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REVERSE FLIP – FROM OFFSHORE TO ONSHORE

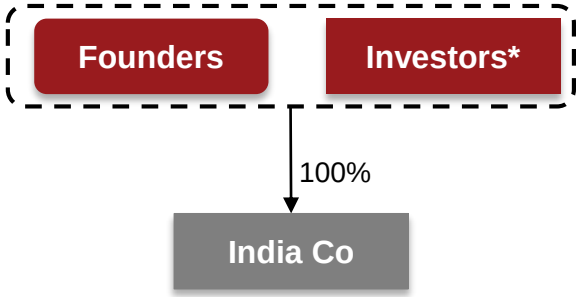
September 19, 2024

AGENDA

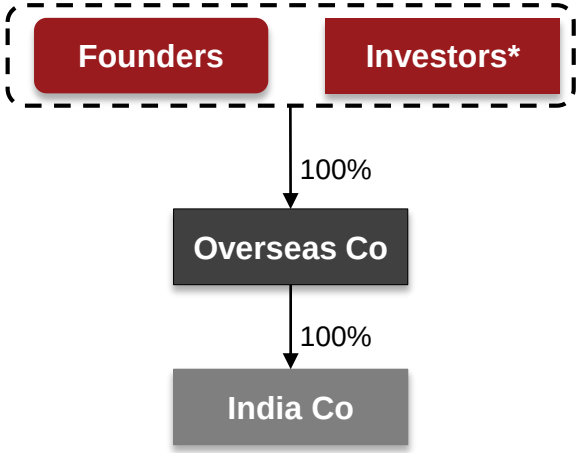
- What is Reverse Flipping?
- Why did companies set-up in a foreign country?
- Why companies are choosing/should choose to return to India?
- Reverse flip story so far…..
- Structures to implement reverse flipping
- Q&A session

WHAT IS REVERSE FLIPPING OR INTERNALISATION

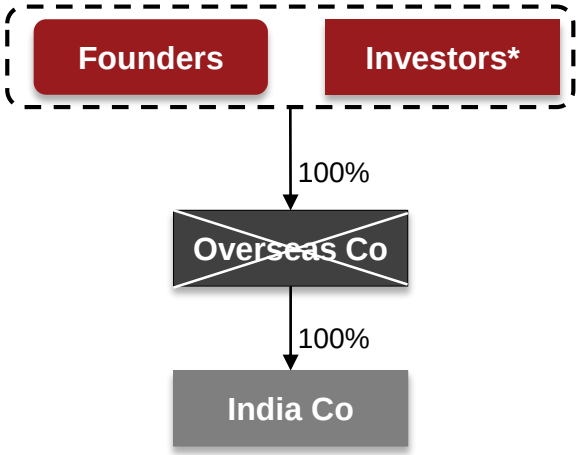
The once-common practice of ‘flipping’ or “externalized structure”, where companies incorporated their operations abroad to tap into specific benefits, is giving way to a phenomenon known as ‘reverse flipping’ or ‘internalization.’ This reversal involves Indian companies, initially established overseas, strategically repatriating their legal headquarters back to India



Basic Structure



Flip or Externalized Structure



Reverse Flip or Internalized Structure

**Investors include resident and non-resident investors*

WHY DID COMPANIES SET UP IN FOREIGN COUNTRIES?

1	Easier access to foreign capital and investor confidence
2	Lucrative global markets and brand recognition
3	Stringent intellectual property protection laws abroad
4	Favorable regulations abroad
5	Tax optimization for investors
6	Better exit valuations

WHY COMPANIES ARE/SHOULD RETURN TO INDIA

I	Investor-friendly regulatory reforms (Tax incentives, FDI relaxations, Make in India incentives, etc)
N	New growth opportunities across diverse sectors, from e-commerce and fintech to healthcare and renewable energy offers significant growth potential and strong returns on investment
D	Demographic Advantage - Massive consumer base and a dynamic workforce
I	Increased investors base in India and confidence in the Indian start-up ecosystem
A	Accelerated Capital Market reach - Surge in successful IPOs, particularly in the technology and startup sectors

REVERSE FLIP STORY SO FAR*…..

