

**Deloitte.**

**Tax Due Diligence**  
**VCC Circle - Training workshop**

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# Tax Due Diligence

## When & Where ??? – Now & Here !!!

- Framework and Objectives
- Approach
- Typical issues and solutions
- Impact on transactions
- Case Study
- Summing Up
- Questions

# Due Diligence – Framework and Objectives

# Tax Due Diligence Framework and Objectives

Although due diligence focuses on negative information, the aim is not to raise obstacles to transactions, but rather to facilitate transactions by identifying problems and risks and by devising solutions to problems or devices to reduce or manage the risks involved in corporate acquisitions.

Due Diligence plays an important role in identifying, quantifying and reducing the risks of an acquisition.

# Tax due diligence - 5 Golden questions

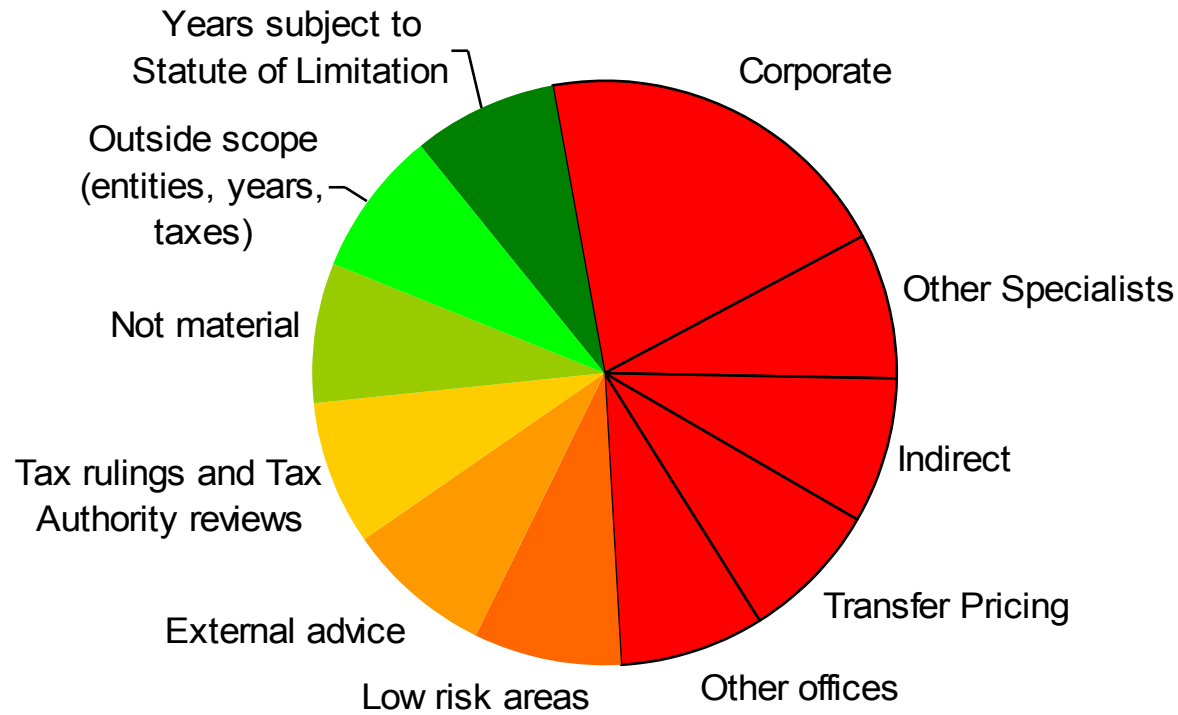
## Purpose of a buyer tax due diligence

- Take historical information and look forward
- “Start with the end in mind”
- Keep in mind key bidder questions
  1. Should I proceed with the deal? (no deal breakers)
  2. How much should I pay? (what are material tax impacts on tax balances and/or acquisition model/value?)
  3. Is there a risk I will need to pay more? If so how much and when?
  4. How can I best protect myself? (impact on negotiation and documentation)
  5. How can I improve the position? (what tax planning opportunities are there?)

