

Impact of Double Taxation on Mergers & Acquisitions



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Agenda

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Rigors of Section
56(2)(x)

2

Income-tax Act –
A maze of double
taxation

3

Unsettling the
settled
principles

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Unaddressed
dilemmas in
accounting

Rigors of Section 56(2)(x)



Inconvenience in genuine cases of corporate restructuring?



Applicability on receipt of shares by company in cases of buyback / capital reduction?



Investor entry / Promoter exit in distressed companies at a price less than the FMV hampering the commercial contours?



Applicability on receipt of shares on fresh issue?



Income-tax Act: A maze of double taxation

Interplay between sections leading to double taxation

Sections 43CA / 50C and 56(2)(x): Property

- In cases where property is transferred at less than stamp duty valuation, the **difference between stamp duty value and sale price is taxed twice**, in the hands of seller and buyer

Sections 50CA and 56(2)(x): Shares

- In cases where shares are transferred at less than FMV, the **difference between FMV and sale price is taxed twice**, in the hands of seller and buyer

Ind-AS vis-à-vis Income-tax

- In revenue recognition of real estate projects, situations arise where tax profit and book profit is to be computed in a manner which leads to chargeability of tax and MAT at separate times
- Similar issue arises in Hybrid Annuity Infra projects

STT and LTCG tax co-exist

- As STT was introduced in lieu of LTCG tax which was abolished in 2004, the re-introduction of LTCG tax in Finance Act, 2018 leads to a situation where both co-exist

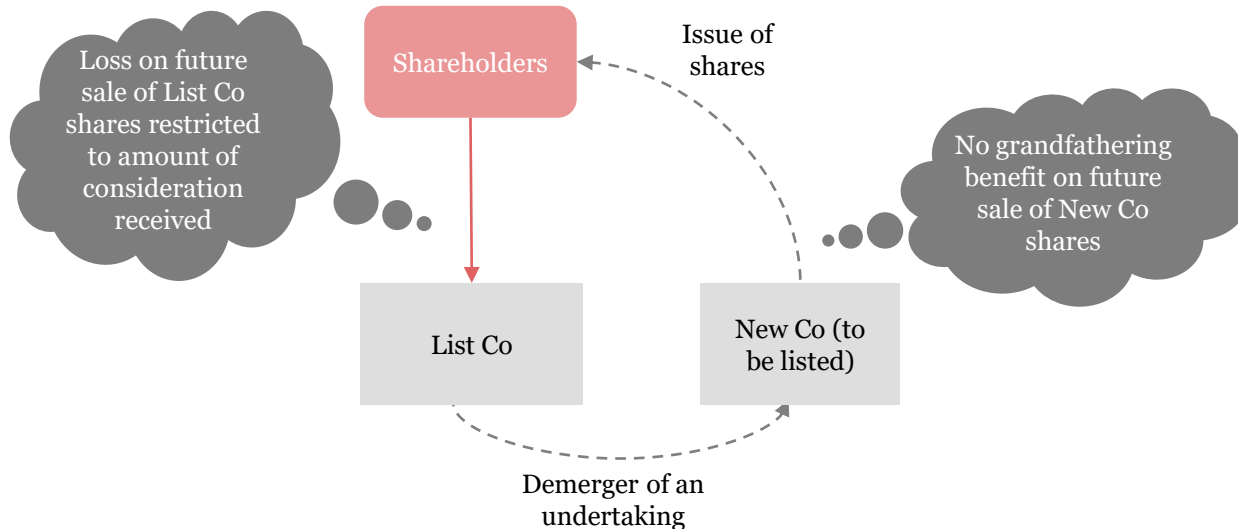


Unsettling the Settled Principles

Finance Act 2018 Amendment

LTCG arising from sale of listed equity shares to be taxed @ 10%. Further, for shares acquired before 1st February, 2018, the amendment also looks to grandfather gains accrued upto 31st January, 2018 by providing the FMV of listed equity shares as on 31st January, 2018 as its cost of acquisition

1 Scenario – Demerger from List Co



2 Similar issue also arises in other corporate actions mentioned below:

- Merger of Listed Company into another Company;
- Issue of bonus shares post 31st January, 2018 in lieu of shares acquired prior to 31st January, 2018.

Had there been no demerger, the entire FMV of listed equity shares as on 31st January, 2018 would have been eligible for grandfathering. As tax neutrality is a key principle for mergers & demergers, it is necessary to address this matter and bring them within grandfathering network

1

Ambiguity around applicability of Section 56(2)(viib) on issue of shares in mergers / demergers as it challenges the basic principle of tax-neutrality in mergers / demergers

2

LLP Act has regarded conversion from Company to LLP to be a statutory vesting, whereas Income-tax Act imposes conditions for exempt transfer – What if conditions are not complied ?

3

Hardships faced under Sec. 56(2)(viib) due to unstable and fluctuating valuations of start-ups



Accounting v Income-tax – Unaddressed dilemmas



In third party demergers, fair value of assets transferred to be accounted as distribution of dividend to shareholders



Ind-AS provides for recording demergers at fair value in the books of resulting company, whereas book value accounting is one of the key condition for tax-neutral demergers



Ind-AS mandates recognizing notional interest income on the debt component of hybrid as well as quasi-equity instruments



Computation of fair value of shares as per Rule 11UA will be an issue as Ind-AS mandates adjustments to be made in Other Equity

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