COMPLETED FLIPS

- **Phone Pe:** First unicorn to reverse flip from **Singapore** through a share transfer transaction
- **Groww:** Moved its domicile from the **USA** back to India in March 2024 through an inbound merger
- **Pepperfry:** Shifted its domicile back to India through an inbound merger

PURSUIT FOR FLIPS

udaan

zepto

KreditBee

Pine Labs

meesho

freshworks

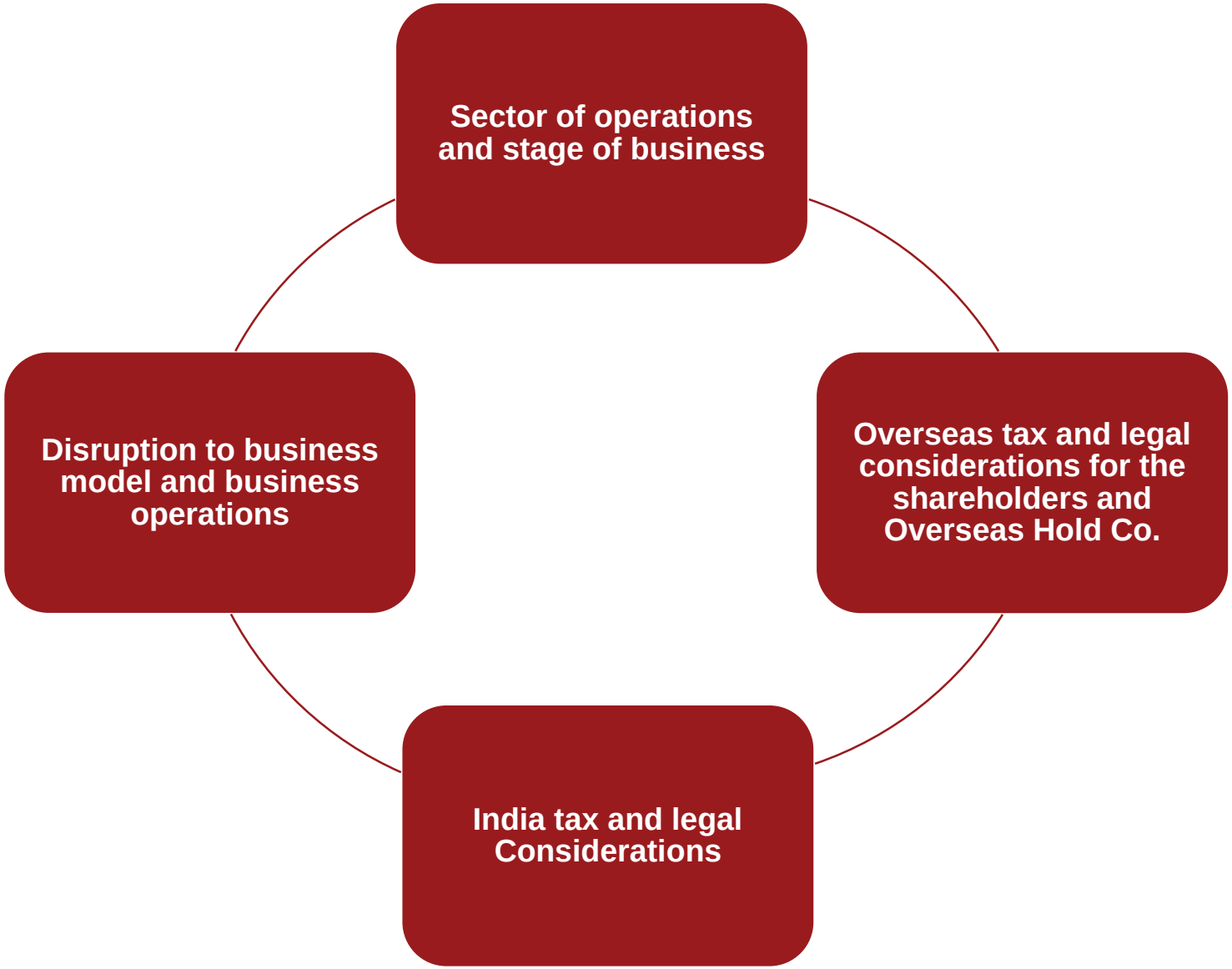
Razorpay

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PREVELANT STRUCTURES FOR REVERSE FLIP

