

**IMC**  
**Chamber of**  
**Commerce and**  
**Industry**

***Seminar on Mergers  
and Acquisitions***

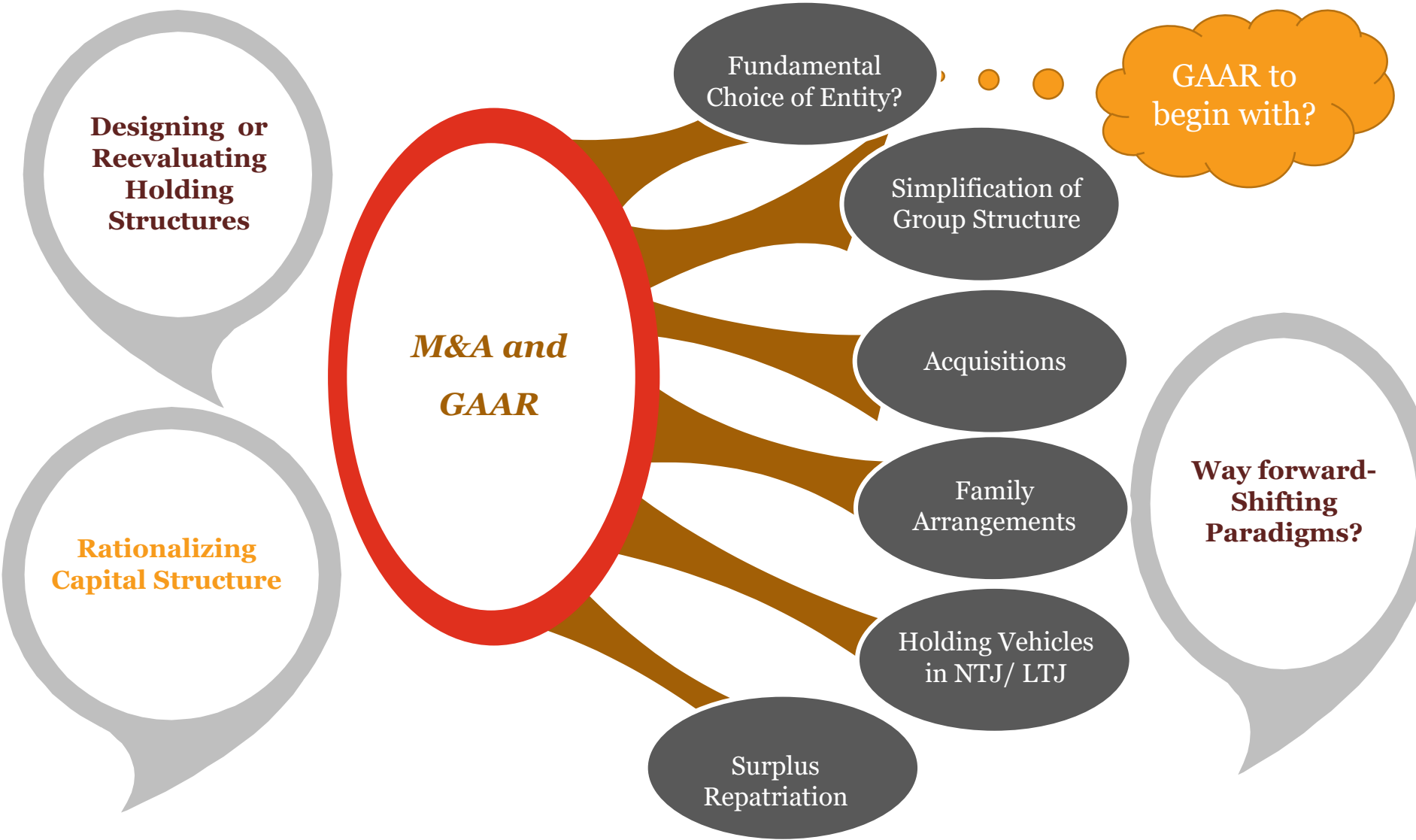
***3<sup>rd</sup> December 2018***

**- Ketan Dalal**

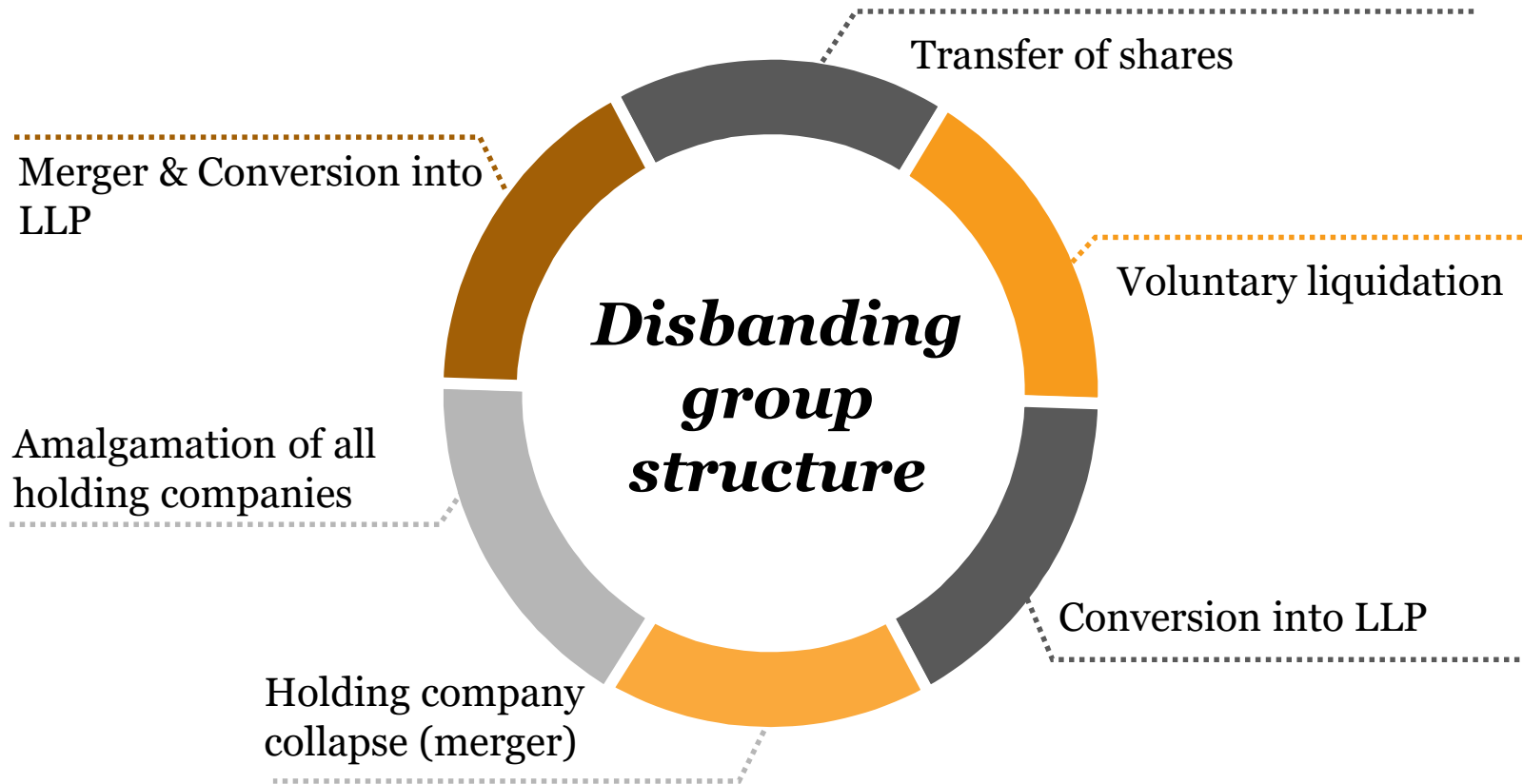
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# Key Impact Areas



# *Simplification of group structure*



Whether commercial and regulatory considerations outweigh the incidental tax benefits (DDT/ MAT Savings?)

