



ICAI (Dubai) Chapter NP10

Business restructuring and Intra-group transfers – Tax Session

25 October 2023

01

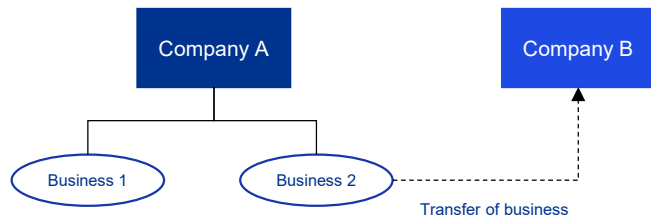
Business Restructuring

Business Restructuring

What is business restructuring?

I. Transfer of business

Proposed steps

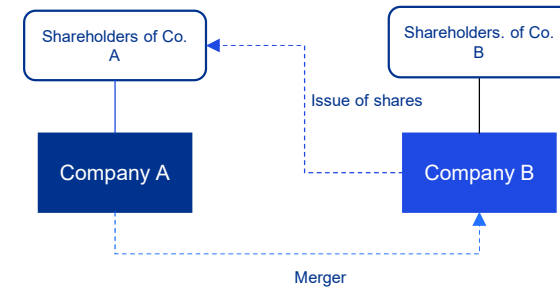


Resultant structure

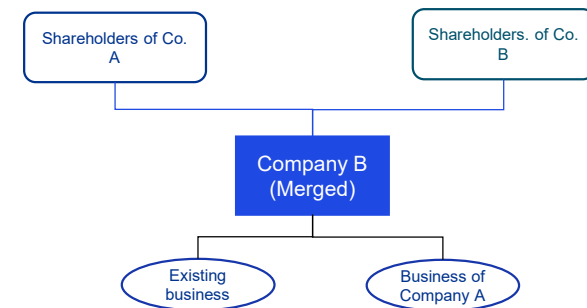


II. Merger / Amalgamation

Proposed steps



Resultant structure



Article 27 – Business Restructuring Relief

Business restructuring shall be considered tax neutral provided all of the following conditions are fulfilled:

01

The transfer of the entire business or part of the business meets all the conditions imposed by the **applicable legislation in the UAE**

02

The restructuring is undertaken by taxable persons who is a **resident persons** or **non-resident person having a permanent establishment ('PE')** in the UAE

03

Neither party to the restructuring transaction is an **exempt or a qualifying free zone person ('QFZP')**

04

Both transferee and transferor **prepare financial statements using the same accounting standards and follow the same financial year**

05

The transfer is undertaken for **valid commercial reasons** which reflect economic reality

06

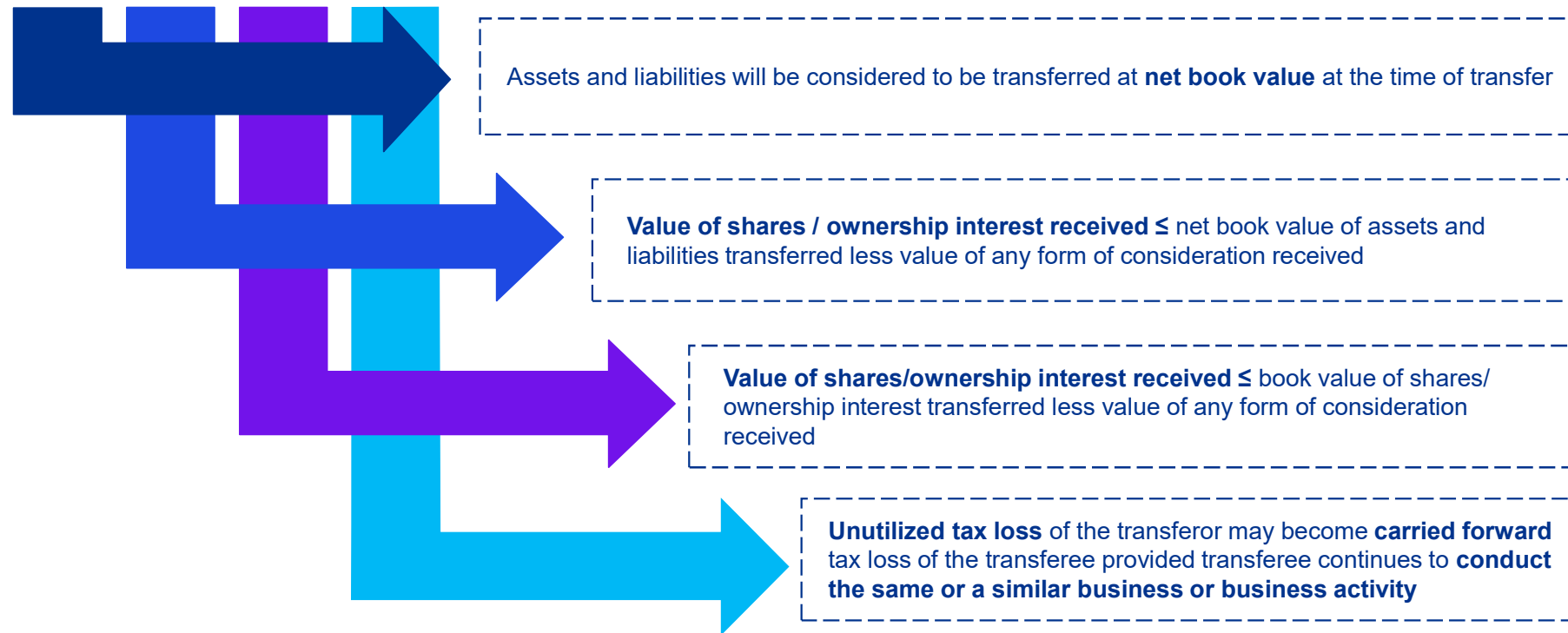
The **shares/ownership interest in the transferor/transferee is continue to be held for a period of 2 years** unless such transfer is made to a member of qualifying group