KEY FACTORS TO CHOOSE BETWEEN OPTIONS



PREVELANT STRUCTURES TO ACHIEVE REVERSE FLIP*

1	Setting up a new structure - For early-stage companies
2	Liquidation of Overseas Hold Co
3	Transfer of Shares of India Co followed by dividend/capital reduction by Overseas Hold Co
4	Swap of shares
5	Inbound Merger

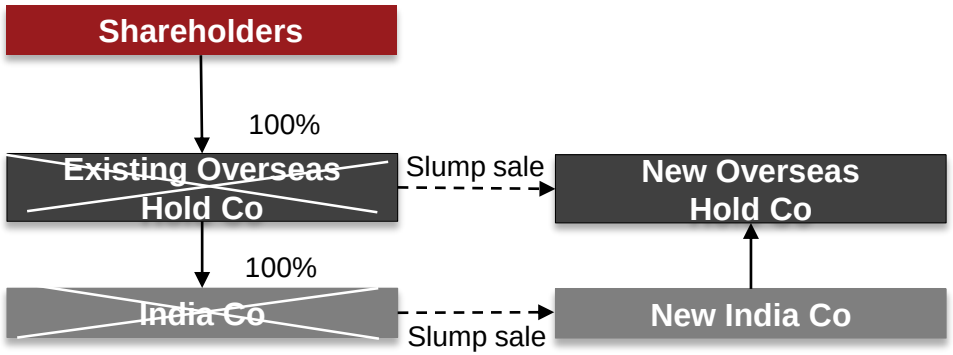
**Overseas tax and regulatory implications would need to discussed with the overseas consultants depending on the jurisdiction of the Overseas Hold Co and residential status of the Shareholders*

OPTION 1: SETTING UP A NEW STRUCTURE

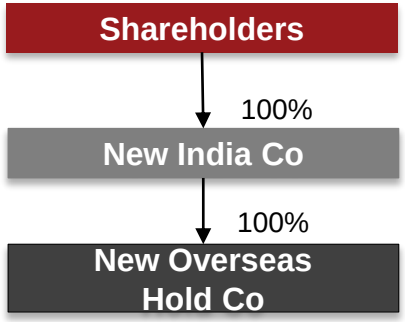
Step 1: Shareholders of Existing Overseas Hold Co to incorporate a new India Co with mirror shareholding and New India Co to set-up a New Overseas Hold Co

Step 2: Existing India Co and Overseas Hold Co to transfer assets and liabilities (including employee and contracts, if any) to New India Co. and New Overseas Hold Co respectively through slump sale

- India Co and Existing Overseas Hold Co to be liquidated over a period assuming that both companies have insignificant operations



