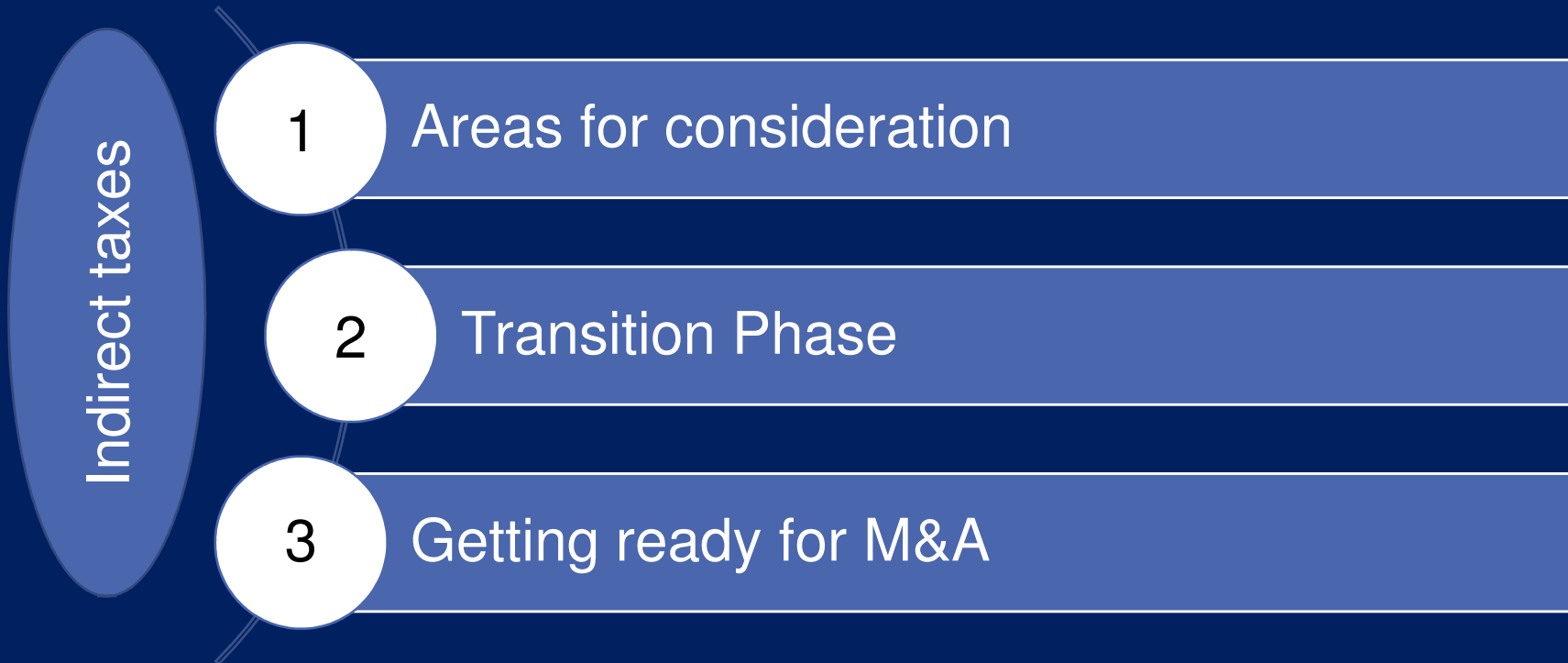


# Merger & Acquisitions

Indirect tax implications

Chirag  Bhatt



# IDT - Areas for consideration

## Qualitative Aspects

## Quantitative Aspects (indemnity / valuation adjustments)

### Correct and Complete

Condition Precedent to Deal

Pending Assessments/ Audits

Documentation and Reconciliations

### Quality of Indirect tax assets / liabilities

Credit Balance

Refund Status

FTP Benefits

### Completeness of tax risk

Contingent Liability









Tax Positions

Current litigation (tax provisions)



# IDT Implications during Transition Phase

Mode of Carve Out  
Shares, Demerger, Slump Sale, Asset Sale etc

	Applicability of indirect taxes on carve out	
	Credit transfer, Concessions and Benefits transfer	
	Pending Litigation	
	Interim transactions compliances	
	Post Transaction Compliances	

# IDT – M&A – Getting Ready

## Tax compliance related information

- ▶ Trial balance and financial statements
- ▶ Tax Registration certificates obtain
- ▶ Filed Copy of Tax Returns along with its backup workings, Audit Reports
- ▶ Reconciliation of various incomes reported in financial statements with tax returns filed along with reasons for difference, if any
- ▶ Sample Invoices with respect to each type of output transaction
- ▶ Status of pending declaration forms / EODC/ BG

## Tax position related information (including tax demands)

- ▶ Note on business activities and corresponding tax positions
- ▶ Year wise assessment status
- ▶ Key Contracts between the Company and third parties, and, related party transactions
- ▶ Documents for concession/ exemption Audit report, SCN, Demand orders
- ▶ Details of any litigation, contingent liability arising from the past assessments along with copy of filings

# Thank You

Q & A

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# IDT - Areas for consideration

Quantitative Aspects  
(Correct & Complete)

Condition  
Precedent to Deal

- ▶ Whether there are any stipulations with respect to any incentives (obtained from state Government), transfer of land etc from MIDC which requires Seller to seek prior approval before transferring the business undertaking.

Pending  
Assessments/  
Audits

- ▶ Highlighting period for which the taxes declared can be challenged
- ▶ Highlighting the indirect tax exposures for recurring transactions/ tax positions impacting multiple assessments for multiple years

Documentation  
and  
Reconciliations

- ▶ Compliance hygiene perspective - Returns filed, Forms obtained etc
- ▶ Analyse reconciliations of turnovers to understand if there is any gaps in declared tax turnovers etc



# IDT - Areas for consideration

Qualitative Aspects  
(indemnity / valuation adjustments)

## Credit Balance

- ▶ Analyse reconciliation of the credit balance mentioned in the financial statement vis-à-vis credit balance mentioned in the tax returns
- ▶ Comment on credits availed on the goods and services which may be litigious

## Refund Status

- ▶ Assessing recoverability of current refunds (show in balance sheet)
- ▶ Highlight the risk of time-barred claims, and defect memos
- ▶ Any claims rejected in past due to documentation issues and accepted by Seller Co

## FTP Benefits

- ▶ Restrictions w.r.t transfer of the authorization or assets procured under actual user conditions, with non-transferability clause.
- ▶ Exposure on account of open licenses, for which the discharge certificate is not available and bonds/ bank guarantees are not cancelled





# IDT - Areas for consideration

Qualitative Aspects  
(indemnity / valuation adjustments)

## Contingent Liability

- ▶ Understanding the rationale for disclosing the issue in contingent liability in the notes forming part of financial statements and commenting on the exposure on the same.

## Tax Position

- ▶ Understanding tax positions adopted by the Company and highlighting any possible risk areas
- ▶ 3-Way Match -- (A) Company Tax Positions (B) General Industry Practice (C) Tax Authority's Understanding of the Law

## Current Litigations (Tax Provisions)

- ▶ Understanding the current litigation status and commenting on the exposure

