



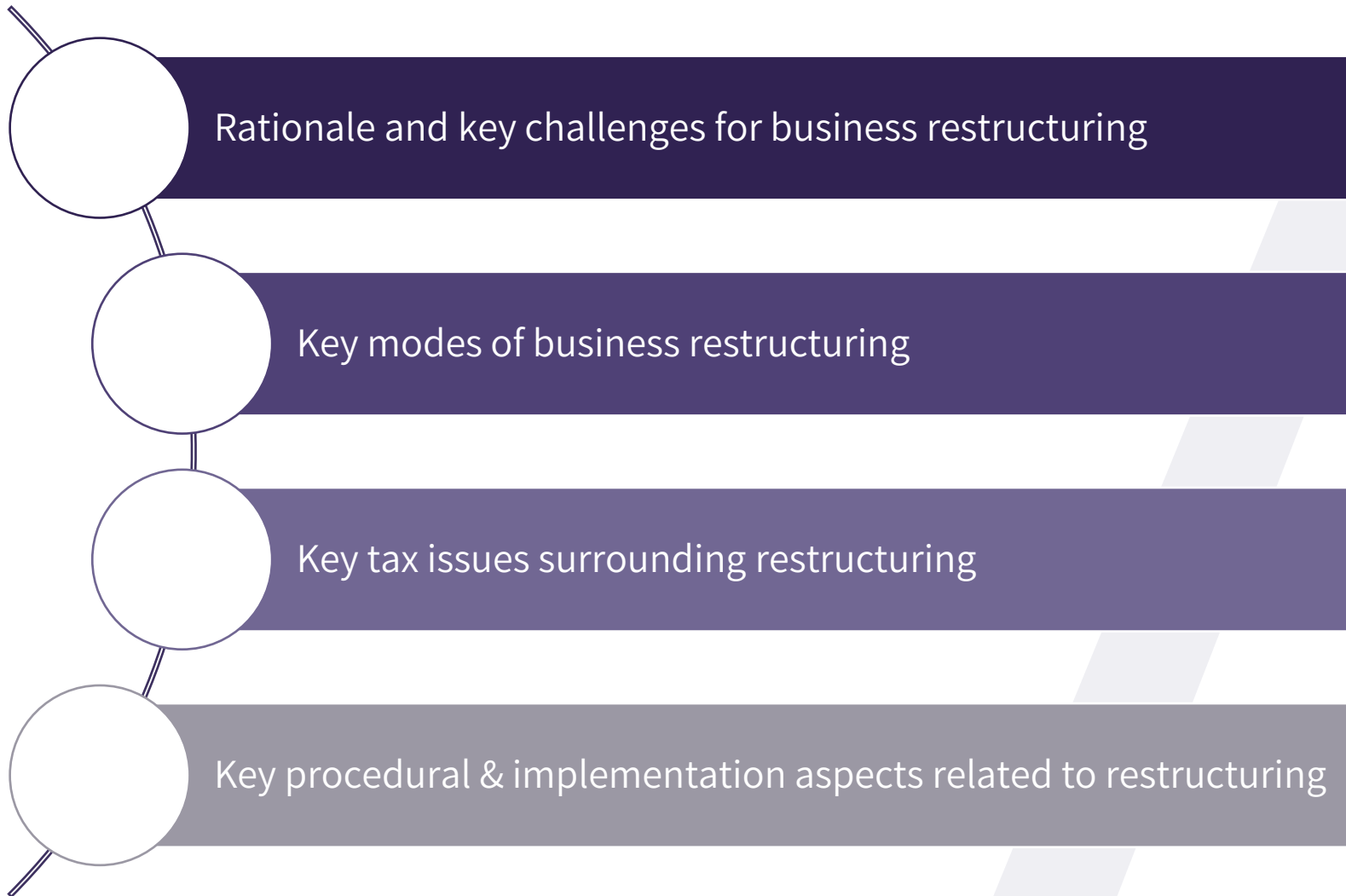
# M & A

## Mergers, Acquisitions, Demergers & Business Structuring – Direct Tax Issues, Solutions & Procedures

26 May 2023

# Presentation Outline

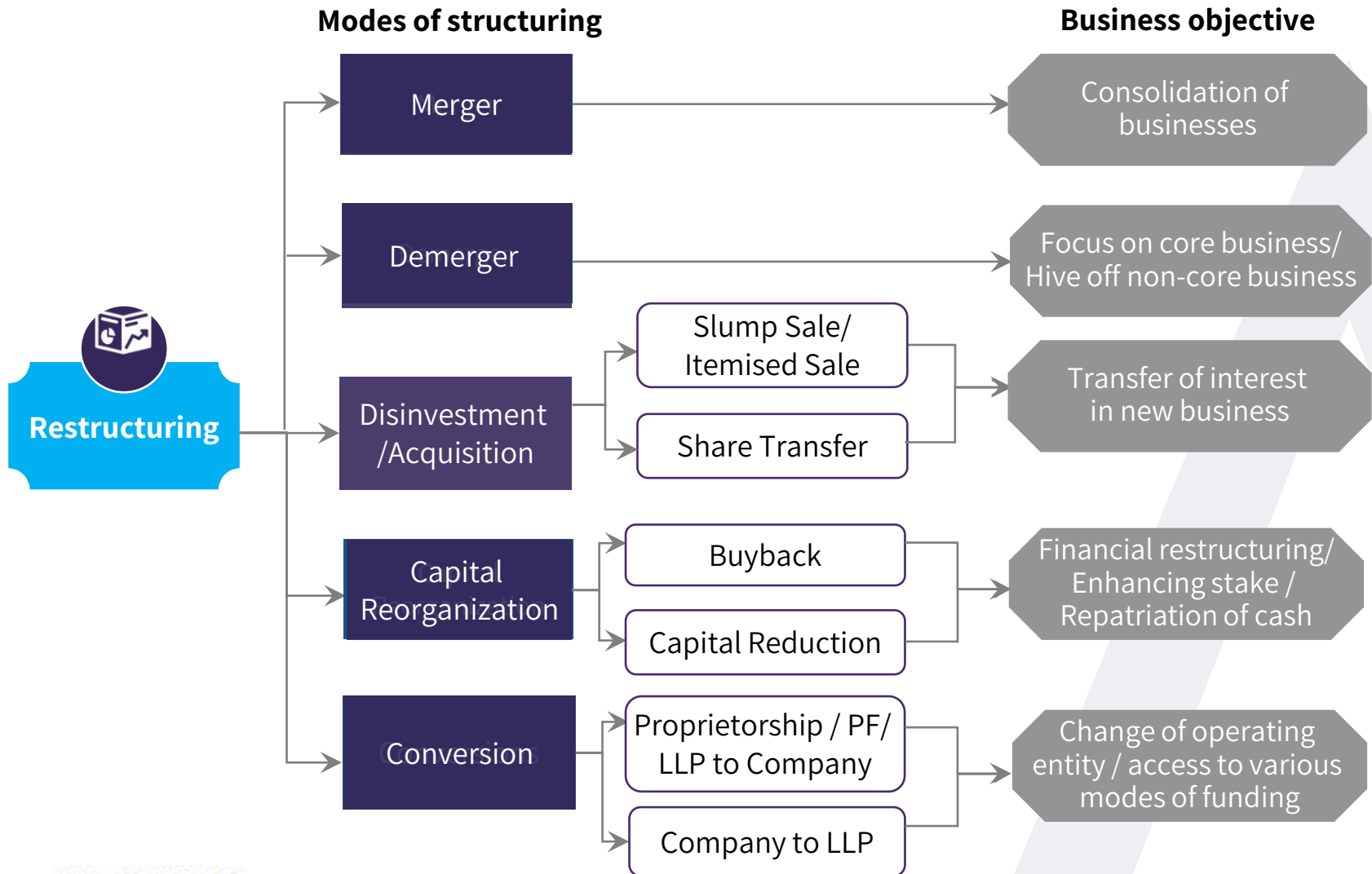
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**01**

