



Taxation & Structuring of LLP

WIRC – CPE Virtual Study Circle
Meeting

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13 March 2021

Glossary

Terms	Abbreviations
FMV	Fair Market Value
FY	Financial Year
GAAR	General anti-avoidance Rules
INR	Indian Rupee
ITA	Income Tax Act, 1961
CA	Companies Act
RD	Regional Director
RoC	Registrar of Companies
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate Tribunal
LLP	Limited Liability Partnership
u/s.	Under section
mn	Million

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Key Insights on LLP

Features of LLP

Governing	Flexibility	Partners	Risk reward	Key Benefit
<p>Law Limited Liability Partnership Act, 2008</p> <p>Charter document LLP Deed</p>	<p>Perpetual succession</p> <p>Cost effective</p> <p>Separate Legal entity</p> <p>Lesser compliance vis-à-vis a Company</p>	<p>Minimum: 2 Maximum: No limit</p> <p>Mandatorily 2 designated partners (out of which one being resident in India)</p>	<p>Partner in terms with LLP deed are entitled for returns in form of remuneration, profit share and interest on capital contribution</p>	<p>An LLP as a legal entity capable of owning its funds and other properties</p> <p>No exposure to personal assets of the partners except in case of fraud</p> <p>Partners are not agent of other partner</p> <p>As a juristic legal person, an LLP can sue in its own name and be sued by others</p>

Why LLP ?

- LLP can be formed either by:
 - ✓ Registering new LLP; or
 - ✓ Converting an existing partnership firm or an existing private or unlisted company
- Who can be a Partner in LLP?
 - ✓ Individual
 - ✓ Body Corporate
 - ✓ Foreign Company
 - ✓ LLP (including LLP incorporated outside India)
- Provisions of deemed dividend and presumptive taxation under the ITA are not applicable to an LLP
- Indian Accounting Standards ('Ind AS') does not apply to LLPs. (However, this can be treated as an advantage available to LLP structure only if the operations of the LLP are significantly large)
- RBI had also approved for FDI in LLPs in 2011 and further, in 2017, liberalized FDI regulations relating to LLP
- Recently, RBI has liberalized ECB norms which now allows LLPs to borrow funds through ECB

Certain Limitations

- ✓ IPO and listing on stock exchange
- ✓ Difficulty in providing for Drag Along Rights, Tag Along Rights, etc.
- ✓ ESOPs cannot be implemented
- ✓ Partner's interest in the LLP though transferable is not tradable like shares

Taxation of LLP under ITA

Taxation of LLP

Status of LLP

Definition

As per section 2:

- Definition of a “**partner**” shall include a partner of a LLP
- Definition of a “**firm**” shall include a LLP
- Definition of “**partnership**” shall include a LLP

Residential Status

As per section 6(2):

- A firm is said to be resident in India in any previous year in every case **except where during that year the control and management of its affairs is situated wholly outside India**
- The term ‘control and management’ is not defined under ITA. Basis various judicial precedents, the term ‘control and management’ contemplates controlling and directing power i.e., “**head and brain**” of the entity / organization

The determination of what constitutes control and management, and who exercises it and from where, is dependent on various factors. The day-to-day control and management functions may be relevant, but the most relevant factor is the place where the controlling and directing power for such functions is situated

Taxation of LLP

Remuneration to partners

In the hands of LLP

Payments (as mentioned below) shall **not be deducted** in computing income chargeable under the head 'Profits and gains of business or profession' if:

- Salary, bonus, commission or remuneration is paid to any partner who is **not a working partner**
- Remuneration paid to a working partner which is **not in accordance with the partnership deed**
- Any payment of remuneration to working partner which relates to any **period falling prior to the date of the deed**
- Remuneration to a working partner **exceeding** the aggregate amount computed as under:

Book Profit	Quantum of deduction
on the first Rs. 3,00,000 or in case of a loss	INR 150k or @ 90% of the book-profit, whichever is more
on the balance	@ 60%

In the hands of partners

Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm shall be taxable under the head '**Profits and gains of business or profession**'

Note: The aforesaid shall be adjusted to the extent not deductible in the hands of LLP

Taxation of LLP

Return for partners

Interest on Capital

In the hands of LLP

Payment of interest (as mentioned below) shall **not be deducted** in computing income chargeable under the head 'Profits and gains of business or profession' if:

- not in accordance with the deed;
- relates to any period falling prior to the date of the deed;
- interest exceeds the amount calculated **@12% p.a.** simple interest.

In the hands of partners

Interest, due to, or received by, a partner of a firm shall be taxable under the head '**Profits and gains of business or profession**'.

Note: The aforesaid shall be adjusted to the extent not deductible in the hands of LLP

Profit share

In the hands of LLP

- Taxed at applicable rates

In the hands of partners

- Share of partner in total income of the firm is exempt
- Taxability in home country of partner to be analyzed in case of foreign partner

Taxation of LLP

Capital Gains

On transfer of capital asset to LLP

- Profits or gains arising from the transfer of a capital asset by a person to an LLP in which he is or becomes a partner or member, shall be **chargeable to tax**:
 - as his income of the previous year in which such transfer takes place and;
 - for the purpose of section 48, the full value of consideration received or accruing as a result of the transfer of the capital asset shall be deemed to be the amount recorded in the books of account of the firm.

Taxation of LLP

Capital contribution

Modes and Valuation

Modes of capital contribution:

- ✓ Cash / in kind
- ✓ Tangible / intangible property
- ✓ Movable / Immovable property
- ✓ Promissory notes / contracts for services performed or to be performed

Contribution in kind to be valued by CA, Cost Accountant or approved valuer

Tax Implications

In the hands of partner

- Profit / loss on contribution of 'capital asset' by partner in LLP – Chargeable as 'Capital Gains' (discussed in earlier slide)
- **Computation of capital gain:**
 - ✓ Consideration – Amount recorded in books of LLP
 - ✓ Assets to be recorded by LLP at value assigned by approved valuer under LLP Act and Rules

For LLP

- Capital contribution by partner in LLP - Subject to 56(2)(x)?

Taxation of LLP

Capital Gains

On distribution of capital asset on dissolution of LLP

- Profits or gains arising from the transfer of a capital asset by way of distribution of capital assets **on the dissolution of an LLP**, shall be **chargeable to tax**:
 - as the income of the firm, of the previous year in which the said transfer takes place and;
 - for the purposes of section 48, the FMV of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.

