



# BOWMANS

THE VALUE OF KNOWING

## CORPORATE REORGANISATIONS

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# GENERAL PRINCIPLES

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- Types of transactions covered
- Common/typical rules

# EXAMPLE

•S45 intra-group transaction:

•*ACo sells machine to BCo*

- Group companies
- Cost to ACo: R10m
- Tax value: R4m
- Price (MV): R7m

	No Relief	s45 Relief
ACo		
Recoupment	R 3m	N I L
BCo		
Cost	R 7m	R 10m
Tax Value	R 7m	R 4m
Max future allowances	R 7m	R 4m
Max future recoupment	R 7m	R 10m

# TRANSACTIONS COVERED

## Asset transfers (in return for consideration)

- Asset-for-Share transactions (s42)
- Amalgamation transactions (s44)
- Intra-group transfers (s45)

Combination of transfer & distribution

## Asset distributions

- Unbundling transactions (s46)
- Liquidation, winding-up & deregistration transactions (s47)

## Capital Restructuring

- Substitutive share for share transactions (s43)

# GENERAL RULES

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Roll-over of capital gains & taxable income (maybe losses)

Recipient steps into shoes of transferor

Market Value / consideration irrelevant

# GENERAL REQUIREMENTS

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Anti avoidance:

- Transferor & transferee to retain relationship
- Retention of actual asset by transferee

Automatic —subject to negative election

# ASSET-FOR-SHARE TRANSACTIONS – KEY PROVISIONS

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- s24BA: Assets acquired as consideration for the issue of shares
- s40C: Issue of shares or granting of options for no consideration
- s40CA: Acquisitions of assets in exchange for shares or debt

# VALUE MISMATCH

## ASSET-FOR-SHARE RULES (S24BA)

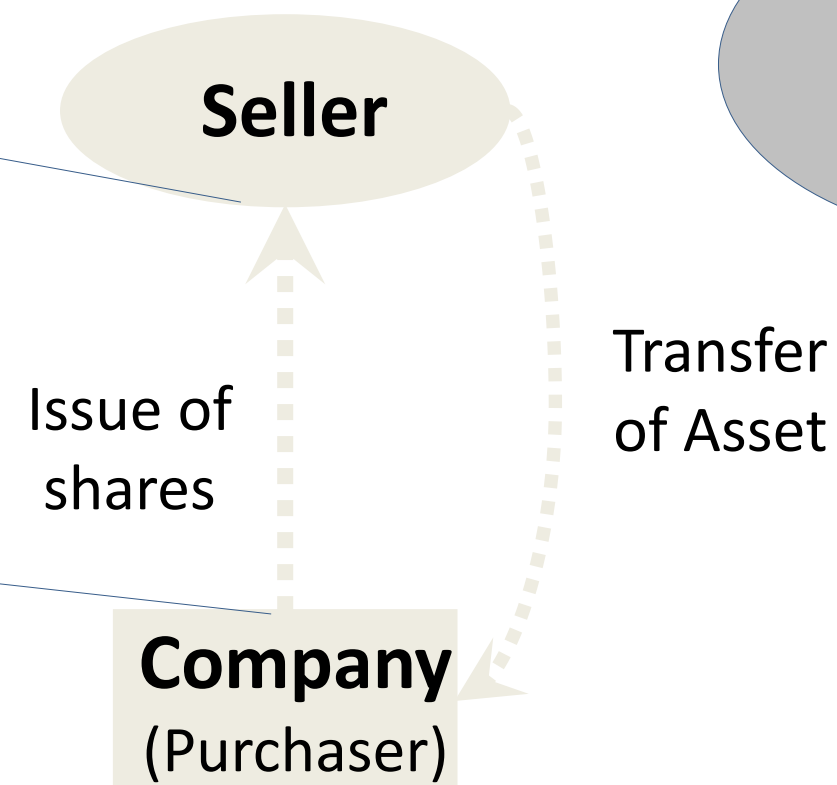
**Asset acquired as consideration by company, in return for issue of shares**

Consideration not arm's length

- MV asset (before) > shares (after)
- Excess:

Tax cost  
reduced

Capital gain





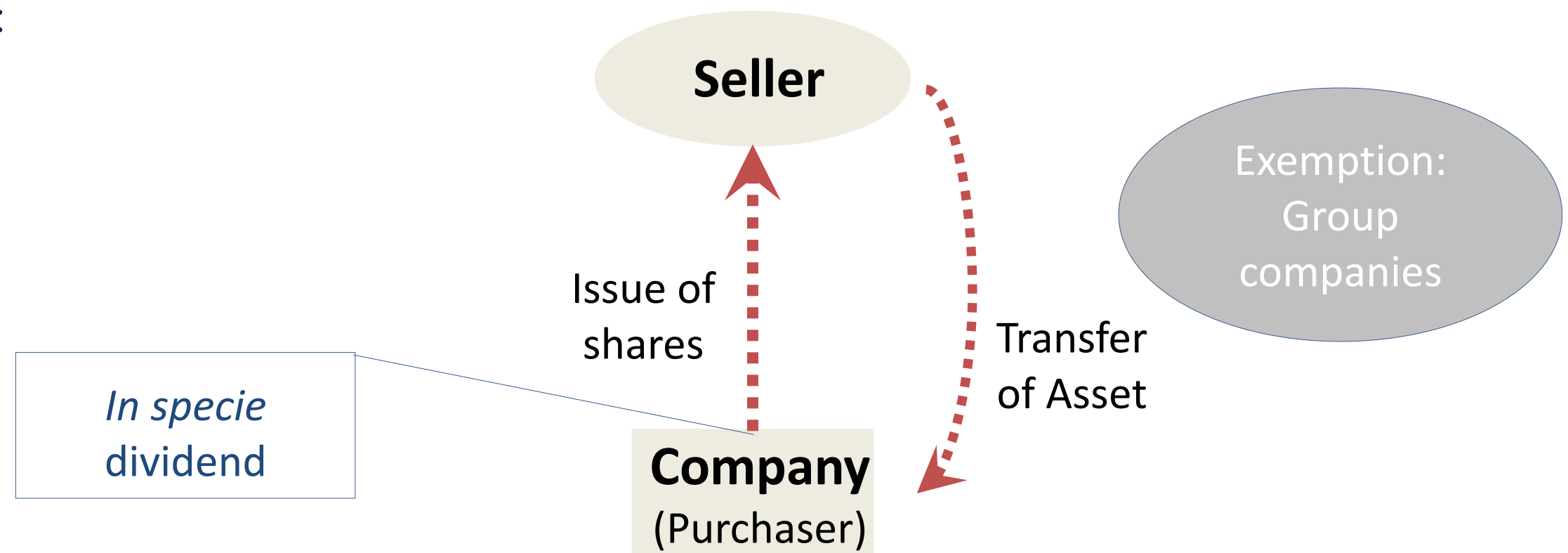
# VALUE MISMATCH

## ASSET-FOR-SHARE RULES (S24BA)

**Asset acquired as consideration by company, in return for issue of shares**

Consideration not arm's length

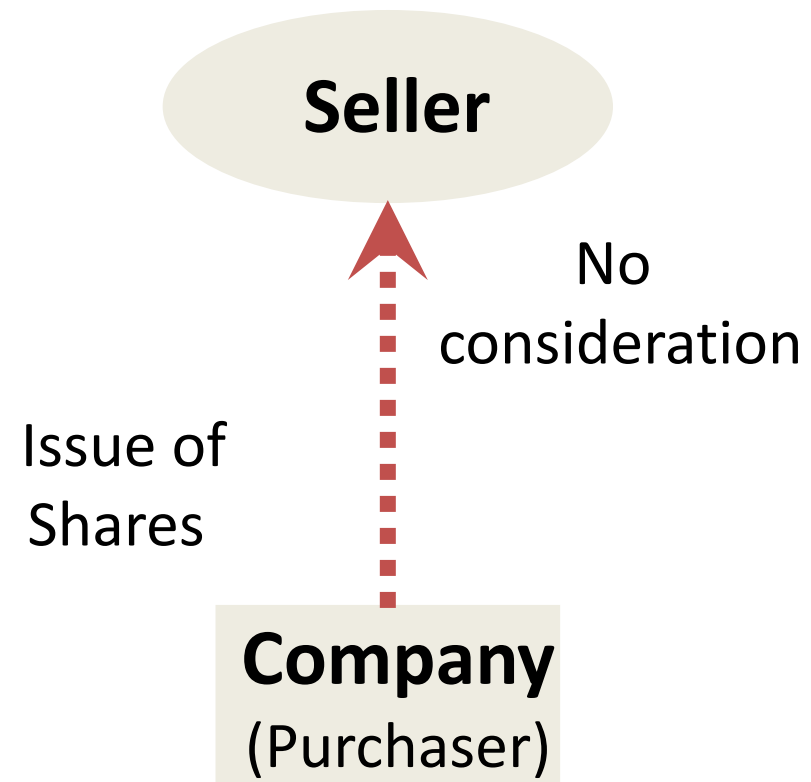
- MV shares (after) > asset (before)
- Excess:



# CAPITALISATION ISSUES

## S40C

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# SHARE TRANSACTIONS

## ASSET-FOR-SHARE RULES (S40CA)

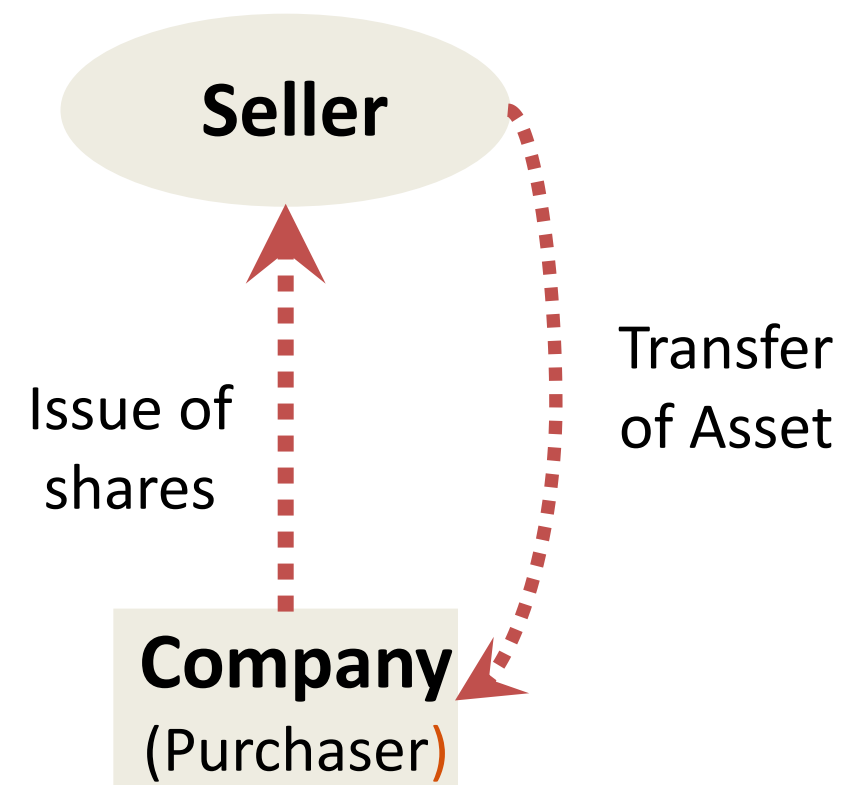
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Asset acquired by company, in return for issue of shares or debt

- Company/Issuer:

**Cost of asset** =

- MV of shares



# ASSET-FOR-SHARE TRANSACTIONS – S42

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- Requirements
- Effects
- Claw-backs
- CTC

# ASSET-FOR-SHARE TRANSACTIONS (S42)

## Roll-over relief for asset transferred to company

Separate **requirements** for:

- Transfers to SA companies; &
- Transfers to CFCs

(But same *relief* rules)

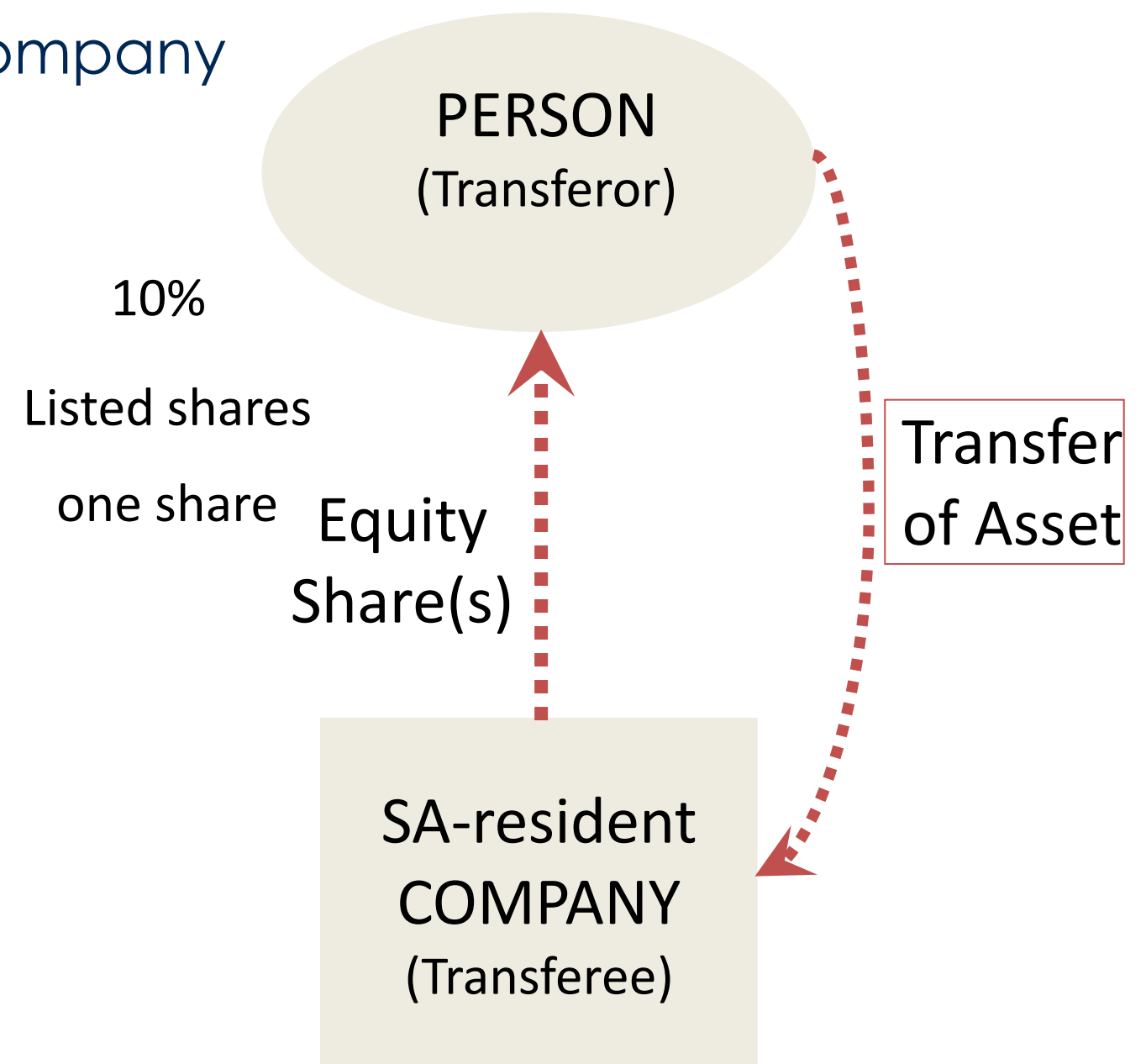
Income Tax relief only applies if transferor's disposal would have triggered SA tax

Election out

# ASSET-FOR-SHARE TRANSACTIONS (S42)

## REQUIREMENTS – TRANSFER TO SA-RESIDENT COMPANY (1)

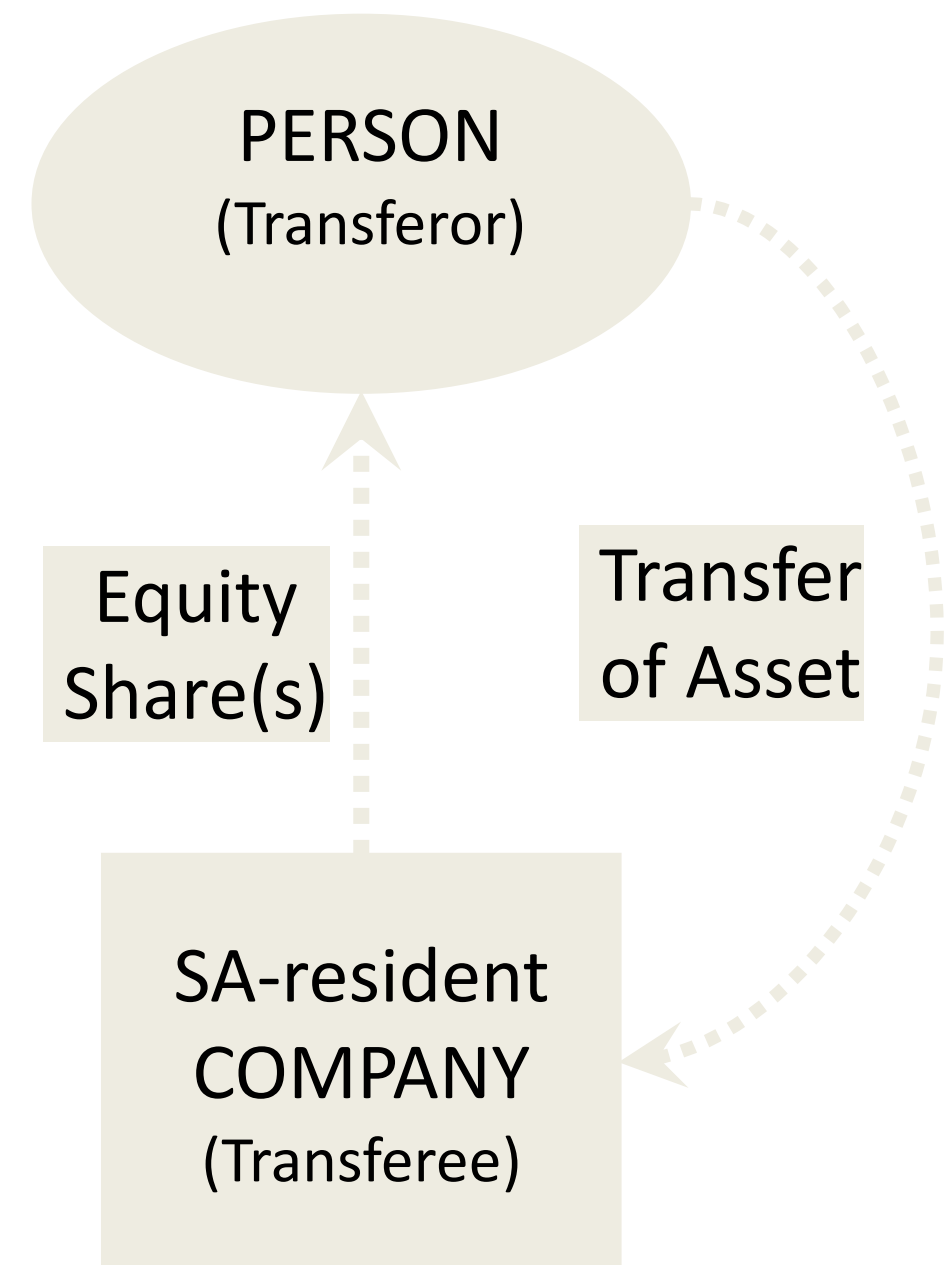
- Asset transferred to **SA-resident** company
- Consideration from company:  
**Equity share(s)**
  - “*qualifying interest*”; or
  - full-time engagement