# Tax due diligence – The DD review

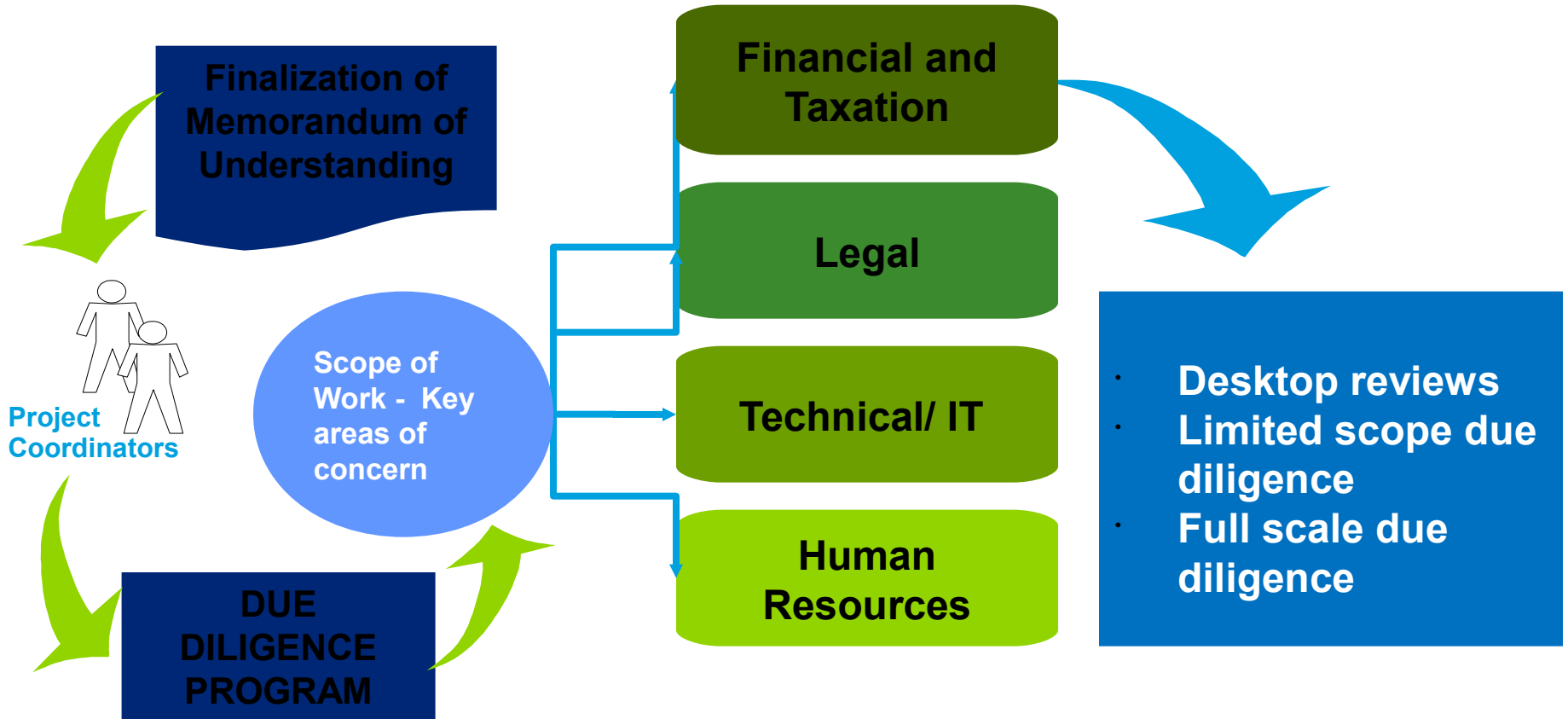
Focus on corporate risks

## Controlling Tax Due Dilligence Risk



# Approach

# Scope of work





# Approach

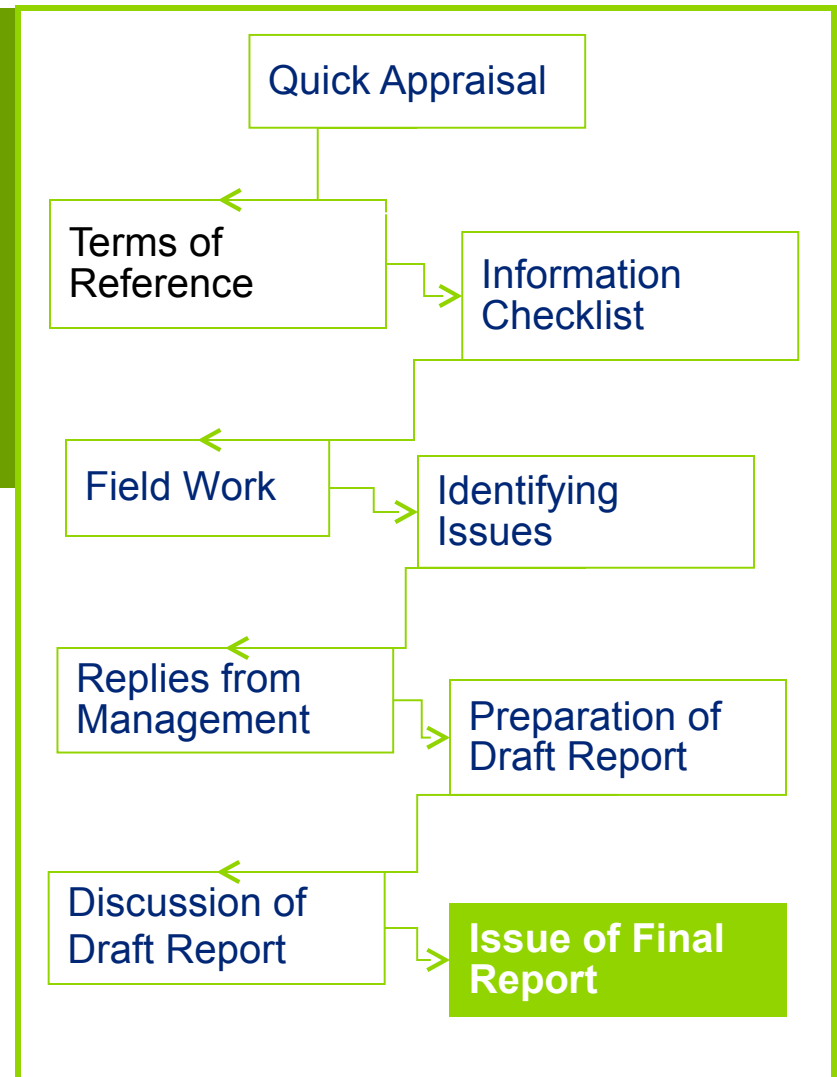
ENABLERS

## Approach per acquirer's need

- Quality service standards
- A multi-disciplinary approach – as per task requirement
- A clear plan of action
- Deliverable timelines

*“The steps involve an interface with the management and other advisors to ensure that all aspect of the project are duly considered and reviewed. This is a pre-requisite for a well informed decision.”*

PROCESS



# Tax due diligence – Key areas

# Areas to be covered

## Review of tax documents

- Income tax returns
- Computations of income
- Tax audit reports
- Deduction related documents

## Tax position

### No litigation detected

Validate tax position adopted by company

- Expenses booked
- Withholding tax positions
- Deduction claimed
- Restructuring exercise undertaken, if any.

