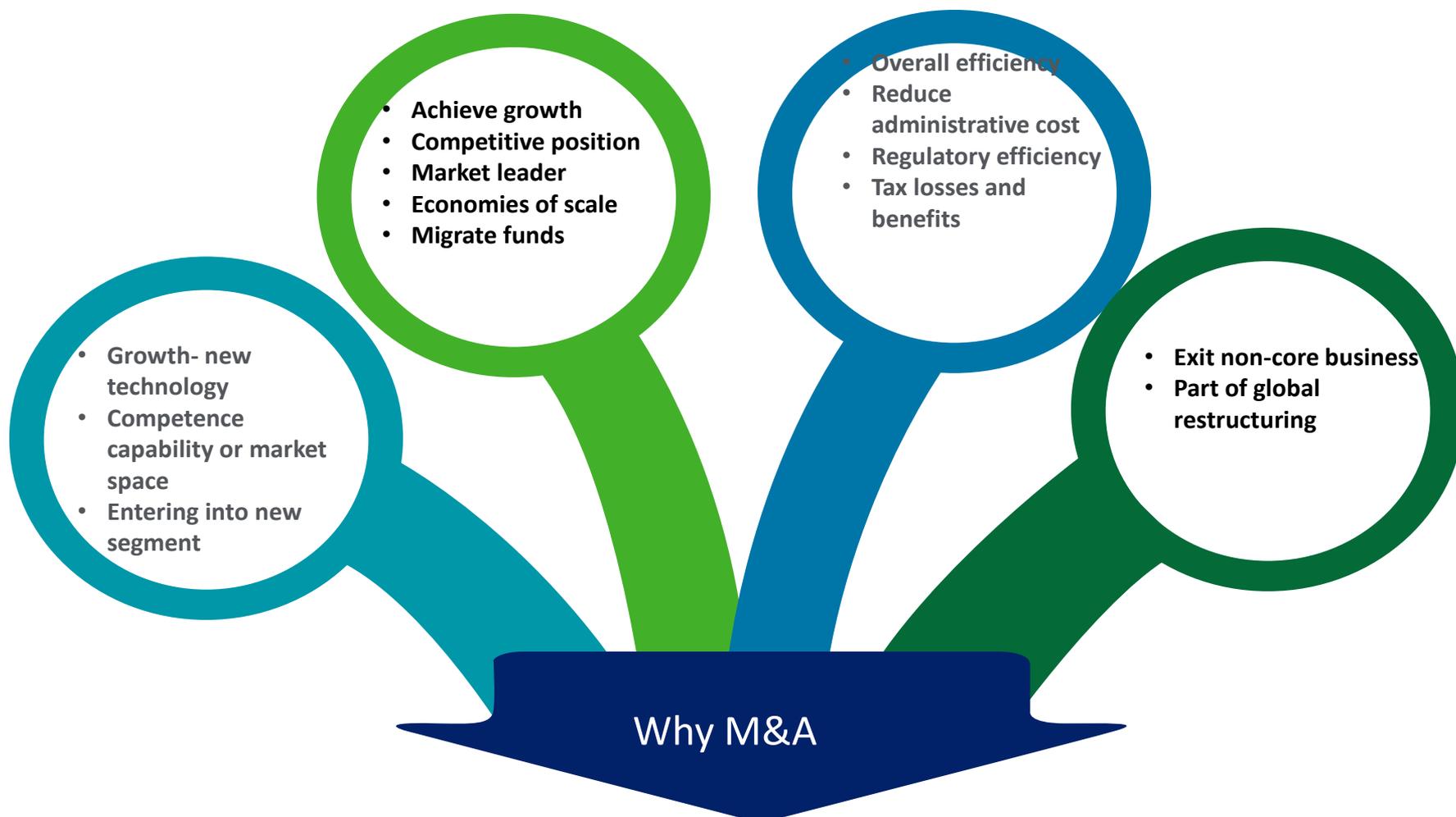




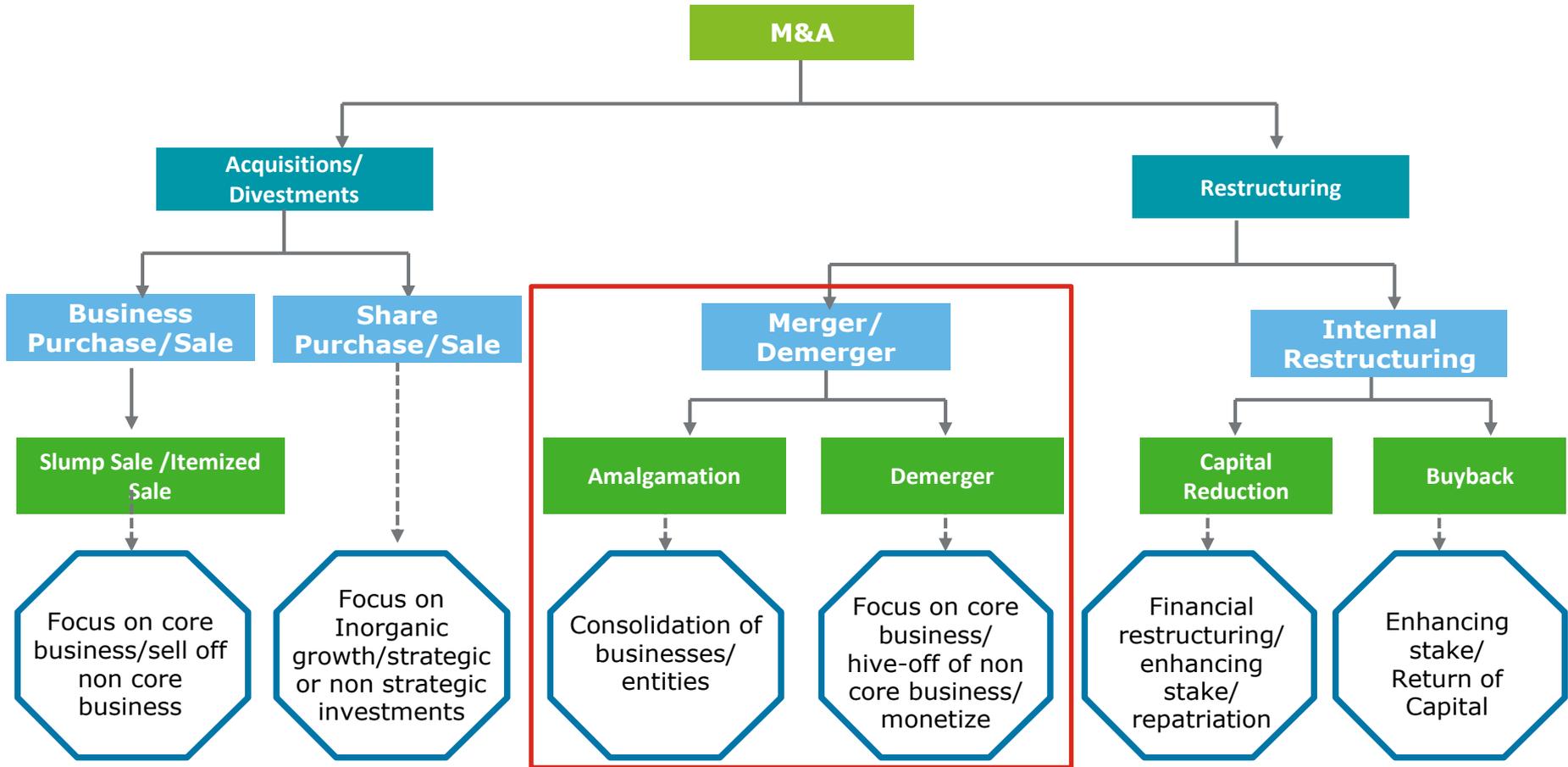
Corporate M&A Tax Law – A perspective

Private & Confidential
