Corporate Restructuring

July 2026

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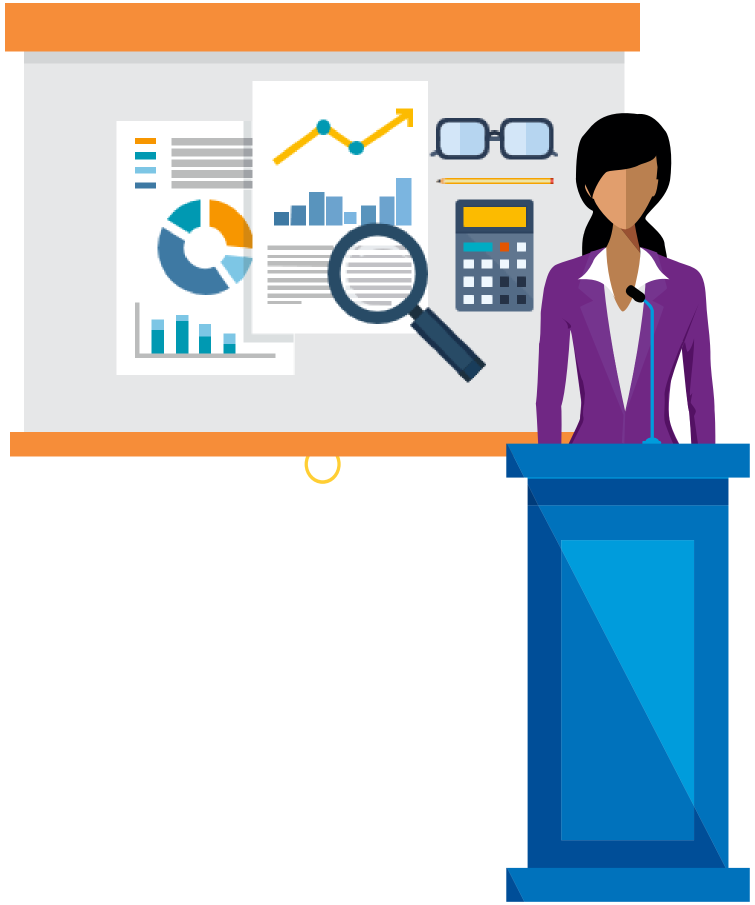


Overview

Meaning and objectives

Corporate restructuring is a strategic process in which a company makes significant changes to its organization, operations, ownership, or finances to improve performance, deal with financial challenges, or adapt to market conditions.

Improve profitability

Ex: Consolidation of profitable and loss making businesses

Increase efficiency

Ex: Hive-off / sell non-profitable divisions to focus on core business

Enhance competitive advantage

Ex: Reduce debt burden

Maximize shareholder value

This is the ultimate objective – can be achieved through various modes such as M&A, listing, repatriating excess cash etc.

Typical modes of corporate restructuring

- Merger and demerger
- Slump sale
- Conversion of legal form entities
- Capital reduction
- Buy back
- Share swap
- Reverse flip

Merger and demerger

Merger: key tax provisions

Tax neutral if all assets & liabilities are transferred and at least 75% shareholders remain same

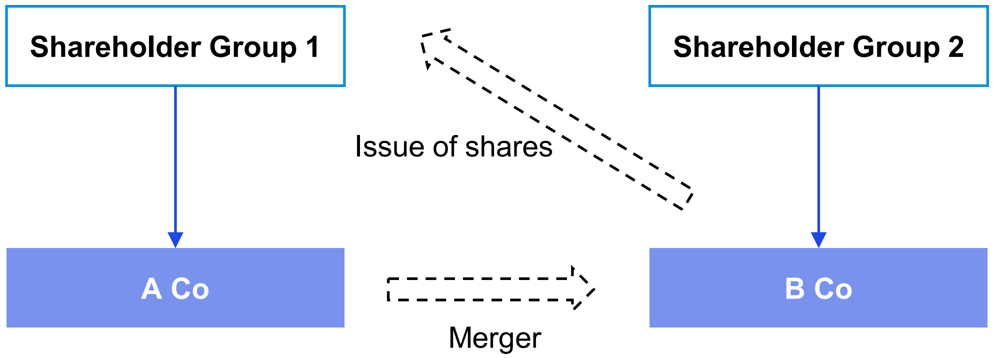
Cost of acquisition and period of holding of shares in the amalgamating company are grandfathered

Unutilized business losses and unabsorbed depreciation allowed to the surviving entity, subject to conditions

