

Business Restructuring

Tax aspects of M&As in India

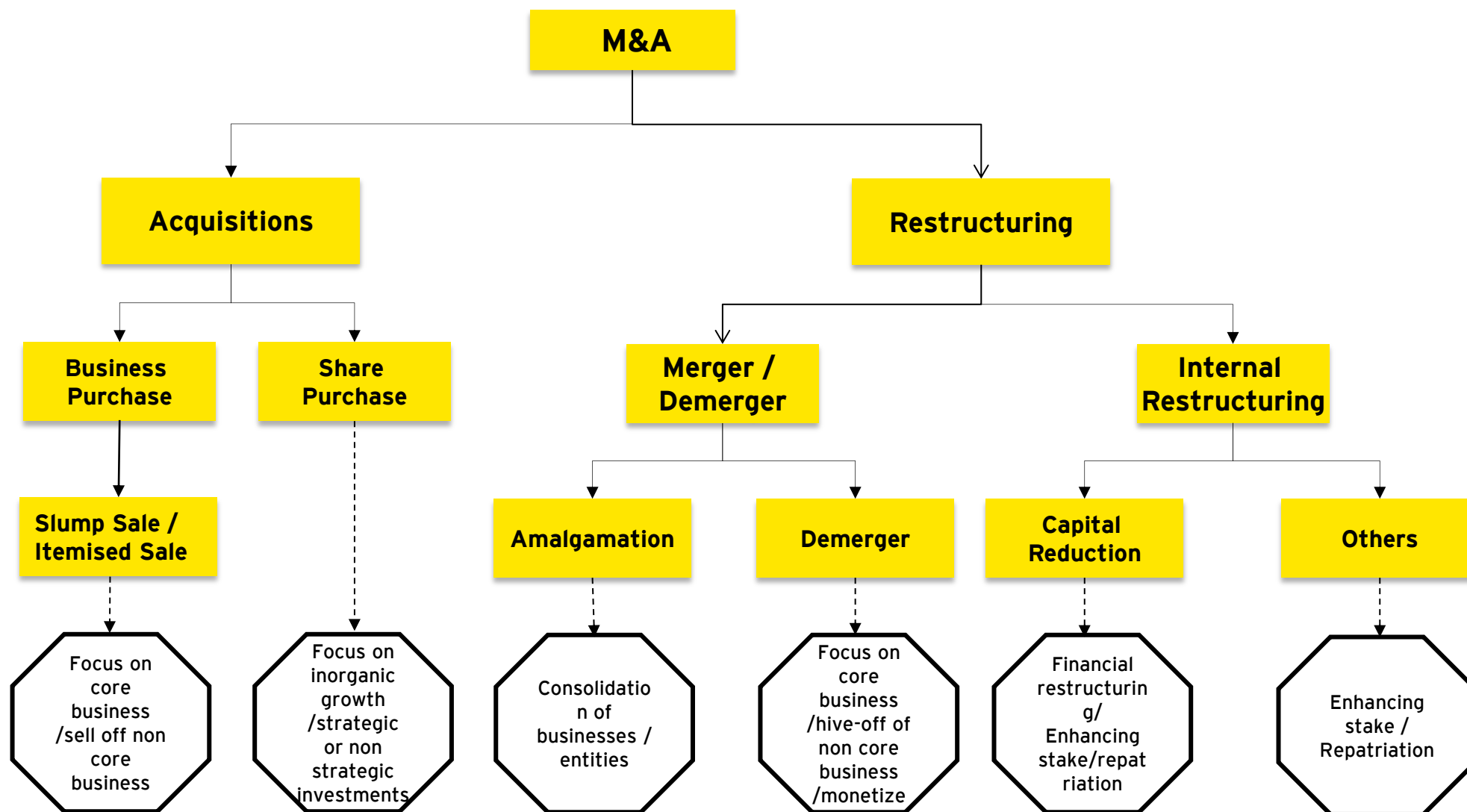
25 June 2016

By Deepa Dalal



Building a better
working world

Modes of M&A in India



Legislative Framework of M&A in India



Snapshot of Indian laws impacting M&A



Mergers



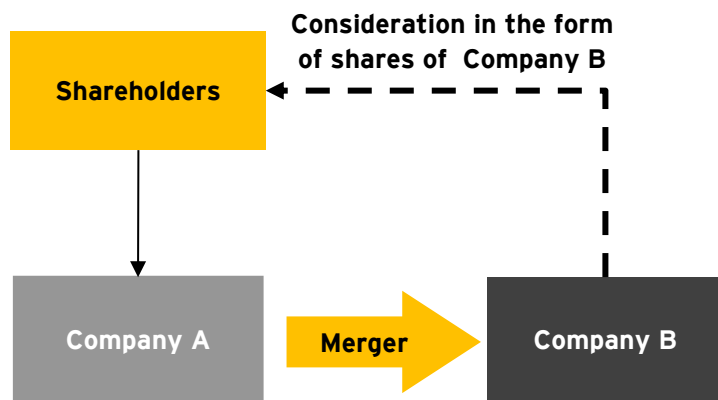
Merger

- ▶ 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, the transferee company issues shares to the shareholders of transferor company