Resultant Structure



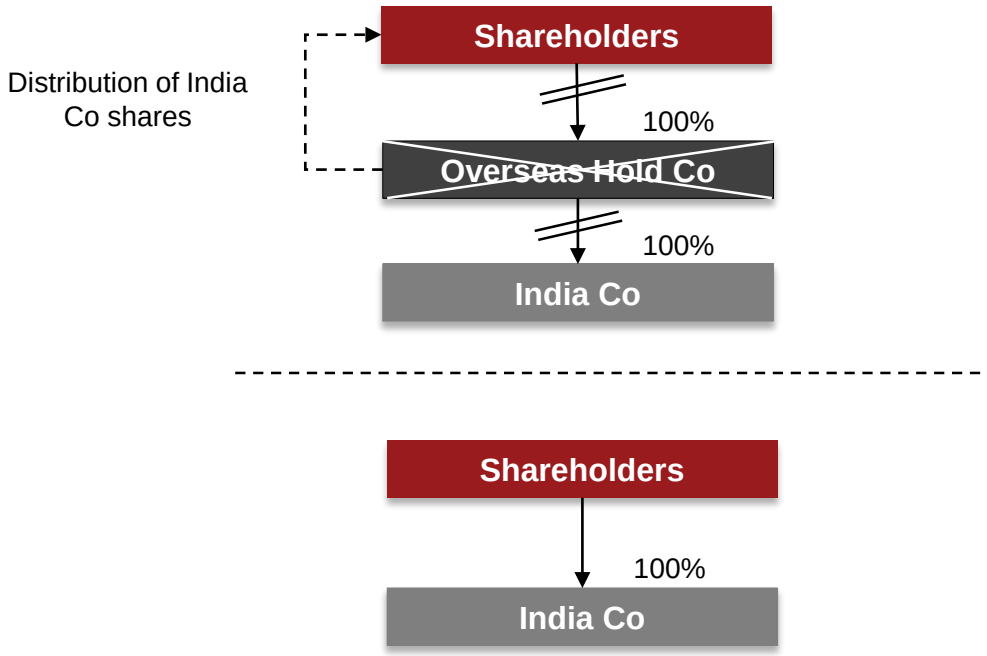
KEY INDIA TAX CONSIDERATIONS

- Excess of sale consideration over cost of acquisition shall be taxable as capital gains
- Carried forward business loss of Existing India Co may lapse on account of change in shareholding pursuant to liquidation
- Timeline: 1-2 months for the transition into the New India Co

OPTION 2: LIQUIDATION OF OVERSEAS HOLD CO

Step 1: Overseas Hold Co to undertake voluntary liquidation in compliance with the laws of overseas jurisdiction

Step 2: Overseas Hold Co to distribute assets and liabilities (including shares of India Co) to its existing shareholders



Resultant Structure

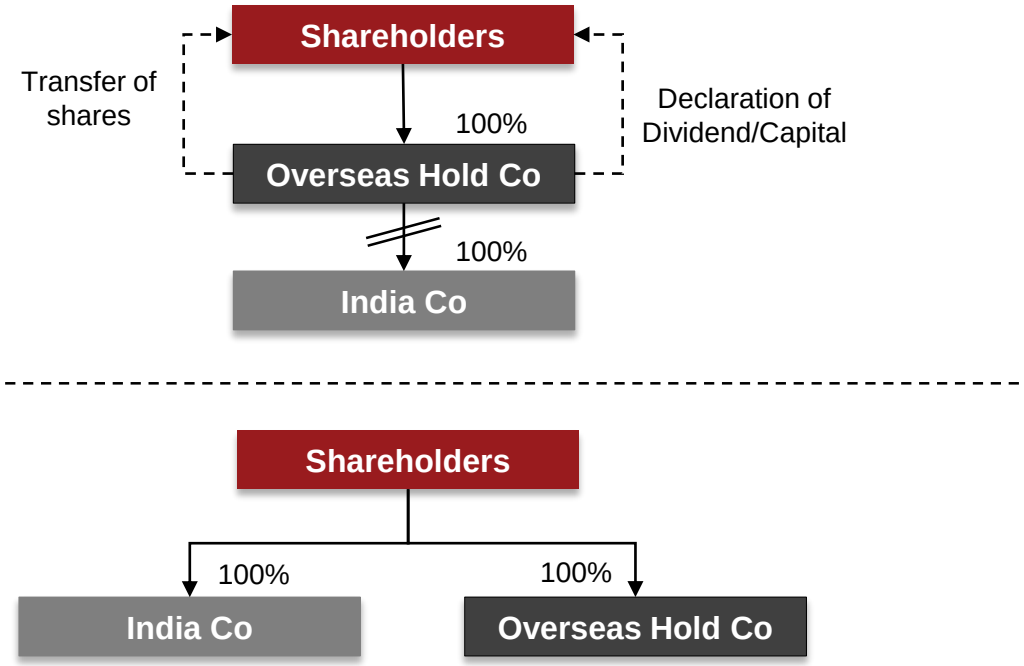
KEY INDIA TAX CONSIDERATIONS

- No India tax implications for Overseas Hold Co on distribution of shares of India Co pursuant to liquidation
- FMV of the assets received on liquidation shall be taxed as dividend to the extent of accumulated profits and the balance shall be deemed to be the sale consideration for transfer Overseas Hold Co' shares for determining capital gain implications
- Indirect transfer tax implications may arise in the hands of non-resident shareholders. Further, receipt-based taxation may also need to be evaluated if the situs of shares of Indian Co is in India
- Reset of period of holding and cost of acquisition for the Shareholders
- Carried forward business loss of India Co may lapse on account of change in shareholding
- Timeline: May vary as per the laws of host jurisdiction