# **Rationale for business restructuring**

# Modes of restructuring - Snapshot



**02**

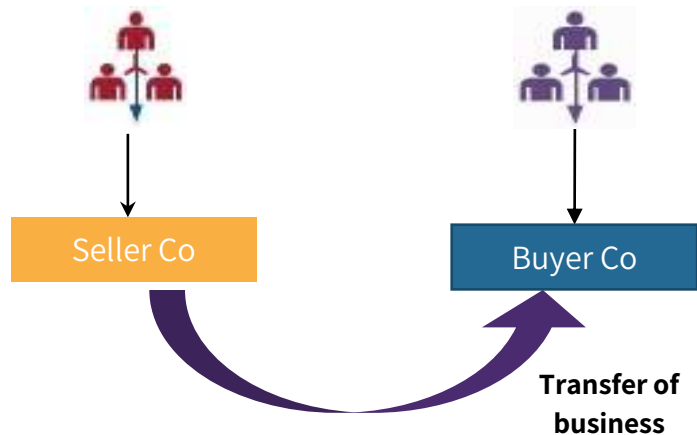
# **Key modes of Structuring**



# **Business vs Share Transfer**

# Business Transfer v. Share Transfer

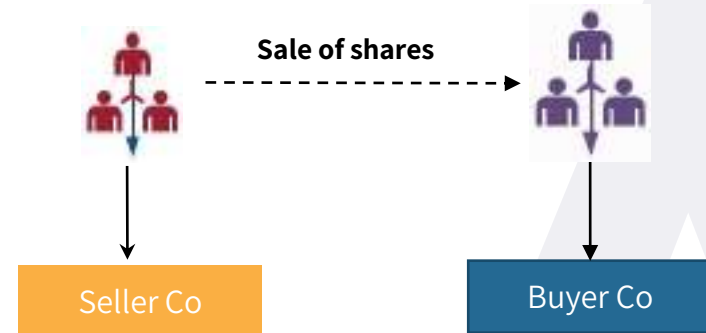
## Business Transfer



### Considerations

- Transfer of business to Buyer Co
- Entity remains with the seller with or without other business

## Share Transfer



### Considerations

- When company owns only desired business for buyer
- Otherwise, pre-acquisition restructuring required

# Key considerations - Business Transfer vs Share Transfer

Parameters	Perspective	Business Deal	Share Deal
Historical risks	Buyer	●	●
Acquisition Funding – Interest Deductibility	Buyer	●	●
Cherry picking of assets and liabilities	Buyer	●	●
Carry forward of losses	Buyer	●	●
Step-up in costs – tax depreciation	Buyer	●	●
Stamp duty, GST, etc.	Transaction	●	●
Seller's overall tax costs	Seller	●	●
PPA	Buyer	●	●
Disruption to business	Buyer	●	●

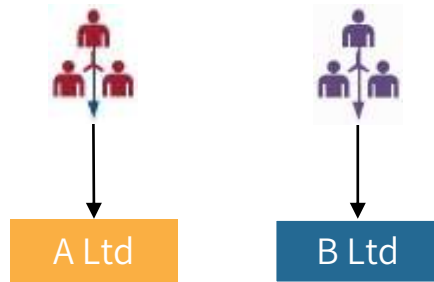




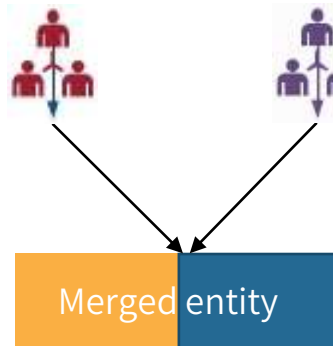
# **Merger / Amalgamation**

# Merger / Amalgamation

## Pre-merger scenario



## Post-merger scenario



## Concept:

- Union of two or more companies into one company
- All assets, liabilities, contracts and employees of the transferor company are transferred to the transferee company
- Transferee company issues shares to the shareholders of transferor company as consideration
- Transferor company would cease to exist post-merger

## Key Drivers:

- Operational synergies (pooling of resources, economies of scale, etc.)
- Develop focused brand image/ stronger market standing through a single flagship company
- Rationalizing operating/administrative costs by reducing the number of companies
- Exploring fiscal benefits that may be possible on consolidation
- Overcoming competitive pressure

# Merger – Tax Implications

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- Merger to be tax neutral for companies and the shareholders if it satisfies conditions of section 2(1B) r.w. section 47(vi) and section 47(viii) of the IT Act
  - All the assets and liabilities of amalgamating company to be transferred
  - Shareholders holding **at least 3/4th in value** of shares in the amalgamating company (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary to become shareholders of amalgamated company
- Carry forward of business loss and unabsorbed depreciation of amalgamating company permissible subject to satisfaction of conditions prescribed under section 72A of IT Act
  - **Fresh lease** of life to **business losses / unabsorbed depreciation**
- Depreciation available to amalgamated company on WDV of block of assets of amalgamating company – In the 1<sup>st</sup> year, deduction of depreciation to be split between amalgamating company and amalgamated company in the ratio of the number of days for which the assets are used
- **Tax holiday** under certain provisions (for instance, section 80-IA) **not available** to amalgamated company