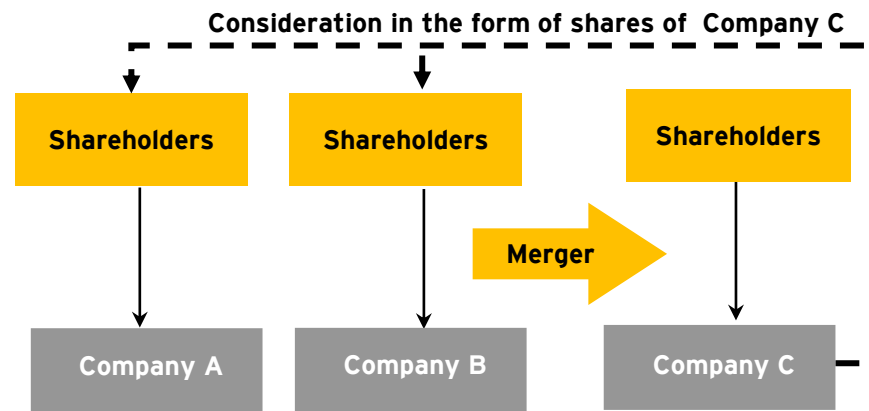
Prominent mergers

- ▶ Reliance Industries - Reliance Petroleum
- ▶ Sun Pharma - Ranbaxy
- ▶ Pfizer - Wyeth
- ▶ Max Life - HDFC Life (latest in news)