### Litigation detected

Thorough review of the tax positions:

- Validate tax position adopted by company
- Review tax position adopted by tax authorities
- Review of orders of assessment/penalty passed by tax authorities

Assessment  
of degree of  
risk

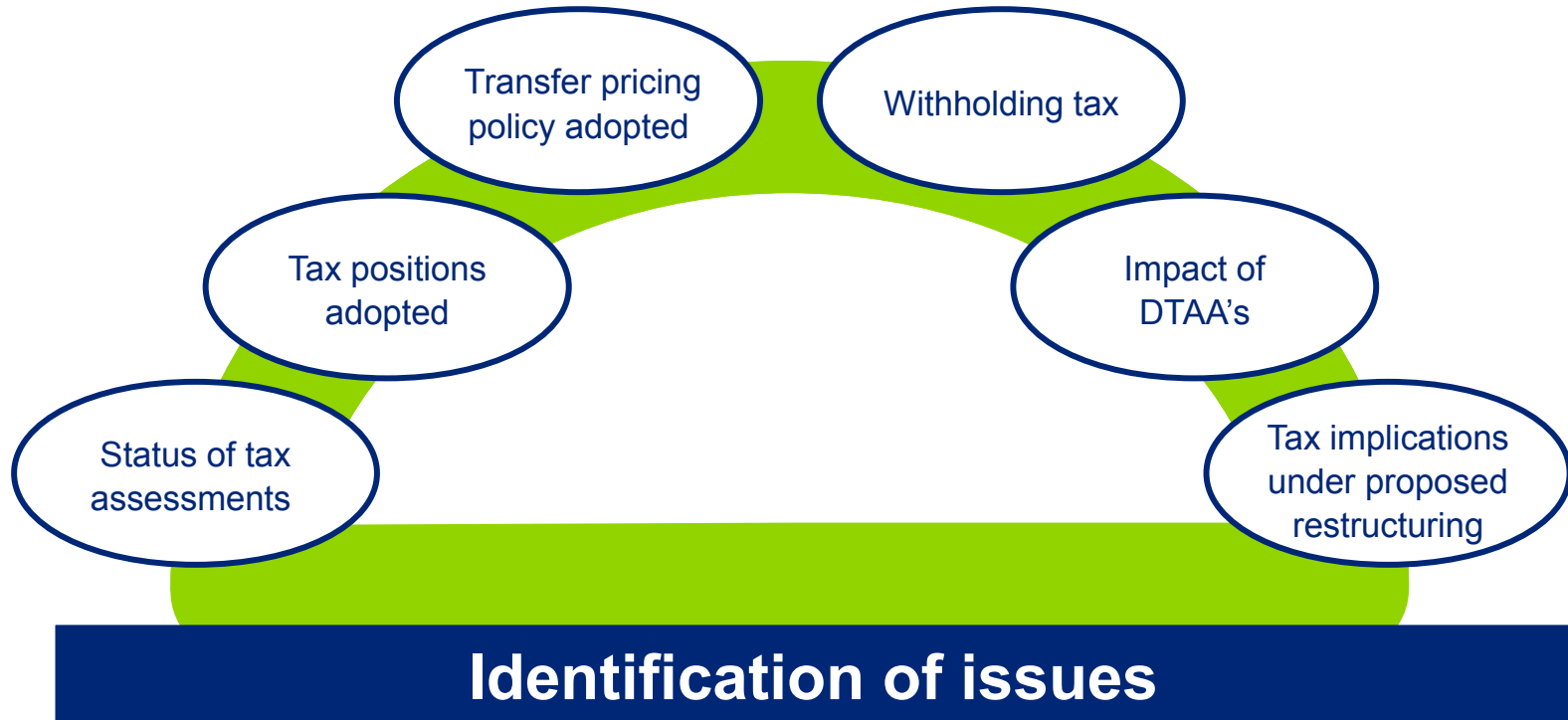
# Typical issues and solutions

# Typical issues

# Typical issues

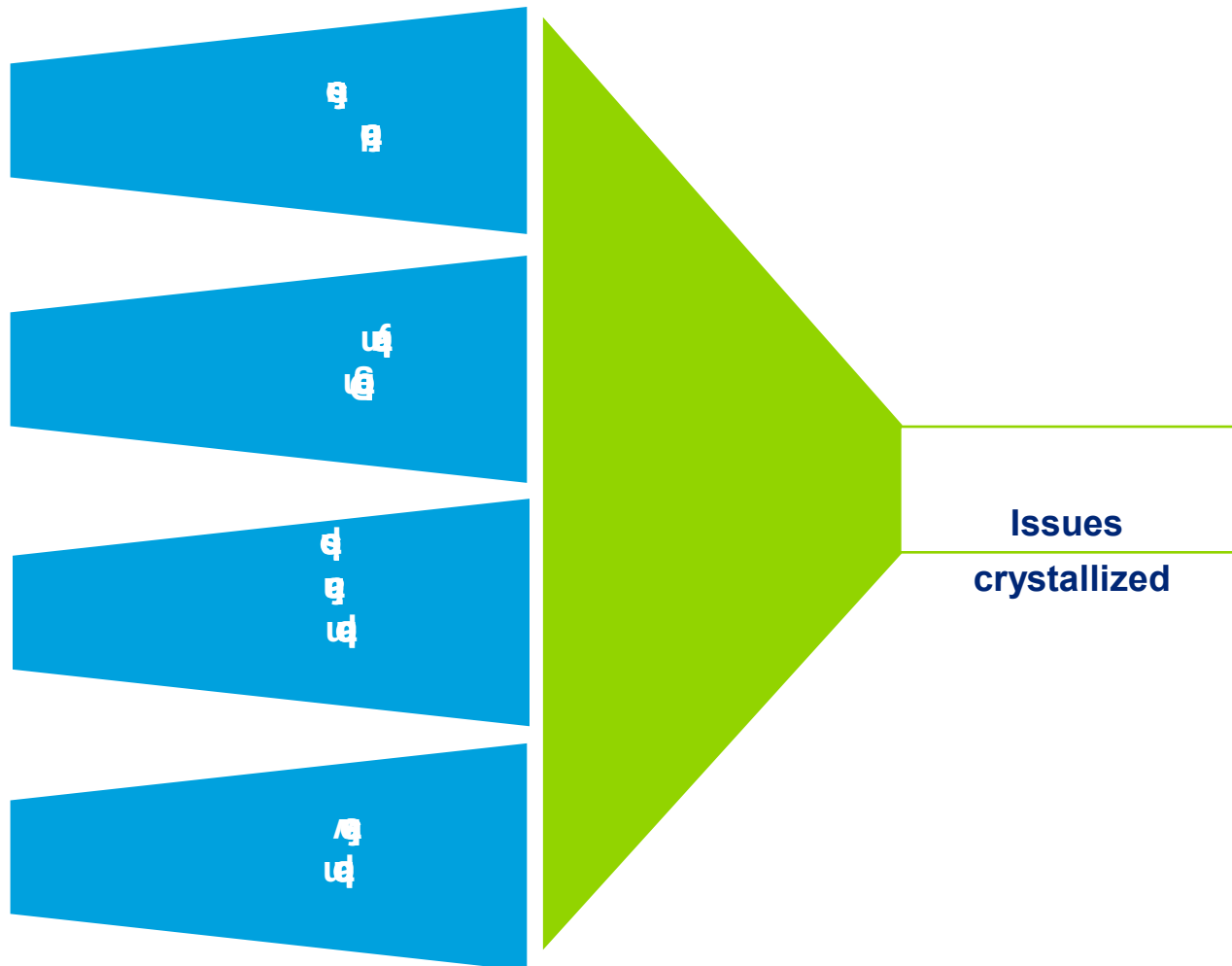
# Issues - crystallization & quantification

## Crystallizing issues



# Issues - crystallization & quantification

## Crystallizing issues – contd.





# Issues - crystallization & quantification

## Quantifying issues

It begins with the analysis of the data pertaining to relevant assessment years and taking into account the appeal effects.