Ensuing slide captures proposed amendment in Budget 2021

Taxation of LLP

Capital Gains

Amendment to be effective
from FY20-21

Taxation	Existing	Proposed in Budget 2021
Distribution of capital assets by firm to its partners (section 45(4))	Gains arising on distribution of capital asset on dissolution of the firm or otherwise, to its partner is taxable in the hands of the firm	Provision replaced to cover the following: <ol style="list-style-type: none"> 1. Dissolution and reconstitution of the firm; 2. Gains arising on the transfer of the asset to be taxable in the hands of firm 3. Computation mechanism to be as follows: <ul style="list-style-type: none"> - FMV is deemed as full value of consideration - Cost of acquisition is the cost of asset in the hands of the firm/if introduced by partner the FMV at which it was initially taxed (without considering increase in capital account on account of revaluation and self generated goodwill)
Distribution of money /any other assets by firm to partners (section 45(4A))	Basis judicial precedents gains arising on cash distribution not taxable at present in the hands of firm	New provision introduced to also cover distribution of cash/other asset (not characterized as capital asset) on dissolution/reconstitution of firm. <ol style="list-style-type: none"> 1. Gains made by partner to be taxable in the hands of the firm 2. Computation mechanism to be as follows: <ul style="list-style-type: none"> - Money + FMV of asset is deemed to be the consideration - Balance in capital account to be treated as cost (without considering increase in capital account on account of revaluation and self generated goodwill)
Mode of computation (Section 48)		The amount included in the total income of firm u/s 45(4A), which is attributable to the capital asset being transferred, calculated in the prescribed manner

Taxation of LLP

Capital Gains

Illustrative 1

Assumptions

Distribution of capital asset/assets/cash by the firm

Particulars	INR
FMV of capital asset distributed	200
Total Distribution	200
Other details	
Cost of assets acquired/Cost of asset introduced by Partner	40

Taxation implications under proposed section 45(4)

Upon Distribution of capital assets to partner

Particulars	Capital gains
FMV of capital asset distributed	200
Less: Cost of acquisition	40
Capital gains taxable in the hands of Firm	160

Finance Bill proposes to bring in significant amendments to tax distributions from partnership firms to exiting partners. Such distributions have been a subject matter of litigation and the proposed provisions seek to plug room for litigation on taxability of such distributions.

Taxation of LLP

Capital Gains

Illustrative 2

Assumptions

Distribution of capital asset/assets/cash by the firm

Particulars	INR
FMV of other assets distributed	100
Cash distributed	50
Total Distribution	150
Balance in the capital account	100

Taxation implications under proposed section 45(4A)

Upon Distribution of other assets/cash to partner

Particulars	Capital gains
FMV of other assets distributed	100
Cash distributed	50
Deemed consideration	150
Less: Cost of acquisition	100
Capital gains taxable in the hands of Firm	50

Taxation of LLP

Capital Gains

Illustrative 3

Assumptions

Distribution of capital assets/assets/cash by the firm

Particulars	INR
FMV of assets distributed	100
Cash distributed	50
Total distribution	150
Balance in Capital account (Includes INR 20 on account of self generated goodwill)	120

Taxation implications under proposed section 45(4A)

Upon Distribution of other assets/cash to partner

Particulars	INR
FMV of assets distributed	100
Cash distributed	50
Deemed consideration	150
Less: Cost of acquisition	100
Capital gains taxable in the hands of Firm	50

For the purpose of computing cost of acquisition, Balance in capital account on account of revaluation of assets or goodwill recognition would be ignored

Taxation of LLP

Tax rates and filings

Tax rates

- Tax rate card – 30%

Income up to INR10 mn		Income above INR10 mn	
Surcharge rate	ETR	Surcharge rate	ETR
Nil	31.20%	12%	34.94%

- AMT

Location of LLP	ATI* up to INR10 mn		ATI* above INR10 mn	
	Surcharge rate	ETR	Surcharge rate	ETR
Other than in IFSC -18.5%	Nil	19.24%	12%	21.55%
In IFSC - 9%	Nil	9.36%	12%	10.48%

*ATI - Adjusted total income would mean total income as increased by deductions, claimed, if any under:

- Chapter VI-A from Section 80H to 80RRB except for section 80P;
- Section 10AA; and
- Section 35AD reduced by depreciation allowed u/s 32)

Return filing

- The due date for furnishing return of income for LLP is:
 - **31 July** – If accounts are not required to be audited
 - **30 September** – If accounts are required to be audited under LLP Act
 - **30 November** – If Transfer pricing is applicable

Taxation of LLP

Losses and Recovery of Tax

Cary forward and set off of losses

- In case of a **change in the constitution of a firm**, the losses proportionate to the share of the retired / deceased partner as exceeds his share of profits shall not be entitled to be carried forward and set off in future
- Further, where the **business is succeeded** by another person otherwise than by inheritance, no losses shall be entitled to be carried forward to any person other than the person incurring the losses

Recovery of Tax

Where any tax, interest or penalty due from a LLP in respect of any income of any previous year, cannot be recovered

- **every person who was a partner of the LLP** at any time during the relevant previous year, shall be **jointly and severally liable** for the payment of such tax
- **unless** he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP.

Taxation of LLP

Assessment of LLP

Assessment as "firm"

LLP is assessed as a "firm" if:

- ✓ The partnership is evidenced by an **instrument**; and
- ✓ The **individual shares** of the partners are specified in that instrument

In case of non-compliance with aforesaid:

- ✓ **No deduction** by way of any payment of interest, salary, bonus, commission or remuneration made by such firm to any partner shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession"
- ✓ Correspondingly, such payment shall not be chargeable to income-tax u/s 28(v) of ITA

Joint and several liability

- In case any tax, penalty or other sum payable by LLP for the relevant previous year is due, then
 - ✓ every person being a partner of a firm and
 - ✓ the legal representative of deceased partner during the previous year

shall be **jointly and severally liable** along with the firm in respect of such sum.

In case of any change in the constitution of the firm – the firm is required to furnish a certified copy of the revised instrument of partnership along with the return of income for the relevant assessment year

Change in constitution / succession

- At the time of making an assessment, if it is found that a **change has occurred in the constitution of a LLP**, the assessment shall be made on the LLP as constituted at the time of making the assessment
- Where a LLP carrying on business or profession is **succeeded by another LLP** (otherwise than as mentioned above), separate assessments shall be made on predecessor LLP and successor LLP
- Where any business or profession carried on by a LLP has been **discontinued** or where a LLP is **dissolved**, the Assessing Officer shall make an assessment of the total income of LLP as if no such discontinuance or dissolution had taken place.

Taxation of LLP

Transfer of partner's rights

Assignment / transfer of partner's interest (Section 42 of LLP Act)

- The right to **share profits and losses** and to **receive distribution** in accordance with LLP agreement -
 - Are transferrable either wholly or in part
- This transfer of partner's right does not cause disassociation of partner / dissolution / winding up
- Assignee / Transferee does not become partner – Share of profit not exempt