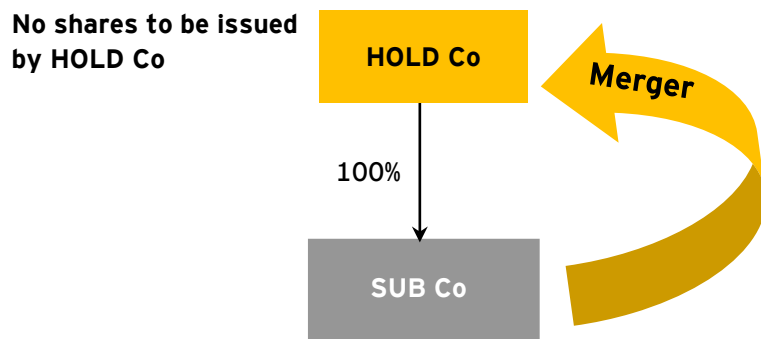
Domestic Merger Situations



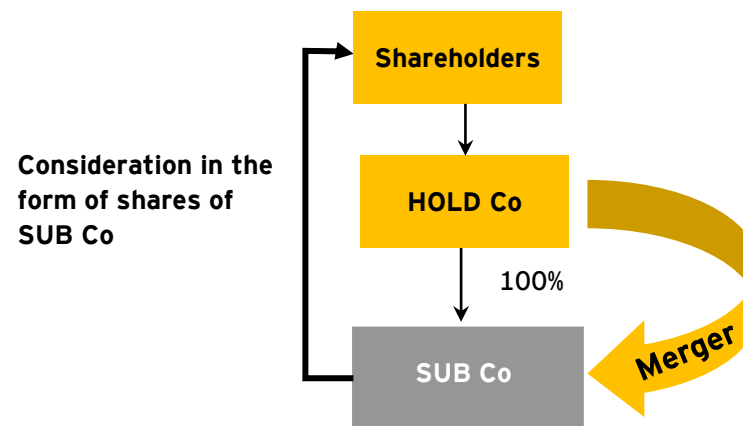
Merger of Company A with Company B



Merger of Companies A & B with Company C

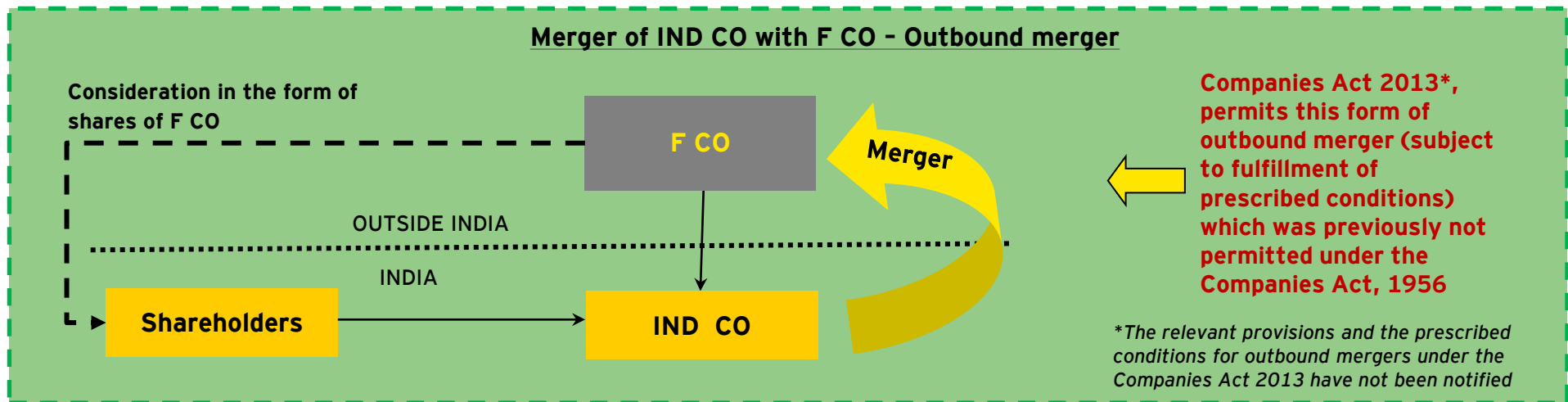
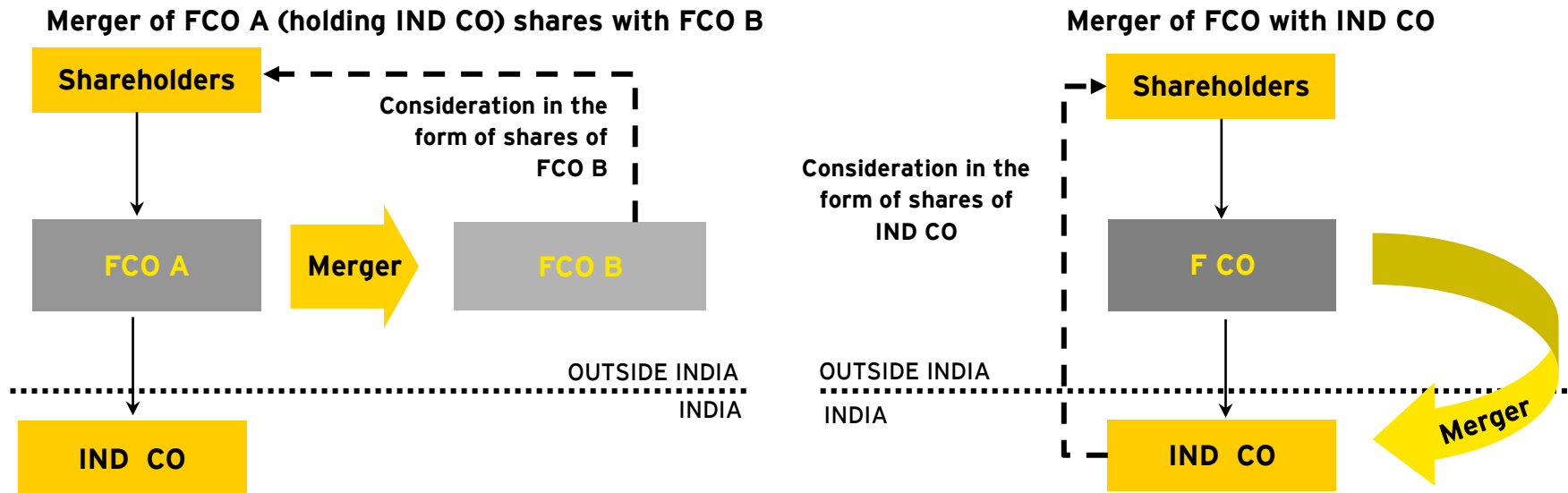