It is the discretionary power of tax authorities to impose the penalties

- In case it is apparent that the tax position adopted by the tax authorities is correct- penalties that could be imposed may range from 100% - 300%.
- In case a different view can be taken under different forums – penalties may not be imposed.
- In case it is apparent that the tax position adopted by the tax authorities is not correct - no penalties would be imposed

# Indemnities



**Insurance policies against possible tax liability....**

# Impact on transactions

# Due diligence findings

Discussions with other advisors on findings

Resolutions of issues identified

# Impact on future tax liabilities

- Assessment of various modes of tax neutral deal structuring
  - Demerger, amalgamation, slump sale, itemized sale, etc.
  - Assessment of tax consequences that could arise out of restated financials post the deal
- Identifying tax saving opportunities
  - Tax holidays availed / which could be availed
  - Continuity of existing tax holiday post the deal
- Generally, a litigation prone area (needs to be examined carefully)
  - Tax efficient capital infusion / debt push down - relevant exchange control guidelines to be kept in perspective
  - Review of transaction document

# Case study

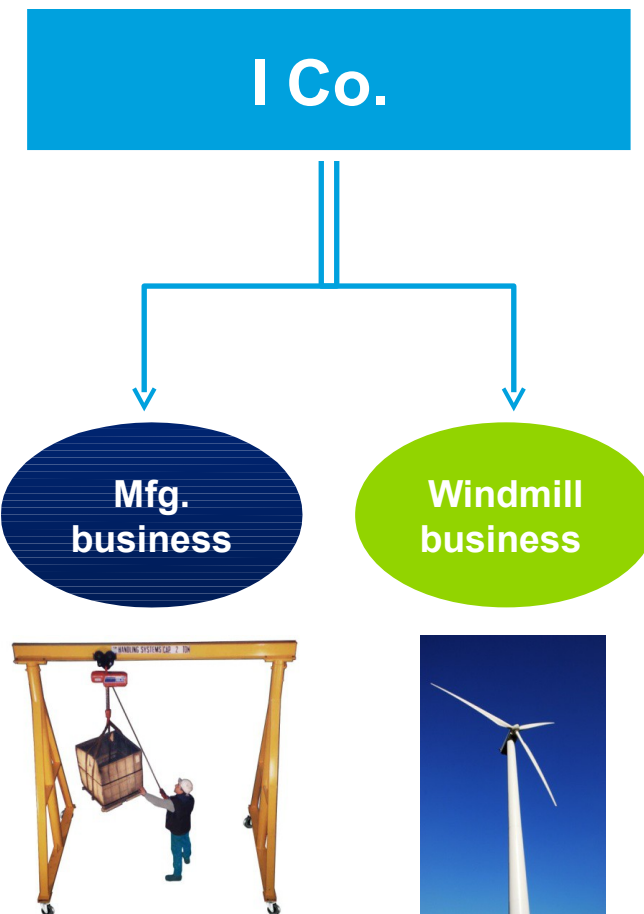
# Case study

## Facts

- Indian company (I Co) manufactures equipments
- I Co. has started with windmill business which is eligible for tax holiday. However, currently no benefit has been claimed on account of loss being incurred by the said units.

## Issues

- Exemption provisions
- Levy of interest / penalty
- Minimum alternate tax
- Disallowance of expenditure incurred in relation to exempt income
- Treatment of tax losses
- Non compliance of withholding tax obligations (especially payments to non-residents)
- Depreciation
- Taxability of capital gains
- Re-assessment provisions
- Search , seizure and block assessment provisions