OPTION 3: TRANSFER OF SHARES OF INDIA CO FOLLOWED BY DIVIDEND/CAPITAL REDUCTION BY OVERSEAS HOLD CO

Step 1: Overseas Hold Co to transfer shares held in Indian co to the shareholders (Consideration to remain outstanding)

Step 2: Overseas Hold Co. to undertake capital reduction/ declare dividends and set-off against the consideration receivable from the Shareholders



Resultant Structure

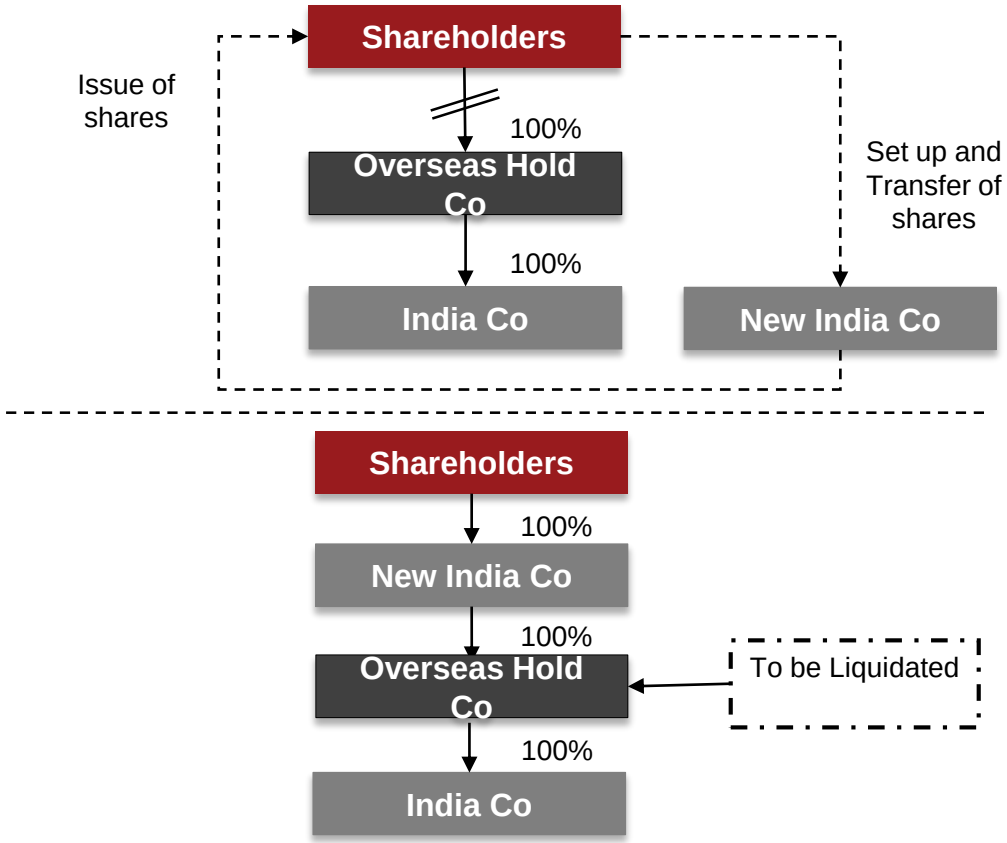
KEY INDIA TAX CONSIDERATIONS

- Excess of sale consideration over cost of acquisition shall be taxable as capital gains on transfer of shares of Indian Co.
- No India tax implication in the hands of Non-resident shareholders on receipt of dividend from Overseas Hold Co.
- Carried forward business loss of India Co may lapse on account of change in shareholding
- Timeline: 4 to 6 weeks

OPTION 4: SWAP OF SHARES

Step 1: Shareholders to set up of New Indian Co and transfer shares held in Overseas Hold Co to New India Co in exchange of shares of New India Co

Step 2: Overseas Hold Co to liquidate and distribute assets and liabilities (including shares of India Co) to New India Co