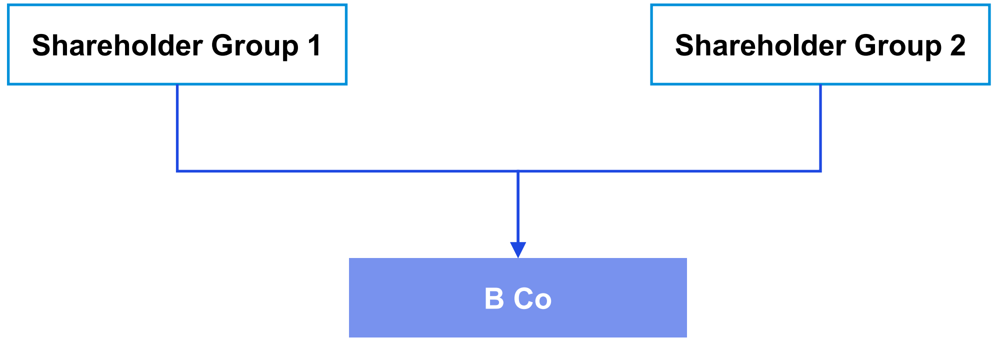
Fresh lease of life of 8 years on merger not allowed anymore

Structures and issues (1/3)

Mechanics



Resultant Structure

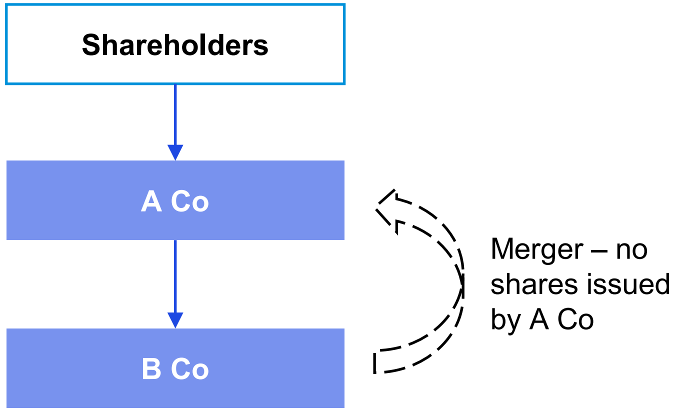


Is it possible to issue preference shares to equity shareholders in case of merger and still qualify as tax neutral merger ?

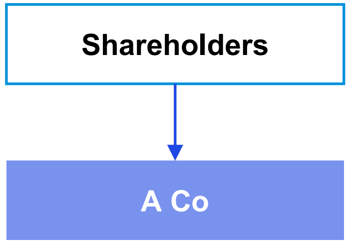
In case of merger with a common parent, can nominal shares be issued for a tax neutral merger?

Structures and issues (2/3)

Mechanics



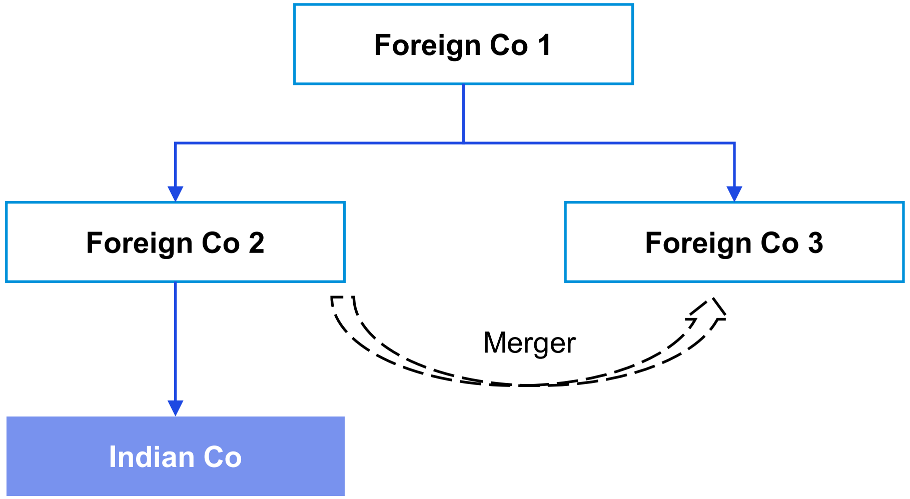
Resultant Structure



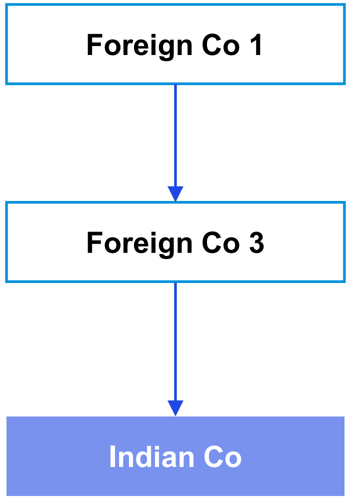
In case of parent-WOS mergers, shares are not issued by the parent company – does it still qualify as a tax neutral merger?

Structures and issues (3/3)

Mechanics



Resultant Structure



Is transfer of Indian Co shares from Foreign Co 2 to Foreign Co 3 exempt from capital gains tax in India for Foreign Co 2?