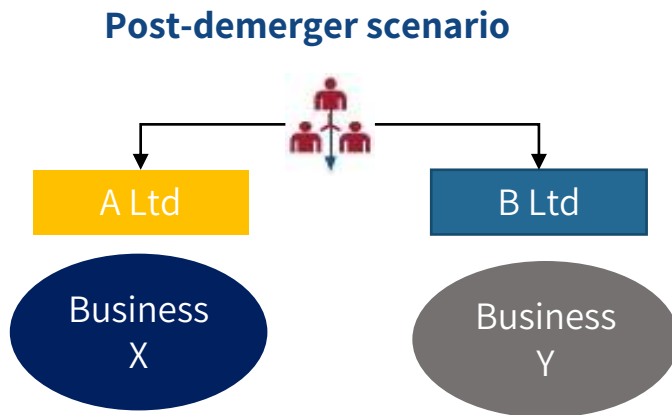
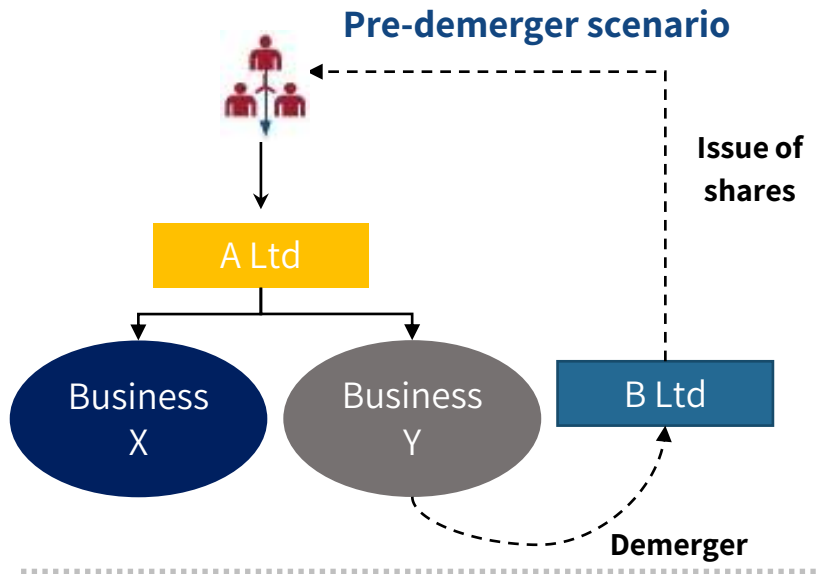
# Merger – Tax Implications

Taxability	Particulars	Relevant Section of IT Act
In the hands of Transferor Company*	No capital gains on transfer of assets	47(vi)
In the hands of the shareholder of Transferor Company*	No capital gains on transfer of shares	47(vii)
	Cost of acquisition of shares received on merger = cost of shares held in transferor company	49(2)
	Period of holding of shares received on merger includes period of holding of shares of transferor company	2(42A)
In the hands of Transferee Company*  {Cost of assets acquired = Cost of transferor company}	Stock	43C
	Depreciable asset	Explanation 7 to 43(1) + 43(6)
	Capital Asset	49(1)
	Period of Holding of transferor company to be included for calculating STCG/ LTCG	2(42A) r.w.s 49(1)
Transferee company	No deemed gift tax implications	56(2)(x)



# Demerger

# Demerger



## Concept:

- Transfer of identified business undertaking from one company (i.e., demerged company) to another company (i.e., resulting company)
- In consideration, the resulting company issues shares to shareholders of the demerged company

## Key Drivers:

- Segregation of core and non-core business
- Monetization and value unlocking
- Dedicated management focus on each business segment
- Attracting investors / funding

# Demerger – Tax Implications

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- Demerger defined under section 2(19AA) of the IT Act. Demerger to be tax neutral for the companies and the shareholders if conditions provided in section 2(19AA) r.w. section 47(vib) and section 47(vid) are complied
- Transfer of business under demerger should constitute an **eligible ‘undertaking’** – on a **going concern** basis
- Shareholders holding not less than 3/4<sup>th</sup> in value of the shares in demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) to become shareholders of the resulting company
- Resulting company **to issue its shares as consideration** to the shareholders of demerged company on a proportionate basis (except where resulting company is shareholder of demerged company)
- All the properties and liabilities of the demerged undertaking to be transferred at **values appearing in its books** of account immediately before the demerger
  - **Not applicable** where the resulting company records the value of properties and liabilities of undertaking at a value different from the value appearing in the books of account of the demerged company, immediately before the demerger, **in compliance with Ind AS**

# Demerger – Tax Implications

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- In the 1<sup>st</sup> year, depreciation available to resulting company on WDV of block of assets of demerged undertaking – deduction of depreciation to be split between demerged company and resulting company in the ratio of the number of days for which the assets are used
- Unlike merger **no conditions** need to be fulfilled to carry forward and set off of tax losses
  - **No fresh lease** of life for carry forward of business losses
  - **Loss directly relatable to the demerged undertaking:** To be carried forward and set off in the hands of the resulting company
  - **Loss not directly relatable to the demerged undertaking:** To be apportioned between the resulting company and the demerged company in the ratio of the assets transferred and assets retained
- Tax holiday under certain provisions (for instance, Section 80-IA) **not available** to resulting company



# Demerger – Tax Implications

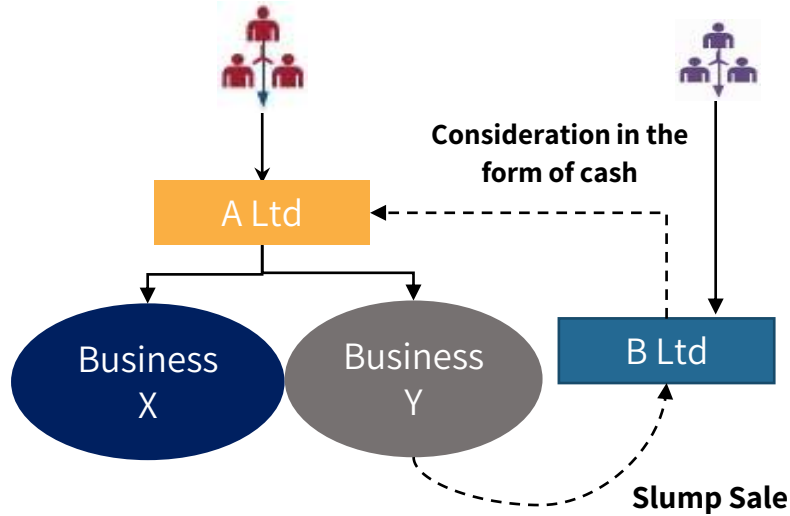
In the hands of	Taxability/ Treatment	Relevant Section of IT Act
Demerged Company	No capital gains on transfer of assets	47(vib)
<b>Resulting Company:</b>		
Cost of assets	<p>Depreciable Assets - Opening WDV in the hands of the Demerged Company</p> <p>Capital Asset - Cost of Capital Asset in the hands of Demerged Company</p>	<ul style="list-style-type: none"> <li>• Explanation 2B of Section 43(6)</li> <li>• 49(1)(iii)</li> </ul>
Period of holding of capital assets	Includes period for which assets are held by the demerged company	2(42A) r.w.s. 49(1) and 47(vib)
Cost of acquisition of shares for shareholders	Cost of acquisition of shares of Demerged Company to be split in the ratio of net book value of assets transferred to total net book value of assets of Demerged Company before demerger	49(2C)
Period of holding of shares for shareholder	Includes period for which shares of Demerged Company were held	Explanation 1(g) to Section 2(42A)
Resulting company	No Deemed gift implications	Section 56(2)(x)