## *External M&A – Various facets*

Amortization  
under IndAS –  
Goodwill vs  
Intangibles

Continuity of  
tax losses –  
Merger vs  
Demerger?

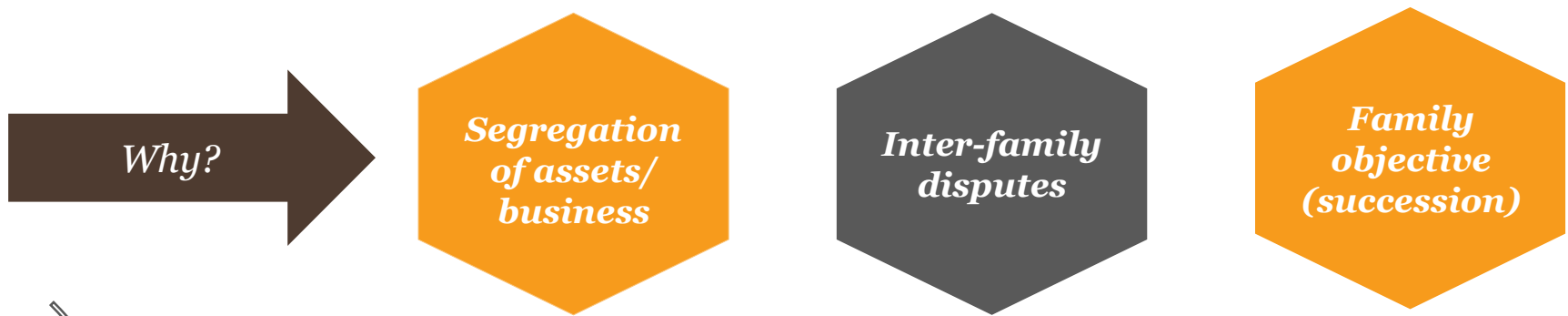
Continuity of  
tax losses –  
Registered  
owner vs  
Beneficial  
owner

Indirect  
Transfer vis-a-  
vis Treaty  
shopping

Acquisition  
debt  
pushdown vis-  
à-vis profit  
repatriation

Whether incidental tax benefits can outweigh the commercial considerations ?

