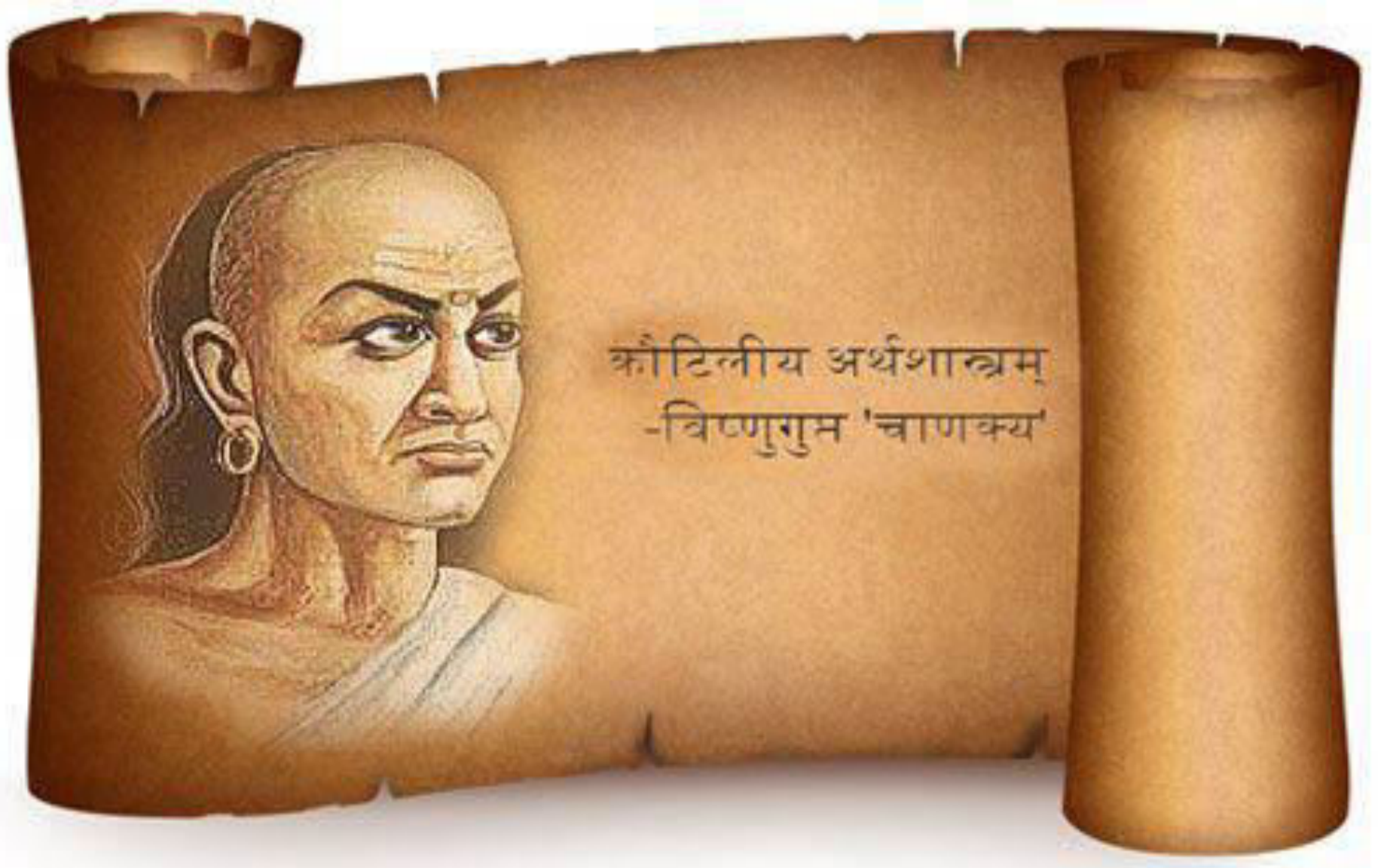




Business Structuring & Merger using LLP (With Case Studies)

At
ICAI TOWER
Bandra Kurla Complex
Mumbai

Presented by
CA DIVYESH V. MEHTA



An Idea can change life , but ideas are no one's Monopoly!!!

Accounting History

- Chankya wrote Arthshashtra in 4th Century B.C.
- After some years the System was called **Desi Nama** in certain parts of the country.
- It was basically on Cash System / Barter Exchange and valued at FAIR MARKET VALUE.
- Double Entry system was originated in Italy by Luca De Bergo in the year 1494. It is concept based on **Historic Cost** and **Face Value**.

LLP – Recent News

Can an Indian Limited Liability Partnership (LLP) be allowed to amalgamate with an Indian private limited company under a scheme of amalgamation filed before the National Company Law Tribunal (NCLT)?

Answer: YES

M/s Real Image LLP (transferor LLP) v/s M/s Qube Cinema Technologies Pvt Ltd (Transferee Company) CP/123/CAA/2018 Order (dt.11/06/2018)

Source:

Economic Times (dated: 31/07/2018)

<https://economictimes.indiatimes.com/news/economy/policy/nclt-allows-merger-of-llp-private-companies/articleshow/65204166.cms>



INDEX



- LLP - HISTORY TO CURRENT SCENERIO
- TAXATION OF LLP
- STRUCTURING OF LLP



Interesting Global History



- The concept of LLP originated in Italy.
- France is the first country which brought LLP under regulatory framework in 1673.
- In 1892, German Act on LLP extended the limited liability to all the partners.
- The Concept of Company is existing in UK since several Centuries.
- East India Company was formed in 1600BC
- First Joint Stock Companies Act was since 1844 in UK.

Why do we need separate form of Organization ?





Rationale



- There is a need for Multi Disciplinary Professionals Firm
- There is restriction on number of partners u/s. 11
- BIG Hurdle is the liability of all partners is unlimited
- SME can not cope up with corporate financial rigidity [i.e. Dividend, capital and related party transaction]
- SME can not cope up with compliance requirements in Company
- SME sector generally do not raise money from public



Who can prefer LLP?

- Asset Holding Companies
- Best for Joint Venture entities
- All partnerships /AOP with long term objective
- Professional Firms [CA/CS/CWA]
- Service sector/ Real Estate

Who can not go for LLP?



- Non profit making entities [NGO]
- Finance/ Investment entities [Till RBI recognises LLP]