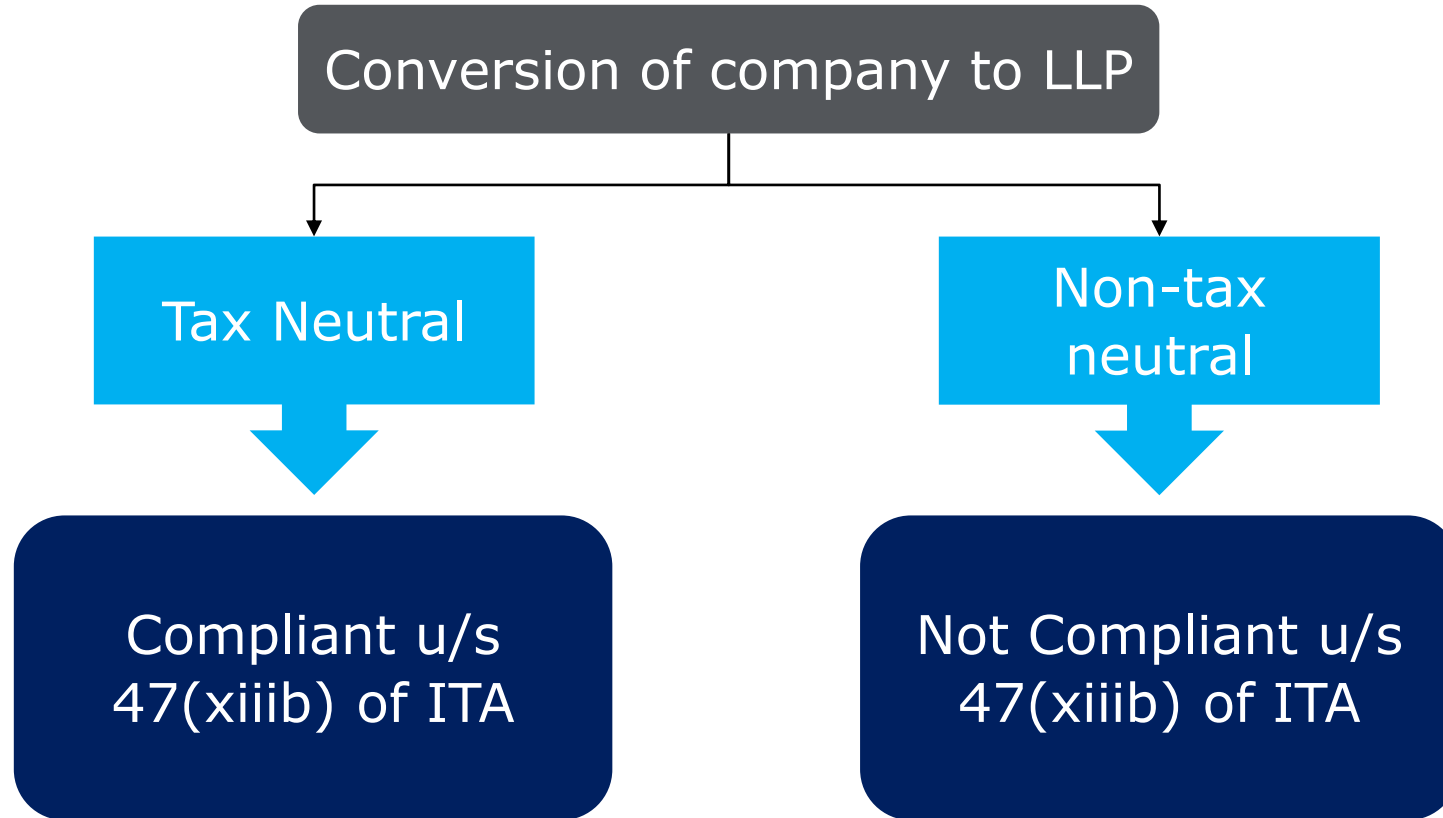
Since partner's interest is separately assignable it can be regarded as **capital asset u/s 2(14)** of ITA, and accordingly **subjected to capital gains in the hands of partner transferring such interest**

- **Cost of acquisition of such right – Can it be Capital contribution ? Can we place reliance on BC Shrinivas Shetty 21 CTR (SC) 138**
- **Will 56(2)(X) be applicable on such assignment / transfer ?**



Conversion to LLP

Types of Conversion to LLP



Types of Conversion to LLP

Conversion of Company* to LLP - Conditions

Tax Neutral conversion Cumulative conditions u/s 47(xiiib)		
Eligibility Criteria	1	Total sales, turnover or gross receipts of the company does not exceed INR 6 million in any of the 3 preceding previous years
Conditions at conversion stage	2	All the assets and liabilities of the company are transferred to LLP
	3	All the shareholders of the company become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion
	4	The shareholders of the company do not receive any consideration other than by way of share in profit and capital contribution in the LLP
Conditions after conversion	5	The total value of the assets as appearing in the books of account of the company in any of the 3 preceding previous year in which the conversion takes place does not exceed INR 5 crore
	6	The aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50% at any time during the period of 5 years from the date of conversion
	7	No amount is paid to any partner out of balance of accumulated profit of the company on the date of conversion for a period of 3 years from the date of conversion

*a private company or unlisted public company

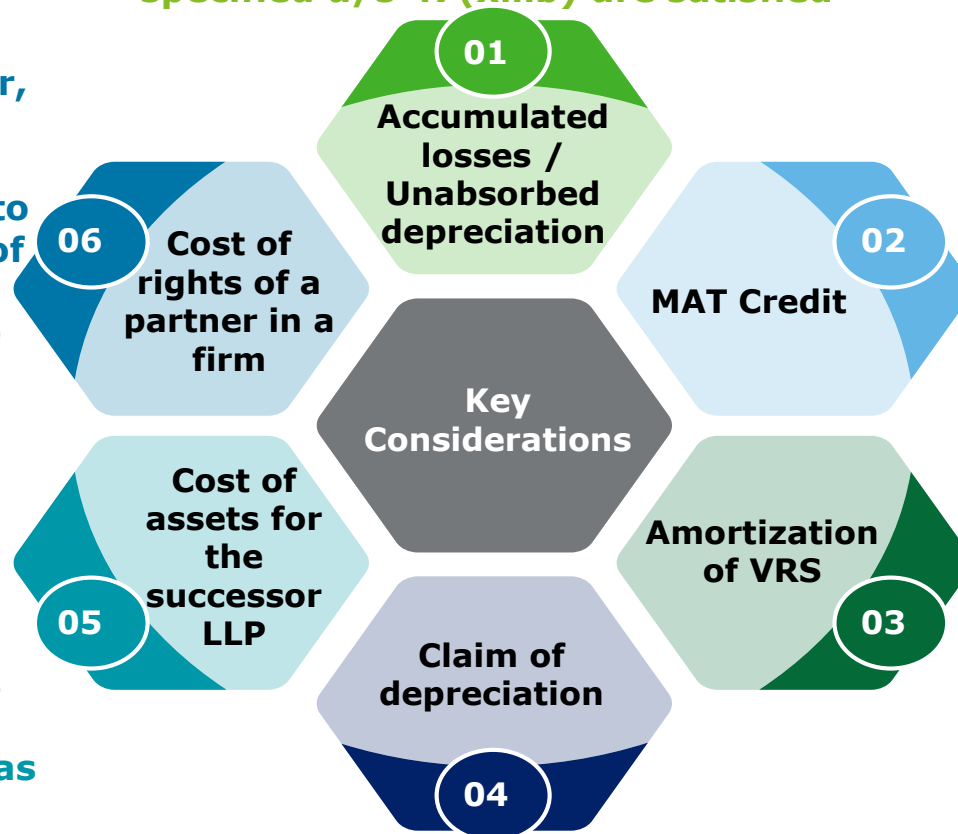
Types of Conversion to LLP

Conversion of Company to LLP – Key considerations

Accumulated losses / Unabsorbed depreciation will be allowed to be carried forward by successor, if all conditions as specified u/s 47(xiiib) are satisfied

Cost of acquisition of capital asset being rights of a partner, received in consideration for transfer of shares on conversion, shall be deemed to be cost of acquisition to him of shares in predecessor company, immediately before its conversion

Actual cost of block of assets in case of successor LLP shall be WDV of block of assets as in case of predecessor company as on date of conversion