17 December 2021

Key objectives – M&A transactions

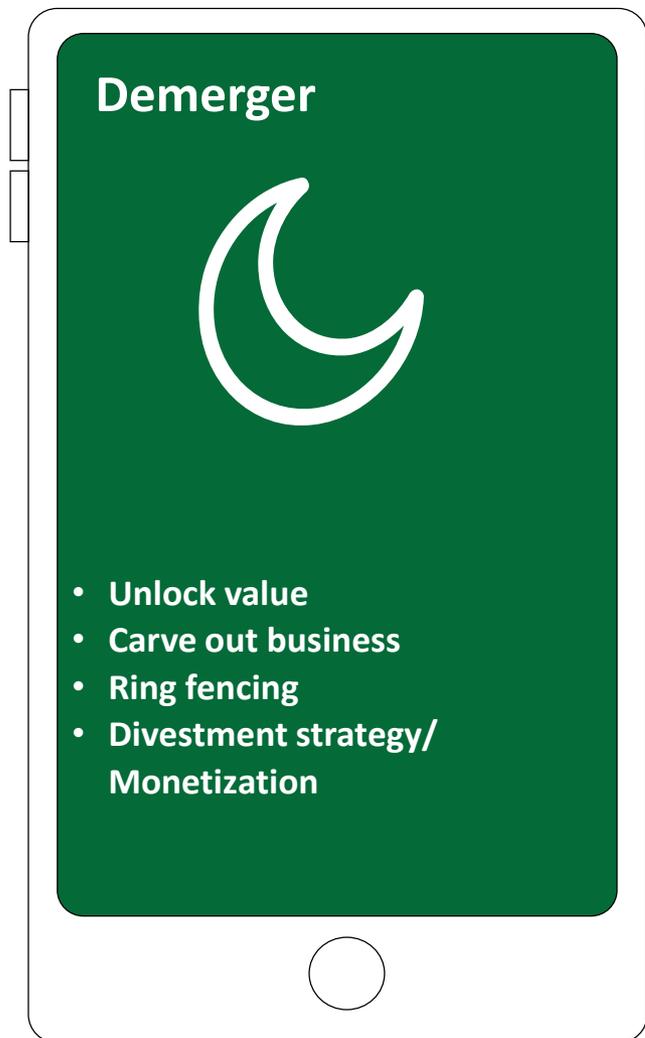
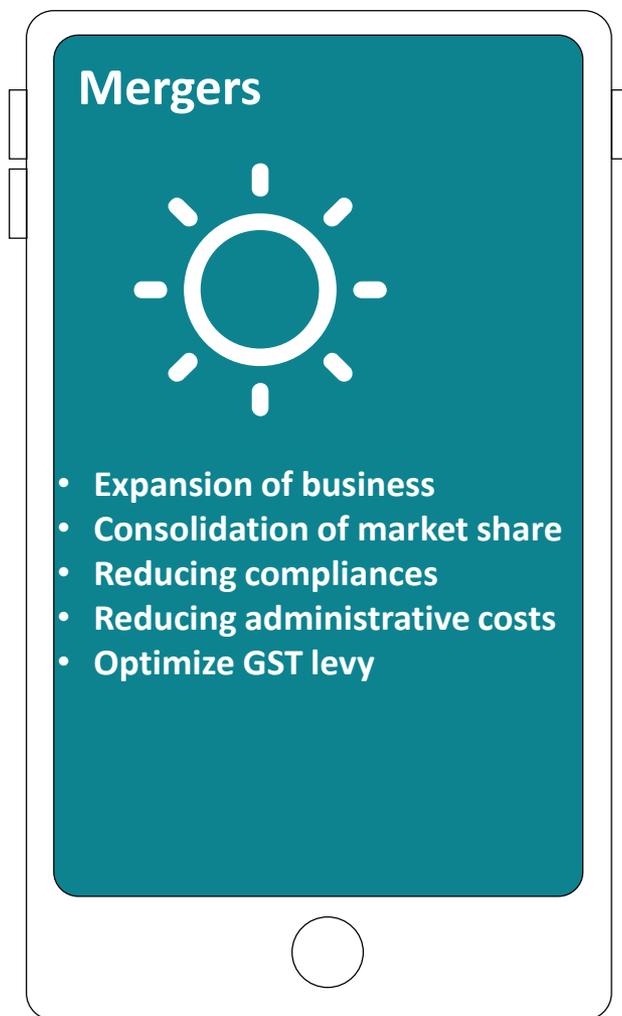