# ASSET-FOR-SHARE TRANSACTIONS (S42)

## REQUIREMENTS – TRANSFER TO SA-RESIDENT COMPANY (2)

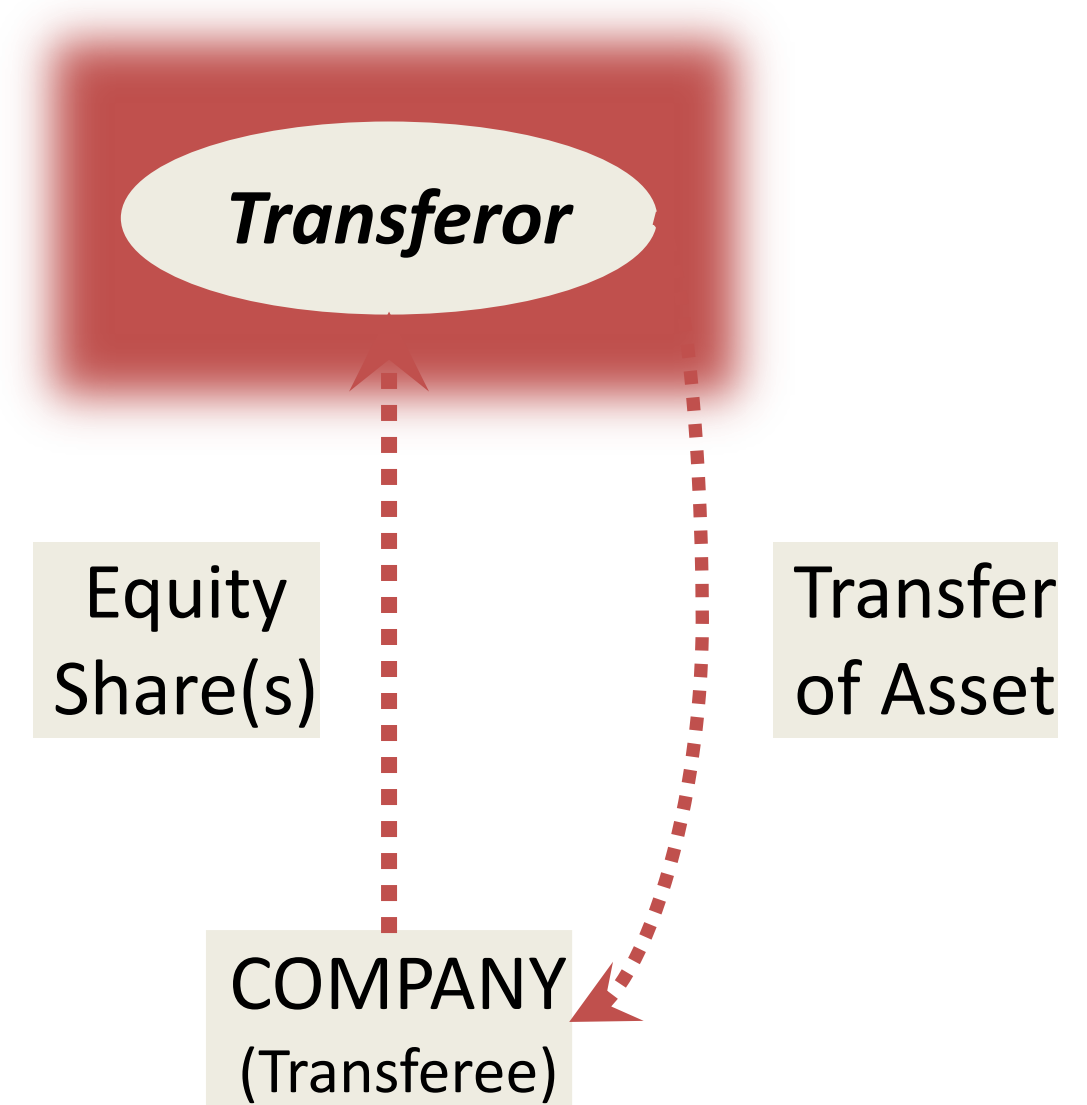
- Most assets
- MV of asset  $\geq$  b/cost (no loss)
  - Asset retains nature
    - or capital can convert to trading stock
    - special rule for transfer of listed shares



# ASSET-FOR-SHARE TRANSACTIONS (S42)

## EFFECT: TRANSFEROR

- Disposal of asset
  - General rule: No tax charge
  - Special rules if consideration not exclusively equity shares
- Shares received
  - Assume cost history of asset transferred