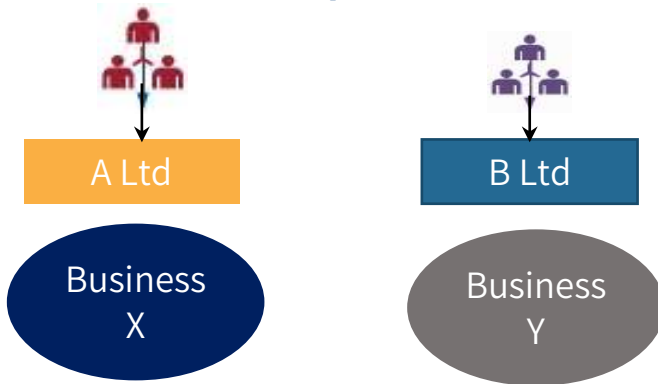
# Slump Sale

# Slump Sale

## Pre- slump sale scenario



## Post - slump sale scenario



## Concept:

- Transfer of identified business undertaking / division through
  - Business Transfer Agreement / NCLT approved Scheme
  - Transfer for lumpsum consideration without values being assigned to individual asset and liabilities
- Buyer to discharge consideration in the form of cash

## Key Drivers:

- Segregation of core and non-core business
- Monetization and value unlocking

# Slump Sale – Amendments made by Finance Act 2021

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- Definition of Slump sale u/s 2(42C) of IT Act-

## **Pre-amendment**

"slump sale" means the **transfer** of one or more **undertakings as a result of the sale** for a lump sum consideration without values being assigned to the individual assets and liabilities in such sale”

## **Post-amendment (effective AY 2021-22 onwards)**

"slump sale" means the **transfer** of one or more **undertakings, by any means,** for a lump sum consideration without values being assigned to the individual assets and liabilities in such sale”

- Explanation inserted to define transfer same as section 2(47)
- Thus, slump exchange to be also taxable as slump sale – decisions\* holding slump exchange as non-taxable overruled

*\*CIT v. Bharat Bijlee Ltd [2014] 365 ITR 258; Areva T&D Ltd. (2020) 428 ITR 1 (Madras)*

# Slump Sale – Tax Implications

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- Computation of capital gains as per section 50B
  - **Fair market value** of capital assets as on the date of transfer, calculated as per Rule 11UAE, to be deemed to be the **full value of consideration**
  - **Net-worth** of the undertaking (to be computed in prescribed manner) deemed to be the **cost of acquisition**
- **Proportionate depreciation in 1<sup>st</sup> year** – Applicability of sixth proviso to section 32(1) in case of slump sale treating it as **succession**?
- Accumulated **losses** and unabsorbed depreciation **not eligible** for carry forward under slump sale
- **Tax holiday** u/s 80-IA, 80-IB, etc. **should not get jeopardized** pursuant to slump sale



# Capital Reduction

# Capital Reduction

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## Concept

- Reduction of issued, subscribed and paid-up capital of the company
- Can be done by utilizing reserves / share premium account against the accumulated business losses
- Cos Act requirements - Power under the company's AOA to reduce capital and a special resolution is required to be passed. The reduction effected by such resolution must be confirmed by NCLT

## Income-tax implications

- Reduction of share capital as per the provisions of the Cos Act by reducing the face value of shares or by way of paying off part of the share capital
  - Results in extinguishment of the rights of shareholder to the extent of reduction of share capital.
  - Considered as transfer under section 2(47) of the IT Act and thus, chargeable to tax.
- The income received on capital reduction would be taxable as under:
  - Amounts distributed by the company to the extent of its accumulated profits considered as deemed dividend under section 2(22)(d) – Tax to be discharged by shareholders
  - Distribution over and above the accumulated profits – If amount exceeds original cost of acquisition of shares then, such excess amount taxable as capital gains in the hands of the shareholders.



# Buyback of shares



# Buyback of shares

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## Concept

- Corporate action in which a company buys back its shares from the existing shareholders usually at a price higher than market price
- When a company buys back its own shares, the number of its shares outstanding in the market reduces.

## Income-tax implications

- Buy-back tax @ 20% u/s 115QA of the IT Act to be paid by the company on difference between the buyback price and consideration received by company from its shareholders
- Proceeds of buyback not taxable in the hands of shareholders - Exemption u/s 10(34A) of the IT Act



# **Conversion of Company into LLP**

# Conversion of Company into LLP

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## Concept

- Process under which a Company is converted into an LLP provided under Cos Act r.w. LLP Act, 2008.
- Preferred in cases where extraction of cash is one of the objectives of restructuring
- Suitable only for companies with limited size of operations as on the date of conversion

## Income-tax implications

- Conversion of Company into LLP to be tax neutral for Company and its shareholders subject to satisfaction of conditions provided in section 47(xiii b) of IT Act
- Depreciation available to LLP on WDV of block of assets of Company – In 1<sup>st</sup> year, deduction of depreciation to be split between Company and LLP in the ratio of the number of days for which the assets are used
- Whether cost of acquisition of capital asset being rights/ interest in LLP for partner shall be equal to the cost of acquisition of share of Company?
- Carry forward of business loss and unabsorbed depreciation of Company permissible subject to satisfaction of conditions prescribed under section 47(xiii b) of IT Act
- Brought forward MAT Credit of Company cannot be utilized by LLP post conversion



# **Succession of firm by a company**

# Succession of firm by a company

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## Concept

- Process under which a partnership firm / LLP is converted into a Company under the provisions of Cos Act
- Key drivers for conversion may include access to varied options for obtaining funding, attracting investors, listing objectives, lower corporate tax rate, etc.