Is the same exempt from indirect transfer provisions for Foreign Co 1?

Demerger: key tax provisions

Division / unit being demerged should qualify as an ‘undertaking’

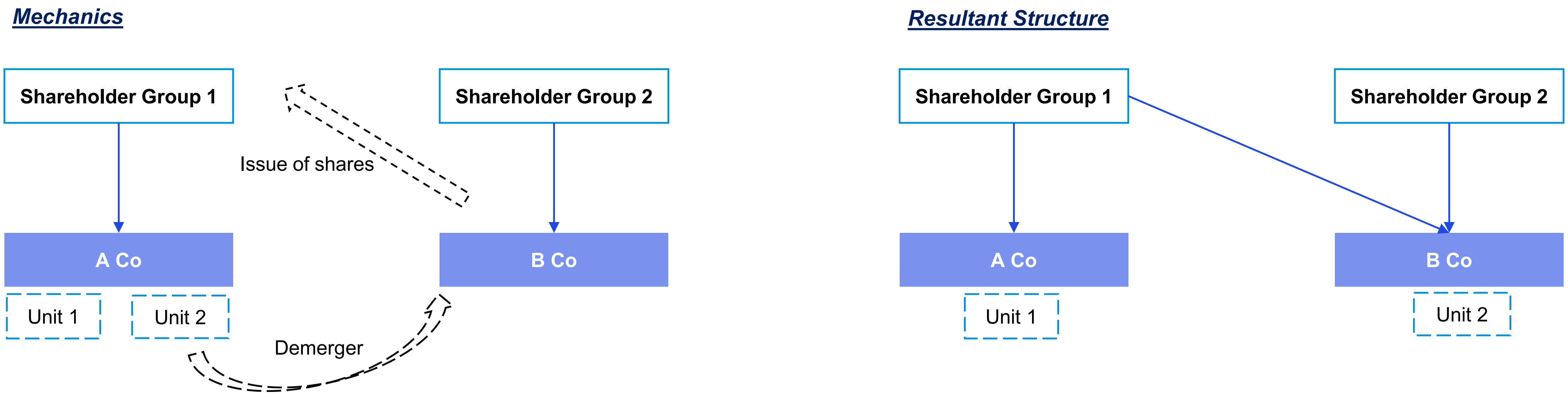
All assets & liabilities related to the undertaking should be transferred and at least 75% shareholders should continue

Shares to be issued by resulting company on proportionate basis

Cost of acquisition of shares in the demerged company split in the ratio of assets

Period of holding is grandfathered

Structures and issues (1/3)

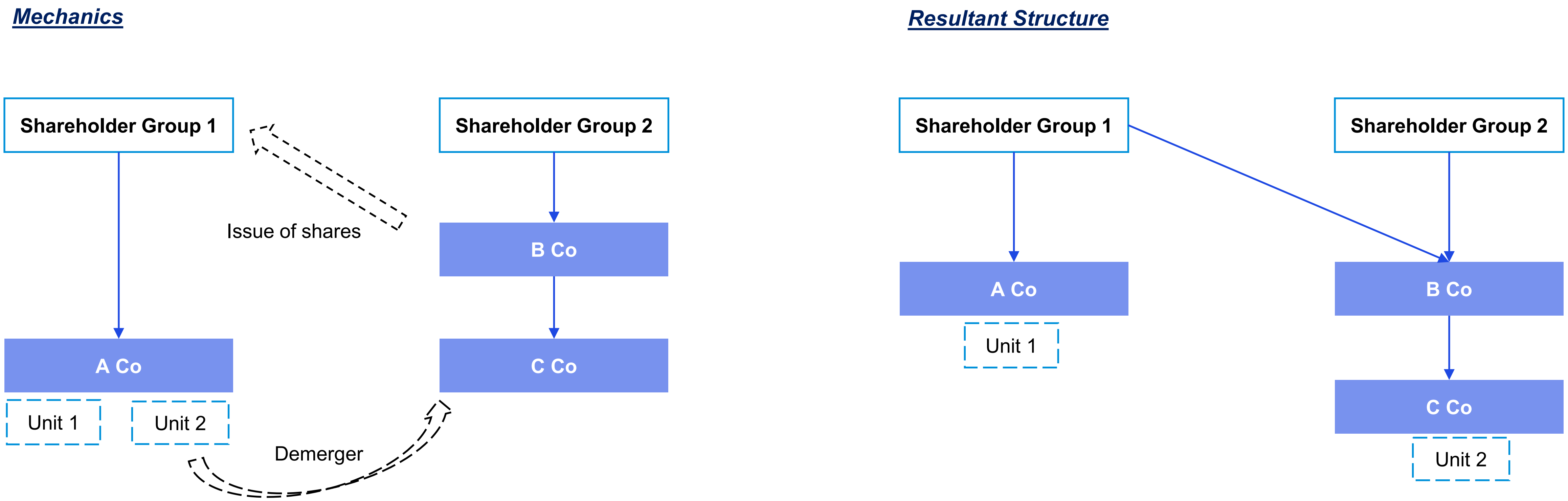


Can the companies pick and choose the assets and liabilities to be demerged and still qualify as an undertaking ?