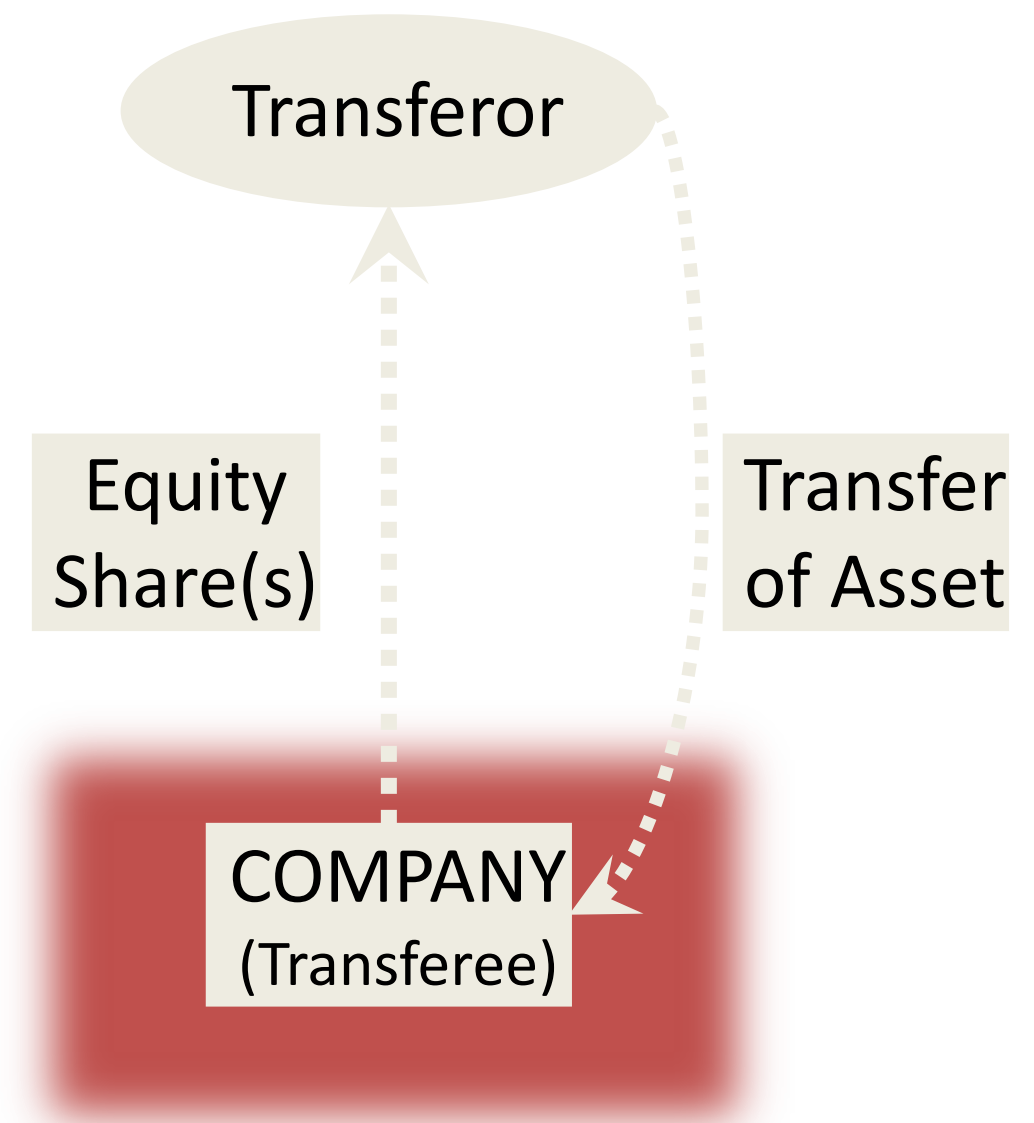


# ASSET-FOR-SHARE TRANSACTIONS (S42)

## EFFECT: TRANSFEREE COMPANY (1)

### Base cost of asset received

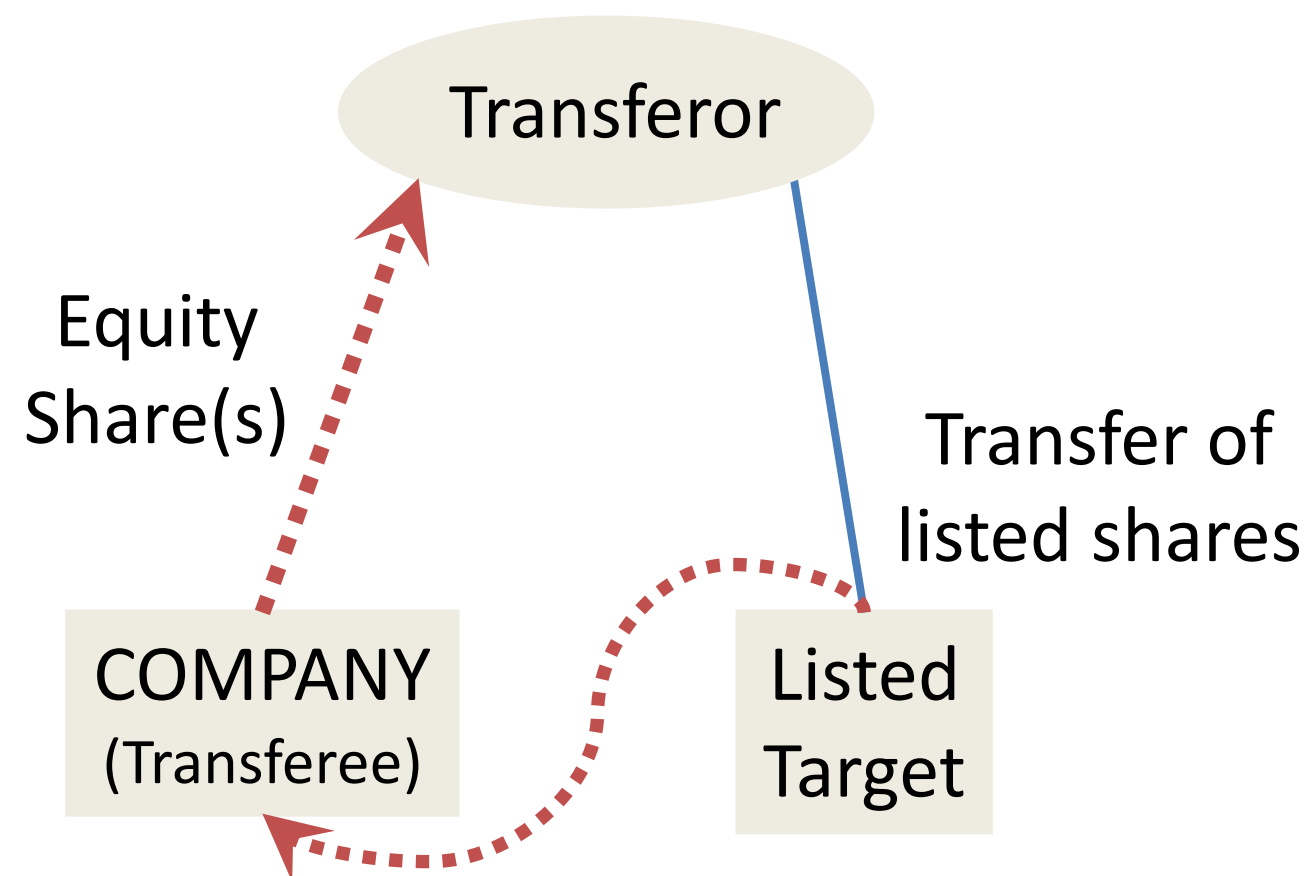
- General rule: Transferee inherits transferor's cost history
- Exception for listed shares



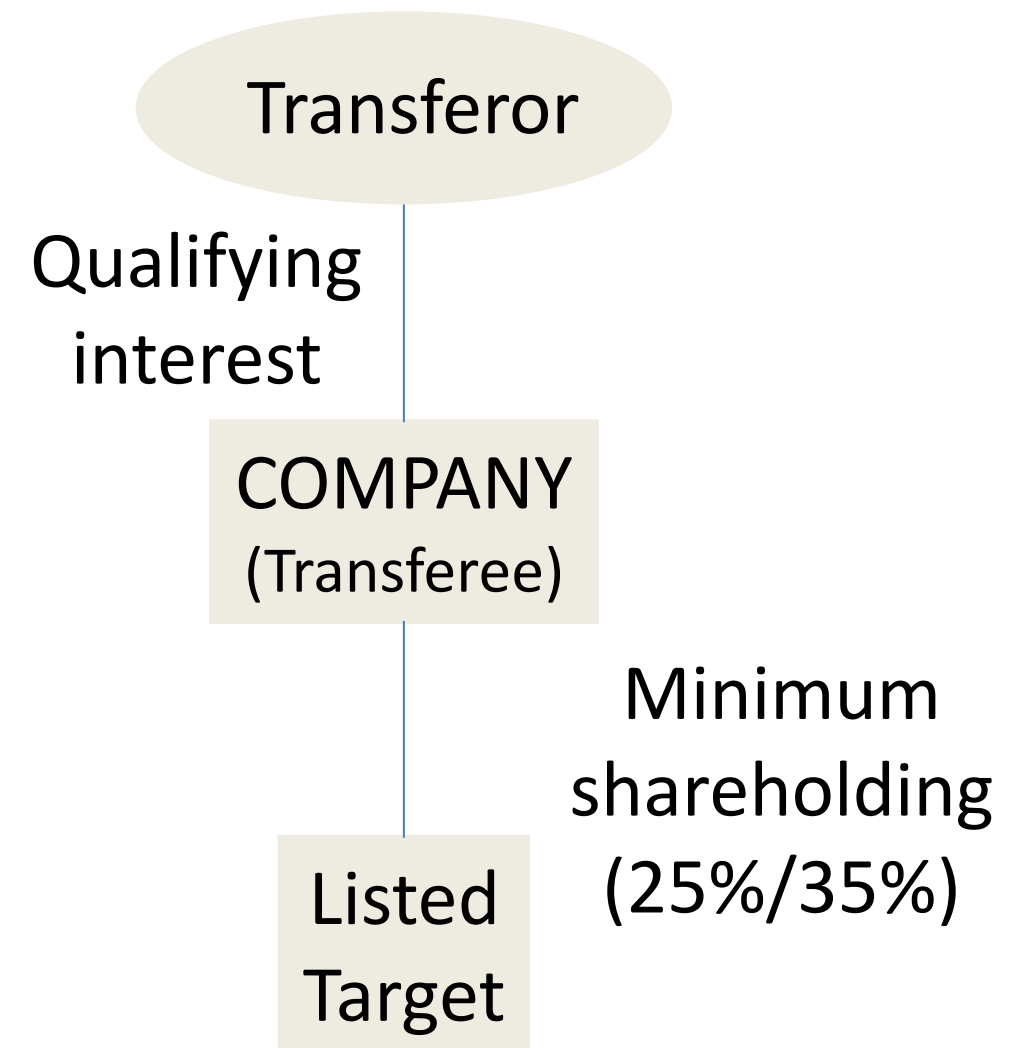
# ASSET-FOR-SHARE TRANSACTIONS (S42)

## EFFECT: TRANSFEREE COMPANY (2)

- Take-over of PCISS/Listed Co



Minimum resultant shareholding  
in listed target (25% / 35%)

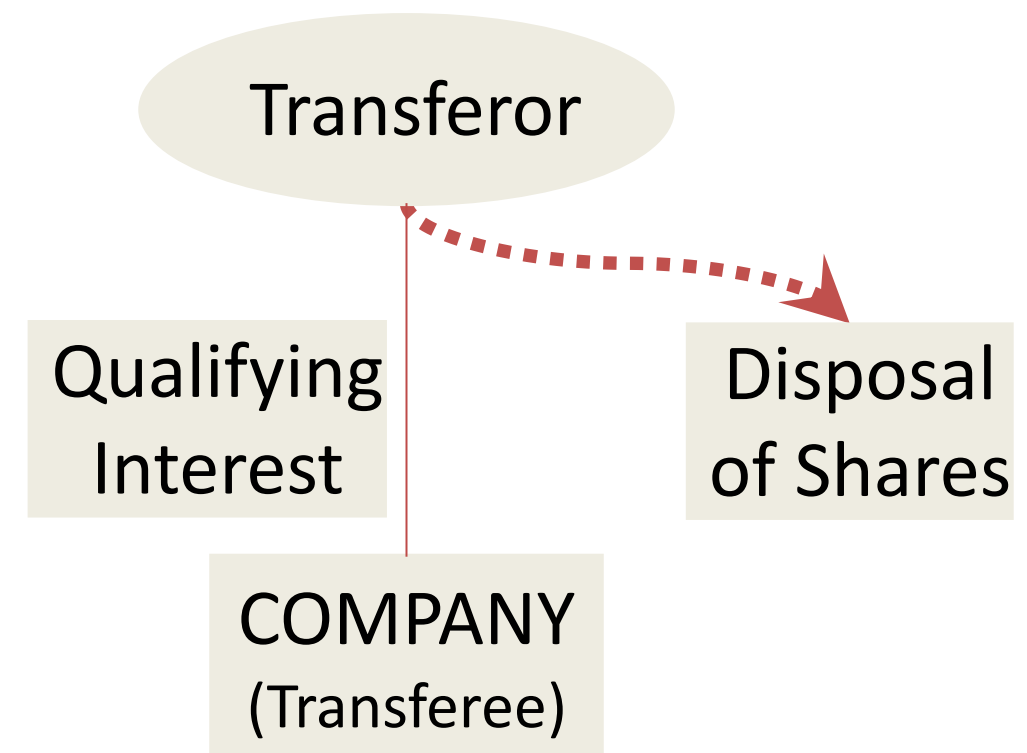


**Transferee's deemed cost = MV**

# ASSET-FOR-SHARE TRANSACTIONS (S42)

## CLAWBACKS (1)

- **Transferor: 18-month rule**
  - Disposal of shares —May be trading stock
  - Less than QI —Deemed disposal of remaining shares