Modes of M&A in India



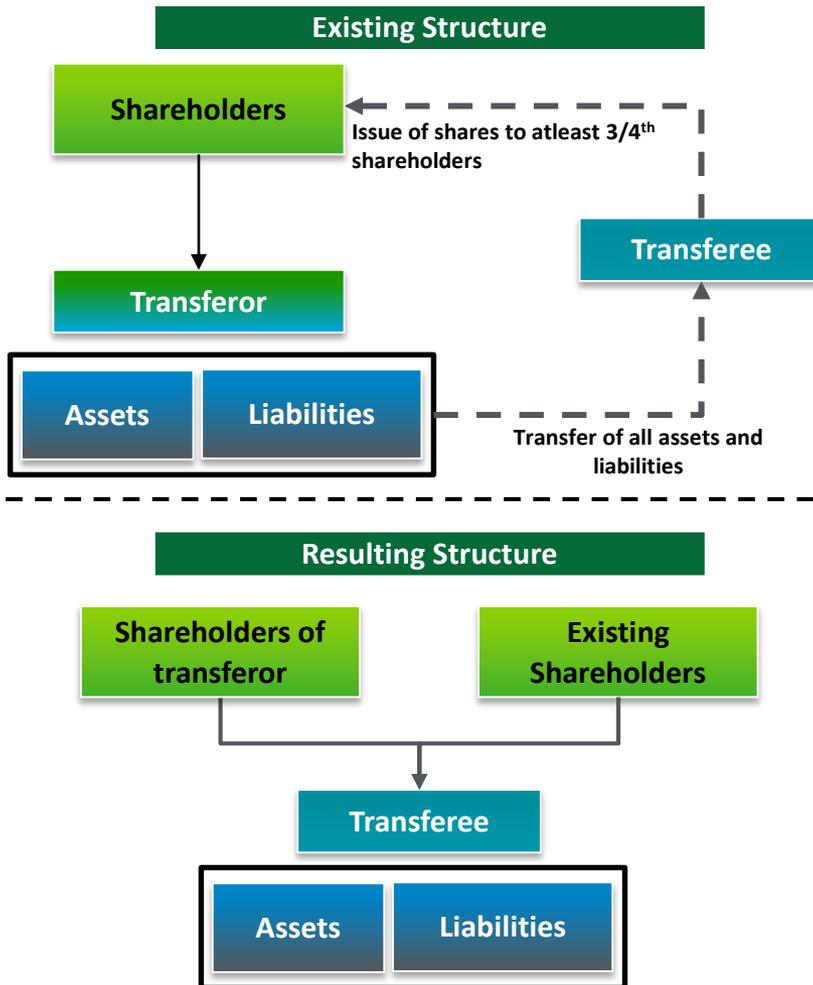
In ensuing slides, we will discuss Mergers and demergers in further detail