MNCs Lobby Government for LLP

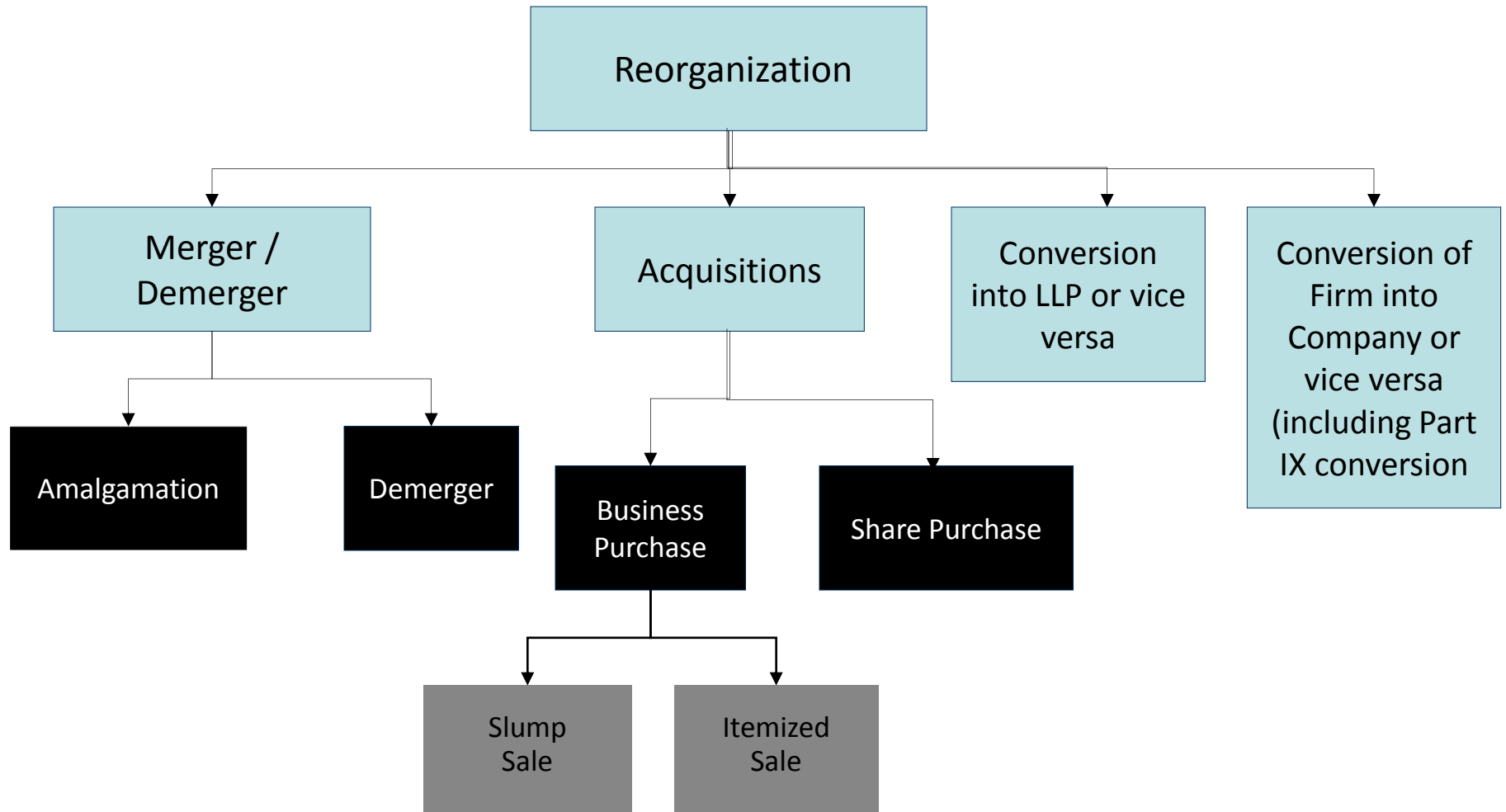
SOURCE : THE ECONOMIC TIMES

Multinationals registered as companies in India are lobbying the government to freely permit their conversion to limited liability partnerships (LLPs), now that it has announced a liberal policy on such entities.

As part of the opening up announced on November 10, foreign direct investment ([FDI](#)) through the automatic route has been allowed in LLPs.



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Taxation

- Corporatization of corporate entity
- Conversion as per Part IX Route
- LLP conversion of unlisted corporate entity
- Explanatory Notes
- Alternate Minimum Tax (AMT)



Corporatization of Corporate Entity



Exemption u/s 47(xiii) 47(xiv) subject to fulfillment of certain conditions

- All the partners of the firm become the shareholders of the company in the same proportion
- No consideration other than issue of shares in the company
- All the assets and liabilities of the proprietary concern or the firm are transferred
- The aggregate shareholding of the proprietor or partners is not less than 50% of total voting power in the company and continue for period of five years



Conversion as per Part IX Route



- Becomes corporate entity by process of law
- Held by various courts since no 'transfer' no tax implications
- Texspin Eng & Mfg Works (263 ITR 345) (Bom HC)
- Recent ruling of AAR in the case of Umicore Finance Luxembourg (318 ITR 78) (AAR)
- Stamp duty not payable?



LLP Conversion of Unlisted Corporate Entity



Condition for Capital Gain Exemption Sec 47 (xiib) :

- All assets and liabilities of the company become the assets and liabilities of the LLP
- Shareholders of the company become partners of the LLP in the same proportions as their shareholdings in the company.
- No consideration other than share in profit and capital contribution in the LLP arises to partners.
- The erstwhile shareholders of the company continue to be entitled to receive at least 50 per cent of the profits of the LLP for the period of five years from the date of conversion.
- Total sales turnover or gross receipts in business of the company do not exceed Rs.60 lakh in any of the three preceding previous year.
- Total value of assets as appearing in the books of accounts of the company in any of the 3 preceding previous years does not exceed Rs. 5 Crores. (Amended in Finance Bill 2016).
- No amount is paid, either directly or indirectly to any partner to any partner out of the accumulated profit of the company for a period of three years from the date of conversion

Income-tax : Explanatory Notes to the provisions of the Finance Act, 2010

- The total sales, turnover or gross receipts in business of the company

[which are taxable under the head "Profits and gains of the business or profession"]

do not exceed sixty lakh rupees in any of the three preceding previous years; and

[\[F.No. 142/1/2011-SO\(TPL\)\]](#)

Meaning of Value Sec 47(xiiib)(ea)

- There is lack of clarity in the meaning of term “Value” (for calculating the limit of Rs.5 Crores) in the amended clause.

The term “Value” is different from “Fair Market value” (FMV) which is usually lower than FMV.

the department would always consider FMV whereas the assessee will consider book value.

- **However in the section it is written as “the total value of Assets as appearing in the books of accounts” which implies it is book value (refer Rule 11UA(1), also refer to book value).**

Calculation of Capital Gain in case of conversion of Private company or Unlisted company to LLP

- Illustration:

Particulars	Sale Consideration	Cost of Acquisition or Indexed Cost of Acquisition	Capital gain
Land	9,80,00,000	1,18,580	9,78,81,420
Office building	20,00,000	16,70,000	3,30,000
Plant & machinery	25,00,000	18,90,000	6,10,000
Investment in shares	32,00,000	3,05,184	28,94,816
Other Assets	52,10,000	52,10,000	NIL
	11,09,10,000	91,93,764	10,17,16,236

If all the 7 conditions are satisfied for the stipulated period as mentioned u/s 47 (xiib) then the conversion of private or unlisted company to LLP is not considered as transfer and the capital gain will be exempted in the hands of Company.

Taxability in the hands of Shareholders

- Capital gain in the hands of Shareholders:
- Suppose there are 7 shareholders in the company holding 40000 shares each @ Rs. 10

Particulars	Amount
Total consideration	11,90,10,000
Sale Consideration (Per Shareholder) (11,90,10,000 / 7)	1,58,44,286
Less: Indexed cost of Acquisition (4,00,000*1125/305)	14,75,410
LTCG	1,28,93,466

The above Capital gain will be exempt in the hands of Shareholders on satisfaction of all the 7 conditions mentioned u/s 47(xiiib).