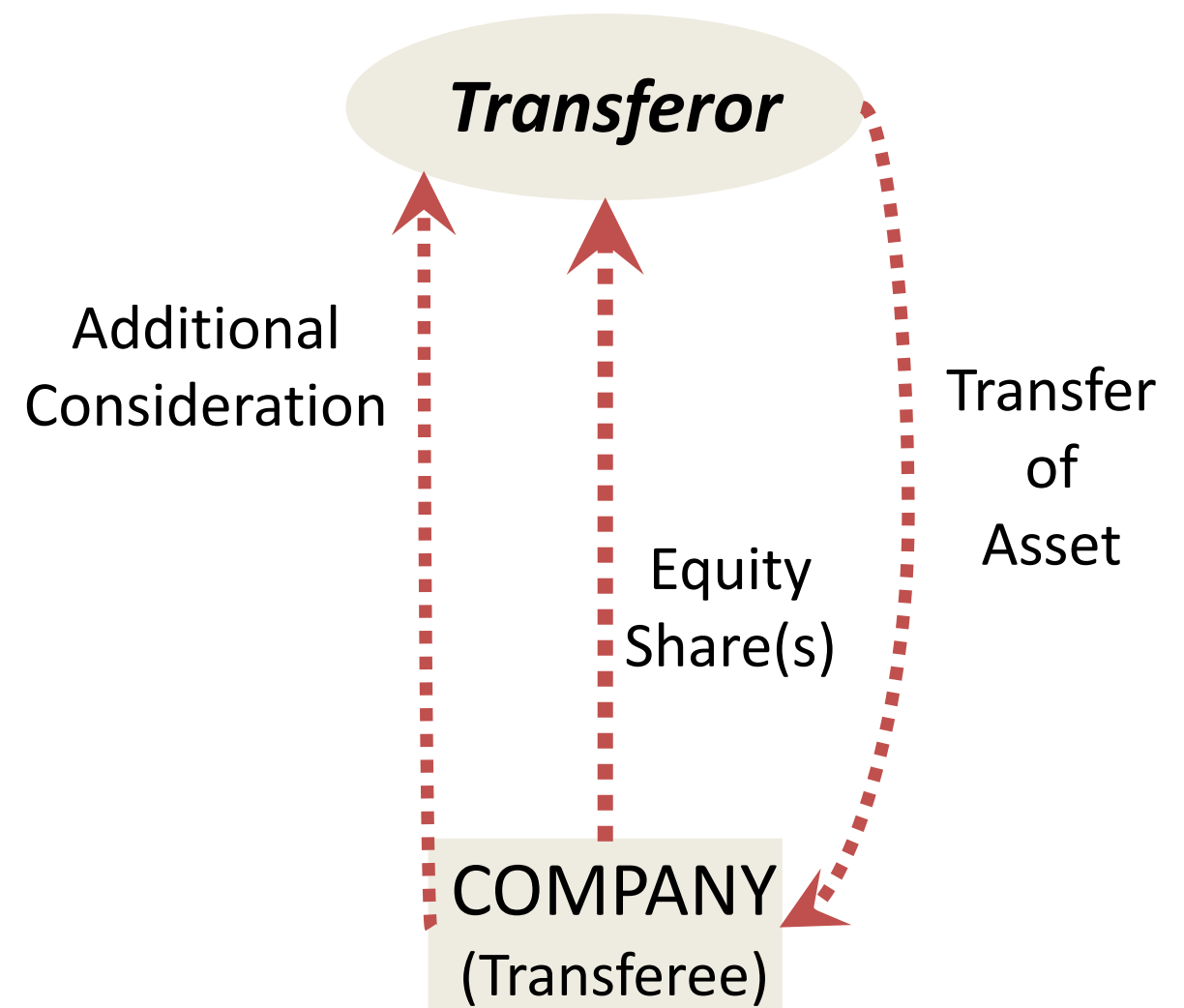
# ASSET-FOR-SHARE TRANSACTIONS (S42)

## CLAWBACKS (2)

Transferor: Qualifying debt assumed by transferee-company

Background: Default rule for ***additional consideration***

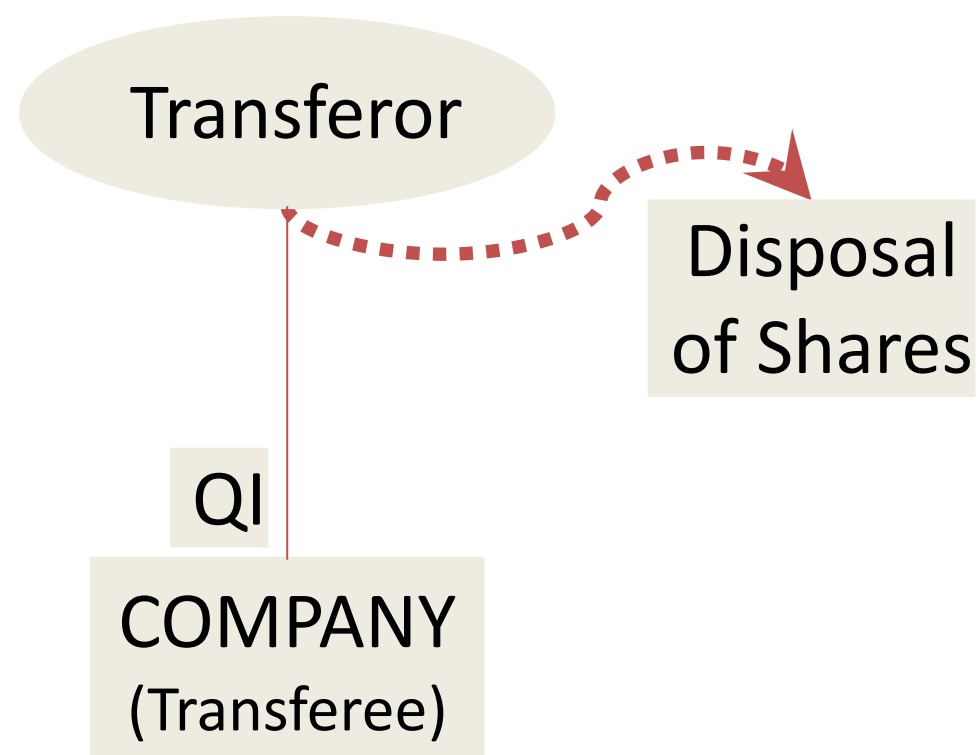
- S42 relief only applies ***to the extent*** of equity shares issued by transferee
- Immediate taxation of additional consideration (incl. assumption of debt)
- Special deferral rules for assumption of specified ***qualifying*** debt



# ASSET-FOR-SHARE TRANSACTIONS (S42)

## CLAWBACKS (3)

Transferor: Qualifying debt assumed by transferee-company



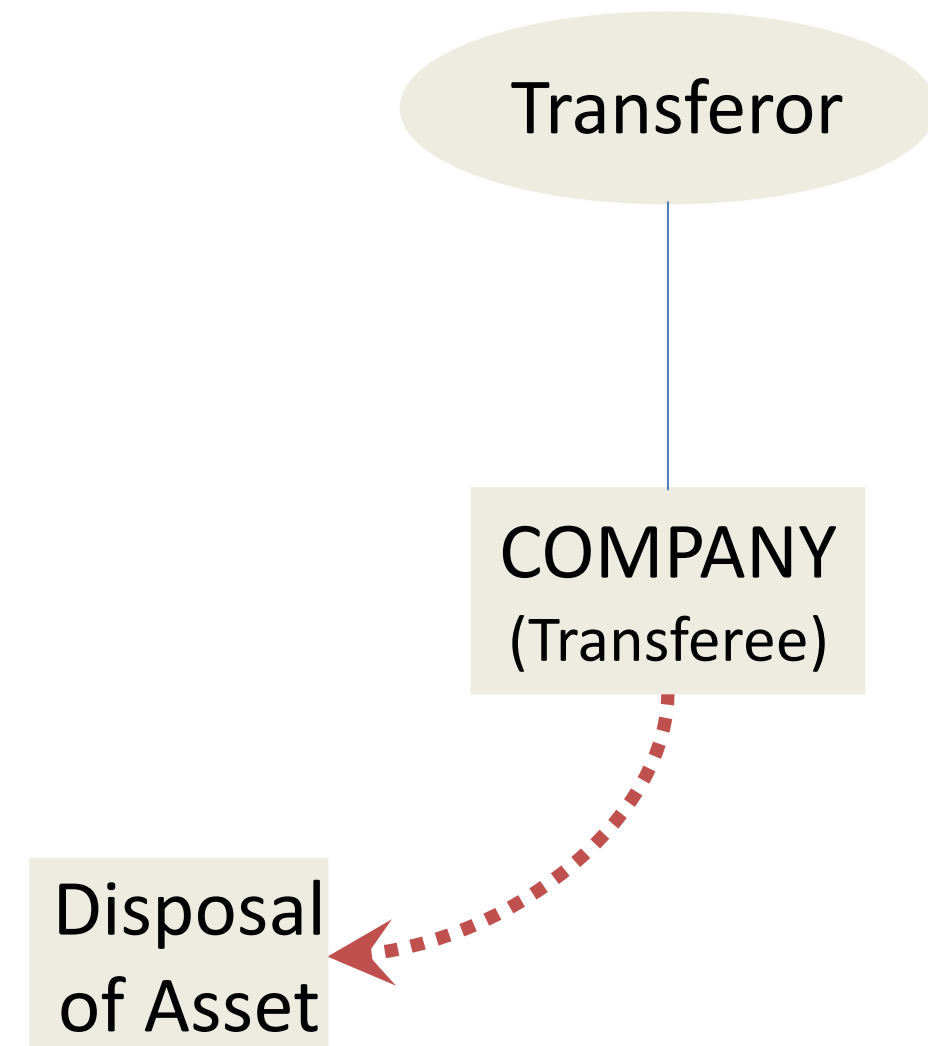
- Qualifying debt **not** taxed immediately upon s42 transfer
- **BUT:** Treated as return of capital immediately before disposal (capital) or income inclusion immediately before disposal (trading stock)