07

No subsequent transfer or disposal of the business for a period of 2 years

Article 27 – Business Restructuring Relief

Key considerations:



As per the Ministerial Decision, an election must be made by the transferor to apply the provisions of Article 27 in relation to business restructuring

Ministerial Decision – Key Points

Value of 'other form of consideration'

- The market value of any other form of consideration received (in addition to shares or other ownership interest) should not exceed the lower of:
 - net book value of the assets and liabilities transferred; or
 - 10% of the nominal value of the ownership interests issued

Ownership interest

- Includes ordinary equity shares, preferred shares, redeemable shares, membership and partnership or any other types of securities that entitles the owner to receive profits or liquidation proceeds
- Such ownership interest should be classified as equity interest under the accounting standard applied by the person holding such instrument

Parties to the transfer

- From transferor's perspective - Shares or other ownership interests must be received by a person that has a direct or indirect ownership interest of at least 50% in the transferor.
- From transferee's perspective – Shares or other ownership interest must be issued by a person that has a direct or indirect ownership interest of at least 50% in the transferee.

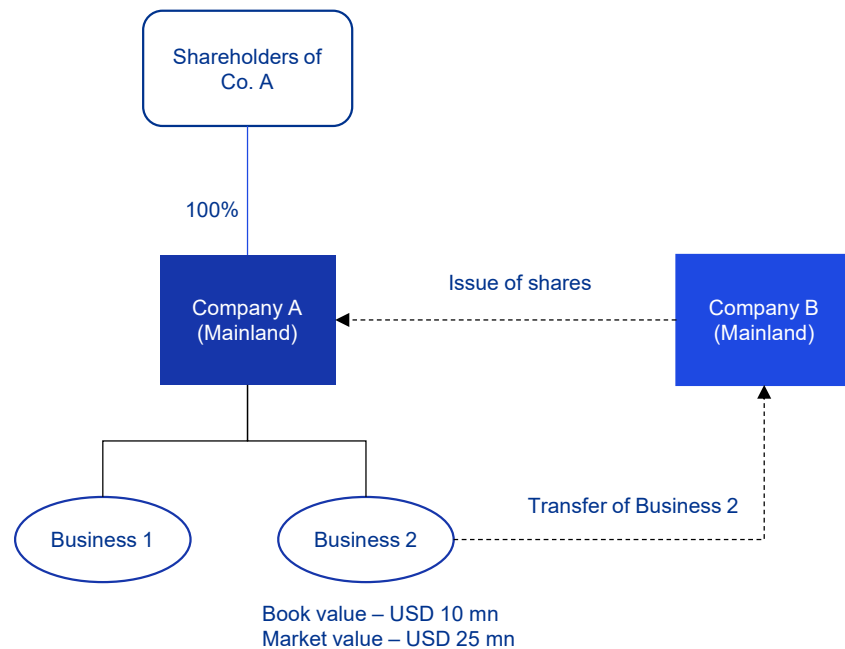
Subsequent transfer

- In case of subsequent transfer, any gain or loss that would accrue to the transferor shall be attributed to the transferee if any of the following applies:
 - The transferor has ceased to be a taxable person (e.g. merger); or
 - The transferor is a natural person.

Depreciation

- In case of subsequent transfer, transferee shall make necessary adjustments to the taxable income to reverse any depreciation, amortization or other change in the value of an asset or liability that has been previously adjusted by the transferee for this transfer

Business Restructuring – Case Study 1



Key steps

- Company A, a mainland entity is engaged in Business 1 and Business 2
- Company A is proposing to transfer Business 2 to Company B, another mainland entity.
- As a consideration for transfer, Company B will issue shares to Company A

Key questions

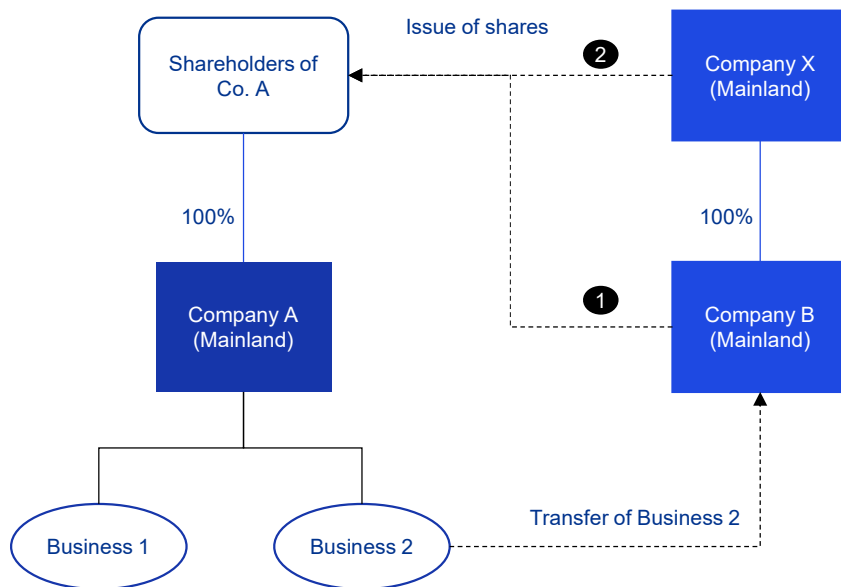
In order to qualify for business restructuring relief:

- At what value will Company B record the assets and liabilities of Business 2 – book value of USD 10 mn or market value of USD 25 mn?
- What should be the value of shares issued by Company B – book value or market value?