How is debt divided between the demerged company and the resulting company ?

Can the resulting company issue equity shares to some shareholders and preference shares to other shareholders and still qualify as tax neutral demerger ?

Structures and issues (2/3)



Can the holding company of the resulting company issue shares pursuant to demerger instead of the resulting company itself?

What if B Co in this case is a foreign company – will the view change ?

Structures and issues (3/3)

Relevant extract of section 2(35) of the IT Act - erstwhile section 2(19AA)

"demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 230 to 232 of the Companies Act, 2013 (18 of 2013), **by a demerged company** of its one or more undertakings **to any resulting company in such a manner that**—

…

(d) **the resulting company issues,** in consideration of the demerger, **its shares to the shareholders of the demerged company** on a proportionate basis, except where the resulting company itself is a shareholder of the demerged company;

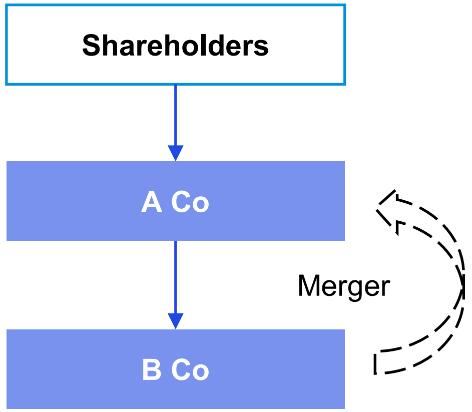
…

Relevant extract of section 2(97) of the IT Act – erstwhile section 2(41A)

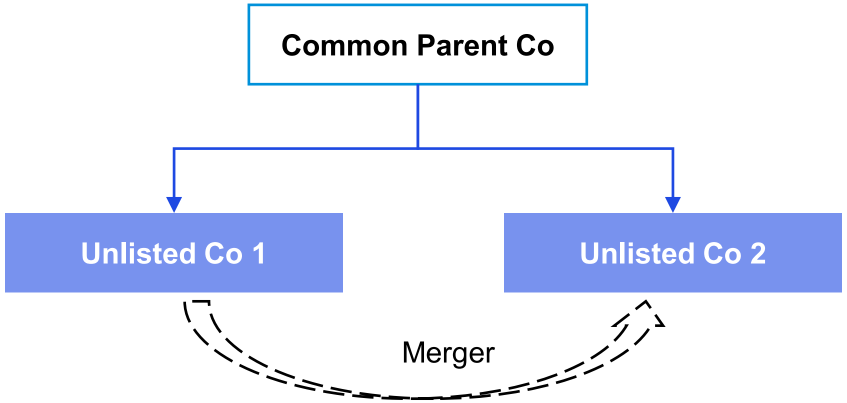
"resulting company" means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger;

Fast track route (1/2)

① **Parent-WOS merger**



② **Merger of fellow subsidiaries**



③ ***Other cases***

- ✓ Merger of two start-up companies
- ✓ Merger of a start-up and a small company
- ✓ Merger of 2 unlisted companies with certain criteria

Are shareholder and creditor approval thresholds same for NCLT route merger vs fast track merger ?

Are fast track mergers and demergers tax neutral ?

Fast track route (2/2)

Relevant extract of section 2(35) of the IT Act - erstwhile section 2(19AA)

"demerger", in relation to companies, **means the transfer, pursuant to a scheme of arrangement under sections 230 to 232 of the Companies Act, 2013** (18 of 2013), by a demerged company of its one or more undertakings to any resulting company in such a manner that—

…

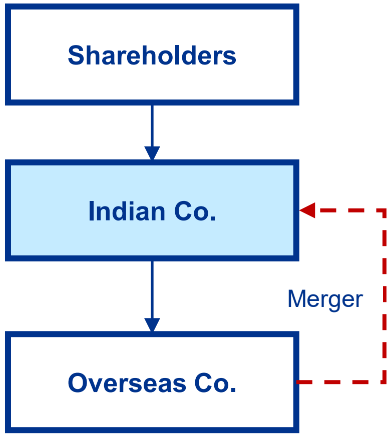
Relevant extract of section 2(6) of the IT Act – erstwhile section 2(1B)

"amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of such merger being referred to as the amalgamated company) in such a manner that –

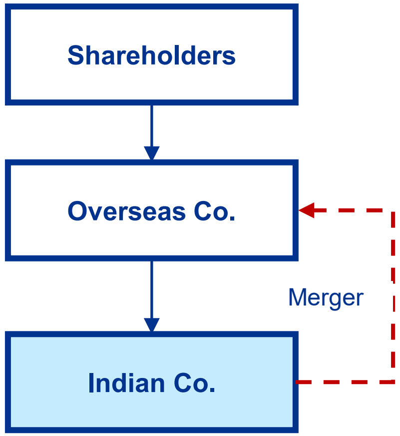
…..