Rationale of Mergers and Demerger

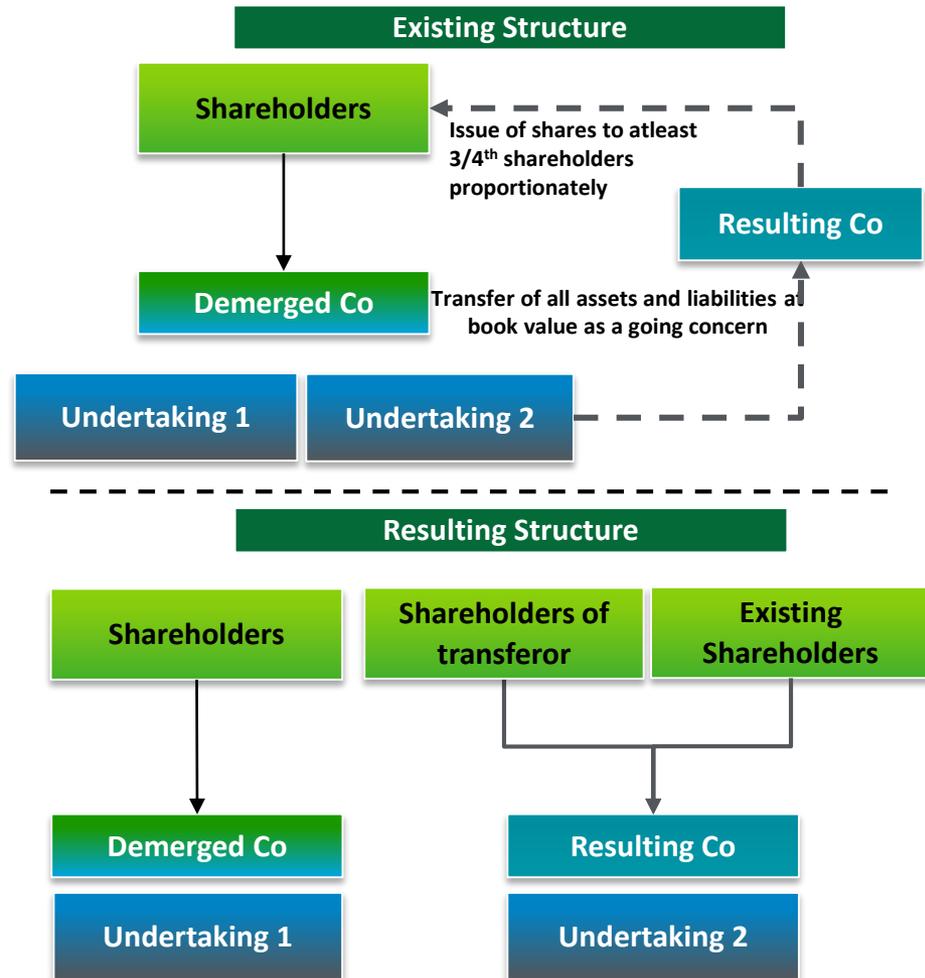


Tax Neutral Merger and Demerger

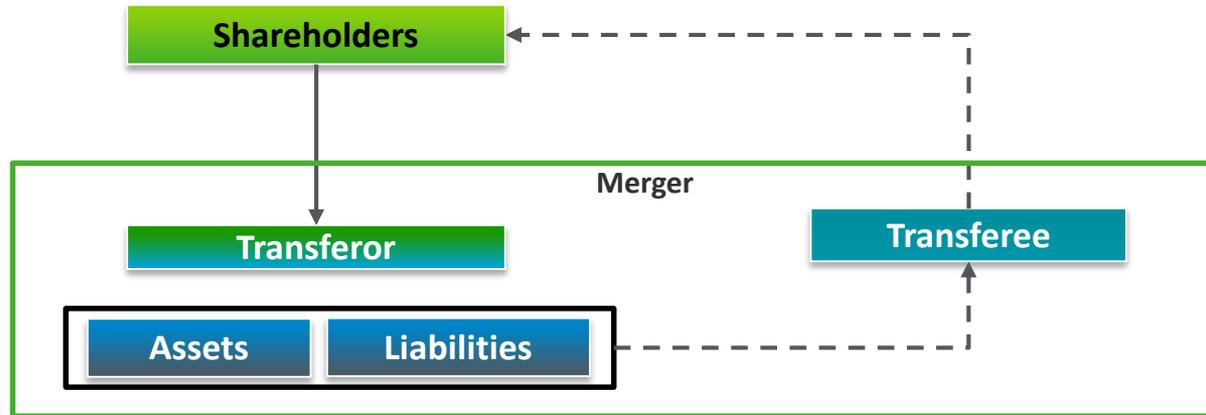
Merger



Demerger

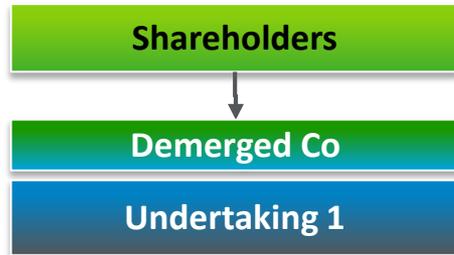


Merger - Key Tax Implications



*Based on certain judicial precedents
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Demerger - Key Tax Implications