Key considerations

- Clause 3(a) of Article 27 - assumes assets and liabilities as being transferred at net book value
- Clause 3(b) of Article 27 – mandates value of shares received should not exceed net book value of assets and liabilities transferred
- The general guide issued by the FTA provides an example where the shares are issued at market value and still regarded as tax neutral business transfer
- Practical challenges for third-party transactions (e.g. transfer value, 2 year lock-in period)
- In case of third-party transaction, Company A should seek protection under transaction documents.

Business Restructuring – Case Study 2



Key steps

- Company A, a mainland entity is engaged in Business 1 and Business 2
- Company A is proposing to transfer Business 2 to Company B, another mainland entity.
- As a consideration for transfer, Company B will issue shares to shareholders of Company A

Key questions

- 1 Will the proposed transfer qualify for business restructuring relief given that the shares are issued to the shareholders of Company A instead of being issued to Company A?
- 2 What if instead of Company B, the 100% holding company of Company B issues shares to shareholders of Company A

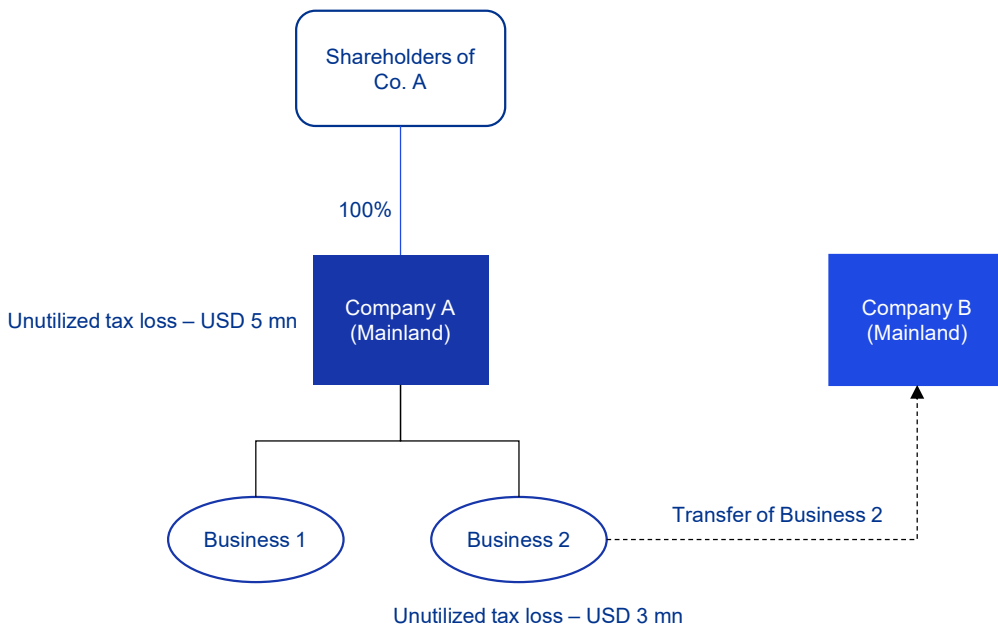
Key considerations

- Clause 4(a) of Article 27 - permits issue of shares to a person other than the transferor provided conditions specified in the ministerial decision are complied with
- Clause 4(b) of Article 27 – permits issue of shares by a person other than the transferee provided conditions specified in the ministerial decision are complied with (Global precedents available – India)

Use Case

- Scenario 1 – Where shareholders want to have direct ownership in Company B / Business 2.
- Scenario 2 – Shares of Company X are listed and give better liquidity to the shareholders of Co. A
- Scenario 2 – In case of a holding company structure, the acquirer may prefer to have the business in a 100% SPV and the sellers receive shares in the holding company

Business Restructuring – Case Study 3



Key steps

- Company A, a mainland entity is engaged in Business 1 and Business 2
- Company A is proposing to transfer Business 2 to Company B, another mainland entity.
- Company A has accumulated tax losses of USD 5 mn out of which USD 3 mn is in relation to Business 2
- Company B has taxable income of USD 1 mn

Key questions

- What proportion of accumulated losses can be transferred to Company B?
- Can Company B set-off or utilize tax losses of Business 2. If yes, to what extent?