Merger of SUB Co with HOLD Co



Merger of HOLD Co with SUB Co

Cross Border Merger Situations



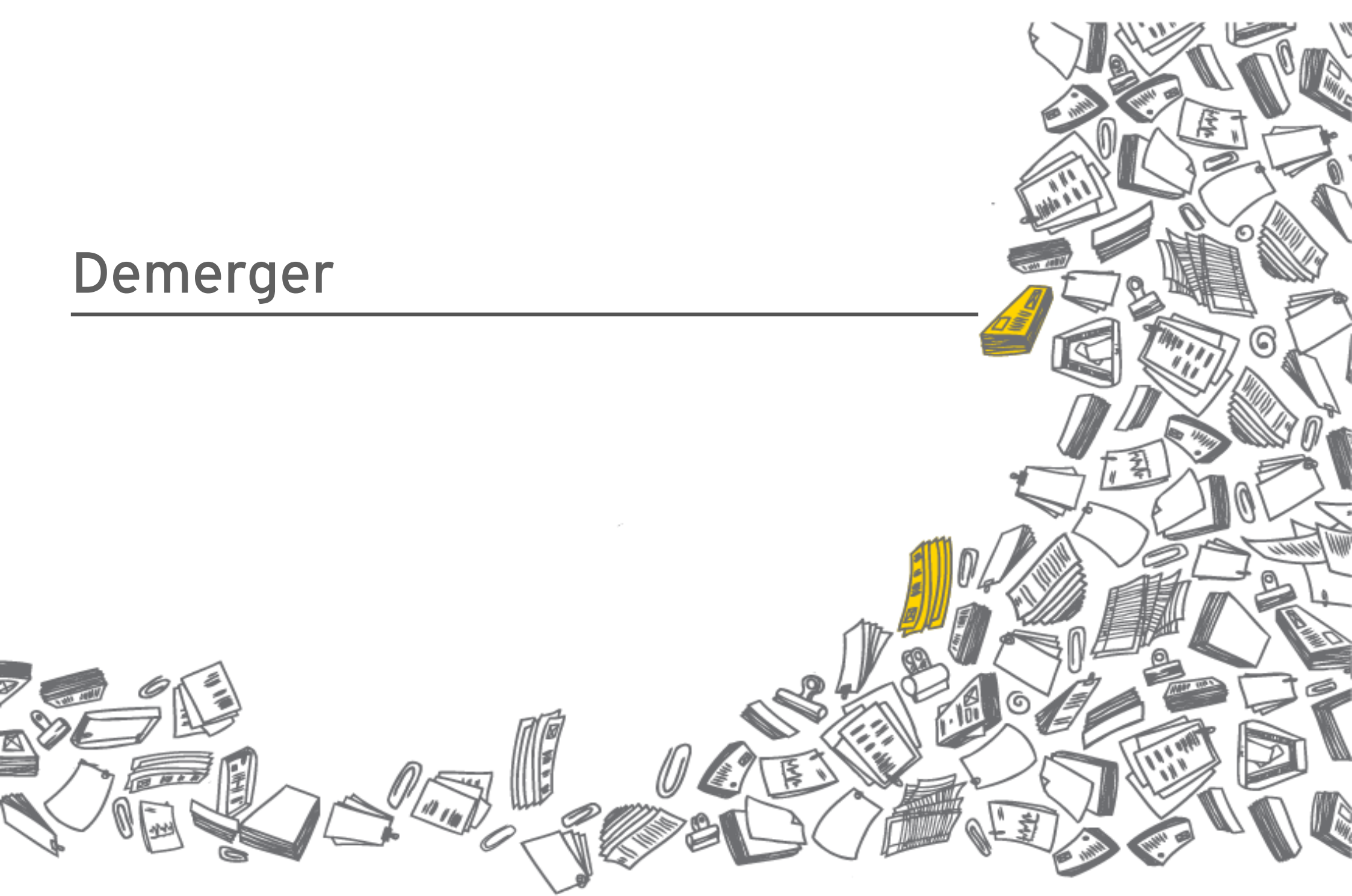
Key tax implications

- ▶ Tax neutral subject to fulfilment of certain conditions
- ▶ Carry forward & set off of losses / unabsorbed depreciation
- ▶ Depreciation allowable on proportionate basis
- ▶ Merger expenses amortisable over 5 years
- ▶ Cost of acquisition (COA)
- ▶ Period of holding
- ▶ COA of capital assets transferred to Transferee Co = Cost incurred by Transferor Co for acquiring such assets

Other tax considerations

- ▶ Appointed date v. Effective Date
- ▶ Whether equity and preference shareholders should be issued equity and preference shares respectively on amalgamation?
- ▶ Tax holiday benefits
- ▶ MAT credit
- ▶ Change in shareholding - lapse of losses
- ▶ Goodwill on merger - Supreme Court in Smifs Securities
- ▶ Applicability of transfer pricing provisions