## Income-tax implications

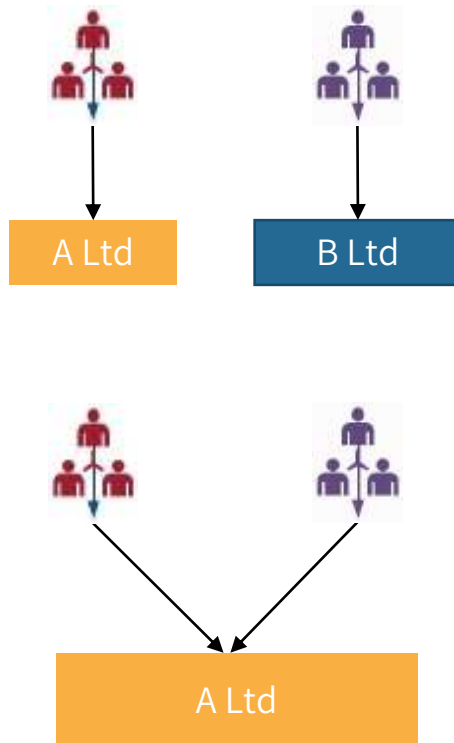
- Conversion of Company into LLP to be tax neutral for the firm subject to satisfaction of conditions provided in section 47(xiii) of IT Act.
  - No clarity on exemption to partners for extinguishment of rights in the firm pursuant to conversion unlike section 47(xiii b)
- Depreciation available to LLP on WDV of block of assets of firm – In 1<sup>st</sup> year, deduction of depreciation to be split between firm and Company in the ratio of the number of days for which the assets are used
- Carry forward of business loss and unabsorbed depreciation of Company permissible subject to satisfaction of conditions prescribed under section 47(xiii) of IT Act

**03**

# **Key Income-tax issues**

# Case Study 1 - Recognition of intangible assets upon merger

## Pre-merger scenario



## Facts:

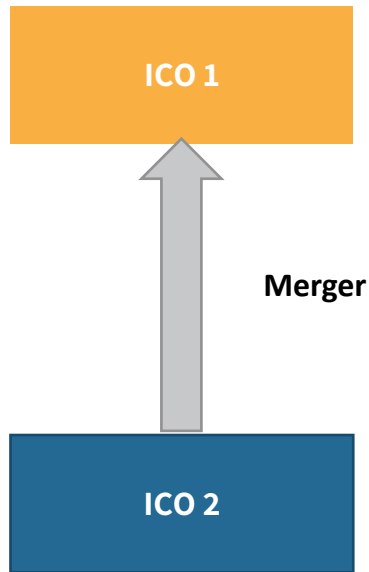
- A Ltd and B Ltd are Indian Companies.
- B Ltd is proposed to be merged into A Ltd
- All the assets and liabilities of B Ltd shall be transferred to A Ltd
- A Ltd shall recognize all the assets and liabilities of B Ltd at fair value
- A Ltd has paid consideration in the form of shares in excess of the fair value of B Ltd

## Issue for consideration:

- Would A Ltd be eligible for depreciation on goodwill arising on merger of B Ltd into A Ltd?
- Can A Ltd recognise certain identified intangible assets, other than goodwill in its books of account and whether A Ltd would be eligible to claim depreciation on the same?

# Case Study 2 - Merger of loss-making company into profit making company

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## Facts:

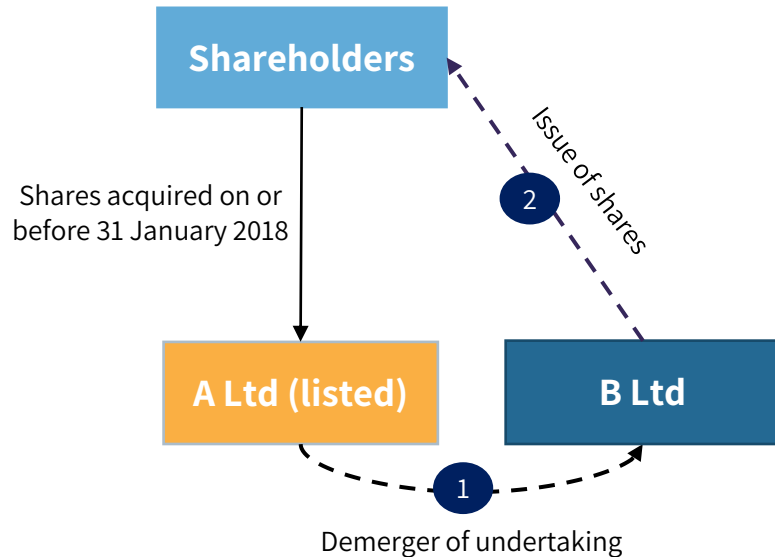
- ICO 1 and ICO 2 are Indian Companies and ICO 2 is proposed to be merged with ICO 1
- ICO 1 is a profit-making company whereas ICO 2 has substantial amount of accumulated losses and unabsorbed depreciation.
- Subsequent to merger, ICO 1 intends to set off such accumulated losses and unabsorbed depreciation of ICO 2 against the profits earned by ICO 1

## Issues for consideration:

- Whether the provisions of GAAR can be invoked ?



# Case Study 3 - Benefit of grandfathering pursuant to demerger



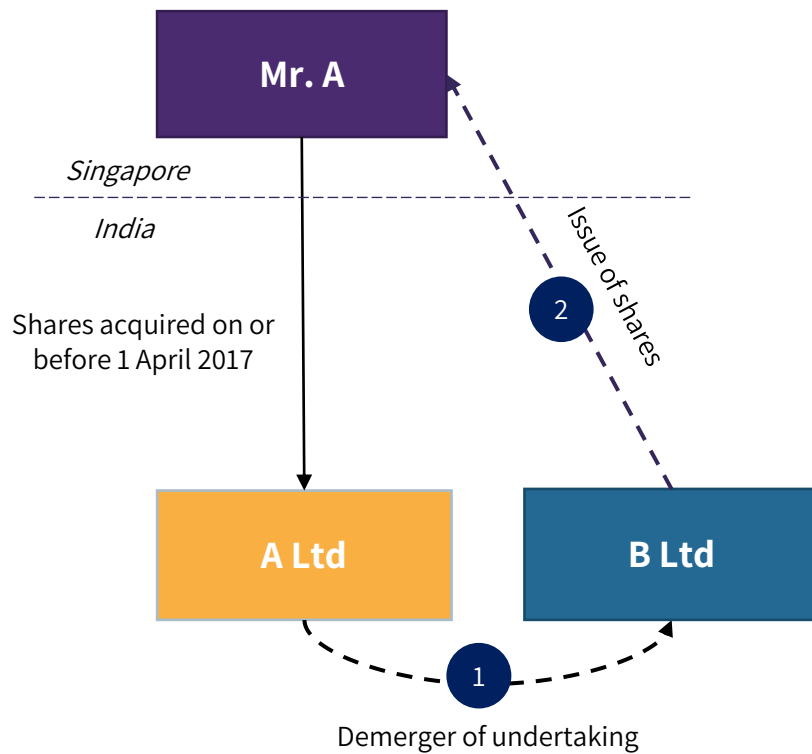
## Facts:

- Shares of A Ltd are listed on BSE and NSE as on 31 January 2018
- Business undertaking of A Ltd is demerged into B Ltd
- Pursuant to demerger, shares of B Ltd are issued to shareholders of A Ltd

## Issue for consideration:

- Whether proportionate cost, being market price of shares of A Ltd as on 31<sup>st</sup> Jan 2018 as provided u/s 55(2)(ac), would be available in respect of shares of B Ltd?