Key considerations

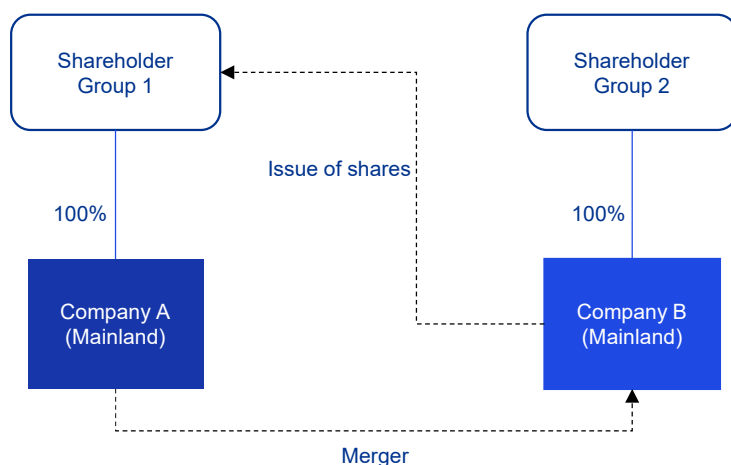
- Article 27(5) – Accumulated tax losses that can be reasonably attributed to the independent part of the business can be carried forward by the transferee provided the transferee carries on similar business activity after the transfer. Therefore, tax loss of USD 3 mn can be transferred to Company B
- Article 37(2) – Unutilized tax losses can be set off to the extent of 75% of taxable income. Therefore, USD 0.75 mn can be utilized by Company B
- Determining the attribution of tax losses to the transferred business

Use Case

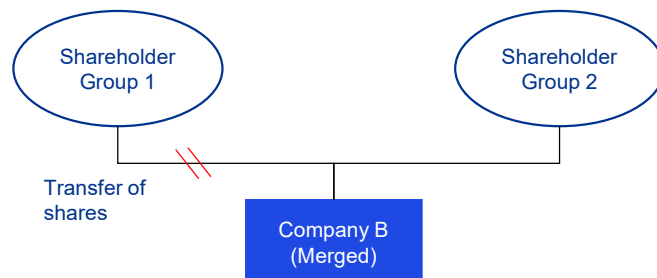
- Utilizing tax losses with a group in case where a tax group cannot be formed (e.g. minimum ownership of 95% is not met) and transfer of tax loss is also not possible (e.g. minimum ownership of 75% is not met) subject to commercial consideration

Business Restructuring – Case Study 4

Proposed steps



Resultant structure



Key steps

- Company A and Company B are UAE based mainland entities
- Company A is proposing to merge with Company B
- As a consideration for merger, Company B will issue shares to the shareholders of Company A
- Shareholder Group 1 (erstwhile shareholders of Company A) transfer shares of Company B to a third party within 1 year of merger

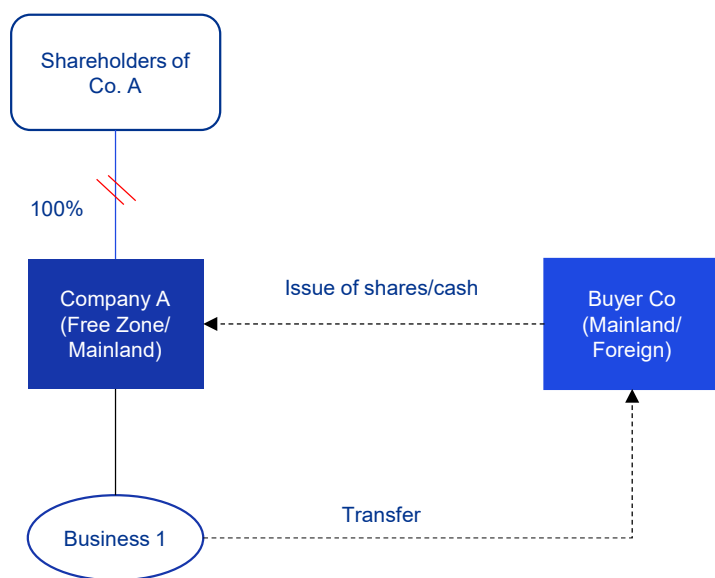
Key questions

- Will the merger of Company A with Company B qualify for business restructuring relief?

Key considerations

- Article 27(6) – In case the shares of transferee company are transferred to a non-qualifying member / third party within 2 years of merger, business restructuring relief shall not be available
- Article 27(7) – In case relief is not available, the transfer of the business shall be treated as having taken place at market value at the date of the transfer.
- As per the ministerial decision, the gains accrued to the transferor shall be attributable to the transferee as transferor ceases to be a taxable person
- Manner of computing capital gains for Shareholder Group 1 on sale of shares of Company B (merged)

Business Restructuring – Case Study 5



Key steps

- Company A is engaged in Business 1
- Buyer Co is proposing to acquire Business 1
- Shareholders of Co. A are evaluating a tax-efficient mode of divestment of Business 1

Key questions

- 1 Scenario 1 (Business Transfer)– Whether transfer of business by Company to Buyer Co would qualify for business restructuring relief
- 2 Scenario 2 (Share Transfer) – Whether the transfer of shares of Company A should be considered as an alternative option to business transfer?

Key considerations

Scenario 1 –

- In case Company A is a QFZP or Buyer Co is a foreign entity, business restructuring relief is not available
- In case consideration is paid entirely in cash, business restructuring relief cannot be claimed
- In case Company A and Buyer Co both are mainland entities, business restructuring relief can be availed subject to meeting prescribed conditions
- In case Buyer Co is a foreign entity, permanent establishment exposure need to be evaluated

Scenario 2 –

- In case Company A is a QFZP, the sale of shares could be evaluated subject to participation exemption conditions
- In case shareholders of Co. A are individuals, sale of shares could be evaluated assuming such shares are held on a personal investment account