# ASSET-FOR-SHARE TRANSACTIONS (S42)

## CLAWBACKS (4)

### Transferee-Company: 18-month rule

- Disposal of asset: Ring-fencing of original gain/TI
  - i.e. cannot be reduced by losses
  - Not applicable to company's regular/continuous trading stock

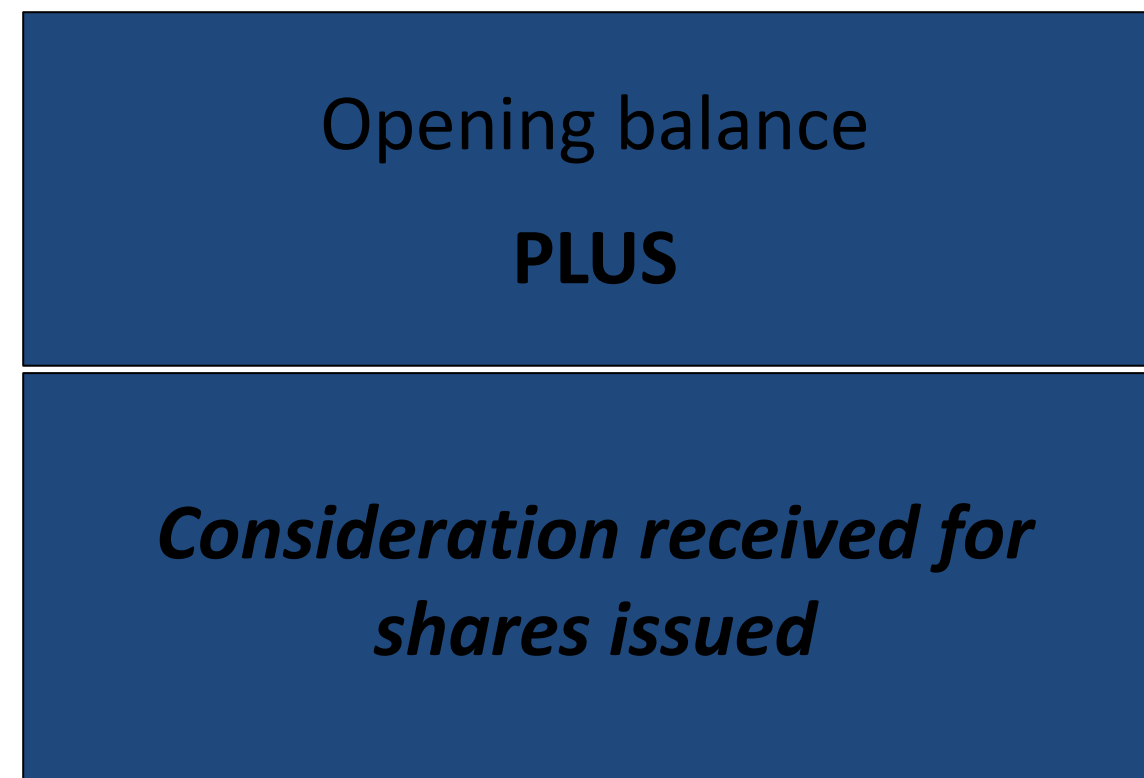


# ASSET-FOR-SHARE TRANSACTIONS (S42)

## CONTRIBUTED TAX CAPITAL

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What is CTC?



# ASSET-FOR-SHARE TRANSACTIONS (S42)

## CTC

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Increase in CTC: Asset contributed as consideration for shares issued

- Default (non-s42) rule:
  - CTC increased by **market value** of asset received.
- S42 Asset-for-share:
  - CTC increased by **base cost** (not MV) of asset received.

*(Exception for takeovers of listed companies / PCISs)*



# ASSET-FOR-SHARE TRANSACTIONS (S42)

## CTC EXAMPLE

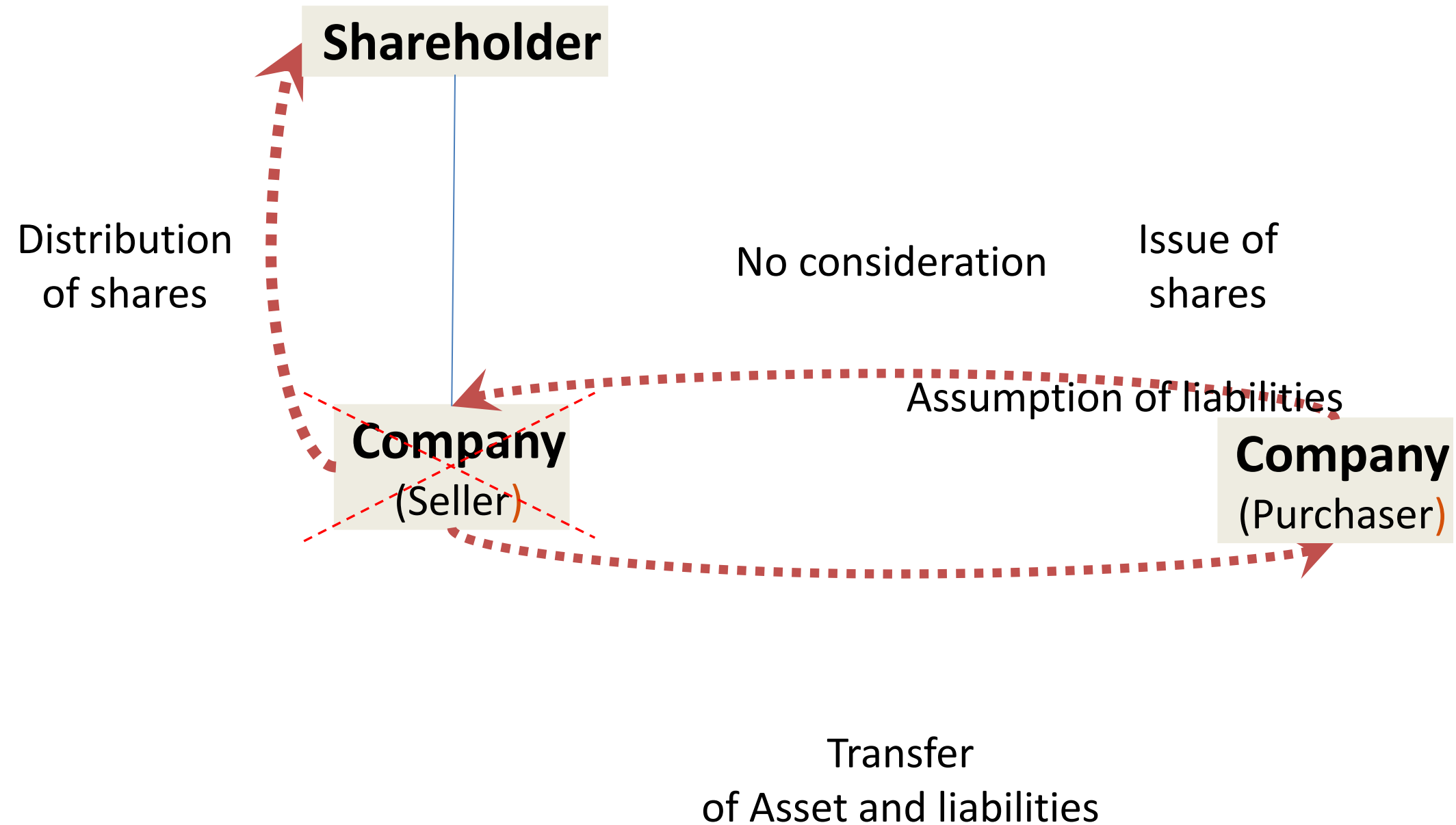
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- Asset acquired (s42 asset-for-share):
  - Base cost (tax): R100m
  - MV: R500m
- **Accounting:**

DR: Asset	R500m
CR: Share Capital/	R500m

- **TAX:** Increase in CTC = R100m

# AMALGAMATION TRANSACTIONS (S44)



# AMALGAMATION TRANSACTIONS (S44)

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## **Sub-section 2 and 3: Disposal of capital assets and allowances assets**

- Transferor and transferee are deemed to be one and the same person
- No CGT implications
- No income tax implications
- Transferee deemed to have acquired the asset on the same day as the transferor and at the same cost

# AMALGAMATION TRANSACTIONS (S44)

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## **Sub-section 4: Consideration other than equity shares or qualifying debt**

- Sub-section 2 and 3 will not apply if the amalgamated company receives any consideration other than:
  - equity share or shares in the resultant company; or
  - qualifying debt.