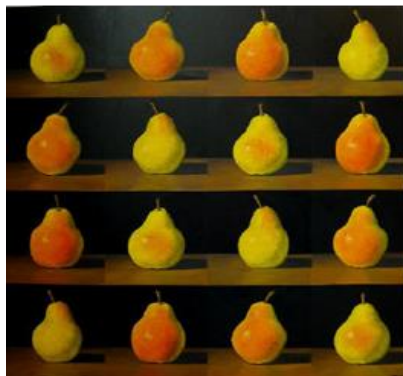
Demerger



What is demerger?



v/s

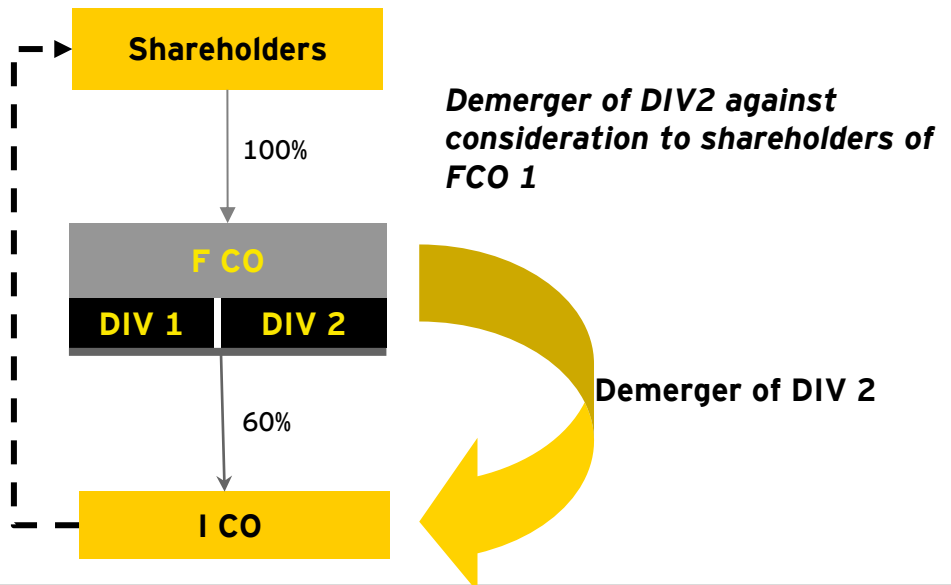
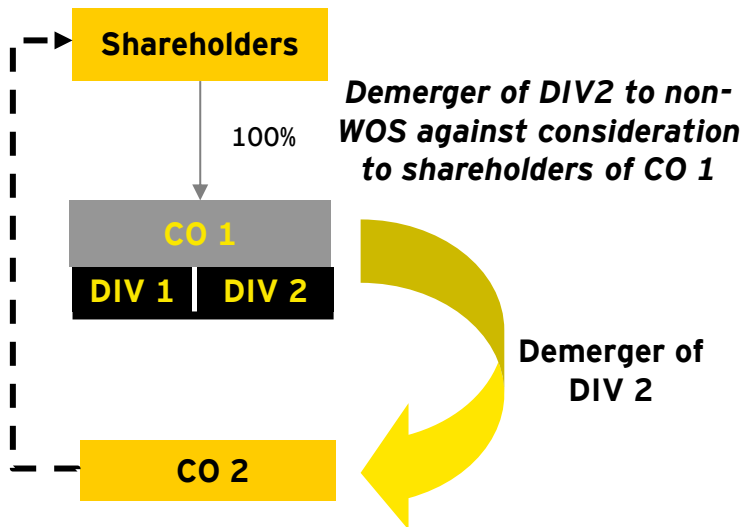
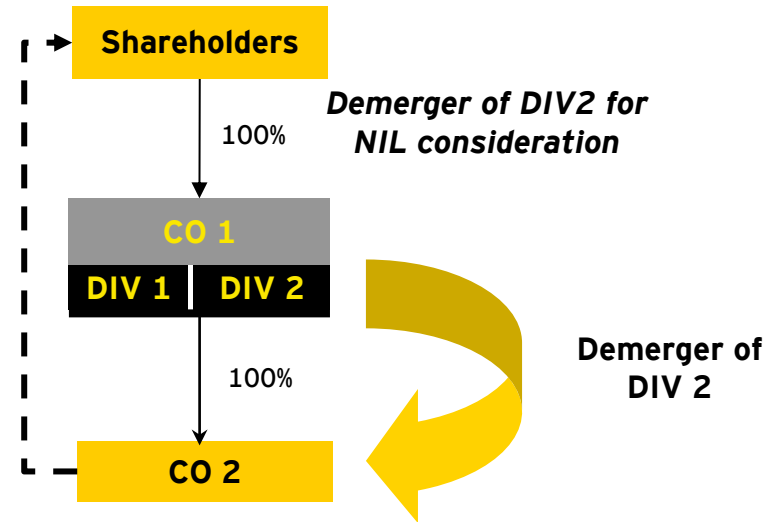
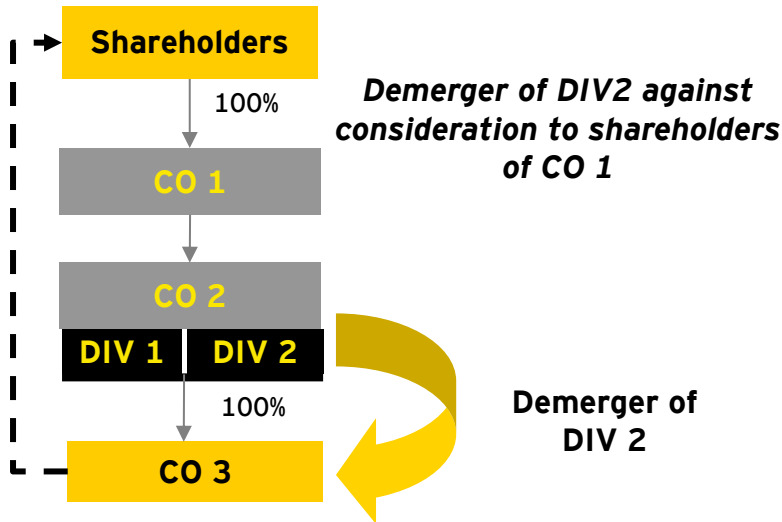