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02

Transfers Within a Qualifying Group

Article 26 – Transfer within Qualifying Group

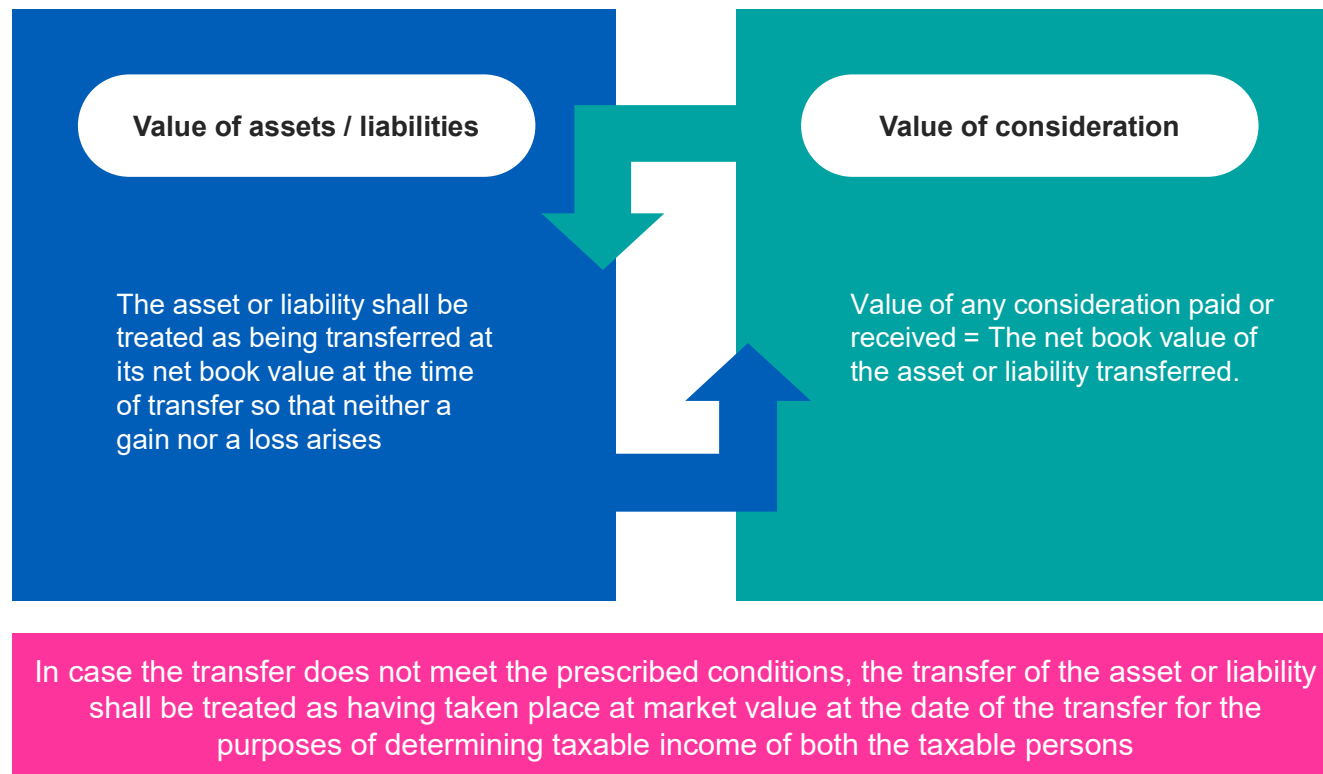
Transfer of assets or liabilities between two taxable persons that are members of qualifying group shall not be subject to CT

Two persons shall be regarded as members of qualifying group provided following conditions are fulfilled:

- 
- 1. Taxable persons are juridical person that are residents, or non-resident that have a PE in the UAE
 - 2. Either of the taxable person has a direct / indirect ownership of atleast 75% in the other taxable person or a common person has direct / indirect ownership of atleast 75% in each of the taxable persons
 - 3. None of the persons are an exempt person or a QFZP
 - 4. Both prepare financial statements using the same accounting standards and follow the same financial year
 - 5. No subsequent transfer of asset/liability outside of the qualifying group for a period of 2 years
 - 6. Taxable persons remain part of the same the qualifying group for a period of 2 years

Article 26 – Transfer within Qualifying Group

Key Considerations:



Ministerial Decision – Key Points

Exchange of assets / liabilities

- In case of transfer of asset/liability in exchange of another asset or liability, the transfer shall be treated as two separate transfers for the purpose of Article 26
- Relief shall apply to each transfer where at least one of the taxable persons that is party to the transfer has elected to apply Article 26

Ownership interest

- Includes ordinary equity shares, preferred shares, redeemable shares, membership and partnership, **Islamic financial instrument** or any other types of securities that entitles the owner to receive profits or liquidation proceeds
- Such ownership interest should be classified as equity interest under the accounting standard applied by the person holding such instrument

Making election

- An irrevocable election must be made by the transferor at the time of submission of the tax return for the tax period in which a transfer occurs
- Article 26 shall apply to all transfers of assets/liabilities 'held on capital account' as defined under Article 20(4)