Cross border mergers

Inbound merger



Outbound merger



1. Inbound mergers are tax exempt, whereas outbound mergers are not tax exempt
2. Companies Act empowers cross border mergers – approval in India and from authorities of the foreign country
3. Deemed approval from RBI if certain conditions laid down in FEMA Cross Border Merger Regulations are complied with
4. SEBI regulations to be complied with for listed companies
5. Precedents:
   - ✓ Inbound mergers – Reliance Life Sciences B.V. (Netherlands) with Reliance Life Sciences Pvt Ltd (India) ; Sun Pharma Global FZE (UAE) with Sun Pharmaceutical Industries Ltd (India)
   - ✓ Outbound merger – Ishtar Music Pvt Ltd (India) with Believe International SARL (Luxembourg)

Slump sale vs itemized sale

Slump sale vs itemized sale

Slump Sale	Itemized Sale
• Appropriate when identified business unit is transferred • Undertaking test to be satisfied • Capital gains on sale of undertaking – threshold period of 36 months for short term or long-term classification ✓ Short term capital gains tax @ 25.17% ✓ Long term capital gains tax @ 14.3% • GST is not applicable • Examples: ✓ Slump sale of nutraceuticals business of Nestlé India to a JV ✓ Slump sale of a defense unit of Punj Lloyd Ltd. to Adani Defense Systems and Technologies Ltd	• Appropriate when only certain assets are to be transferred • Asset wise transfer for individual consideration • No requirement to satisfy the undertaking test • Capital gains on sale of non–depreciable assets ~ threshold period of 24 months for short-term or long-term classification – tax rate same as for slump sale • Capital gains on depreciable asset arises only when sale value exceeds WDV of block of asset and is always taxable as short-term capital gains @ 25.17% • GST appliable depending on nature of asset

Can trading and distribution business qualify as undertaking for slump sale?

Slump sale in case of transfer between group companies with common foreign parent – TP impact on valuation.

Tax risks in cases where some IT assets, contracts and some employees are transferred via a run up run down model?

Conversion of legal form entities

Conversion of legal form of entities

A Firm into Company

XYZ (Partners) → ABC Firm

XYZ (Shareholder) → ABC Private Limited

B Sole Proprietorship into Company

Mr. A (Proprietor) → ABC (Sole Proprietorship Concern)

Mr. A → ABC Private Limited

C Company into LLP

XYZ (Shareholders) → ABC Private Limited

XYZ (Partners) → ABC LLP

- Conversion to a Company unlocks following benefits:
  - ✓ Better corporate governance in company
  - ✓ PE funds prefer companies to invest
  - ✓ Provides a pathway to potential IPO
  - ✓ Flexibility for future restructuring such as mergers / demergers
- Tax exempt provided prescribed conditions are met
- Carry forward and set-off of business losses and depreciation of predecessor entity allowed to the successor company ~ overall period for business loss restricted to 8 years
- Breach of conditions will lead to taxability in the hands of successor company

- Conversion to LLP unlocks following benefits:
  - ✓ Reduced compliance and regulatory requirements
  - ✓ Efficient profit extraction with no partner-level tax
- Tax exempt provided prescribed conditions are met
- Carry forward and set-off of business losses and depreciation of predecessor company allowed to the successor LLP ~ overall period for business loss restricted to 8 years
- Breach of conditions will lead to taxability in hands of successor LLP or shareholders of predecessor company

Capital reduction

Overview

Why is reduction of share capital undertaken?

To repatriate cash when there are no profits

To return surplus capital to the shareholders

To right-size the balance sheet by writing off accumulated losses

Some NCLT approved schemes

Distribution of surplus cash – Max India Limited and Mahindra Homes Pvt Ltd

Set-off losses against reserves – Trustwave Securities Ltd and Mafatlal Industries Ltd

Taxability in case of capital reduction

- ✓ Taxable as dividend in the hands of shareholder upto the amount of accumulated profits.
- ✓ Amount distributed beyond accumulated profits is taxable as capital gains in the hands of the shareholder @ 14.3% or 25.17%

Buy back

Overview

Buy back refers to purchase by a company of its own shares

Why to do a buy back?

Improve Earnings Per Share ~ makes stock more attractive

Optional for shareholders to participate ~ not mandatory payout like dividend

Promoters liked this as it uses company cash to increase their stake in the business

Tax efficient for public shareholders ~ law has evolved over time. Now taxable as capital gains.