## **Sub-section 5: Anti - avoidance (disposal of an asset by the resultant company within 18 months)**

- Capital assets – ring-fenced capital gain and losses. However the losses can be set-off against any ring-fenced capital gains.
- Trading stock – deemed to be a separate trade (N/A to trading stock that is regularly and continuously disposed of)
- Allowance assets – separate trade recoupment and ring-fenced capital gain

# AMALGAMATION TRANSACTIONS (S44)

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**Sub-section 6, 8 & 9: Transfer of the equity shares by the amalgamated company (in the resultant company) to the person who holds shares in the amalgamated company**

- No dividends tax
- No amount is included in the recipient's income
- No CGT consequences for the amalgamated company.

**Sub-section 13: Liquidation requirements**

**Sub-section 14: Where section 44 will not apply**

- in respect of any transaction that constituted a s47 transaction;
- if the resultant company is a co-operative, or a company formed in the Republic to serve a specific service to the public;
- if the resultant company is a portfolio of a CIS in securities and the amalgamated company is not a portfolio of a CIS in securities;
- if the resultant company is a portfolio of a hedge fund investment scheme and the amalgamated company is not a portfolio of a hedge fund collective investment scheme;

# AMALGAMATION TRANSACTIONS (S44)

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## **Sub-section 14: Where section 44 will not apply (cont'd)**

- if the resultant company is a non-profit company as defined in section 1 of the Companies Act;
- in respect of any transaction if any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or to accrue to the resultant company;
- in respect of any transaction if the resultant company is a PBO or recreational club approved by the Commissioner in terms of section 30 or 30A; or
- if that amalgamated company, resultant company and person jointly elect (in writing) out of section 44.

# INTRA-GROUP TRANSACTIONS (S45)

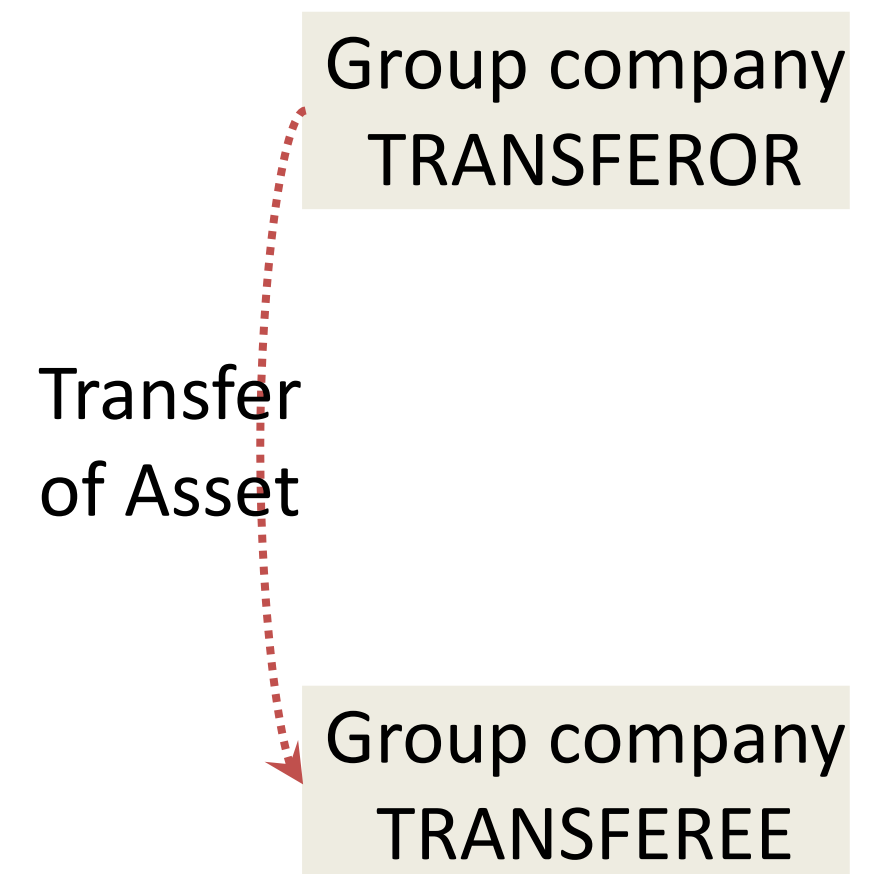
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- General s45 principles
- What is a “*group*”
- Degrouping

# INTRA-GROUP TRANSACTIONS (S45)

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- Group of companies
- Asset retains its nature
- No taxation for transferor
- Transferee assumes cost history

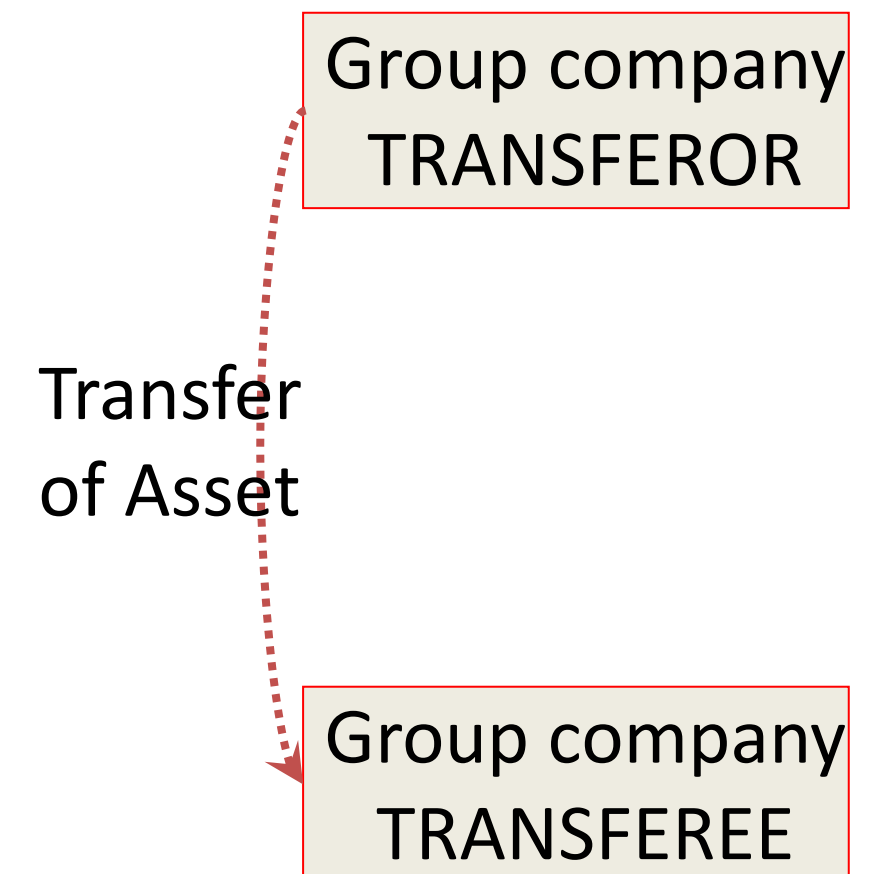




# INTRA-GROUP TRANSACTIONS (S45)

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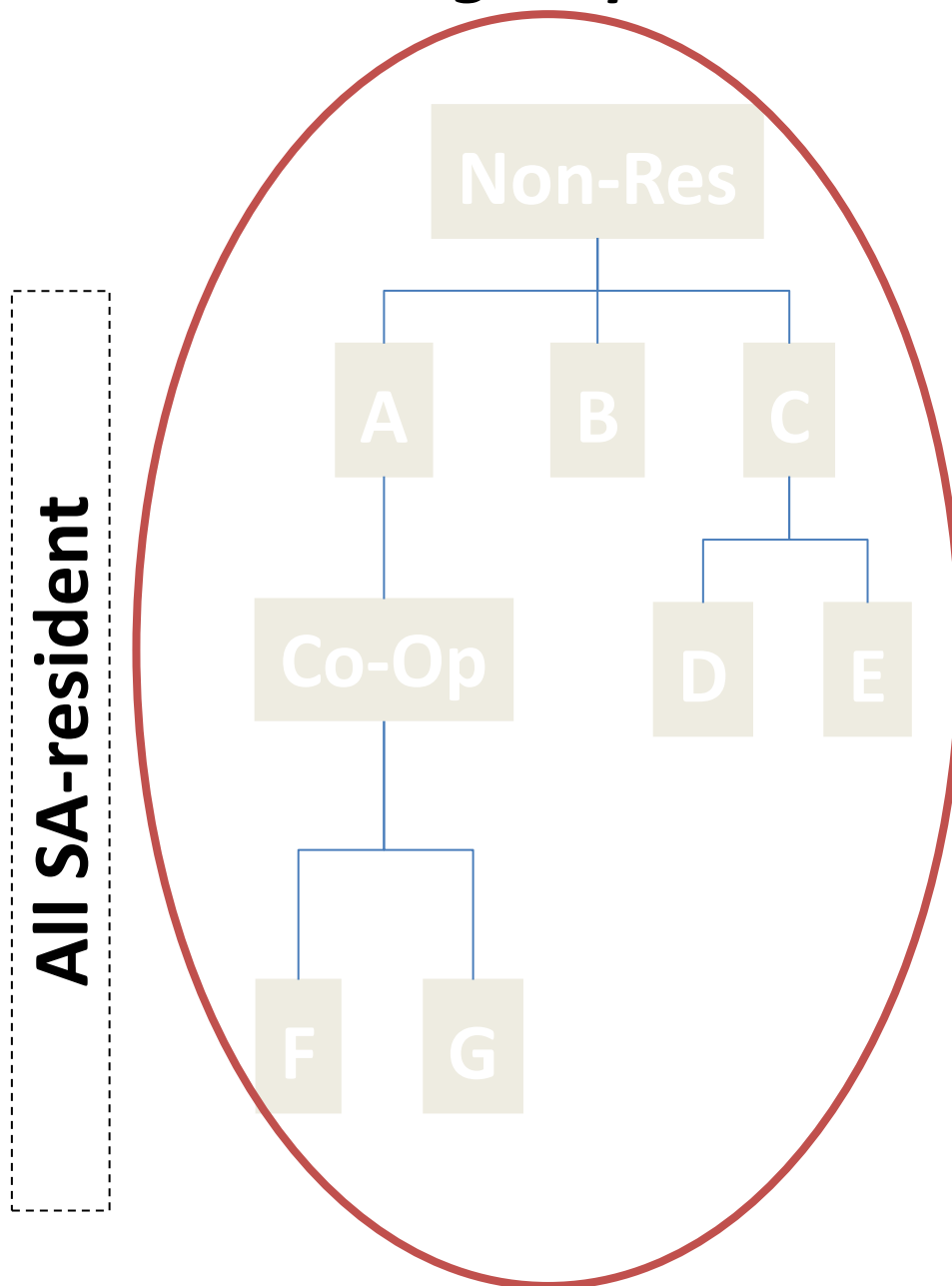
- Automatic application
  - unless companies elect out
- N/A in certain cases, e.g.
  - exempt transferee, transfer qualifies for s42, share buy-backs, (et al))
- 18-month ring-fencing
- De-grouping charge