MAT credit will not be available to successor, regardless of whether conditions as specified u/s 47(xiiib) are satisfied or not

Benefit of amortization of VRS payments shall apply to successor LLP as they would have applied to the company

Depreciation would have to be apportioned between company and LLP on the basis of number of days of usage in the year of conversion

Types of Conversion to LLP

Conversion of Company to LLP – Violation of conditions

Violation of Conditions (two fold)

- I. Required to be fulfilled **at the time of conversion** – if not fulfilled at the time of conversion itself - non compliant conversion – (discussed in next slide)
- II. Required to be fulfilled till **specified period after conversion**
 - If violated in year of conversion – non-compliant conversion – *Aravali Polymers LLP – 47 taxmann.com 335 (Kolkata - ITAT)*
 - If violated later on within specified period - section 47A(4) to apply

Tax implication on violation

Section 47A(4) of ITA –

- ✓ Profit & gains not charged as capital gains in hands of company – taxable in hands of converted LLP – in year in which condition is violated;
- ✓ Profit & gains not charged to tax in hands of shareholder of company – taxable in their hands in year in which condition is violated

Types of Conversion to LLP

Conversion of Company to LLP – Non Complaint

For Company

- Under ITA, transfer to involve 2 parties – **Possible to contend that there is no transfer**
- Bombay High Court decision in the case of Texspin Engg. and Mfg. Works held there is no transfer of capital asset when firm is converted into Company (Same principle can be applied in conversion of Company to LLP)

For Shareholder

- **Potential capital gains implications**
- May be regarded as taxable transfer liable to capital gains
- **Consideration** - Section 50D of ITA, to apply where consideration is not ascertainable or cannot be determined. Accordingly, **FMV of shares** as on date of conversion to be regarded as Consideration

For LLP

- Since exemption u/s 47(xiiib) of ITA, was not claimed, LLP should not be liable to any capital gains implications u/s 47A(4) of ITA.
- Capital gains implications, if any in the hands of company may be recovered from the LLP (as **successor**)

Types of Conversion to LLP

Conversion of Company to LLP – Non Complaint (Relevant Case laws)

For Company

Mumbai Tribunal, in the case of **Celerity Power LLP**, held that pursuant to the conversion, assets and liabilities are transferred at book value, accordingly **no gain/income will be subject to tax**. The Tribunal had not dealt with the taxability of shareholders of the company

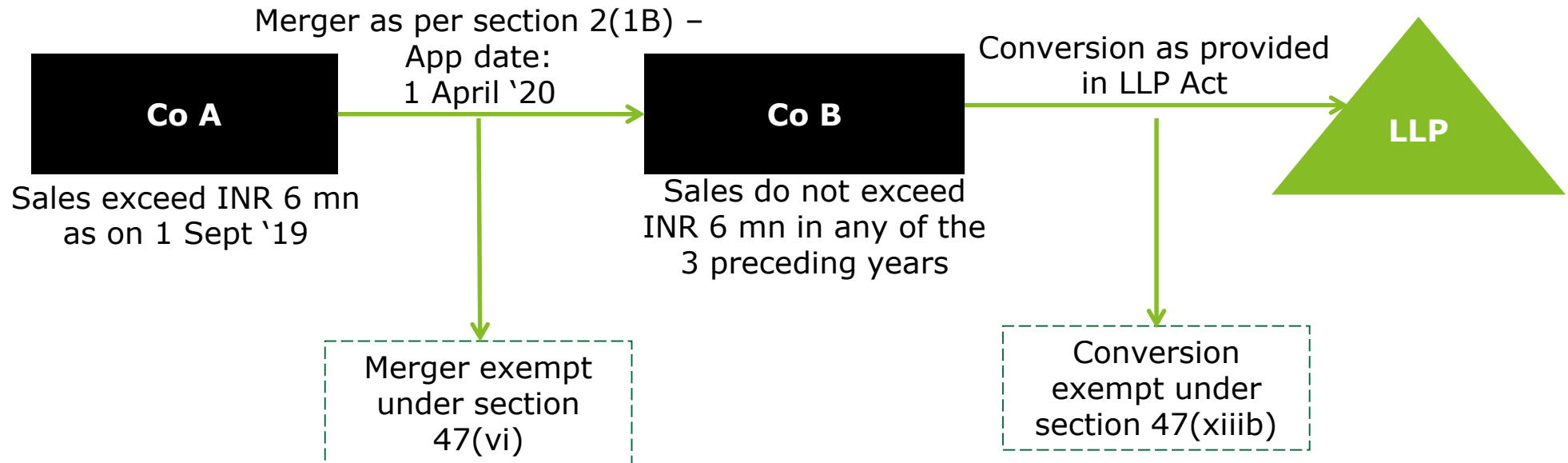
For Shareholders

Recently, the Authority of Advance Ruling ('AAR') ruling in the case of **Domino** held that a shareholder is taxable on conversion of a company into an LLP on the basis of the following:

- Conversion of a company into an LLP is a taxable transfer u/s.2(47) of ITA.
- Existence of a party and a counterparty is not mandatory.
- Non-compliance of specific conditions for availing exemption on the conversion of a company into an LLP creates a presumption that such conversions are otherwise taxable.

Impact of GAAR, which has come to force from 1 April 2017, also needs to be considered

Case study



Tax

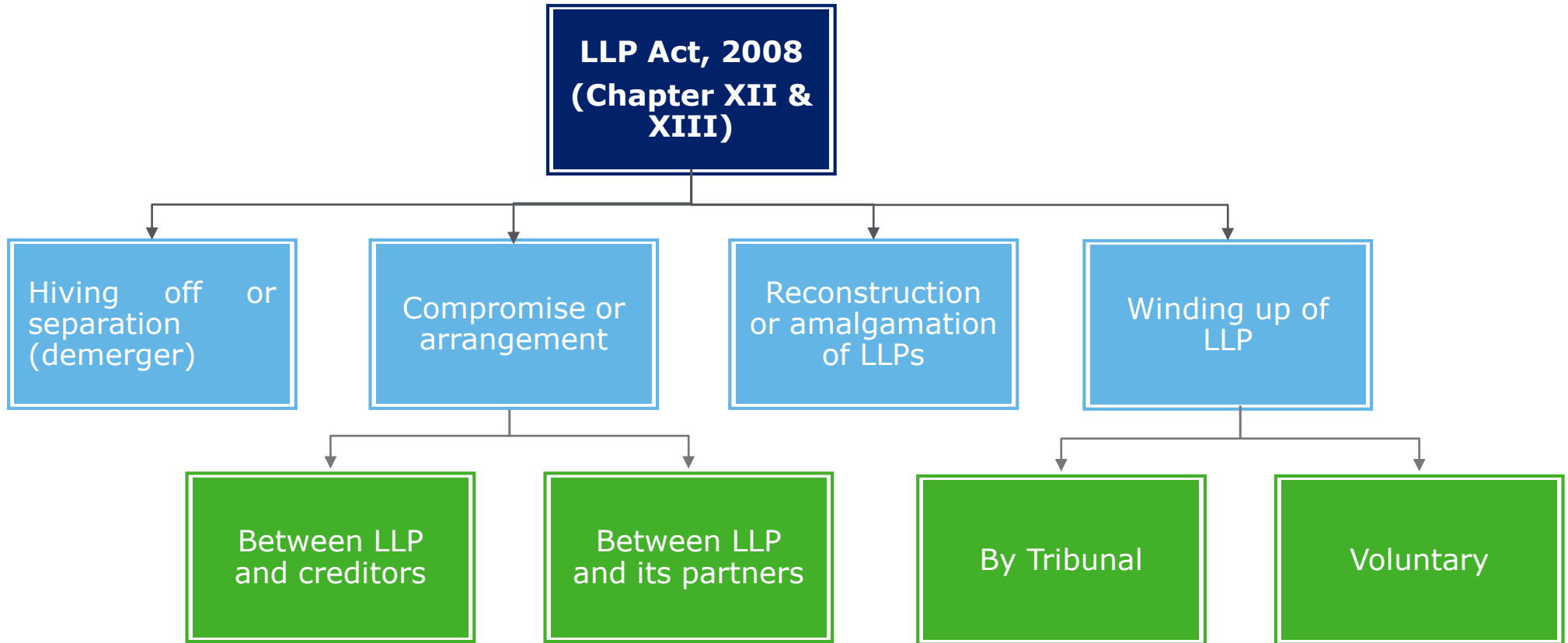
- Can the Tax Authorities deny exemption to a genuine merger between two companies followed by a conversion to an LLP?
- Can GAAR be invoked?