# Case Study 4: Benefit of grandfathering under DTAA



## Facts:

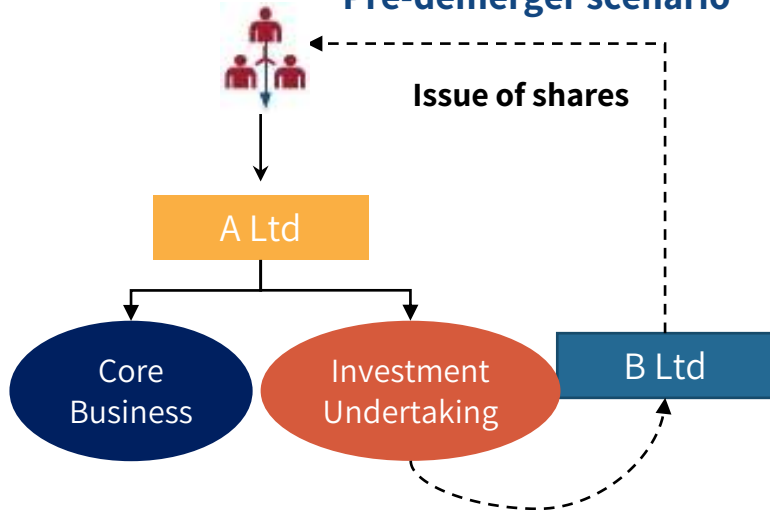
- Mr. A is a resident of Singapore and had acquired shares of A Ltd prior to 1 April 2017
- Business undertaking of A Ltd is demerged into B Ltd
- Pursuant to demerger, shares of B Ltd are issued to shareholders of A Ltd i.e., Mr. A

## Issue for consideration:

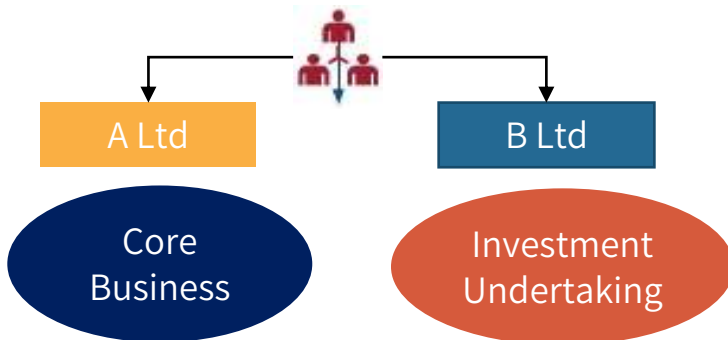
- Whether shares of B Ltd be grandfathered under Article 13(4A) of the India-Singapore DTAA assuming that the transaction is a bonafide transaction and not arranged for the primary purpose to take advantage of the benefits of Article 13(4A)?

# Case Study 5: Demerger of Investment undertaking business

## Pre-demerger scenario



## Post-demerger scenario



## Facts:

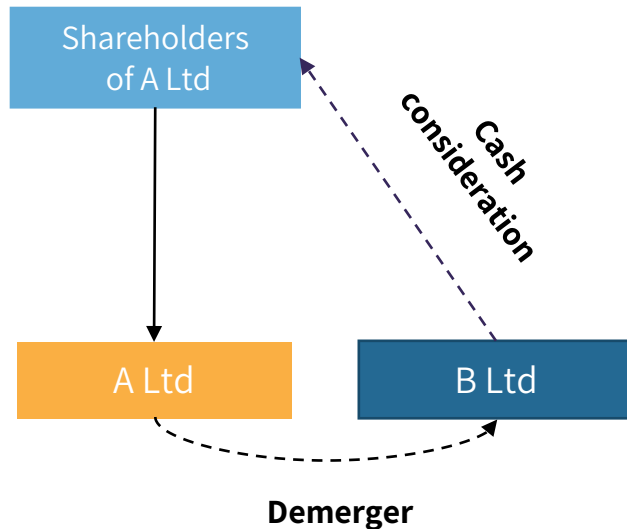
- A Ltd and B Ltd are Indian Companies
- Investment Undertaking of A Ltd is demerged into B Ltd
- Pursuant to demerger, shares of B Ltd are issued to shareholders of A Ltd

## Issue for consideration:

Whether the investment undertaking of A Ltd constitute an 'undertaking' as defined in Explanation 1 to section 2(19AA) of the Act?

- a) Case I – Investment undertaking constitutes operating business along with related business investments
- b) Case II – Investment undertaking constitutes investments in subsidiaries through which operations of the Group are undertaken

# Case Study 6: Non-tax neutral demerger



## Facts:

- A Ltd and B Ltd are Indian Companies. A Ltd has two divisions viz. Division X and Division Y
- All assets and liabilities pertaining to Division Y are demerged by A Ltd into B Ltd
- Pursuant to demerger, B Ltd discharges consideration in the form of cash, to shareholders of A Ltd

## Issue for consideration:

- Whether the demerger shall satisfy the condition provided u/s 2(19AA) of the IT Act and be considered as tax neutral for the companies as well the shareholders ?
- If not, what would be the tax implications of demerger in the hands of following:
  - Shareholders of Demerged Company
  - A Ltd i.e. Demerged Company
  - B Ltd i.e. Resulting Company

**04**

# **Key procedural & implementation aspects under Income Tax**



# Filing of return of income

# Section 170A - Modified Return

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## 170A. Effect of order of tribunal or court in respect of business reorganisation.

**Notwithstanding anything to the contrary contained in section 139, in a case of business reorganisation, where prior to the date of order of a High Court or tribunal or an Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as the case may be, any return of income has been furnished by the successor under the provisions of section 139 for any assessment year relevant to the previous year to which such order applies, such successor shall furnish, within a period of six months from the end of the month in which the said order was issued, a modified return in such form and manner, as may be prescribed, in accordance with and limited to the said order.**

Explanation.—In this section, the expressions—

- (i) **"business reorganisation"** means the reorganisation of business involving the amalgamation or demerger or merger of business of one or more persons;
- (ii) **"successor"** means all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.