Key Considerations

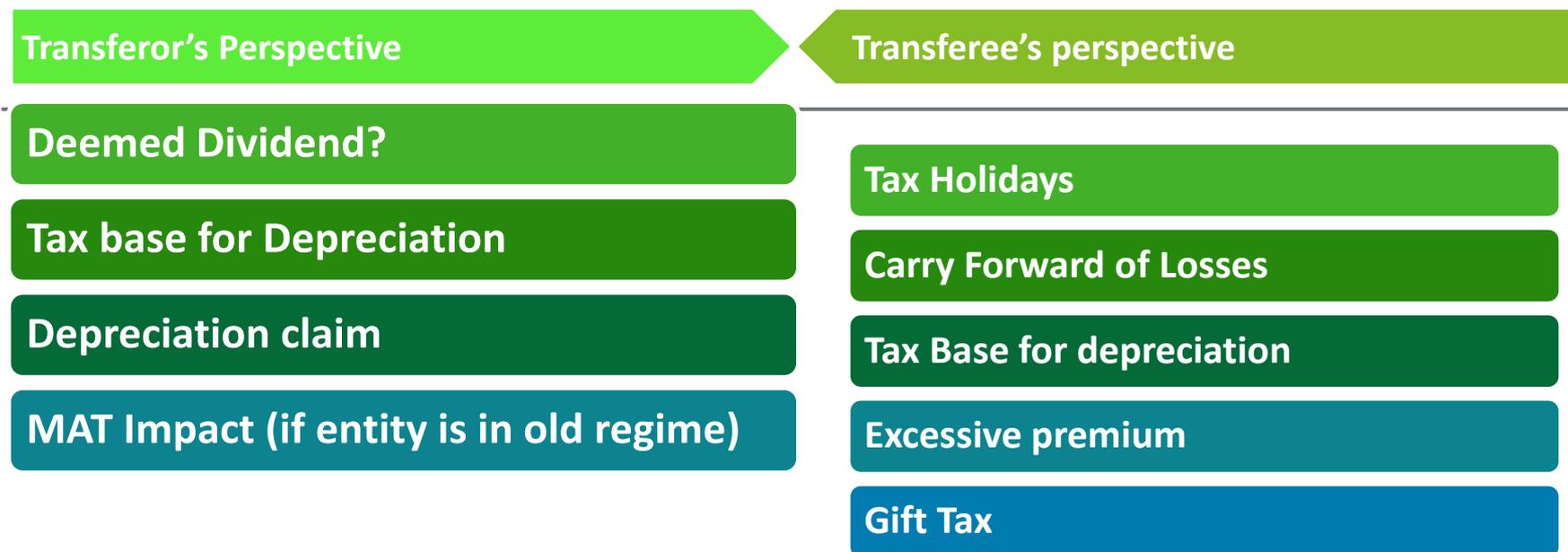
Undertaking

- What is an Undertaking?
- Test of undertaking – a crucial determinant of tax neutrality of demerger
- Can pure investments qualify as an undertaking?
- Qualification as an undertaking where some assets are retained by the transferor?
- Is owning more than one undertaking a prerequisite for demerger?

Valuation

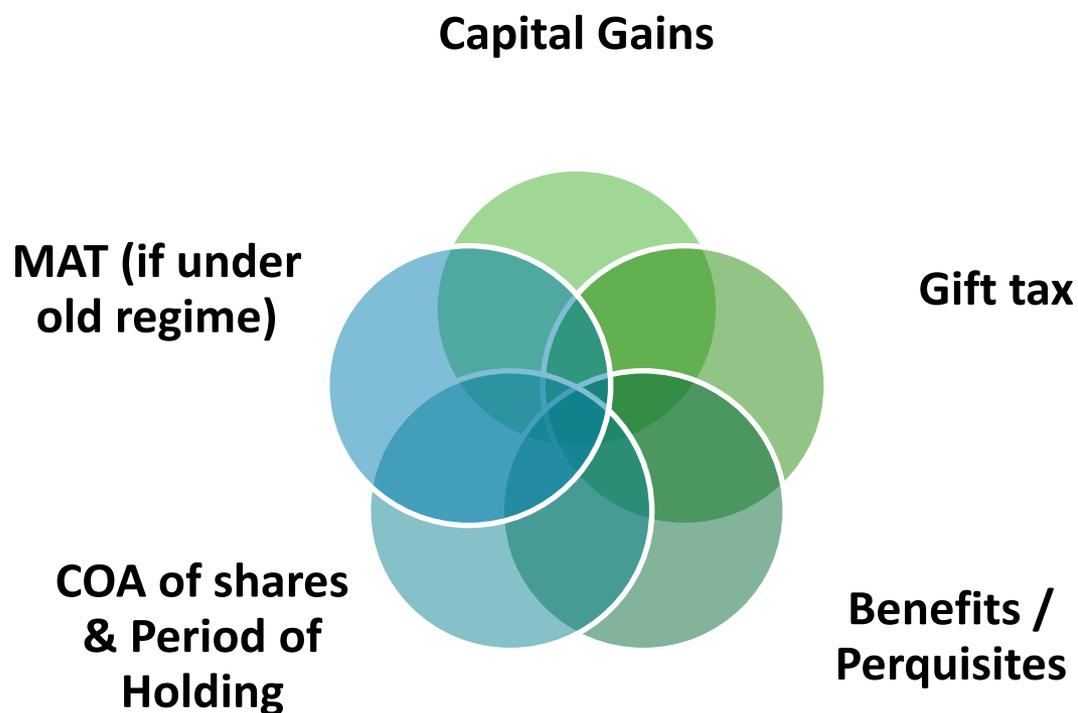
- Valuation date to be – Appointed date / effective date / record date?
- Implications of 56(2)(viib) – consideration received for issue of shares shall not exceed fair value where issuer is a closely held company

Key tax considerations–Non tax neutral Merger / Demerger



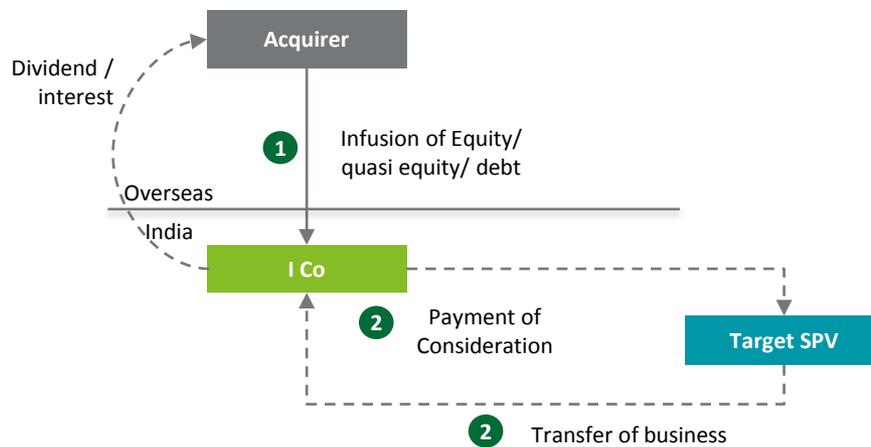
Key tax considerations–Non tax neutral Merger / Demerger