Restructuring of LLP

Restructuring of LLP

Provisions under the Governing Law



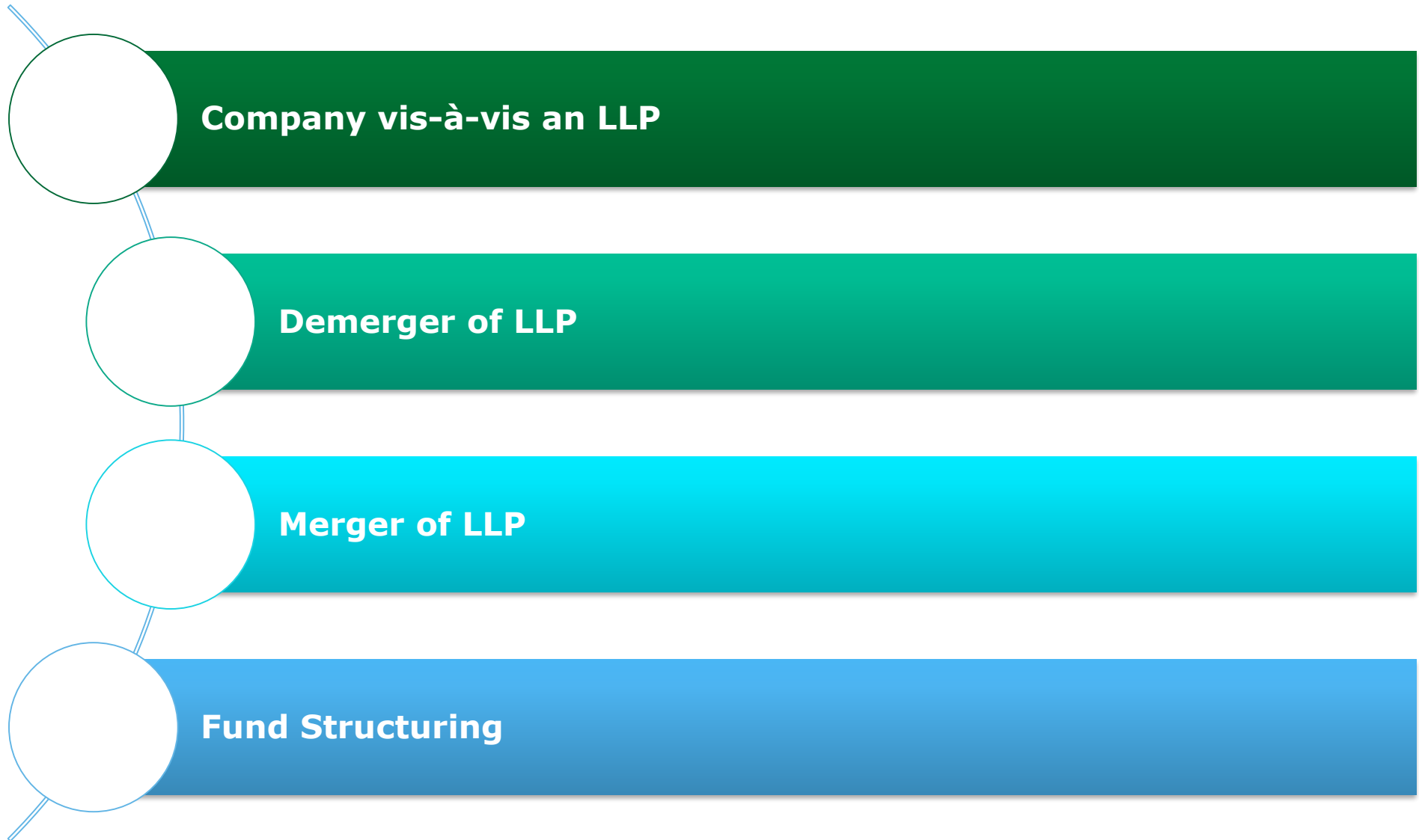
ITA contains no specific provisions with respect to the above reorganizations



LLP Structures

LLP structures

Contents



LLP structures

Company vis-à-vis an LLP ...(1/4)

Modes of repatriation of cash

Company

I. Dividend Payment

- Taxed in the hands of shareholders as per their applicable tax rates.
(Detailed evaluation on next slide)

II. Buy-back

- Statutory threshold limits on quantum of buy-back (up to a maximum of 25%)
- Distributions made are taxable @ effective tax rate of 23.296%

III. Capital reduction

- No statutory thresholds and no buy back equivalent tax on the distributions. However, capital reduction is a court process and hence may be time consuming;
- Dividend tax to the extent of accumulated profits, balance proceeds will be subjected to tax as capital gains

LLP

I. Remuneration to partners & Interest on partners capital contribution

- Tax deductible expense (subject to limits), in the hands of LLP and taxed in the hands of partners
(Discussed in detail in earlier slides)

II. Profit share

- Taxed in the hands of LLP @ 34.94% and exempt in the hands of partners
(Discussed in detail in earlier slides)

LLP structures

Company vis-à-vis an LLP ...(2/4)

Evaluation on distribution / repatriation of surplus funds by way of dividend

Particulars	LLP	Company			
		25%* (Turnover based)	30% * (not opting for 115BAA/115BAB)	22%* (Sec 115BAA)	15%* (Sec 115BAB)
Taxable income	100	100	100	100	100
Less: Tax liability	34.94	29.12	34.94	25.17	17.16
Profit after tax (Profit available for distribution)	65.06	70.88	65.06	74.83	82.84
Total tax outflow from entity perspective	34.94	29.12	34.94	25.17	17.16
Total tax outflow from investors perspective	Nil	Based on the constitution, legal status and residential status of the investor			

Entity Level tax











Investor Level tax

Accordingly, considering the new tax regime, LLP structure evaluation needs to be factored considering the tax block in which the company falls

* Plus applicable surcharge and cess

LLP structures

Company vis-à-vis an LLP ...(3/4)