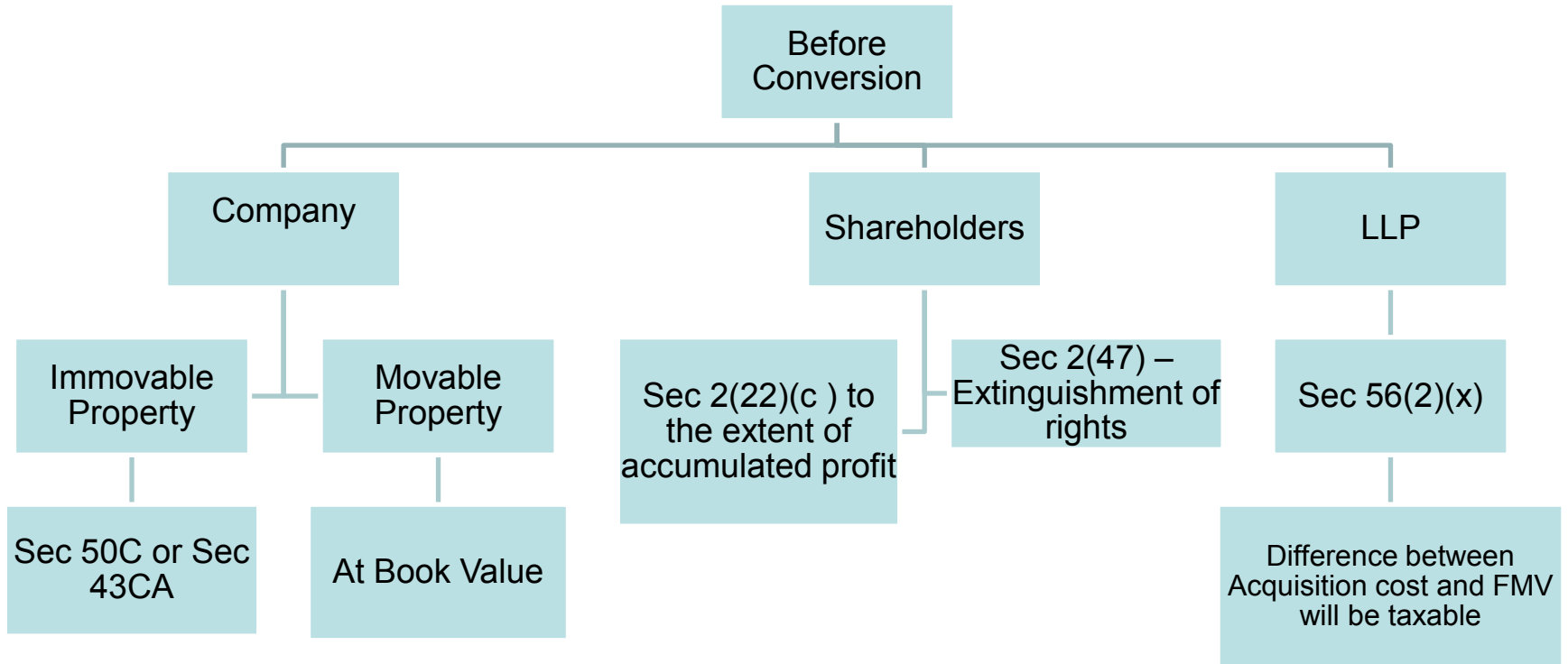
Taxability in case of Non compliance

Non compliance of the conditions u/s 47 (xiiib)

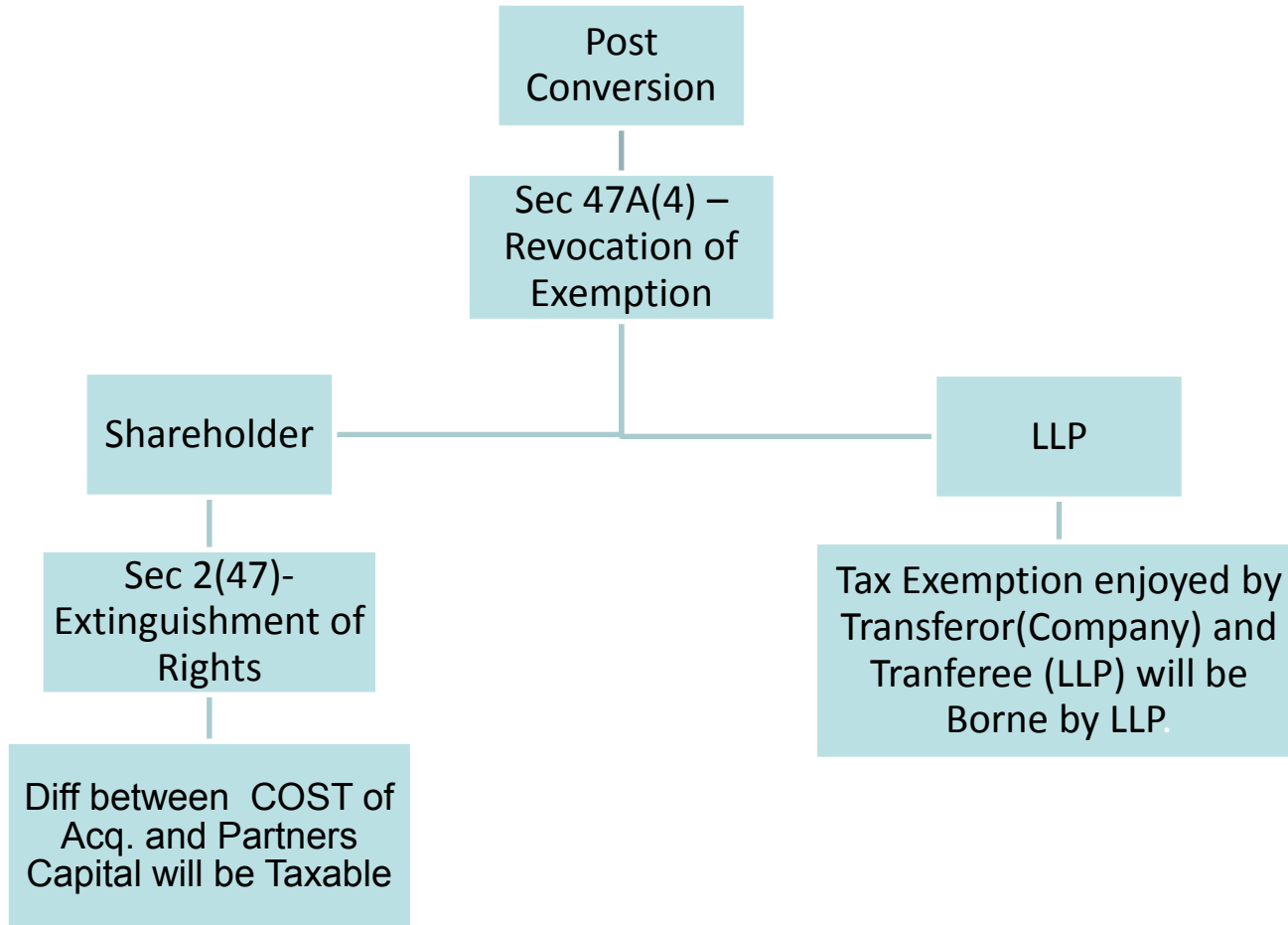
Before Conversion

Post Conversion

Before Conversion



Non Compliance Impact Post Conversion





Companies look at LLP's as new holding vehicle. Source:Mint

- Aravali Polymers, one of the holding firms of EIH Ltd that sold a stake to Reliance Industries Ltd (RIL) on Monday, had been classified as a private limited firm on the Bombay Stock Exchange (BSE) until the June quarter.
- In its announcement on Monday, Aravali Polymers was categorized as an Llp firm, which will help it save taxes.