Section 68 of Companies Act, 2013 governs buy back

Sources for buy-back – free reserves, securities premium account or out of proceeds of issue of any shares or other specified securities

Conditions for Buy back:

- ✓ All shares should be fully paid-up
- ✓ Only BR if buy back is 10% or less of total paid-up equity capital and free reserves ~ Shareholder approval via SR for higher quantum
- ✓ Upto 25% of the paid-up capital + free reserves
- ✓ Post buy back; debt-to-equity ratio to not exceed 2:1

Precedents

- ✓ Wipro Limited
- ✓ Sarla performance Fibers Limited
- ✓ Garware Technical Fibres Limited

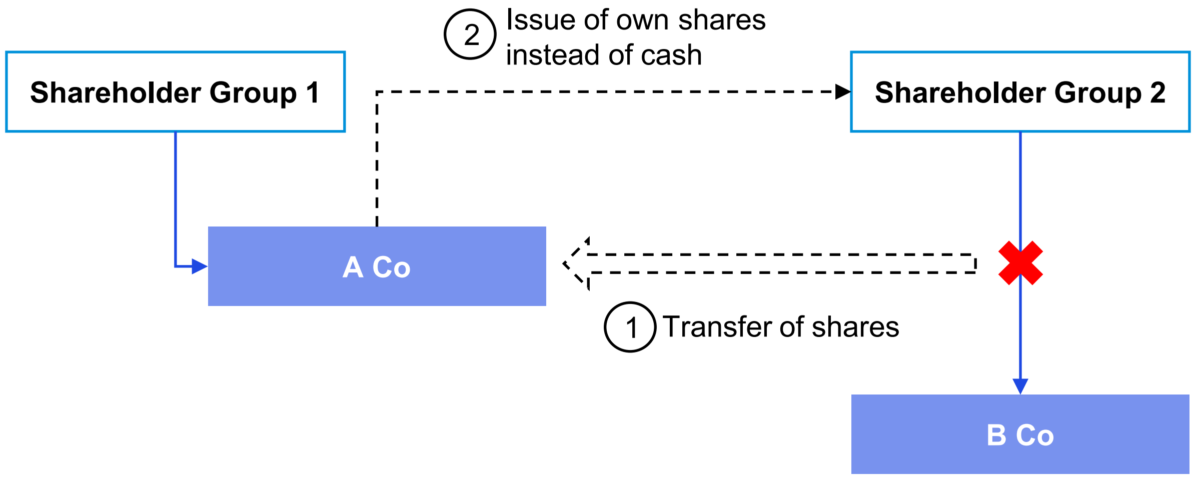
Buy back rolled out to reward shareholders and enhance the overall returns.

If buy-back is at a less than fair market value, is it taxable for the company ?

Share swap

Share swap

Mechanics



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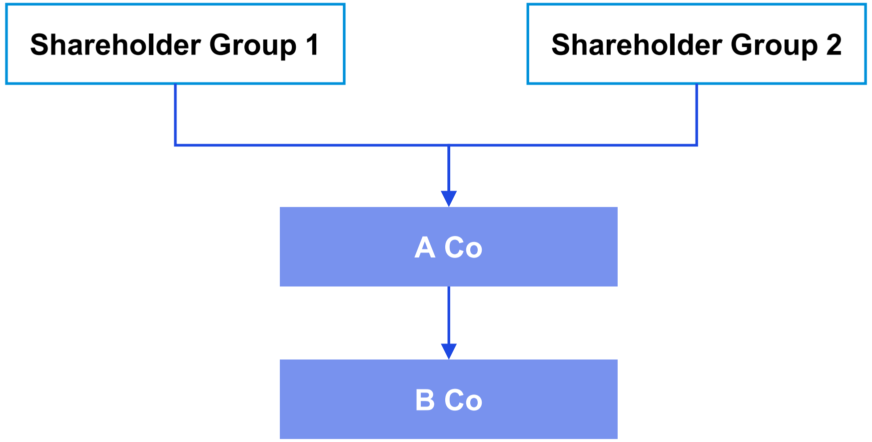
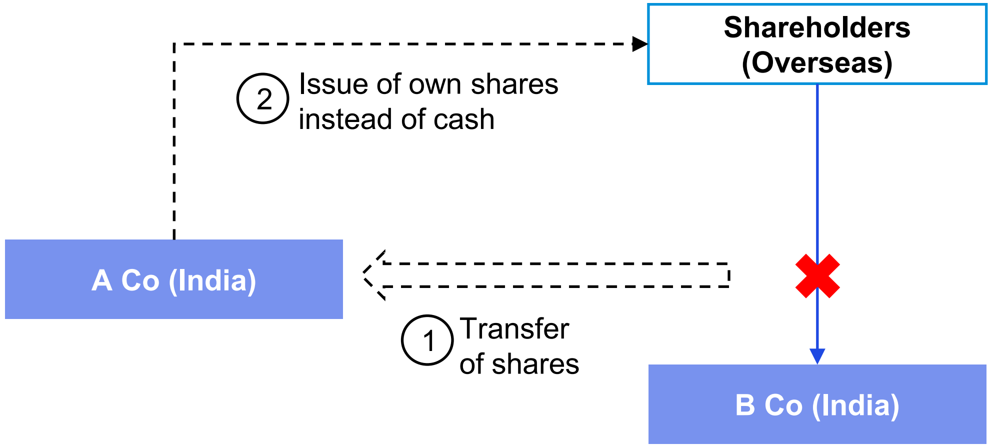