Particulars	LLP	Company
Foreign investments	LLPs are permitted to be engaged in activities that are eligible for 100% Foreign Direct Investment (FDI) under automatic route, without any FDI-linked performance conditions 	FDI is permitted in various sectors subject to limits under the exchange control regulations 
Ease of setting up	Relatively high 	Relatively low 
Compliance burden	Relatively low 	Relatively high 
Restrictions under CA, 2013/ LLP Act, 2008	Not applicable 	<ul style="list-style-type: none"> • Issue of and repatriation of capital • In relation to dealings with directors, promoters, etc. • In relation to inter corporate loans, related party transaction • CSR spend requirement - applicable based on fulfilment of certain conditions 
Liability of partners/ shareholders	Limited to capital contribution (unlimited liability in relation statutory dues etc.)	Limited to capital contribution
Deemed gift provisions on partnership interest / shares	Not applicable 	Applicable 

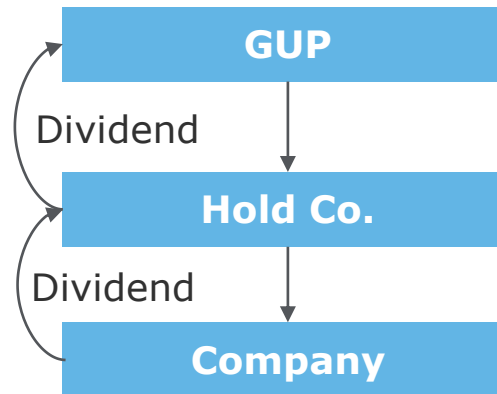
LLP structures

Company vis-à-vis an LLP ...(4/4)

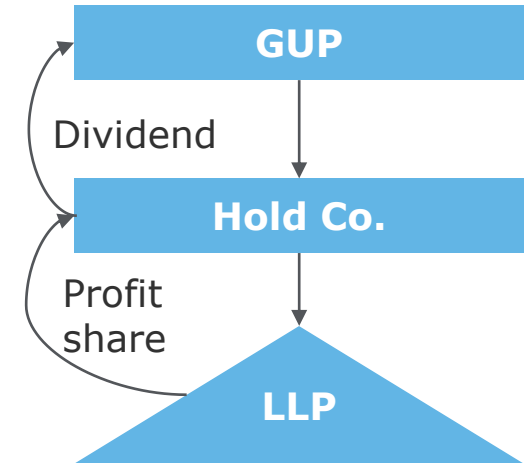
As per Section 80M, a **domestic company** shall be eligible to deduct the amount of dividend paid by it from its dividend income received from any other domestic company

Such deduction shall be restricted to the amount of dividend distributed in turn by the shareholder company.

Company Structure



LLP Structure

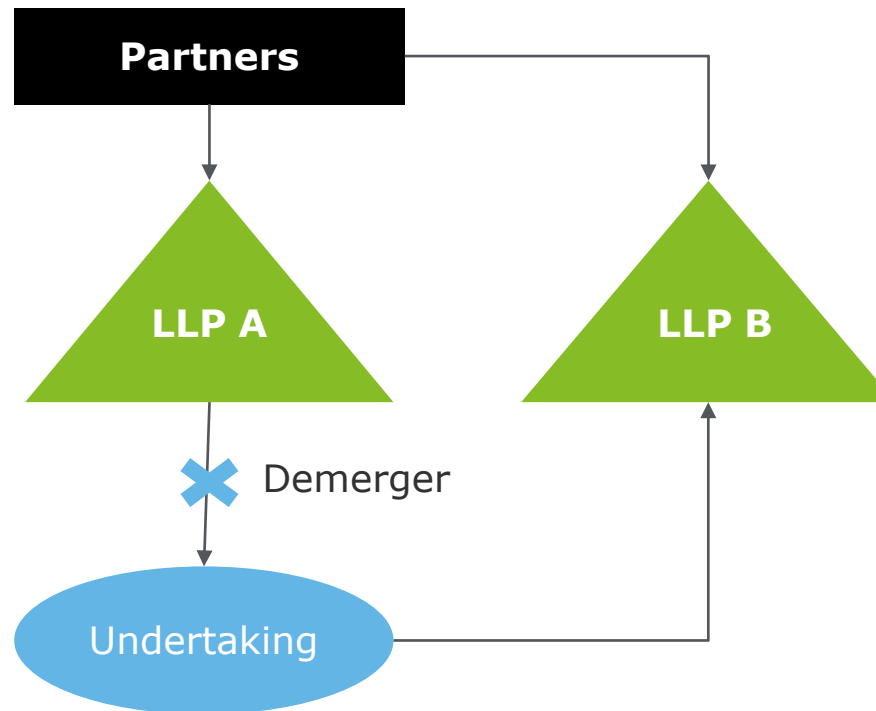


Particulars	Company Structure	LLP Structure	
Dividend / Profit share received by the Hold Co. (A)	100	100	} assumed
Dividend paid by the Hold Co.	70	70	
Deduction under section 80M of ITA in the hands of Hold Co. (B)	70	Nil	
Dividend / profit share income taxable in the hands of the Hold Co. (A-B)	30	Nil	

LLP structures

Demerger of LLP...(1/2)