Source:Mint Newspaper dated 26/08/2010

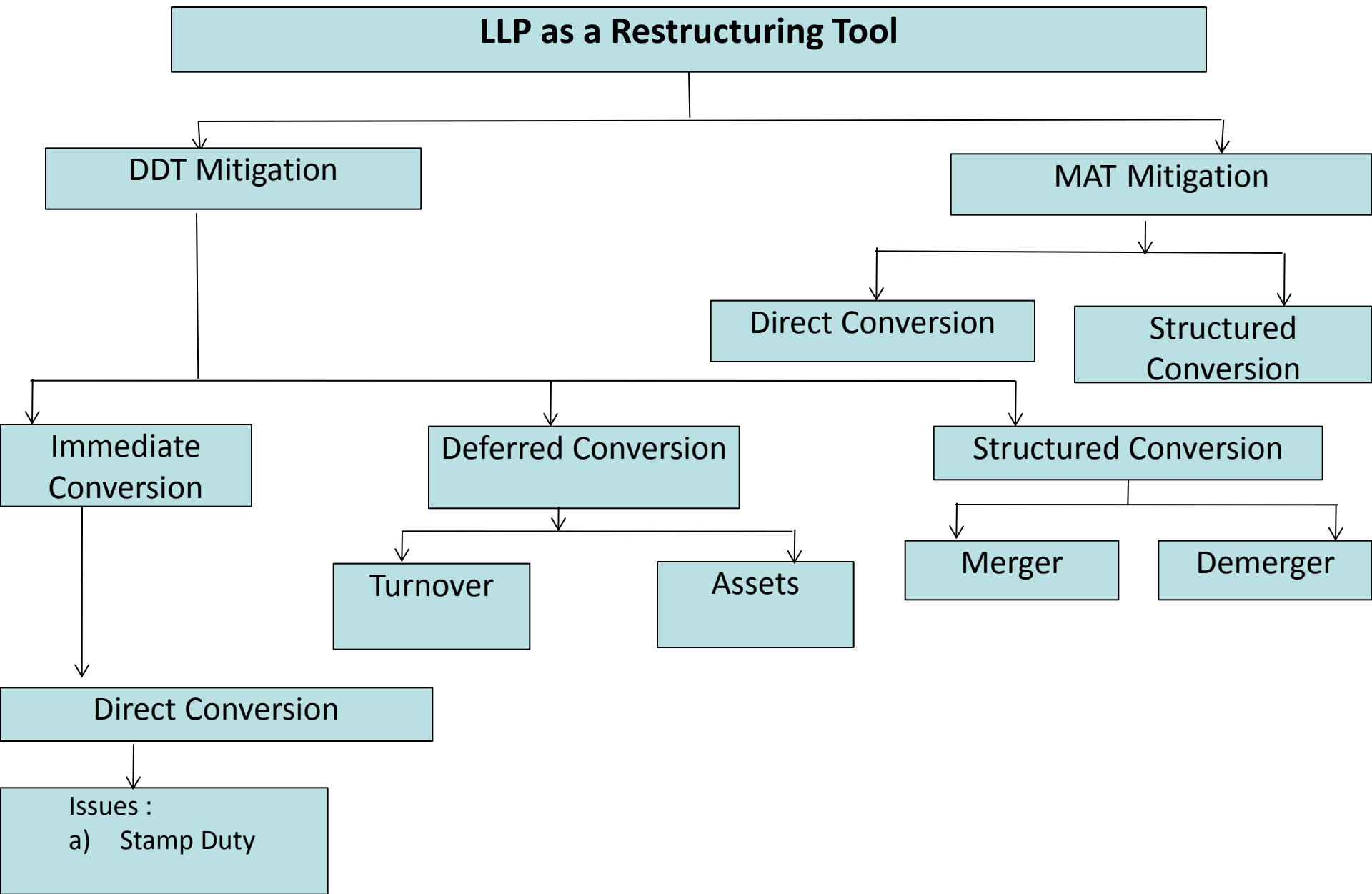


VIOLATION OF CONDITION U/S 47(xiiib)

Aravali polymers LLP V JCIT (Kolkata)

Appeal No. 242/CIT(A)-xx/Range 34 Dt. 10.04.2014

- LLP Post Conversion gave Interest free loan to partners from Reserves & Surplus before conversion.
- This amounts to violating of proviso (f) of section 47 (xiiib).
- Due to violation provisions of section 47A(4) did not apply.
- Capital gain Exemption claimed on conversion revoked & remanded book for re-computation u/s 45 (i.e. without exemption)





Why is Mukesh Ambani shifting equity holdings in RIL to LLPs?

Source: Economic Times

Here is what's behind the move:

In conventional partnership firms, partners have unlimited liability i.e. their personal assets can also be called in to service liabilities of the firm.

Neither RIL nor Mr Ambani are disclosing the reason. But tax experts said it would make the shareholding more tax efficient.



FORM C
 Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992
 [Regulation 13(3) and (6)]

Regulation 13(3) – Details of change in shareholding in respect of persons holding more than 5% shares in a listed company

Name, PAN, & address of shareholders	Shareholding prior to acquisition / sale	No. and % of shares/voting rights acquired / sold	Receipt of allotment advice / acquisition of shares / sale of shares specify	Date of intimation to Company	Mode of acquisition (market purchase/ public/right a/preferential offer etc.) / sale	No. & % of shares / voting rights post acquisition / sale	Trading member through whom the trade was executed with SEBI Registration No. of the TM	Exchange on which the trade was executed	Buy quantity
Kankhal Investments And Trading Company Private Limited- PAN - AAACK1774A. Address: 84-A, Mittal Court, 224, Nariman Point, Mumbai 400 021.	31,38,00,840	Shares transferred 18,53,09,888- 5.33% (VR)	Date of transfer - 11-08-10	13-08-10	Off-market	14,84,90,962 - 4.79%(VR)	Not Applicable	Not Applicable	100
		Shares acquired-100 (0.00%)(VR)	Date of acquisition - 11-08-10						

Note: The transfer & acquisition is part of the inter-se transfer without consideration amongst "group".

For Kankhal Investments And Trading Company Private Limited



Director / Authorised Signatory

Date: 13-08-10



DIRECT CONVERSION



ABC LTD

	2007-08	2008-09	2009-10
Sales	80	20	20
Sh. Capital	1	1	1
Reserve			
P&L	(30)	(30)	(30)

XYZ LTD

	2007-08	2008-09	2009-10
Sales	20	30	30
Sh. Capital	1	1	1
P&L	20	25	30
Reserve			



Stamp Duty Implications

- Company having immovable property when converted into LLP, whether there is liability for payment of stamp duty ?
- As per Section 58 of LLP Act, 2008, all the assets and liabilities vest into LLP. There is no transfer of assets and liabilities.
- As per decision of Bombay High Court in the case of Taxpin Engg.& Mfg. Works and A.P. High Court in the case of Vali Pattabhirama Rao vs. Shri Ramanuja Ginning & Rice Factory (P) Ltd. when the firm is converted into company under Part IX of Companies Act, 1956, the assets of the firm vest into the company and there is no transfer. Whether the ratio of these decisions can be applied on the issue of payment of stamp duty ?
- If LLP does not pay stamp duty and continues to enjoy the property being registered in the name of company, can the title of the property be considered as defective ? Whether at the time of sale of such property any issue can arise ?



Company as a partner in LLP

Contribution of investments at book value Sec 45(3)

It saves future MAT and DDT on funds generated and long term capital gain earned on sale of such transfer portfolio

- it may save liability on dividend distribution , if any under Sec2(22) (c)
- Date of holding for investments for LLP starts from date introduction as capital.(Where as in case of gift - of holding by erstwhile pvt ltd co. (Sec 49 (1)(e) r.w.s 2(42A) will be considered and hence long term)
- Whether interest payment on capital account balance of company as partner is fatal to claim for LTC exemption???