# Filing of return of income – Concept of Modified Return

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- **Applicability:** Reorganisation of business involving the amalgamation or demerger or merger of business of one or more persons.
  - No clarity on applicability for fast-track schemes
  - May not be applicable where the reorganisation does not involve merger or demerger of ‘business’
- **Eligible assessee:** All resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.
  - Demerged Company not allowed to file modified return – File revised return/ updated return?
- **Time limit:** Six months from the end of the month in which the order was issued
- **Impact on assessment/ reassessment:**
  - For pending assessment / reassessment, AO to consider modified return and accordingly complete assessment/ reassessment
  - For completed assessment / reassessment, AO to pass an order modifying the total income in accordance with the order considering the modified return
- **Procedure to file:** File ITR-6 (selecting 170A option) and File Form ITR-A (and attach ITR-6 u/s 170A)



# Extract of Rule 12AD – Effective from 1st November 2022

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**12AD. Return of income under section 170A.**— (1) The modified return of income to be furnished by a successor entity to a business reorganisation, as referred to in section 170A, for an assessment year, shall be in the Form ITR-A and verified in the manner specified therein.

(2) The return of income referred to in sub-rule (1) shall be furnished electronically under digital signature.

(3) If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the order of the business reorganisation applies have been completed or are pending on the date of furnishing of the modified return in accordance with the provisions of section 170A, the Assessing Officer shall, pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, or proceed to complete the assessment or reassessment proceedings, as the case may be, in accordance with the order of the business reorganisation and the modified return so furnished.

(4) The Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing the return in the manner specified in sub-rule (2).’

# Filing of return of income – Demerger of ICO 2 into ICO 1

Scenarios	Appointed Date	Effective Date	Return filing	
			ICO 1	ICO 2
1	1 April 2022	30 September 2023	Original return (including income/expense of demerged business)	Original return (excluding income/expense of demerged business)
2	1 April 2022	30 November 2023	Original Return (excluding income/expense of demerged business )  + Modified Return	Original Return (including income/ expense of demerged business)  + Revised Return
3	1 April 2022	30 June 2024	Original Return (excluding income/expense of demerged business )  + Modified Return	Original Return (including income/ expense of demerged business) + <i>(Time limit for revised return lapsed)</i>  <i>Revision by filing letter with tax officer?</i>

# Extract of Form ITR-A

## Form ITR-A : Modified Return

<b>FORM</b>	<b>ITR-A</b>	<p><b>INDIAN INCOME TAX RETURN</b></p> <p>[For successor entities to furnish return of income under section 170A consequent to business reorganisation]  <i>(Refer instructions for eligibility)</i>  <i>(Please see rule 12AD of the Income-tax Rules, 1962)</i></p>
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PART A GENERAL INFORMATION – 170A												
<b>(A1): Give details of the successor entity filing the return of income:</b>												
<b>(A1a) PAN of successor entity filing the return</b>									<b>(A1b) Name of successor entity</b>	<b>(A1c) Corporate Identity Number (CIN) issued by MCA</b>	<b>(A1d) Date of incorporation (DD/MM/YYYY)</b>	<b>(A1e) Date of commencement of business (DD/MM/YYYY)</b>
<b>(A2): Give details of the other successor entities in the scheme of arrangement/business reorganisation:</b>												
<b>(A2a) PAN (s) of other successor entities</b>									<b>(A2b) Name(s) of successor entities</b>	<b>(A2c) Corporate Identity Number (s) (CIN) issued by MCA</b>	<b>(A2d) Date (s) of incorporation (DD/MM/YYYY)</b>	<b>(A2e) Date (s) of commencement of business (DD/MM/YYYY)</b>

# Extract of Form ITR-A

## Form ITR-A : Modified Return

<b>(A3): Give details of the predecessor entities:</b>													
<b>(A3a)</b> PAN(s) of the predecessor entities										<b>(A3b) Name (s) of predecessor entities</b>	<b>(A3c) Corporate Identity Number (s) (CIN) issued by MCA</b>	<b>(A3d) Date (s) of incorporation (DD/MM/YYYY)</b>	<b>(A3e) Date (s) / Year of commencement of business (DD/MM/YYYY)</b>
<b>(A4) Assessment Year</b> <i>[Please see instruction]</i>					<b>(A5) whether return previously filed for this assessment year?</b>  <input type="checkbox"/> Yes <input type="checkbox"/> No				<b>(A6) If yes, Whether filed u/s</b> <input type="checkbox"/> 139(1) <input type="checkbox"/> Others (drop down)				
<b>(A7) Enter form filed, Acknowledgement no. or Receipt No. and Date of filing original return (DD/MM/YYYY)</b>				ITR-6		<b>Ack no and date of filing</b>							
<b>(A8) Details of order of business reorganisation:</b>													
<b>(A8a) Authority passing the order of business reorganisation</b>								<input type="checkbox"/> High Court <input type="checkbox"/> Tribunal as referred to in section 170A <input type="checkbox"/> Adjudicating Authority as defined in clause (1) of section 5 of IBC, 2016					

# Extract of Form ITR-A

## Form ITR-A : Modified Return

(A8b) Date of order	
(A8c) Order No.	
(A8d) Date from which the business reorganisation has been made effective as per the order	
(A9) Please upload ITR-6 u/s 170A, modifying the income for the relevant AY.	
(A10) Acknowledgement no. and Date of filing of the modified return (will be auto-filled at the time of submission)	/ /

### VERIFICATION

I, \_\_\_\_\_ son/ daughter of \_\_\_\_\_ solemnly declare that to the best of my knowledge and belief, the information given in the return is correct and complete and is in accordance with the provisions of the Income-tax Act, 1961. I further declare that I am making this return in my capacity as \_\_\_\_\_ (drop down to be provided) and I am also competent to make this return and verify it. I am holding permanent account number (Please see instruction).

I further declare that the terms and conditions specified in the order of business reorganisation passed by the Competent Authority have been complied with.

Date:

AURTUS  
CORPORATE

Signature:.