- ▶ Demerger involves transfer of identified business from one company to another
- ▶ In consideration, company which acquires business, issues shares to shareholders of selling company
- ▶ Demerger is a Court approved process similar to merger

Prominent demergers

- ▶ Wipro
- ▶ Bajaj
- ▶ ICICI

Demerger situations



Key tax implications

- ▶ Tax neutral subject to fulfilment of conditions as per the Income Tax Act
- ▶ Carry forward & set off of losses/ unabsorbed depreciation relatable to demerged undertaking / division
- ▶ Depreciation allowable on proportionate basis
- ▶ Demerger expenses amortisable
- ▶ Cost of acquisition - to be split
- ▶ Period of holding

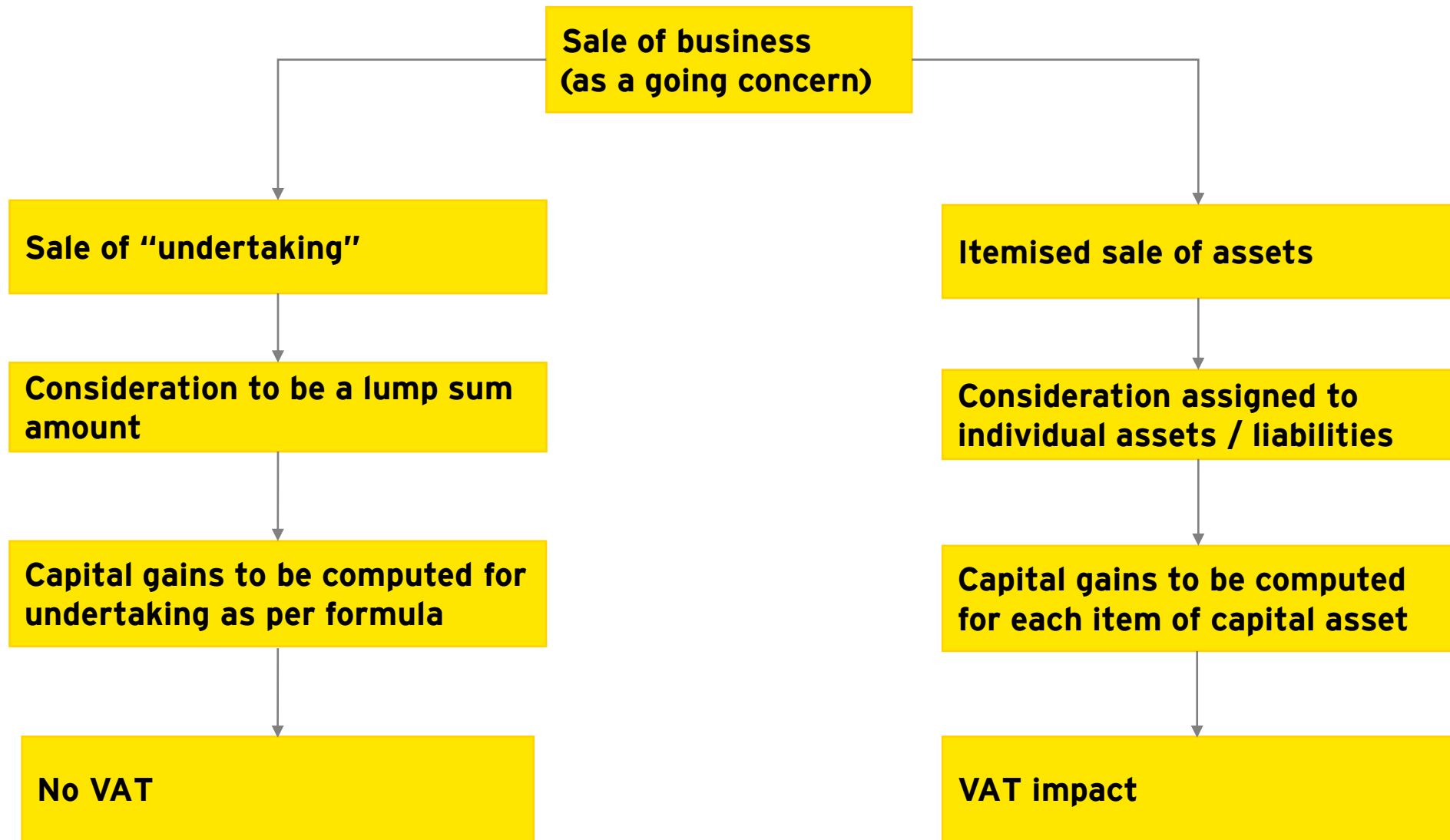
Other tax considerations

- ▶ What constitutes an 'undertaking'?
- ▶ Continuity of tax holiday benefits of the Demerged Co?
- ▶ Whether MAT credit allowed to transferred to the Resulting Co?
- ▶ Issue of cash on demerger?
- ▶ Applicability of transfer pricing provisions?

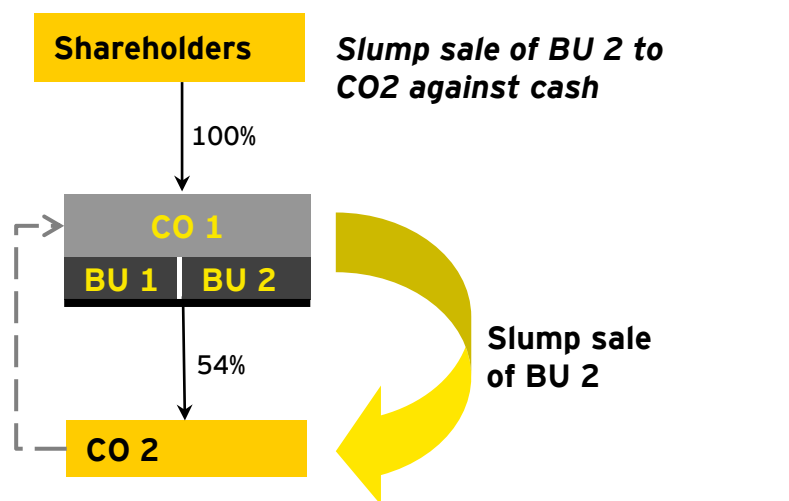
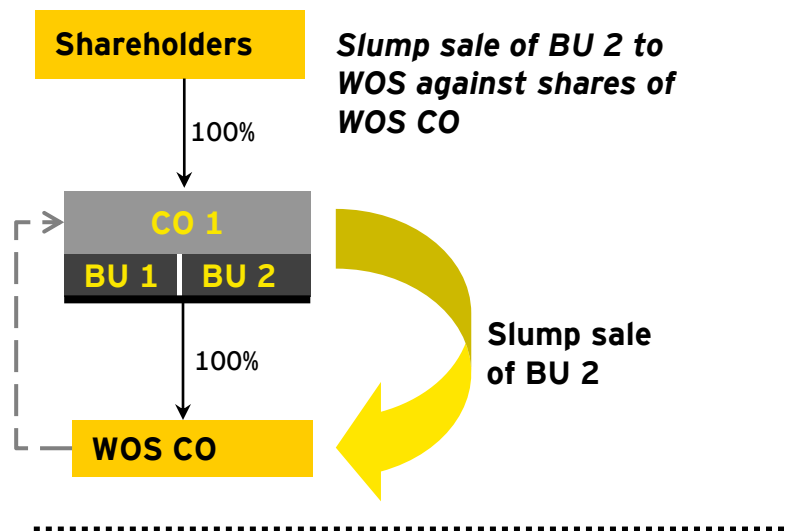
Business acquisitions