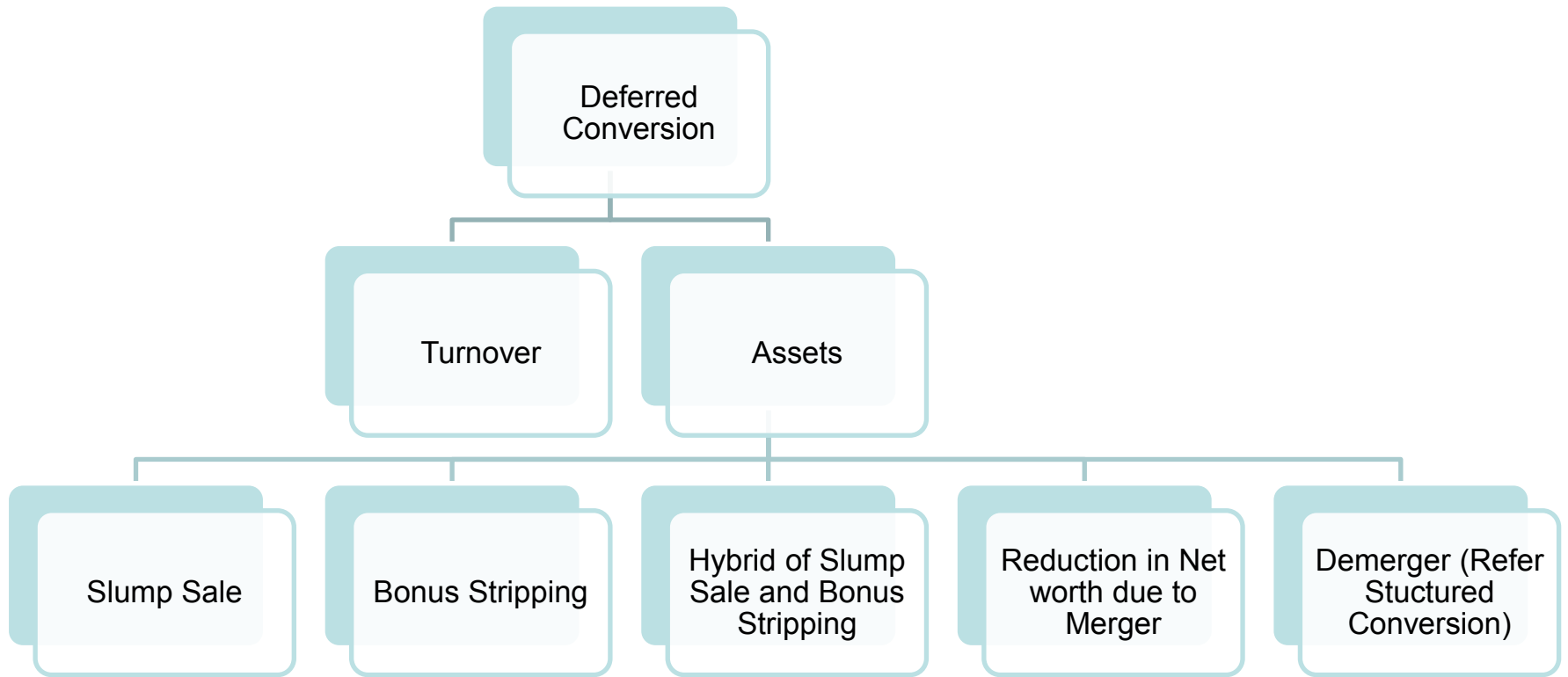
Section 45 (3)

- **Capital asset transferred by the partner to the partnership firm:**
As per section 45(3) of the Income Tax Act 1961 if any partner in a firm transfers his asset to the firm then the capital gain on such asset arising to the partner shall be calculated by presuming the sale **value of such asset as is recorded in the books of accounts of the firm and not the market value of the asset.**

Definition Of Income Sec2(24)(iv)

The value of any benefit or perquisite, whether convertible into money or not, obtained from a company either as a director or by a person who has a substantial interest in the company , or by a relative of a director or such person , and any sum paid by such a company in respect of any obligation which , but for such payment, would have been payable by the director or other person aforesaid.

Deferred Conversion



Deferred Conversion (Turnover)

▪PQR Pvt. Ltd. want to convert in to LLP .

Following Facts

▪Company also operate similar business from other sister concern

▪The Asset size is less than Rs.5 Crores.

▪Company has Properties and Shares with high Market Value

▪Company Does not wish to sell any of the Investments

▪Company wish to save DDT and MAT and Stamp Duty

PQR Private Ltd (Rs in crore)				
Source of Income	2010-11	2011-12	2012-13	2013-14
Sales	1	1.15	1.35	1.5
Rent	5	5.10	5.15	5.35
Capital Gain	1.25	1.40	1.65	2.05
Other Sources	1.75	1.95	2.15	2.5
Total	9	9.60	10.30	11.40

Deferred Conversion (Turnover)contd...

■ PQR Pvt. Ltd. Has to project following actions for converting to LLP
ACTIONS

■ Company should discontinue **BUSINESS** operations by shifting to sister concern OR reduce it to below 60 Lacs

■ Other Activities i.e Renting , Investments etc (Not taxable under the **HEAD BUSINESS** and Profession) can be continue

■ By virtue of Explanatory Memorandum to Finance Act 2010 (F.N.142/1/2011.) it will qualify for conversion

PQR Private Ltd		(Rs in crore)		
Source of Income	2014-15	2015-16	2016-17	
Sales	0.55	0.45	0.35	
Rent	5.5	5.65	5.95	
Capital Gain	1.25	1.40	1.65	
Other Sources	1.75	1.95	2.15	
Total	9	9.60	10.30	

Case Study 1 - Slump Sale

- Balance Sheet of ABC Ltd

(Fig in crores)

Liabilities	Amount	Assets	Amount
Share Capital	1	Fixed Assets	2
Reserves	5	Stock	2
Liabilities	3	Debtors	3
		Profit & loss A/c	2
	9		9

Case Study 1 Contd....

We Distribute the Assets between 2 Divisions and Profit /Loss Debit Balance will be set off against Reserves.

Post that the Balance Sheet will appear as follows.

(Fig in Crores)

Liabilities	Division A	Division B	Assets	Division A	Division B
Share Capital	1		Fixed Assets	2	-
Reserves	1	2	Stock		2
Liabilities		3	Sundry debtors		3
	2	5		2	5

Case Study 1 Contd....

- Division B will be sold by way of Slump Sale.
- Post Slump Sale the Balance sheet would be as follows;

(Fig in Crores)

Liabilities	Division A	Assets	Division A
Share Capital	1	Fixed Assets	2
Reserves	3	Stock	
Liabilities		Sundry debtors	
		Bank	2
	4		4

The Asset size post Slump Sale of the remaining Division A is less than Rs.5 Crores, hence it qualifies for conversion into LLP under sec 47(xiiib) after 3 years.

Case Study 2 – Bonus Stripping

- Balance Sheet of ABC Ltd (Fig in Crores)

Liabilities	Amount	Assets	Amount
Share Capital	1	Investments	7
Reserves	6		
	7		7

Case Study 2 Contd...

Apparently the Company does not satisfy the condition mentioned in clause (ea) of Sec 47(xiiib) but by following **Bonus Stripping** the Value of Investments can be brought down and the Asset size can be would be within the threshold limit of Rs.5 Cr.

What is Bonus Stripping:- In the above example the Company is in possession of 7Cr Shares of Re.1 each of XYZ Company and the XYZ company issues Bonus in the ratio of 1:1 hence the investor subsequent to Bonus owns 14 Cr shares of Re.0.5 each. Later the Investor sells the original shares for Re.0.5 each and hence books a notional loss of Rs. 3.5 Cr ($0.5 \times 7\text{Cr}$). Thus the remaining shares acquired without consideration will be shown at NIL cost. Bonus Stripping as specified u/s 94(8) of the Income Tax Act is applicable to Mutual funds and not equity shares.

Case Study 2 Contd...

The disclosure of the above adjustment would be as follows:

Profit & Loss A/c (Fig In Crores)

Particulars	Amount	Particulars	Amount
Short term capital Gain	3.5		

Balance Sheet (Fig In Crores)

Liabilities	Amount	Assets	Amount
Share Capital	1	Investments (Bonus Shares)	NIL
Reserves 6		Bank	3.5
Less: Loss <u>(3.5)</u>	2.5		
	3.5		3.5

Case study 2 contd.....

- As per AS 13 “Accounting for Investments” the carrying amount of remaining investments (if a part of Investments is sold) will be average cost of Investments.
- Whereas the method followed in the above case is FIFO.
- Hence following actions will have to be taken on the part of –

1) Auditor:

- a) Disclose in the Auditor’s report about the deviation from the accounting standard.

2) Directors:

- a) Disclosure in the Significant Accounting Policies.
- b) Disclosure in the Director’s Responsibility Statement u/s 134(5) of the Companies Act, 2013 regarding the accounting Standards followed and material departures if any.