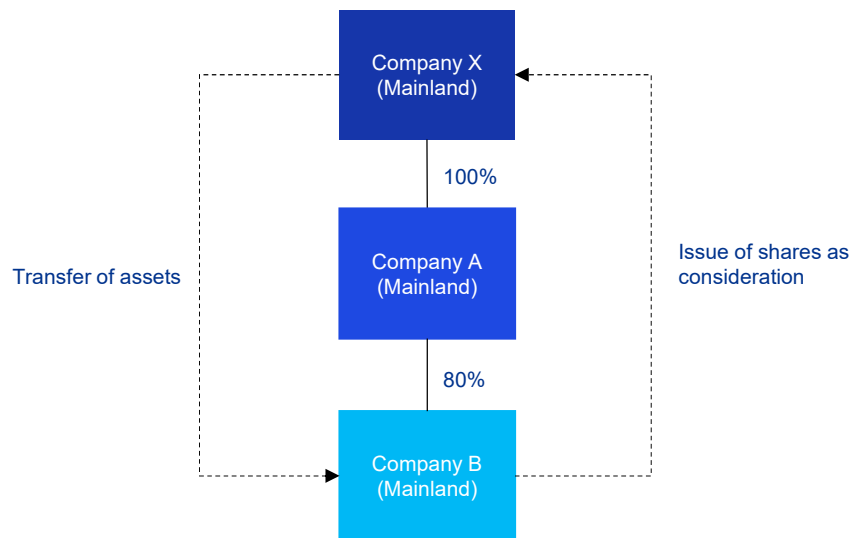
Subsequent transfer

- In case of subsequent transfer, any gain or loss that would accrue to the transferor shall be attributed to the transferee if the transferor has ceased to be a part of qualifying group
- Gains arising on subsequent transfer shall be taxable proportionately to the part of asset/liability transferred.

Depreciation

- In case of subsequent transfer, transferee shall make necessary adjustments to the taxable income to reverse any depreciation, amortization or other change in the value of an asset or liability that has been previously adjusted by the transferee for this transfer

Intra-group transfer – Case Study 1



Key steps

- Company X (UAE mainland entity) owns 100% of Company A. Company A owns 80% of Company B (mainland UAE entity)
- Company X is proposing to transfer an asset to Company B which has a net book value of USD 1m. The fair value of the asset is USD 2m
- As consideration for the transfer, Company B will issue shares to Company X

Key questions

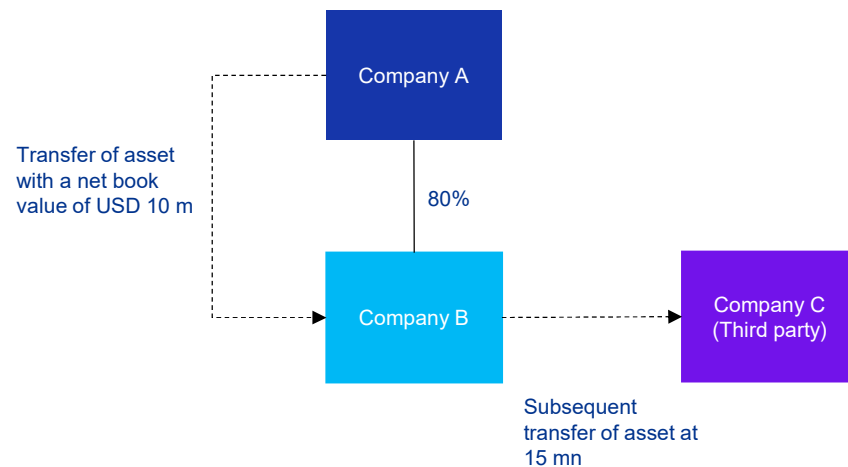
In order to qualify for the relief:

- Will Company X and Company B be considered as members of a Qualifying Group?
- At what value will Company B record the assets and liabilities of Company X – book value of USD 1m or fair value of USD 2m?
- What should be the value of shares issued by Company B – book value or fair value?

Key considerations

- Clause 2(b) of Article 26 - Two Taxable Persons are part of the same Qualifying Group if they have a direct/indirect holding of at least 75%
- Clause 3(a) of Article 26 - Assets and liabilities should be transferred at net book value
- Clause 3(b) of Article 26 – Value of shares received should not exceed the net book value of assets and liabilities transferred

Intra-group transfer – Case Study 2



Key steps

- Company A (UAE mainland entity) directly owns 80% of Company B (UAE mainland entity)
- Company A transferred an asset to Company B which has a net book value of USD 10 mn. The fair value of the asset is USD 15 mn.
- Within 1 year from the transfer, Company B is planning to transfer the same asset to Company C (a third party / non-qualifying member)

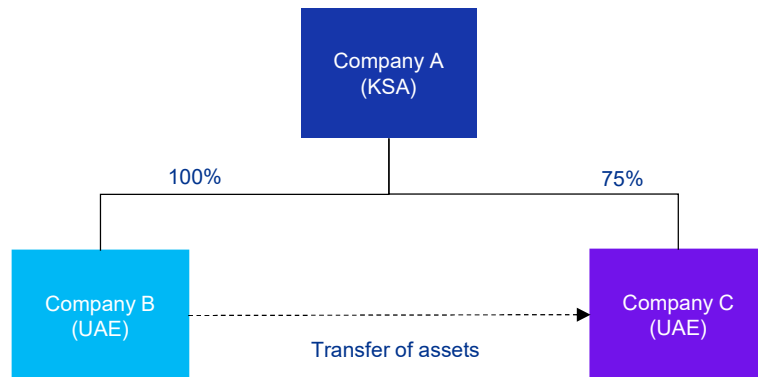
Key questions

- What are the tax implication on transfer of assets by Company B to Company C

Key considerations

- Clause 4(a) of Article 26 - In case the assets/liabilities are transferred to a non-qualifying member / third party within 2 years, the tax exemption shall not be available
- Clause 5 of Article 26 - Assets and liabilities shall be treated as being transferred at market value. Therefore, transfer of asset from Company A to Company B shall be deemed to be transferred at USD 15 mn.