Variant 1



Mechanics

- Demerger of Undertaking from LLP A to LLP B

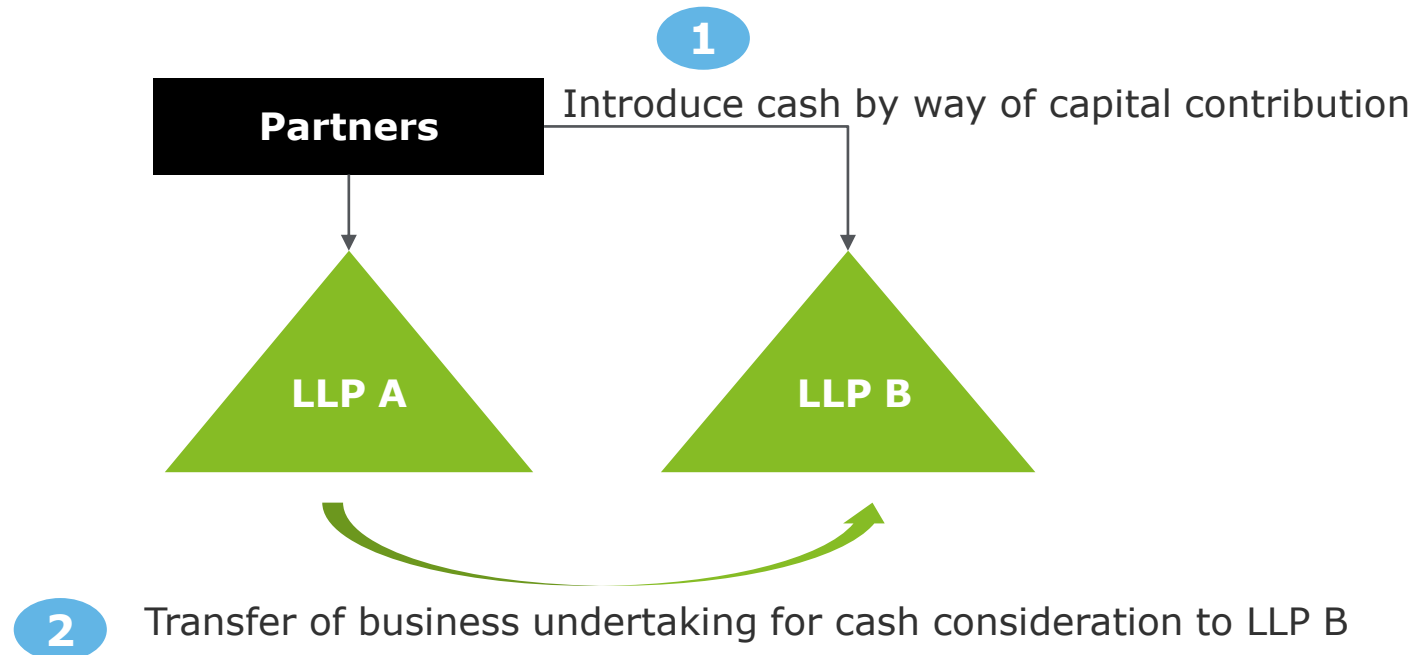
Tax

- What will be the implications from a tax perspective if the demerger is not as defined in section 2(19AA)?

LLP structures

Demerger of LLP...(2/2)

Variant 2



Mechanics

- Partners to introduce capital in LLP B
- Transfer of business undertaking from LLP A to LLP B

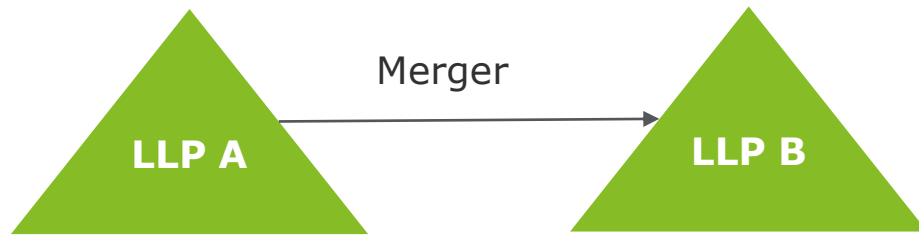
Tax

- Will it be tax efficient compared to Variant 1?

LLP structures

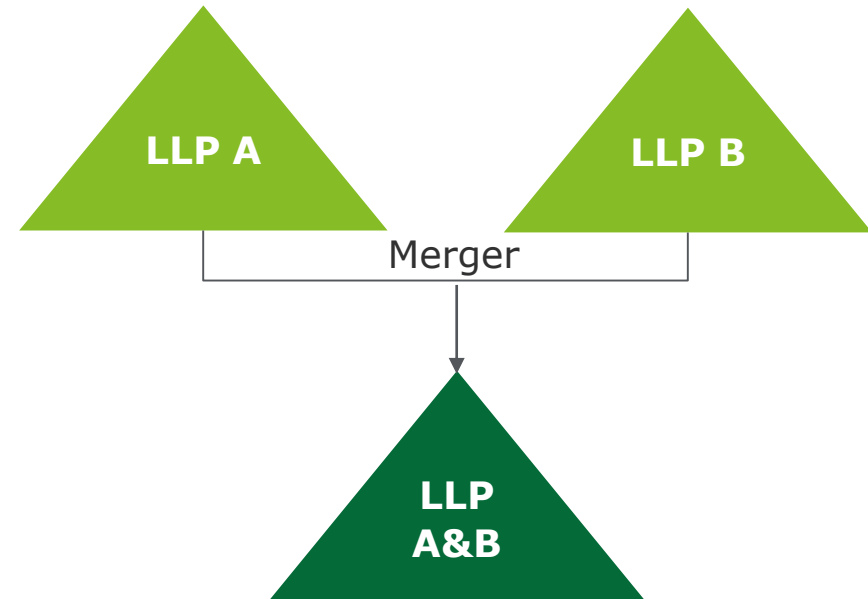
Merger of LLP...(1/3)

Variant 1A



or

Variant 1B



Mechanics

- Merger of LLP A into LLP B or Merger of LLP A and LLP B into LLP A&B

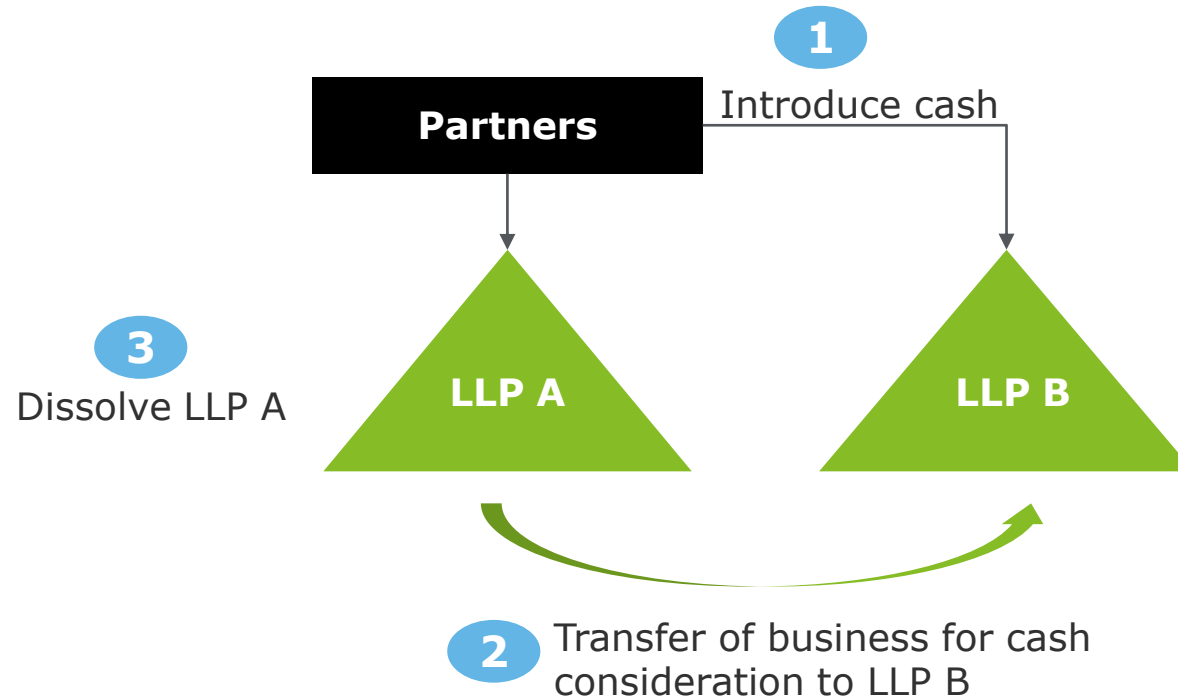
Tax

- In absence of any specific provisions in the ITA, there is no clarity on the tax implications that will arise in the above scenarios

LLP structures

Merger of LLP...(2/3)

Variant 2



Mechanics

- Introduce capital in LLP B
- Transfer of business of LLP A to LLP B for cash consideration
- Dissolve LLP A

Tax

- Will it be tax efficient compared to Variant 1A & 1B?