Case Study 3 – Hybrid (Slump Sale & Bonus Stripping)

- Balance Sheet of ABC Ltd

(Fig in crores)

Liabilities	Amount	Assets	Amount
Share Capital	1	Fixed Assets	1
Reserves	9.5	Investments	4.5
Liabilites	3	Sundry Debtors	5
		Stock	3
	13.5		13.5

Case Study 3 Contd....

- The Balance Sheet can be divided into 3 Divisions as follows

Liabilities	A	B	C	Assets	A	B	C
Share Capital	1	-	-	Fixed Assets	1		
Reserves		4.5	5	Investments		4.5	
Liabilites			3	Sundry Debtors			5
				Stock			3
	1	4.5	8		1	4.5	8

Case Study 3 contd...

- Division C will be sold by way of Slump Sale.
- Post Slump sale Balance sheet will be as follows;

(Fig in Crores)

Liabilities	A	B	Assets	A	B
Share Capital	1	-	Fixed Assets	1	
Reserves	5	4.5	Investments		4.5
Liabilites			Bank	5	
	6	5		6	5

We will adopt Bonus Stripping in Division A and B to bring down the Value of Assets within the limit of Rs.5 Crores.

Case study 4 (Reduction in Capital via Merger)

Existing Balance Sheet of ABC Ltd

(Fig in Crores)

Particulars	Liabilities	Particulars	Assets
Share Capital	10	Fixed Assets	2
Creditors	2	Stock	1
		Debtors	1
		Bank	8
	12		12

Existing Balance sheet of XYZ Ltd

(Fig in Crores)

Particulars	Liabilities	Particulars	Assets
Capital	1	Bank	1
	1		1

Case study 4 contd...

Step1: XYZ Ltd acquires the shares of ABC Ltd from shareholders of ABC Ltd. The Balance sheet post acquisition is as under;

Balance sheet of XYZ Ltd

(Fig in Crores)

Particulars	Liabilities	Particulars	Assets
Capital	1	Investments	9
Loan	8		
	9		9

Case study 4 contd...

Step 2: Merge XYZ Ltd with ABC Ltd and the balance sheet post merger will be as under;

Existing Balance Sheet of ABC Ltd

(Fig in Crores)

Particulars	Existing Liabilities	Merged	Net	Particulars	Existing Assets	Merged	Net
Share Capital	10	-9+1	2	Fixed Assets	2		2
Creditors	2		2	Stock	1		1
Loan			8	Debtors	1		1
				Bank	8		8
	12		12		12		12

Case study 4 contd...

- Loans will be repaid and post repayment the balance sheet will be as under and
- The company will be eligible for conversion into LLP

Balance Sheet of ABC Ltd

(Fig in Crores)

Particulars	Liabilities	Particulars	Assets
Share Capital	2	Fixed Assets	2
Creditors	2	Stock	1
		Debtors	1
	4		4

STRUCTURED CONVERSION





CASE STUDY ON STRUCTURED CONVERSION

Balance Sheet of A Pvt. Ltd (With Sales Exceeding Rs.60 Lacs AND Asset More than 5 Crore for last 3 yrs)

Liability	Amount	Assets	Amount
Share Capital	10000	STOCK - IN TRADE	10000
Reserve	0		
Total	10000	Total	10000

Balance Sheet of B Pvt. Ltd (With Sales Less Than Rs.60 Lacs AND Asset Less than Rs.5 Crore for Last 3 Yrs)

Liability	Amount	Assets	Amount
Share Capital	100	Investments	1000
Reserve	900		
Total	10000	Total	10000



Merger



What is a 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, typically the transferee company issues shares to the shareholders of transferor company.

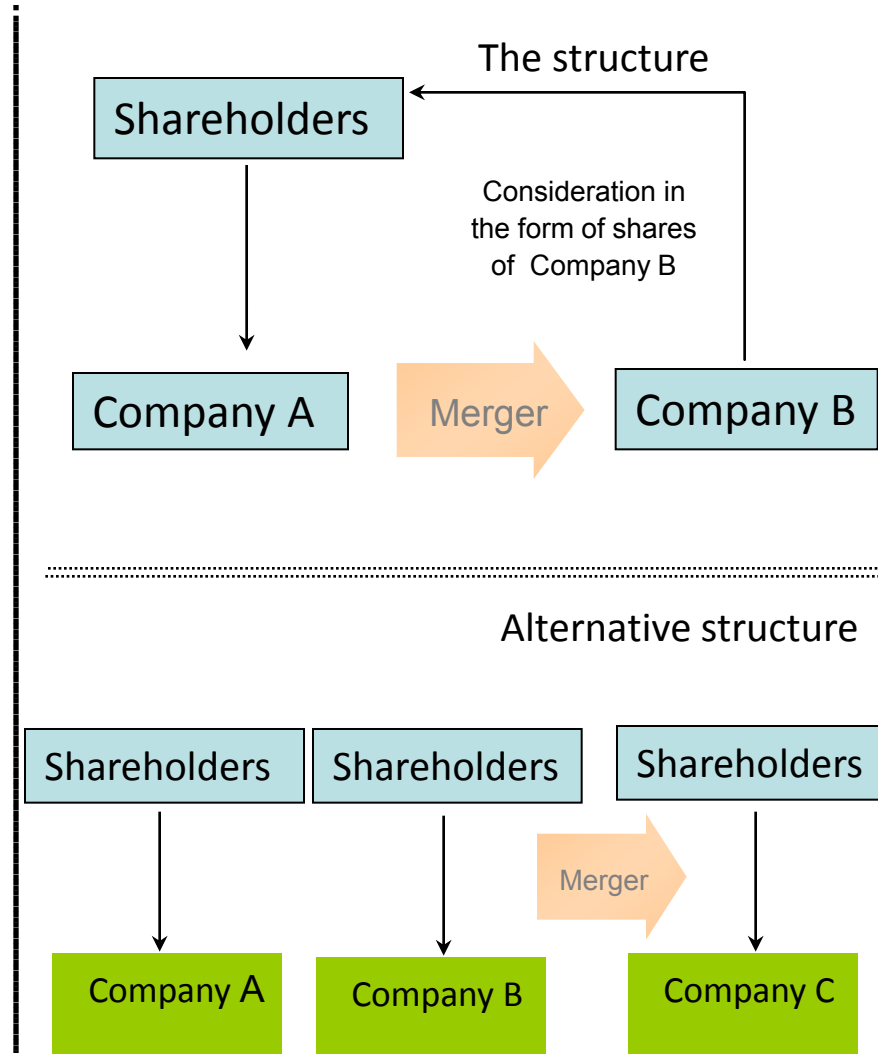
- Process (4-6 months):
 - NCLT approval
 - BIFR Approval (Sick Industrial Companies Act)
 - Banking Regulations