Shareholder's Perspective

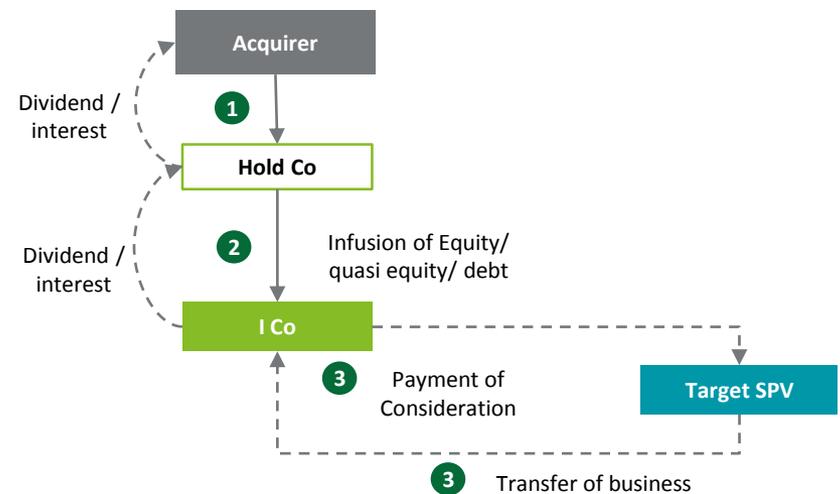


Modes of acquisition – Business acquisition

Buyout through directly held I Co



Buyout through indirectly held I Co



Key considerations in case of business acquisitions:

- Step up in cost base for tax depreciable assets, based on purchase price allocation of consideration
- No tax depreciation available on goodwill of business or profession
 - May be possible to recognize other depreciable intangibles (in the nature of business or commercial rights) on acquisition of business
- Stamp duty may be payable on transfer of business
- Risk of secondary succession liability in case of income tax, and joint and several risk for historic indirect tax liabilities
- Acquisition of business on a going concern to be at the tax fair value, as prescribed

Key tax considerations

Computation Mechanism

- Capital gains on transfer of the Identified Business on a slump sale basis is computed as under:

Computation of Capital Gains	INR
Full Value of Consideration	XX
Less: Tax Net-worth of the Undertaking [Refer Table below]	(YY)
Taxable Capital Gain	ZZ
Tax @20%* (excluding surcharge @12% and Cess @4%)	ZZZ

*Assuming the Business is held for 36 months or more. Accordingly, the resultant gain is long term. Else @30% plus surcharge & cess

- Tax Net-worth is computed as under:

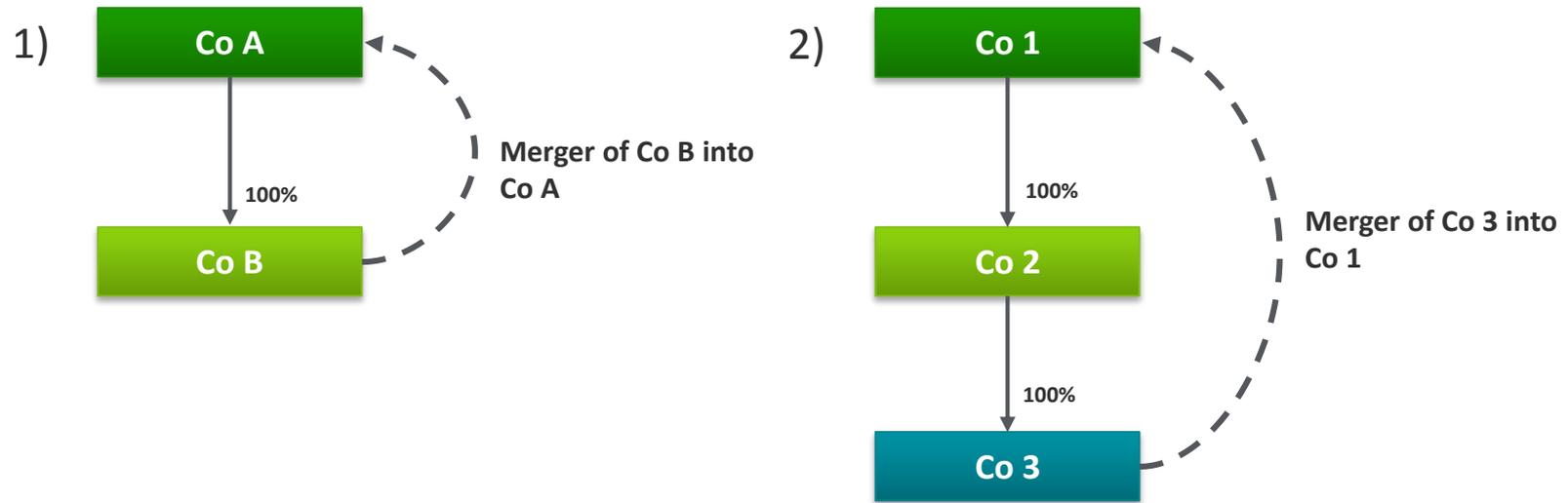
Computation of Capital Gains	INR
Tax WDV of Depreciable assets	X
Add: Book Value of Non-depreciable assets (excluding Revaluation)	Y
Less: Book Value of liabilities (excluding Revaluation)	(Z)
Tax Net-worth	YY

Notes:

- Capital gain will be regarded as short-term if the ownership of business is 36 months or less
- Benefit of Indexation is not available in case of slump sale
- If value of liabilities transferred is more than the value of assets, i.e. networth of undertaking is negative, the difference may be added to the value of the consideration for tax purposes
- The current year tax business losses, UAD, b/f capital loss may be set off against the capital gains arising on slump sale
 - Long term Capital Loss may be set off against Long term capital Gains
- Tax losses including UAD of the identified business will not be transferred in the hands of buyer. Similarly income tax balances i.e. Advance tax & TDS also typically remain with the Seller

Case Studies

Case Study 1 – Merger of WOS into parent / Step down WOS into ultimate parent



Background / Transaction mechanics

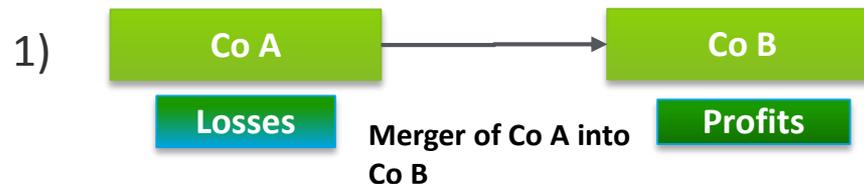
- 1) Subsidiary Company (Co B) merges into holding company (Co A)
- 2) Stepdown WOS (Co 3) merges into ultimate holding company (Co 1)

Key Considerations

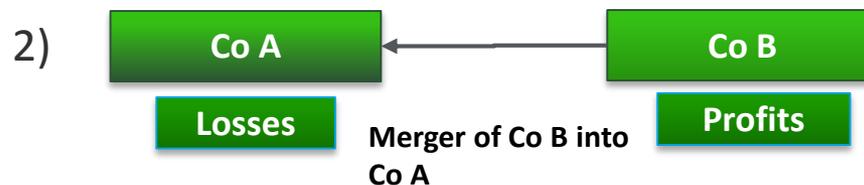
- 1) Whether holding company / ultimate holding company is required to issue fresh shares as consideration?
- 2) Implications of tax in the hands of Co 1/Co 2?

Case Study 2 – Merger of Loss Making & Profit Making Companies

Case 1



Case 2



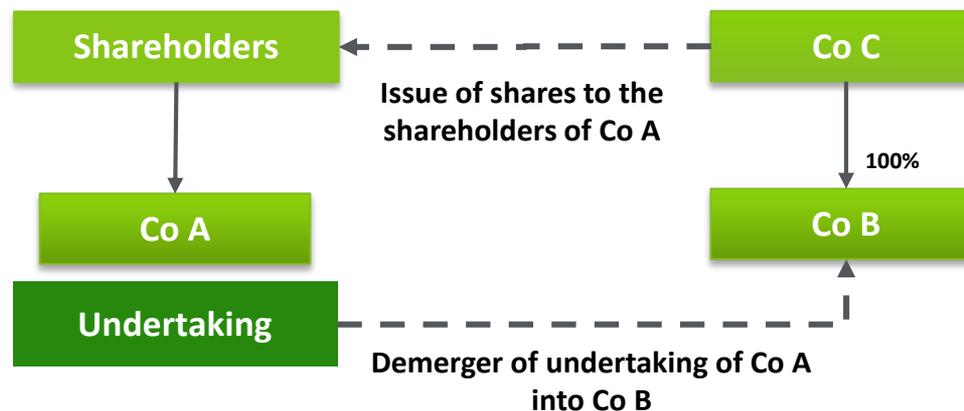
Background / Transaction mechanics

- 1) Co A is a loss making company and has carry forward losses and unabsorbed depreciation
- 2) Co B is a profit making company
- 3) The intention of amalgamation is to utilize the tax losses of the transferor company

Key Considerations

- 1) Impact on the tax losses and MAT credit where either Co A merges into Co B or vice versa
- 2) Applicability of GAAR on the transaction

Case Study 3 – Issue of Shares as consideration by Holding Company



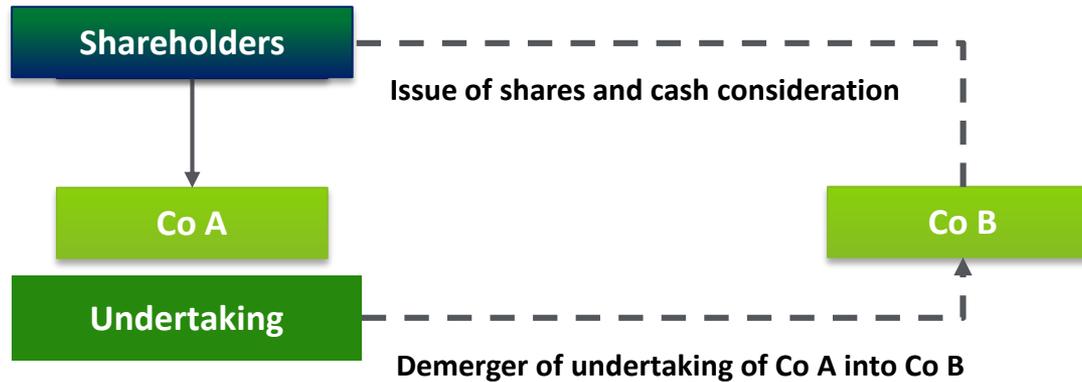
Background / Transaction mechanics

- 1) Co B is a WOS of Co C
- 2) Co A demerges one of its undertakings into Co B
- 3) Co C to issue shares to shareholders of Co A as consideration for demerger

Key Considerations

- 1) Whether Co C can issue shares to the shareholders of the demerged co on behalf of its WOS?
- 2) Whether such demerger is a tax neutral demerger?