LLP structures

Merger of LLP...(3/3)



Chennai NCLAT ruling in December 2019

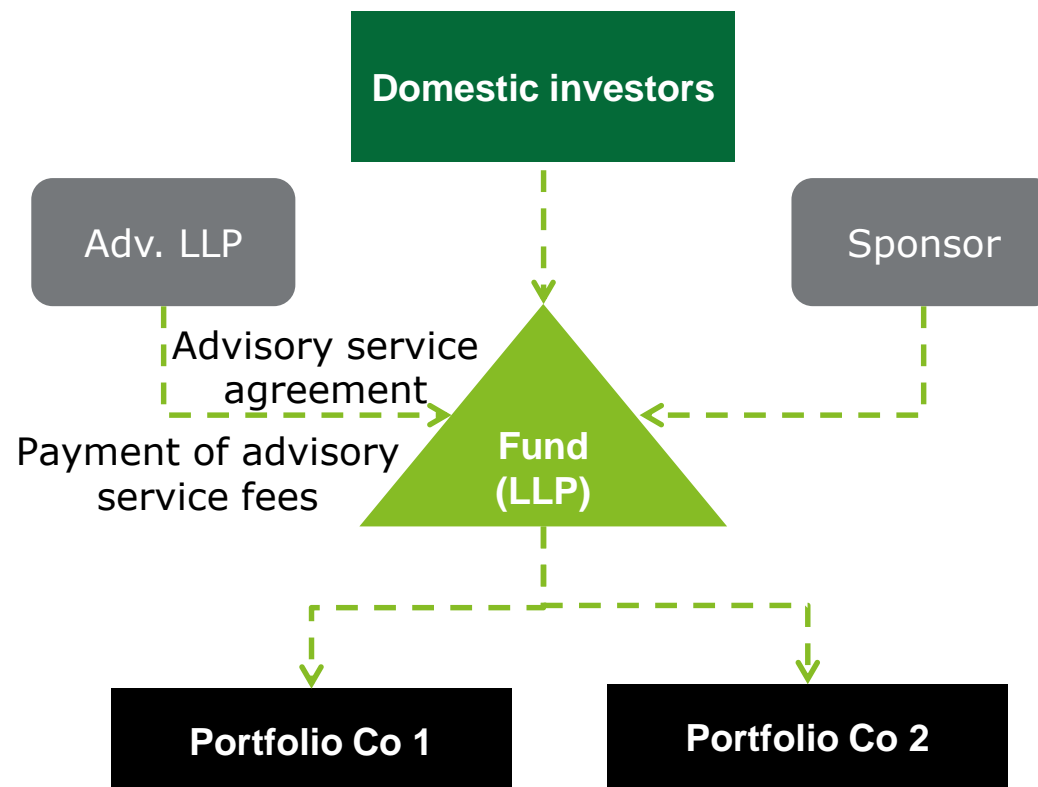
In case of - M/s Real Image LLP to be merged with Qube Cinemas Private Limited

- **NCLT order:** NCLT sanctioned the merger invoking **legal principle *casus omissus**** on following grounds -
 - ✓ All statutory requirements needed u/s. 230 to 232 of CA, 2013 were complied with
 - ✓ Provisions of the erstwhile CA, 1956 (u/s. 394(4)(b)) permitted a LLP to be merged into a company. Since merger of a foreign LLP into an Indian company is permitted under section 234 of the CA, 2013 it would not be appropriate to assume that an Indian LLP cannot be merged into an Indian company
- **Appeal to NCLAT:** RD and RoC filed an appeal before NCLAT against the order of NCLT contending that for a LLP to be merged into a company, the LLP has to first register as a company under the method prescribed u/s. 366 of the CA, 2013 – (*this section enables entities such as LLPs to be registered as companies*). Thereafter, such registered companies can be merged into other companies following the procedure prescribed under section 230 to 232 of the CA, 2013
- **NCLAT order:** NCLAT found merit in the arguments proposed by the appellants that the CA, 2013 provided for registering LLPs into companies first and thereafter provided for merger of such registered companies with other companies
 - ✓ Relying on the Supreme Court’s decision in the case of Union of India Vs Rajiv Kumar (2003) , the NCLAT **noted that the principle of *casus omissus* cannot be applied by courts except in the case of clear necessity and when reason for it cannot be found in the four corners of the statute itself**

* *casus omissus* - A case omitted; an event or contingency for which no provision is made; particularly a case not provided for by the statute on the general subject, and which is therefore left to be governed by the common law

LLP structures

Fund Structuring



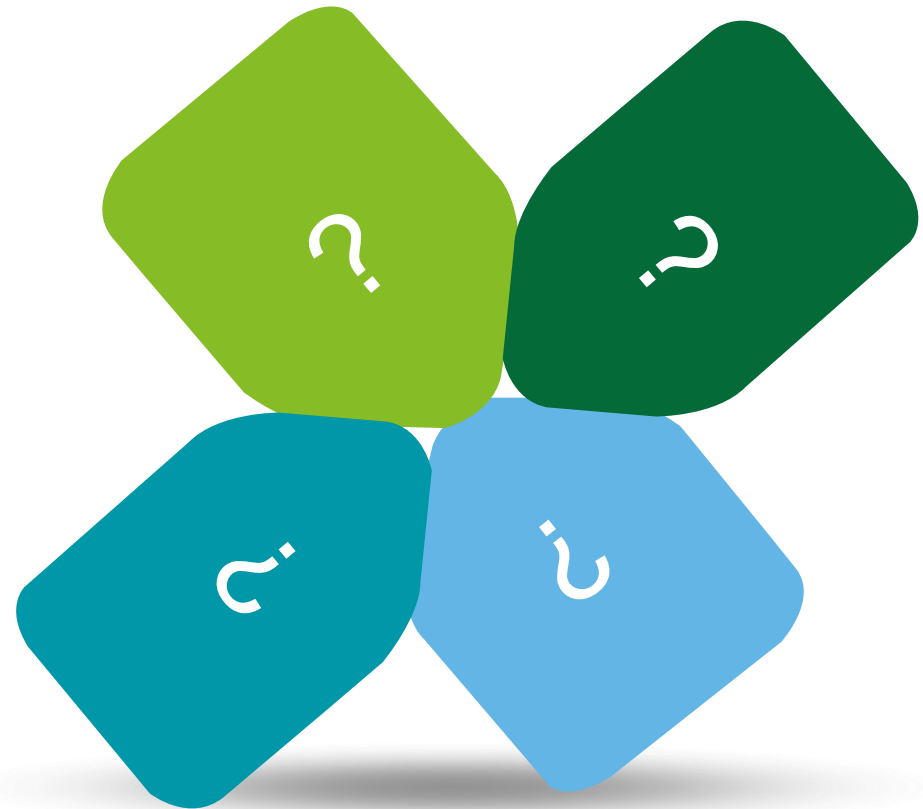
Mechanics

- Fund to set up as a LLP
- Sponsors would act as designated partners
 - Other domestic investors in the LLP would act as limited partners
- Fund to enter into advisory service agreement with the Fund Manager (Adv. LLP)
 - Role of the Adv. LLP – Identify and advice on various investment opportunities
- Income earned by Fund would be distributed to investors as per distribution waterfall
- Fund set up as a LLP can be wound up subject to certain conditions

Tax

- LLPs could be structured as a tax efficient fund pooling vehicle as well as advisor to the fund

Questions ?



Thank you!!