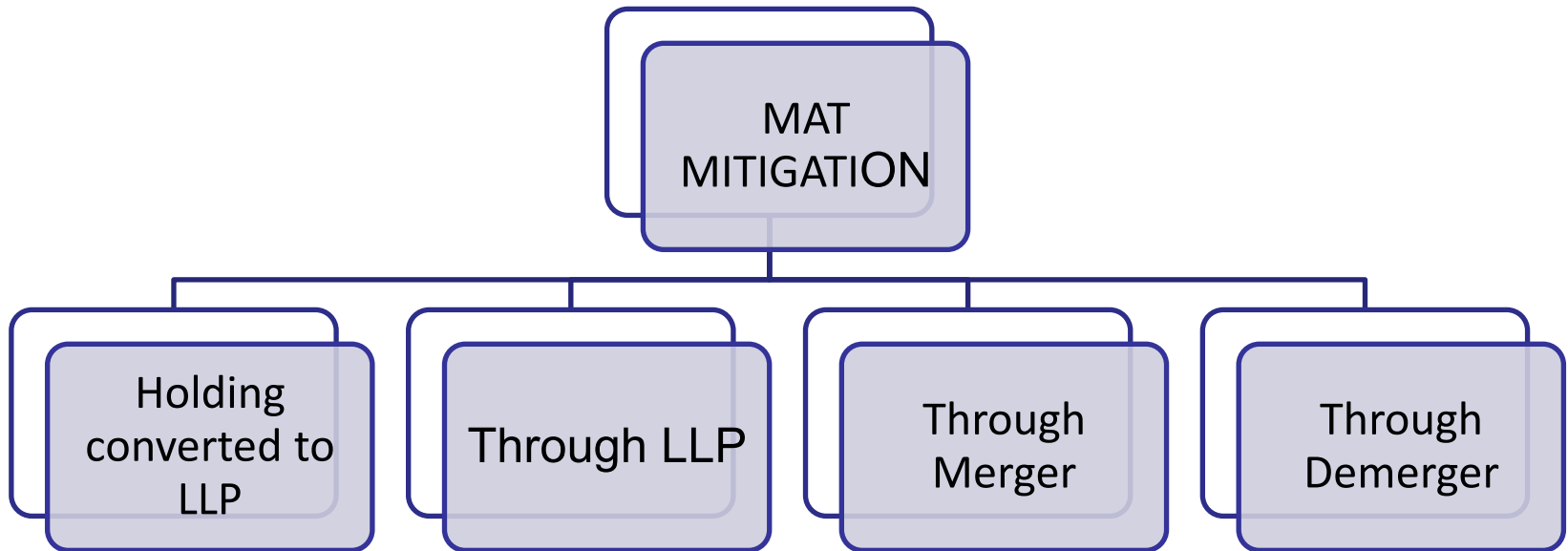
Section 2(1B)

○ Definition of amalgamation-

- All properties to be transferred to the merged company
- All liabilities to be transferred to the merged company
- At least 3/4th in value of shareholders of the merging company (excluding shares already held by the amalgamated co.) should be shareholders of the merged company
- *The above conditions are cumulative*

The merger is tax neutral only if all above conditions are met







MAT PLANNING (Mitigation)



Option 1 : Plain Conversion of Pvt Ltd Co. into LLP

ABC Holding Pvt. Ltd.

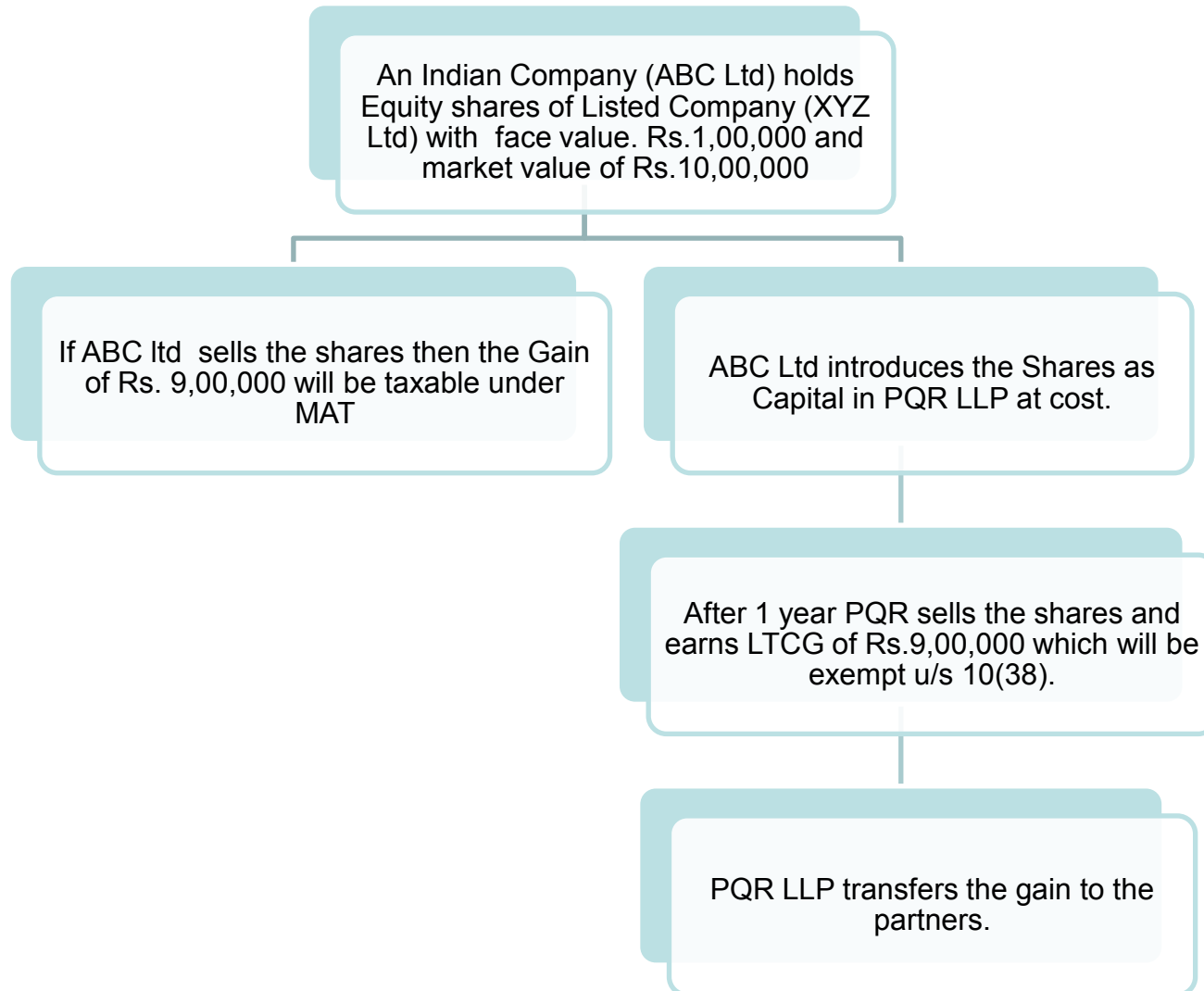
Profit & Loss A/c

Particulars	Amt	Particulars	Amt
Expenses	5	Sales	55
Net Profit	50	(less than 60 L)	
	55		55

Balance Sheet

Particulars	Amt	Particulars	Amt
Sh Cap	100		
Reserve	900	Investment (M.V.10,000)	1000
	1000		1000

Option 2- Through LLP



Option 3- Through Merger



(if RBI permission is required)

Existing position

ABC LTD

BALANCE SHEET

ASSET	AMT	LIABILITIES	AMT
CAPITAL	100	INVESTMENT(M.V.10000)	1000
RESERVE	900		
	1000		

XYZ Pvt ltd

BALANCE SHEET

ASSET	AMT	LIABILITIES	AMT
CAPITAL	100	BANK	100
	100		



MAT PLANNING CONTD....