Case Study 4 – Composite Consideration



Background / Transaction mechanics

- 1) Co A demerges one of its undertakings into Co B
- 2) Co B is to issue shares and cash consideration to the shareholders of the Co A

Key Considerations

Whether a composite consideration (including any security other than shares) results in non tax neutral demerger?

Case Study 5 – Slump Sale between Holding Co. and WOS



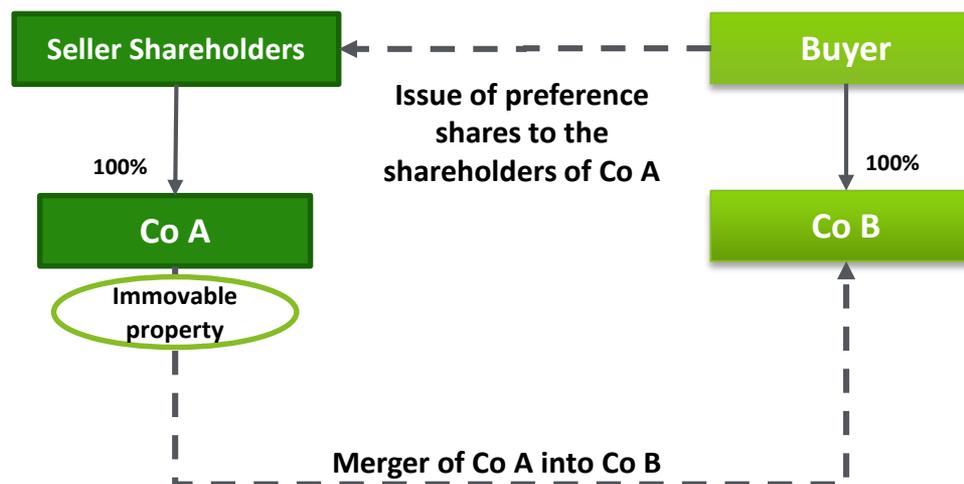
Background / Transaction mechanics

- Seller Co to transfer Unit 2 to its WOS – Buyer Co at fair value
- Buyer Co to discharge consideration to Seller Co

Key Considerations

- Whether slump sale taxation is applicable?
- Whether Buyer can avail cost step-up on business acquired through slump sale?

Case Study 6 – Acquisition through Merger



Background / Transaction mechanics

- Only asset in the books of CO A holds is immovable property situated in the state of Maharashtra
- Buyer wants to acquire the immovable property

Key Considerations

- Stamp duty on immovable property vs Stamp duty on NCLT order approving merger?

Speaker Details



Amrish Shah

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Summary of major personal experience

- Advisory services (including implementation phase) for corporate restructuring of Tata Capital to form a Core Investment Company
- Advisory Services (including implementation phase) for corporate restructuring of Tata Motors Finance Limited to form a Core Investment Company
- Advisory services on merger of Centurion Bank of Punjab into HDFC Bank Limited
- Direct tax due diligence and advisory services to PE for acquisition of stake in cards business
- Direct tax due diligence and advisory services to PE for acquisition of stake in housing finance company through a holding company and subsequent corporate reorganisation
- Corporate restructuring involving merger / demerger of MNC companies in India involved in industrials and IT sector
- Corporate restructuring involving merger / demerger of MNC companies in India involved in specialty chemicals and pharma business
- Corporate restructuring of Tata Steel capital structure
- Corporate Restructuring of VSNL (now Tata Communications Limited)
- Corporate restructuring advisory services for Tata Communications
- Corporate restructuring of TELCO capital structure
- Advisory services for a Tata Motors in respect of its investment in JLR
- Advisory services of merger of Satyam Computers into Tech Mahindra
- Advisory services for merger of Shaw Wallace and United Spirits Limited
- Acquisition of joint venture partner's stake and Corporate restructuring for a large auto major
- Advisory services for Heineken's acquisition in UBL and subsequent corporate reorganisation
- Advisory services for the divestment by the UB Group to Diageo of United Spirits
- Divestment advisory services for a telecom business acquired by Bharti Airtel
- Direct Tax Due diligence and advisory services for a large PE into one of the big tyre manufacturing company as well as divestment tax and regulatory advisory service
- Direct Tax Due diligence and advisory services for a large PE into one of the large pharma company
- Direct Tax Due diligence and Advisory services in respect of acquisition by a Multinational logistic company into an Indian listed entity
- Direct tax Due Diligence and acquisition related advisory service for Sodexo on Radhakrishna
- Direct tax due Diligence and advisory services to PE for acquisition of a healthcare services company
- Direct Tax due diligence and advisory services to PE for acquisition of a hospital group

- Amrish heads the M&A Tax practice of Deloitte in India. He has more than 29 years of experience in tax and regulatory matters with particular focus on mergers and acquisition and corporate restructuring.
- Amrish has advised large multi-national and Indian companies on acquisition/divestment tax and regulatory structuring to optimise tax incidence as well as lead the direct tax due diligence assignments. He has also assisted them in corporate reorganisation including mergers/demerger. Inbound/outbound consulting joint ventures, etc. Amrish has also advised Private Equity clients on acquisition/divestments. He has been part of the CII tax Committee in 2014.
- Amrish's involvement has been across various industries and includes both domestic and cross-border transactions involving structuring of transactions.



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