Intra-group transfer – Case Study 3



Key steps

- Company A (registered in KSA) directly owns 100% of Company B (UAE mainland entity) and 100% of Company C (UAE mainland)
- Company B is proposing to transfer an asset to Company C

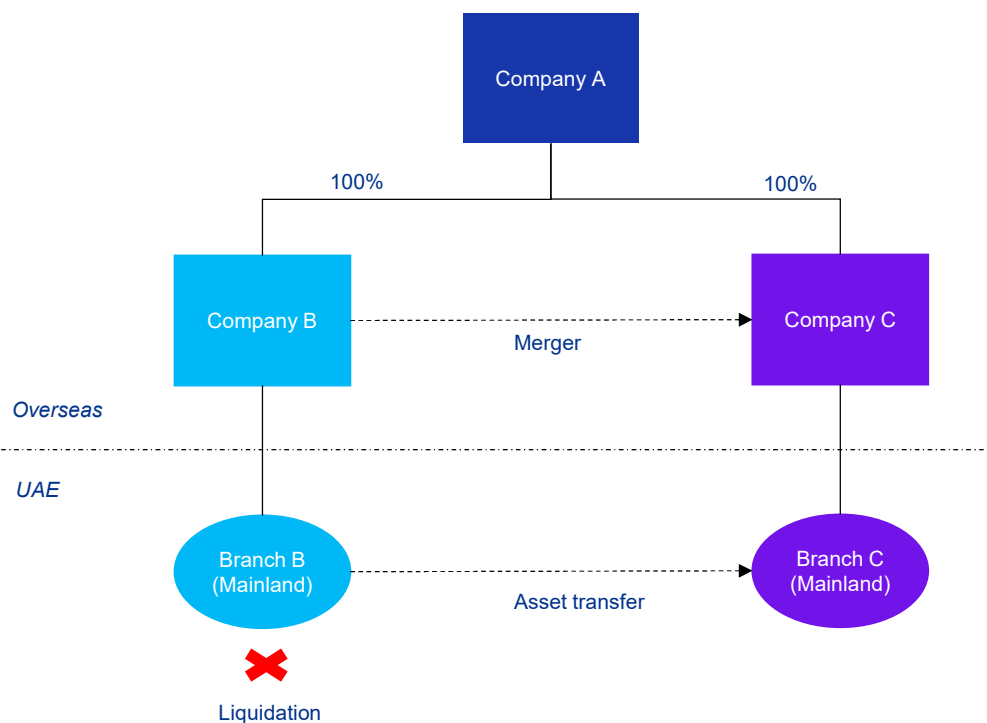
Key questions

- Whether transfer of asset would qualify for relief under Article 26?

Key considerations

- Clause 2(b) of Article 26 - A third person has direct / indirect ownership of the taxable persons
- Article 2(a) of Article 26 – The taxable persons should be residents i.e. both the parties involved in the transaction should be resident
- Article 2(b) does not specify third person (being common shareholder) to be a resident
- It is important to note that Article 40 (Tax Group) specifies all the members of tax group should be residents which is different from the conditions for 'Qualifying Group' under Article 26

Intra-group transfer – Case Study 4



Key steps

- Company A (incorporated in overseas jurisdiction) owns 100% shares of Company B and Company C (both incorporated in overseas jurisdiction)
- Company B and Company C each have a branch in the mainland UAE
- Branches are treated as taxable person for UAE corporate tax purposes
- Pursuant to global acquisition, Company B is merged with Company C in January 2024
- As a part of the transaction, assets of Branch B are to be transferred to Branch C
- Post merger, Company B will cease to exist and the Branch B will also shut down

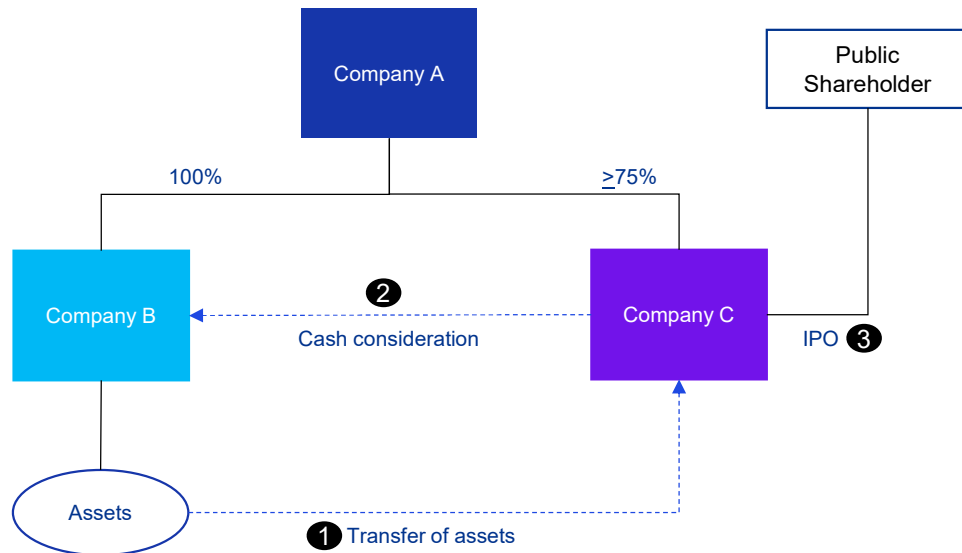
Key questions

- Whether transfer of assets would qualify for relief under Article 26?