Balance Sheet of ABC LLP (Post Conversion)

Particulars	Amt	Particulars	Amt
Partners Capital Contribution	100	Investment	1000
Reserve	900		
	1000		1000



Position After Sale of Investments

ABC HOLDING LLP

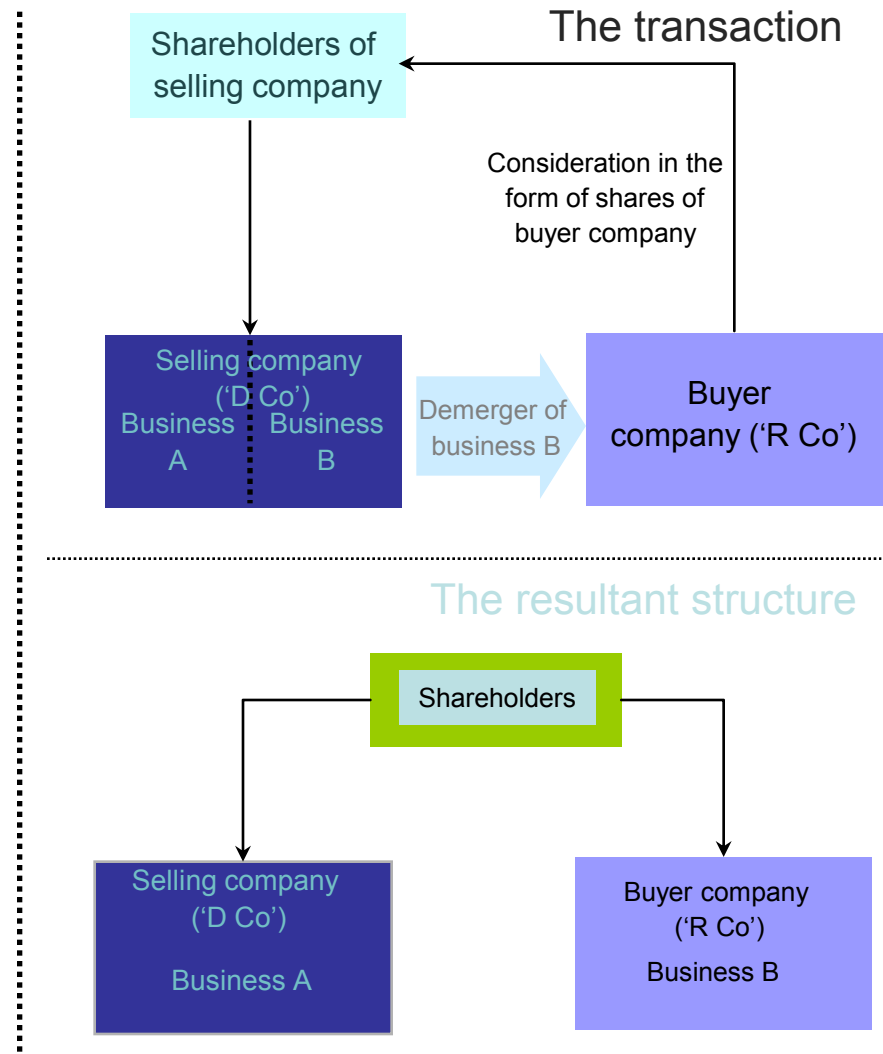
Profit & Loss A/c

Particulars	Amt	Particulars	Amt
Net Profit	9000	Capital Gain (Both LT & ST)	9000
	9000		9000

Balance Sheet

Particulars	Amt	Particulars	Amt
Partners Capital	100	Bank	10000
Add: Profit	<u>9000</u>		
Reserve	900		
	<u>10000</u>		

- **Section 2(19AA)**
- Pursuant to Section 391 to 394 of Companies Act 1956
- ‘undertaking’ transferred as a ‘going concern’
- all ‘property’ of and all ‘liabilities’ relating to the undertaking transferred at ‘book values’
- shares issued as consideration to shareholders of transferor co on a proportionate basis
- shareholders hold at least 3/4th in value of shares of transferee co (other than already holding)
- Transfer has to be at book value without revaluation of assets
- Above conditions are cumulative





CASE STUDY ON DEMERGER PROIR TO CONVERSION IN TO LLP

This Option can be considered in case of CASH RICH Corporate to hive off Investment Division and LLP

Balance Sheet of A Pvt. Ltd (With Sales Exceeding Rs.60 Lacs and / or Assets Exceeding Rs.5 Crore for last 3 yrs)

Liability	BUSINESS	INVEST	Assets	BUSINESS	INVEST
Share Capital	500	500	Investments	5000	
Reserve	4500	5500	STOCK		6000
Total	5000	6000	Total	5000	6000

Balance Sheet of B Pvt. Ltd (With Sales Less Than Rs.60 Lacs and/or Assets Exceed Rs.5 Crore for Last 3 Yrs)

Liability	Amount	Assets	Amount
Share Capital	100	Investments	100
Reserve			
Total	100	Total	100

DEMERGED INVESTMENT DIVISION IN TO B LTD AND RETAIN BUSINESS IN A LTD

Resultant Balance Sheet (Post DEMERGER) will be

Balance Sheet of B Pvt. Ltd (With Sales Less Than Rs.60 Lacs and Assets Less than Rs.5 Crore for Last 3 Yrs)

Liability	Amount	Assets	Amount
Share Capital	5100	Investments	5100
Reserve	0		
Total	5100	Total	5100

NOW B PVT LTD can be Converted in to LLP & A LTD CAN DO EXISTING BUSINESS

Major Cost With Merger/Demerger

- Stamp Duty
 - Higher of
 - a) 5% of Market Value of immovable property located in Maharashtra
 - OR
 - b) 0.7% of the market value of shares allotted in exchange and consideration.

 - ROC Filing Fees
 - a) Stamp duty for increasing AOA = 0.2%
 - b) For increasing Authorized Capital = 0.5% (above Rs.1Cr.)
- Total 0.7%

STAMP DUTY MITIGATION

Current Scenario

A Ltd. Balance Sheet

Particulars	Amt	Particulars	Amt
Share Capital	100	Fixed Asset	5000
Reserve	900	Other current asset	6000
Other liabilities	10000		
	11000		11000

B Ltd. Balance Sheet

Particulars	Amt	Particulars	Amt
Sh Cap	50	Fixed Asset	6000
Reserve	500	(property)	
Other liabilities	7000	Other current asset	1550
	7550		7550



STAMP DUTY/ROC –EXISTING SCENARIO

Now,
If B Ltd Merged With A Ltd.
Then,
Stamp duty will be
HIGHER Of

a) 5% of property	300
b) 0.7% of Consideration (Consideration=net worth)	3.85
Applicable Stamp duty option a	300

Now, If B Ltd Merged With A Ltd. Then, ROC Fees will be	
a) 0.5% of Additional Shares to be issued (Addl Shares = net worth)	2.75
and	
b) 0.2% of Additional Shares to be issued (Addl Shares = net worth)	1.1
Applicable Cost (ROC)	3.85

Make Target Company (B Ltd) as Subsidiary Company

A Ltd. Balance Sheet (Pre Amalgamation)

Particulars	Amt	Particulars	Amt
Share Capital	100	Fixed Asset	5000
Reserve	900	Investment in B Ltd	550
Other liabilities	10000	Other current asset	5450
	11000		11000

B Ltd. Balance Sheet (Pre Amalgamation)

Particulars	Amt	Particulars	Amt
Share Capital	50	Fixed Asset	6000
Reserve	500	(property)	
Other liabilities	7000	Other current asset	1550
	7550		7550

A Ltd (Post Amalgamation)

Particulars	Amt	Particulars	Amt
Share Capital	100	Fixed Asset	11000
Reserve	900	Other current asset	7000
Other liabilities	17000		
	18000		18000

Applicable Stamp Duty will be NIL (As there will be Cancellation of Shares of B Ltd)



ROC MITIGATION

- Swap ratio should be structured in such a way that acquirer company will issue shares at premium.
- For that acquire company share valuation either on DCF or NAV whichever is applicable should be higher
- This will Result into Lesser Issue of shares due to amalgamation/Demerger Resulting into lesser Roc fees for increasing Authorized capital

General Anti Avoidance Rule (GAAR)

- An arrangement the main purpose of which is to obtain a tax benefit(and which also satisfies at least one of the four tests) can be declared as an “impermissible avoidance agreement”.
- Four test:-
 - 1) The arrangement creates rights and obligations which are not normal in arm’s length transaction.
 - 2) Results in abuse of provisions of the Income tax Act, 1961.
 - 3) It lacks or is deemed to lack commercial substance n whole or part.
 - 4) It is entered into or carried out in a manner, which is normally not employed for bonafide purpose.
- As per Rule 10U these provisions shall not apply to an arrangement where **tax benefit** in aggregate to all the parties **does not exceed Rs.3 Crores.**



CA Divyesh V Mehta