Slump sale v. Itemised sale



Slump Sale

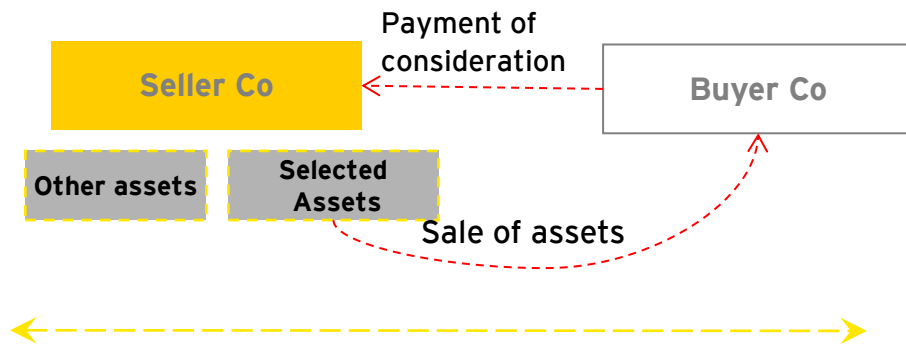


- ▶ Transfer of identified business from one company to another for a lump sum consideration
- ▶ In consideration, the buyer company to pay cash to the seller company
- ▶ Values not to be assigned to individual assets / liabilities during sale
- ▶ No Court approval required
- ▶ Undertaking defined to include -
 - ▶ A part of an undertaking
 - ▶ Unit or division of an undertaking
 - ▶ Business activity taken as a whole

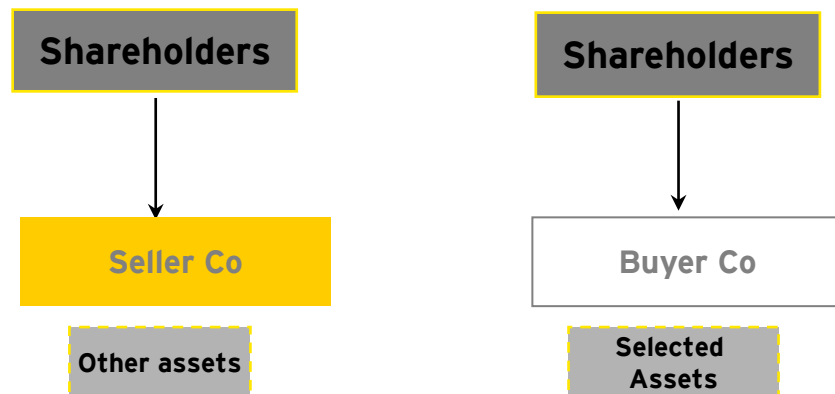
Key tax considerations

- ▶ Special provision to compute capital gains on slump sale
- ▶ Tax net worth certificate to compute capital gains impact
- ▶ Will the transaction be regarded as a slump sale if certain assets or liabilities are not taken over by the purchaser?
- ▶ Can depreciation be claimed on the amount paid over and above the value of business which is termed as 'Goodwill'?
- ▶ Tax deductions/exemptions (section 80-IA,80-IB,10AA) in the case of slump sale, whether will be transferred to the new company?
- ▶ Whether TP provisions would apply to a slump sale transaction?

Itemised - sale of Business



Post itemized sale scenario



- ▶ Involves transfer of business wherein consideration is identified against each asset
- ▶ Not necessary what is transferred constitutes a business undertaking
- ▶ In consideration, the Buyer Co pays cash to the Seller Co
- ▶ No requirement for the Buyer Co to continue to undertake the business
- ▶ No Court approval required

Cherry Picking of assets and allocation of value to individual assets based on their inherent commercial advantage

Key tax considerations

- ▶ **Transaction non-tax neutral**
 - ▶ **Gains arising on sale of capital assets taxed as Long/ short term capital gains depending on period of holding**
- ▶ **Provisions of Section 50 shall apply in the case of sale of depreciable assets that form a part of a block of assets**
- ▶ **Provisions of Section 50C apply in case of sale of capital asset being land / building**
 - ▶ **Stamp duty value to be considered as full value of consideration for computation of capital gains**

Questions?