# *GAAR and family arrangements*



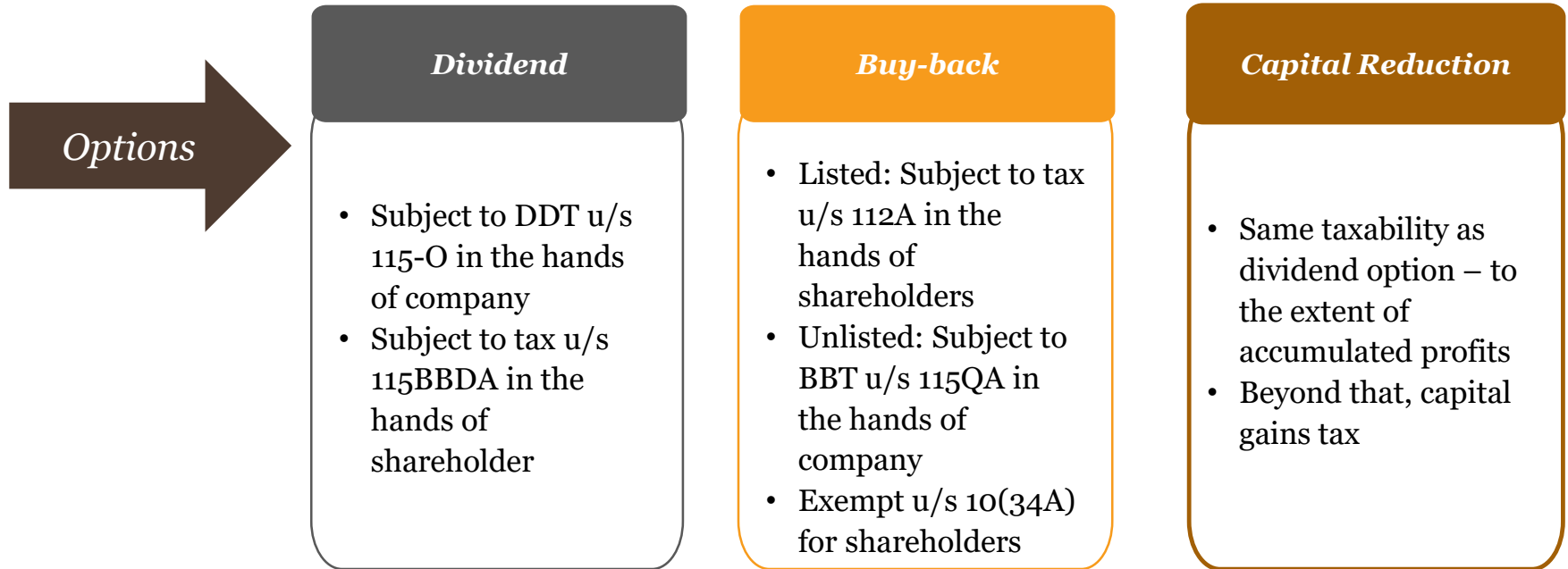
Transfer to non relative – Tax exposure under deemed income provision (section 56(2)(x) of the Act)

Judicial precedents under the erstwhile gift tax law - transfer under a family arrangement should not be regarded as transfer

Transfer by a company under family arrangement, will it be considered as transfer?

Main purpose of family arrangement is to secure peace and harmony within the family, GAAR inapplicable?

# GAAR and surplus repatriation



Can GAAR be invoked questioning the decision of surplus repatriation ?



Can GAAR be invoked on choice of dividend vs buy-back vs capital reduction ?

Artificial devices/ schemes to circumvent payment of DDT, BBT or capital gains tax – GAAR exposure

# Summing Up

## Judicial GAAR

- Tax avoidance vs tax mitigation vs tax planning

## Commercial Rationale

- Strong commercial rationale
- Primary purpose test - non-tax benefit to be substantiated

## GAAR vs SAAR

- Applicability of provisions of GAAR and SAAR at the same time

## Implementation Challenges

- Invocation of GAAR should not be a bipolar choice
- Should not be based on suspicions, conjectures or surmises
- Should not be left to the vagaries of the AO

*Thank You*