What is it and why used?

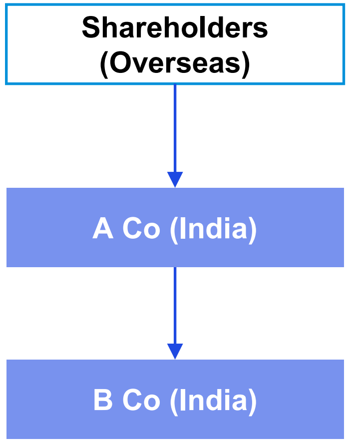
- Issue of shares as consideration for purchase of shares of another company, instead of paying cash.
- Cash neutral way of ownership transfer.
- Ensures better liquidity with the purchaser.
- Tax exempt in certain countries, but not in India. Taxable as capital gains in India akin to a standard share purchase.

Indicative structures (1/2)

Inbound acquisition via share swap



Resultant structure

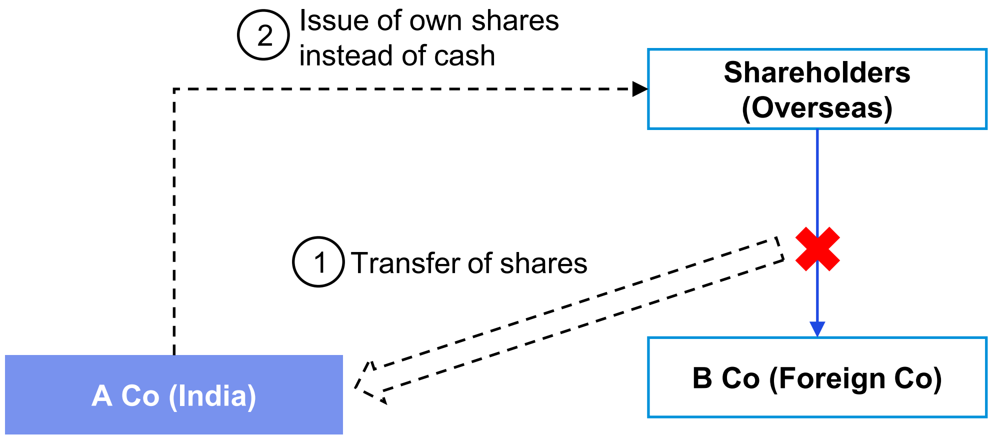


Key points

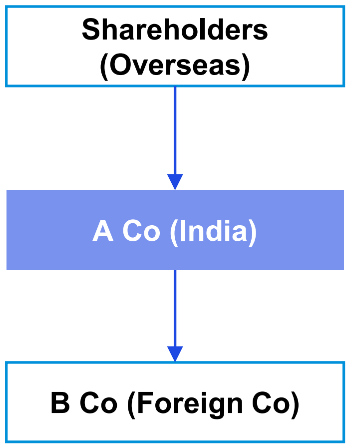
- Valuation by Valuers / Merchant Bankers registered in India and overseas
- FDI regulations to be complied with including sectoral caps and pricing guidelines
- Taxable transaction

Indicative structures (2/2)

Outbound acquisition via share swap



Resultant structure



Key points

- Valuation by Valuers / Merchant Bankers registered in India and overseas
- Overseas Investment regulations to be complied with including pricing guidelines
- Taxable transaction

Reverse flip

Why has reverse flip gained popularity?

- Reverse flip refers to the process of internalizing and consolidating value of the global business in India.
- The concept of reverse flip has gained popularity in past few years. Numerous startups have implemented and many are exploring reverse flip to bring their ownership back to India.

Why flip the structure to India?