Key considerations

- Clause 2(a) of Article 26 - Transfer is between taxable persons who are non-residents having a permanent establishment in the UAE
- Clause 2(b) of Article 26 - A third person has direct / indirect ownership of the taxable persons
- Clause 4(b) of Article 26 – Taxable persons should continue to be members of the same qualifying group for a period of at least 2 years – This condition is violated
- Transfer of asset shall be treated as having taken place at market value at the date of transfer

Intra-group transfer – Case Study 5



Key steps

- Company A (UAE mainland) owns 100% of Company B (UAE mainland entity)
- Company A has recently incorporated 100% subsidiary viz. Company C (UAE mainland)
- Company A intends to carve-out identified assets of Company B in a new entity with the objective of listing such new entity
- Company B will transfer assets to Company C and immediately thereafter the shares of Company C are listed on the stock exchange
- Company A will divest 15% stake in the IPO. Additional 5% stake is divested immediately after 1 year from the the date of listing

Key questions

- Whether transfer of asset would qualify for relief under Article 26?

Key considerations

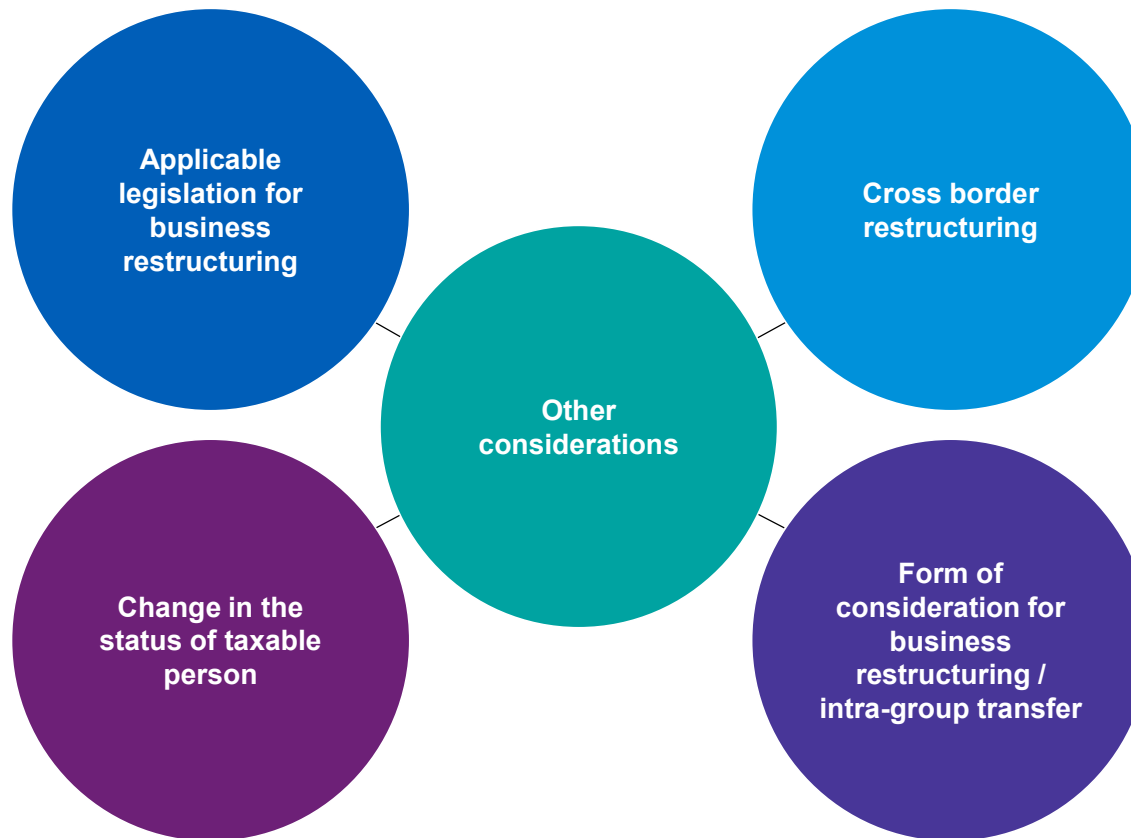
- Clause 4(b) of Article 26 - Taxable persons should continue to be members of the same qualifying group for a period of atleast 2 years
- Upon divestment of shares in the IPO, Company A will own 85% ownership interest in Company C
- Upon sale of additional 5% stake, Company A will have 80% stake i.e. at least 75% ownership and therefore Company C is still a part of qualifying group
- Assuming other conditions are satisfied, transfer of assets by Company B to Company C will qualify for relief under Article 26.
- In case the ownership falls below 75% anytime during the 2 year lock-in period, the relief will not be available.

The background of the slide features a low-angle shot of a modern building with a glass facade, partially obscured by a large, semi-transparent blue rectangle. To the right, the Italian flag (green, white, and red vertical stripes) is visible, flying from a tall pole against a clear blue sky.

03

Other Considerations

Points to Ponder



Compliance & Reporting

Record Keeping

- Both the Transferor and the Transferee must maintain a record of the agreement to transfer the business or asset / liability (as the case may be) at the value prescribed under Article 26 / Article 27

Tax Deregistration

- A person with a TRN shall file a tax deregistration application with the authority in case of cessation of its business or business activity whether by dissolution, liquidation, or otherwise,
- The application shall be made in the form and manner and within the timeline prescribed by the authority

Thank you.

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The views and opinion expressed are personal in nature and do not represent views of any organization/entity.