Resultant Structure

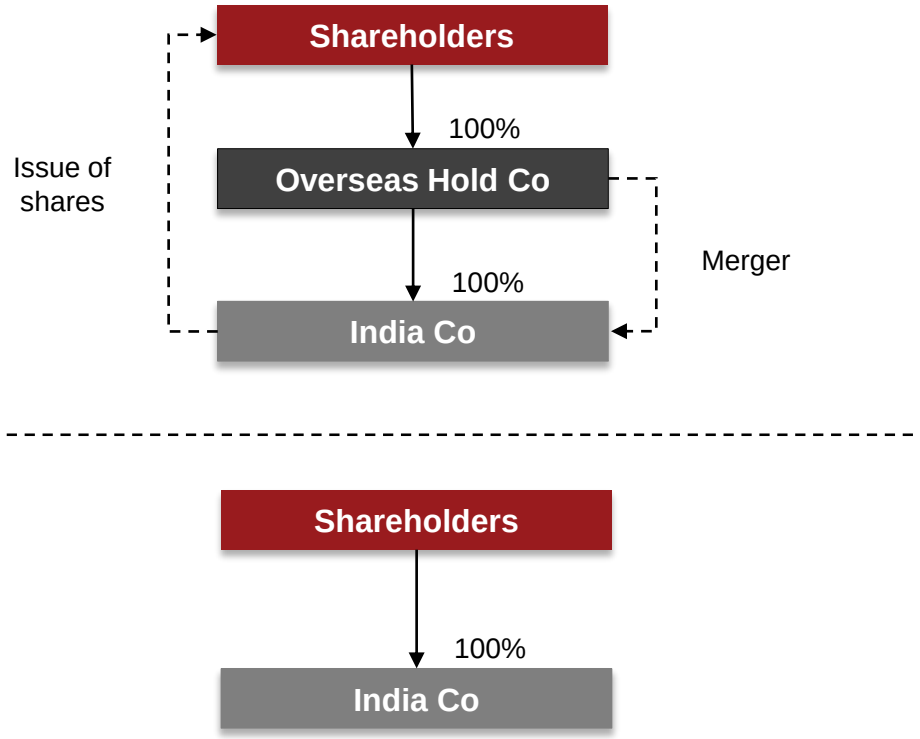
KEY INDIA TAX CONSIDERATIONS

- Indirect transfer tax implications may arise in the hands of non-resident shareholders. Further, receipt-based taxation may also need to be evaluated if the situs of shares of Indian Co is in India
- No India tax implications for Overseas Hold Co on distribution of shares of India Co pursuant to liquidation
- FMV of the assets received on liquidation shall be taxed as dividend to the extent of accumulated profits and the balance shall be deemed to be the sale consideration for transfer Overseas Hold Co' shares for determining capital gain implications
- Carried forward business loss of India Co may lapse on account of change in shareholding
- Timeline: 6 to 8 weeks (May vary as per the laws of host jurisdiction)

OPTION 5: INBOUND MERGER

Step 1: Merger of Overseas Hold Co into India Co under fast-track route

Step 2: Issue of shares by India Co to the Shareholders of Overseas Hold Co as consideration for merger



Resultant Structure

KEY INDIA TAX CONSIDERATIONS

- Merger of foreign company with India Co to be tax-neutral for the Overseas Hold Co, Shareholders and the India Co subject to compliance with prescribed conditions
- Carried forward business loss of India Co may lapse on account of change in shareholding
- Continuation of the period of holding and cost of acquisition for the Shareholders
- Merger to be compliant with laws of overseas jurisdiction
- Timeline: 9-12 months

GIFT CITY: PREFERRED DESTINATION FOR INTERNALIZATION

IFSCA has introduced International Financial Services Centres Authority (Listing) Regulations, 2024 to provide access to global capital without domestic listing and has set up **Padmanabhan committee** to develop a plan to **Onshore the Indian innovation to GIFT IFSC**

KEY RECOMMENDATIONS BY THE COMMITTEE

- **IFSCA should be a nodal office for application for incorporation and other regulatory approval under one form**
- **Tax neutral structure for relocation of overseas holding companies into GIFT IFSC**
- **Grandfathering of existing investment of overseas holding companies and protection from tax on disposal of existing investments post relocation**
- **Exemption from applicability of provision relating to place of effective management**
- **Protection from lapse of losses of the Indian operating entity and overseas holding companies due to change in shareholding upon relocation**
- **Exemption from taxation of dividend income receivable by holding company from its subsidiaries**
- **Enhancing the LRS limit for investment in the Gift IFSC**

Thank You

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