- Favorable IPO climate in India
- Increased investor trust
- Large consumer base
- Growth opportunities
- Liberalization of regulatory norms

Pine Labs, KreditBee, moengage, Flipkart, meesho, MENSA HOUSE OF BRANDS, Razorpay, BrowserStack, zepto, DREAM11

PhonePe – First unicorn to reverse flip from Singapore through a share transfer transaction

Groww – Moved its domicile from the USA back to India in March 2024 through an inbound merger

pepperfry – Shifted its domicile back to India through an inbound merger

Modes of Reverse Flip – Inbound Merger, Share Transfer/Share Swap, liquidation of foreign company

Key issues in reverse flip

Key Issues

- Significant upfront tax costs
- Potential tax leakage for founders & investors
- Lengthy execution timelines
- Risk of business disruption during the transition period.
- Cross-border compliance and reporting complexities

The Economic Times
Groww pays $160 million tax for domicile shift; losses rise

The Economic Times
Peak XV, YC and Ribbit pocket up to 94x returns from Groww stake sale as IPO lock-in ends

The Economic Times
Zepto IPO: Founders Aadit Palicha, Kaivalya Vohra skip OFS as Nexus Ventures leads share sale

The Economic Times
Meesho IPO unlocks major gains for Elevation, Peak XV, others; founder's stake valued at INR 8750 crore

The Times of India
Zepto Becomes Indian Parent Entity, Completes Reverse Flip To India

Long-term valuation uplift, shareholder value creation and strategic benefits of India domicile outweigh the above-mentioned issues

Tax consolidation

Tax consolidation

Meaning

1

Tax consolidation allows a group of related companies, often structured under a parent entity, to be treated as a single entity for corporate tax purposes.

Mechanics

2

In simple terms, the parent company absorbs all tax attributes of its subsidiaries, including profits, losses, and tax credits. A consolidated tax return is filed and processed.

Tax Consolidation

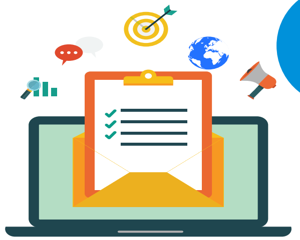
Benefits

3

- Simplified tax administration
- Better utilization of losses
- Enhanced tax certainty
- Reduction in administrative cost & tax disputes
- Improved cash management

Countries providing tax consolidation option

4



UK, USA, Netherlands, Japan, Germany, Australia, France, Ireland

India continues to tax companies as separate legal entities with no provision for tax consolidation

Typical tax issues in corporate restructurings

Typical issues

India tax impact of global restructurings – indirect transfer and capital gains exemptions

GAAR – commercial rationale and substance over form

Validity of Tax Residency Certificate for availing tax treaty benefits

Transfer pricing implications on value determination – can lead to dry tax

Corporate restructuring

Annexures

Annexure (1/3)

Conversion from firm to company

Section 70 (Section 47 of the IT Act, 1961) – Transactions not regarded as transfer

(1) The provisions of section 67 (section 45 of the IT Act, 1961) shall not apply to transfer—

(zd) – of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, if—

- *i. all the assets and liabilities of the firm relating to the business immediately before the succession become the assets and liabilities of the company;*
- *ii. all the partners of the firm, immediately before the succession, become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of the succession;*
- *iii. the partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and*
- *iv. the aggregate of the shareholding of the partners in the company is not less than 50% of the total voting power and such shareholding continues to not less than 50% for five years from the date of succession;*

Annexure (2/3)

Conversion from sole proprietorship to company

(zf) – of a capital asset or intangible asset (by way of sale or otherwise) by a sole proprietorship concern to a company in case of succession of the sole proprietorship concern by the company in the business carried on by it, if—

i. *all the assets and liabilities related to the business of the sole proprietary concern, immediately before the succession, become the assets and liabilities of the company;*

ii. *the shareholding of the sole proprietor in the company is not less than 50% of the total voting power and such shareholding continues to be not less than 50% for five years from the date of the succession; and*

iii. *the sole proprietor does not receive any consideration or benefit, directly or indirectly, except through allotment of shares in the company.*

Annexure (3/3)

Conversion from Company to LLP

(ze) – of a capital asset or intangible asset by a private company or unlisted public company (herein referred to as the company) to a LLP or transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a LLP under the provisions of section 56 or 57 of the Limited Liability Partnership Act, 2008 (6 of 2009), if—

1. *all the assets and liabilities of the company, immediately before the conversion, become the assets and liabilities of the LLP;*
2. *all the shareholders of the company, immediately before the conversion, become the partners of the LLP and their capital contribution and profit-sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion;*
3. *the shareholders of the company do not receive any consideration or benefit, directly or indirectly, other than by way of share in profit and capital contribution in the LLP;*
4. *the aggregate of the profit-sharing ratio of the shareholders of the company in the LLP shall not be less than 50% at any time during five years from the date of conversion;*
5. *the total sales, turnover or gross receipts in the business of the company in any of the 3 tax years preceding the tax year in which the conversion takes place does not exceed INR 60 lakhs;*
6. *the total value of the assets, as appearing in the books of account of the company in any of the 3 tax years preceding the tax year in which the conversion takes place does not exceed INR 5 crores; and*
7. *no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for three years from the date of conversion*

Thank You