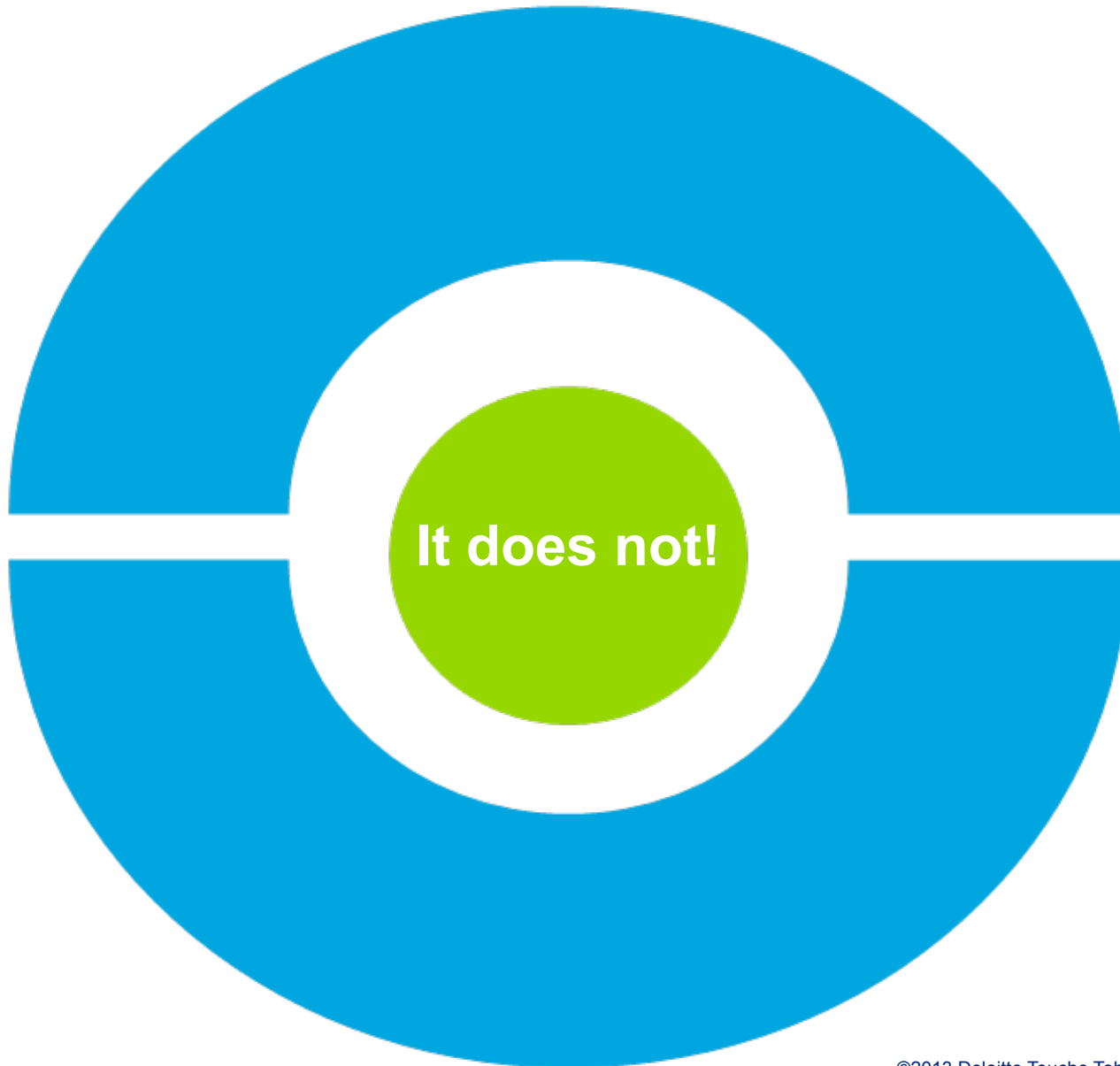
# Summing up



# Tax Due Diligence – Why do it?

# Tax Due Diligence - Where do we start?

# Tax Due Diligence - When does it finish?



# Tax Due Diligence - Why we bother ?