# Slump Sale

# Slump Sale

## Compliances – Slump Sale

- As per section 50B(2) of the IT Act, the buyer of undertaking is required to furnish **a report of CA in Form 3CEA** one month prior to the due date for filing the return of income u/s 139(1), indicating the computation of the net worth of the undertaking and certifying that the net worth of the undertaking has been correctly arrived at in accordance with the provisions of section 50B.
- An extract of the form has been captured in the ensuing slides:

**FORM NO. 3CEA**  
[See rule 6H]

**Report of an accountant to be furnished by an assessee under sub-section (3)  
of section 50B of the Income-tax Act, 1961 relating to computation of  
capital gains in case of slump sale**

<b>1.</b>	Particulars of the assessee effecting the slump sale	
	(a) Name	
	(b) Address	
	(c) Permanent Account Number or Aadhaar Number	
	(d) Nature of business	
<b>2.</b>	Details of the undertaking or division, transferred by way of slump sale	
	(a) Address/location	
	(b) Nature of business	

# Slump Sale

<b>3.</b>	Name, address and Permanent Account Number or Aadhaar Number of the person who has purchased the undertaking or division referred to in item 2	
<b>4.</b>	Date of slump sale of the undertaking or division referred to in item 2	
<b>5.</b>	Amount of consideration received for slump sale referred to in item 2	
<b>6.</b>	Net worth of the undertaking or division referred to in item 2 :	
<b>(a)</b>	In the case of depreciable assets, written down value of the assets of the undertaking or division transferred by way of slump sale, determined in accordance with sub-item (c) of item (i) of sub-clause (c) of clause (b) of section 43.	Rs.
<b>(b)</b>	In the case of other assets, book value of such assets	Rs.
<b>(c)</b>	Aggregate value of total assets of the undertaking or division transferred by way of slump sale [(a) + (b)]	Rs.
<b>(d)</b>	Value of liabilities relating to the undertaking or division as appearing in the books of accounts	Rs.
<b>(e)</b>	Net worth of the undertaking or division [(c) - (d)]	Rs.

\_\_\_\_\_

*Signed*  
**\*\*Accountant**





# Slump Sale

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## Certification

\*I/We \_\_\_\_\_ (name) have examined the accounts and records of \_\_\_\_\_ (name and address of the assessee) during the year ended on \_\_\_\_\_

\*I/We have obtained all the information and explanations which to the best of \*my/our knowledge and belief were necessary for the purposes of ascertaining and computing the net worth of the undertaking or division which has been transferred by way of slump sale.

\*I/We certify that the net worth of the undertaking or division has been computed correctly in accordance with the provisions of section 50B of the Income-tax Act, 1961.

Place \_\_\_\_\_

Date \_\_\_\_\_

Signed \_\_\_\_\_

\*\*Accountant

### Notes :

1. \*Delete whichever is not applicable.
2. \*\*Accountant means an accountant as defined in *Explanation* below sub-section (2) of section 288 of the Income-tax Act.
3. Any change in the value of assets on account of revaluation of assets shall be ignored while indicating amounts in item 6.
4. This form shall be filed along with return of income duly accompanied by copies of the profit and loss account and balance sheet or audited profit and loss account and balance sheet in accordance with the provisions of section 139 of the Income-tax Act.
5. Indicate separately the computation of net worth of each undertaking or division transferred by way of slump sale.



# **Set off and carry forward of losses**

# Carry forward of accumulated loss and unabsorbed depreciation in amalgamation

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- Accumulated losses and unabsorbed depreciation of the amalgamating company can be carried forward by amalgamated company subject to certain conditions provided under section 72A of the IT Act
- Where conditions of section 72A are not satisfied, in certain judicial precedents\*, it has been held that unabsorbed depreciation to be added to block of assets transferred to amalgamated company

*\* CIT vs Hindustan Petroleum Corpn Ltd [1990] 52 Taxman 512; CIT vs Silical Metallurgic Ltd [2010] 324 ITR 29 (Madras HC); EID Parry (India) Ltd vs DCIT [2012] 23 taxmann.com 348 (Madras HC); ACIT vs JSW Steel Ltd (ITA No.156/Bang/2011)*

# Carry forward of accumulated loss and unabsorbed depreciation in amalgamation

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- Section 72A(2) prescribes the condition for set off and carry forward of accumulated losses and unabsorbed depreciation of the amalgamating company
- The relevant extract of the section has been reproduced hereunder:

**“72A. (1) .....**

*(2) Notwithstanding anything contained in sub-section (1), the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless—*

*(a) the amalgamating company—*

*(i) has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years;*

*(ii) has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation;*

*(b) the amalgamated company—*

*(i) holds continuously for a minimum period of five years from the date of amalgamation at least three-fourths of the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;*

# Carry forward of accumulated loss and unabsorbed depreciation in amalgamation

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*(ii) continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation;*

*(iii) fulfils such other conditions as may be prescribed<sup>41</sup> to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.*

.....”

# Carry forward of accumulated loss and unabsorbed depreciation in amalgamation

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The additional conditions to be fulfilled in order to claim the benefit of set off or carried forward of accumulated losses and the unabsorbed depreciation are as under:

*“9C. The conditions referred to in clause (iii) of sub-section (2) of section 72A shall be the following, namely:—*

*(a) the amalgamated company shall achieve the level of production of at 50% of the installed capacity of the said undertaking before the end of 4 years from the date of amalgamation and continue to maintain the said minimum level of production till the end of 5 years from the date of amalgamation :*

***Provided** that the Central Government, on an application made by the amalgamated company, may relax the condition of achieving the level of production or the period during which the same is to be achieved or both in suitable cases.*

*(b) **the amalgamated company shall furnish to the Assessing Officer a certificate in Form No. 62, duly verified by an accountant**, with reference to the books of account and other documents showing particulars of production, along with the return of income for the assessment year relevant to the previous year during which the prescribed level of production is achieved and for subsequent assessment years relevant to the previous years falling within five years from the date of amalgamation.*

*(contd....)*

# Carry forward of accumulated loss and unabsorbed depreciation in amalgamation

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*Explanation.—For the purposes of this rule,—*

*(a) “installed capacity” means the capacity of production existing on the date of amalgamation;  
and*

*(b) “accountant” means the accountant as defined in the Explanation below sub-section (2) of section 288 of the Income-tax Act, 1961.”*

# Carry forward of accumulated loss and unabsorbed depreciation in amalgamation

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An extract of Form No. 62 :

## FORM NO. 62

[See rule 9C]

**Certificate from the principal officer of the amalgamated company and duly verified by an accountant † regarding achievement of the prescribed level of production and continuance of such level of production in subsequent years**

1. Particulars of the amalgamated company :

(a) Name

(b) Address

(c) Permanent account number

(d) Nature and details of business





# Carry forward of accumulated loss and unabsorbed depreciation in amalgamation

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Place \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
(Signature with name of the principal officer of  
the Amalgamated Company)

## Verification

I/We \_\_\_\_\_ [name] have examined the books of account and other documents showing the particulars of production of the company/companies referred to in above items 1 and 2 for the relevant period.

2. I/We have obtained all the information and explanations which are to the best of my/our knowledge and belief necessary for the purposes of ascertaining the actual attainment/continuance of prescribed level of production.

3. \*I/We declare that the above particulars are true and correct to the best of \* my/our knowledge and belief.

Place \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
(Signature with name of the † Accountant)

## Notes :

\*Delete whichever is not applicable.

†“Accountant” means the accountant as defined in the *Explanation* below sub-section (2) of section 288 of the Income-tax Act, 1961.

‡Please attach separate sheet, if necessary.



# AURTUS

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