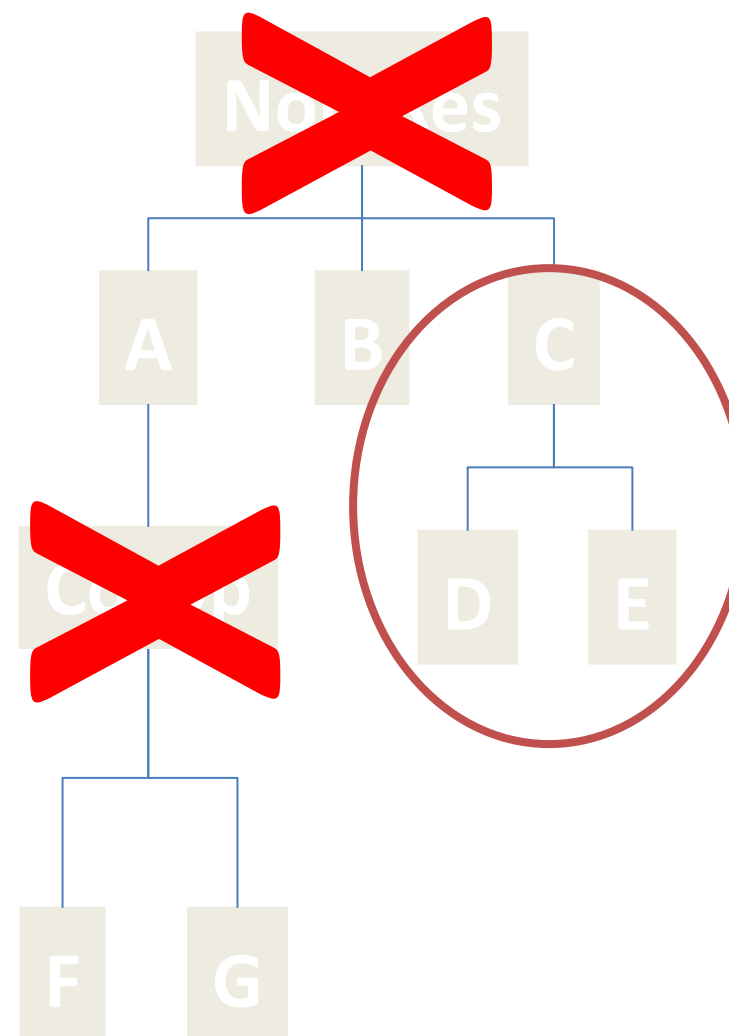
# INTRA-GROUP TRANSACTIONS (S45)

## — WHAT IS A “GROUP”

S1 “group”



S41 “group”:  
Interpretation 1

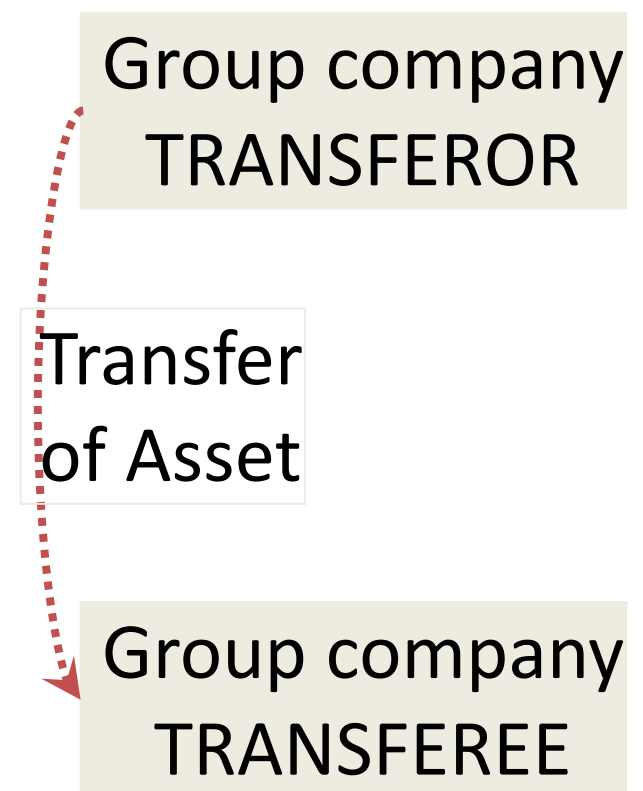


# INTRA-GROUP TRANSACTIONS (S45)

## DEGROUPING

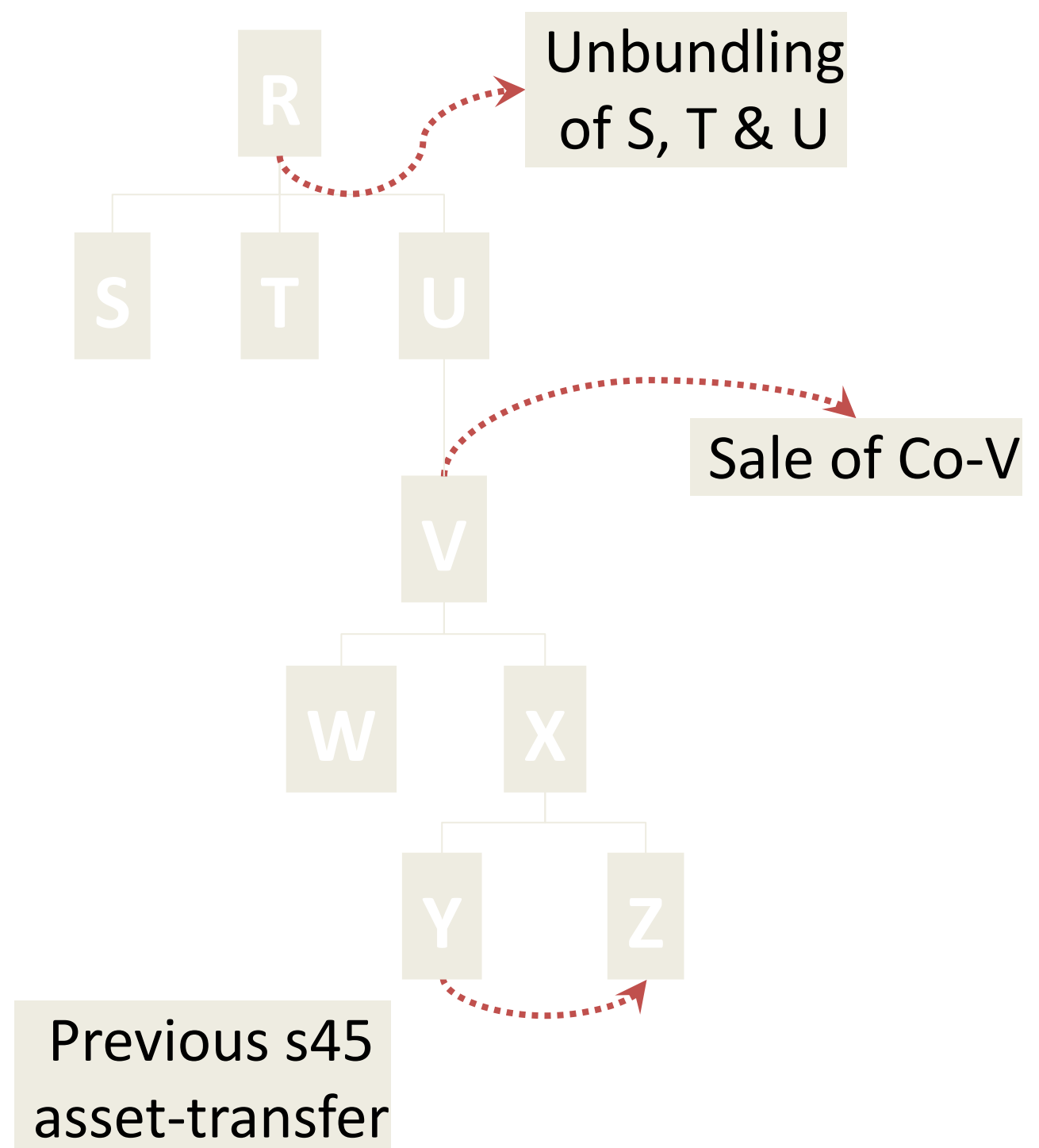
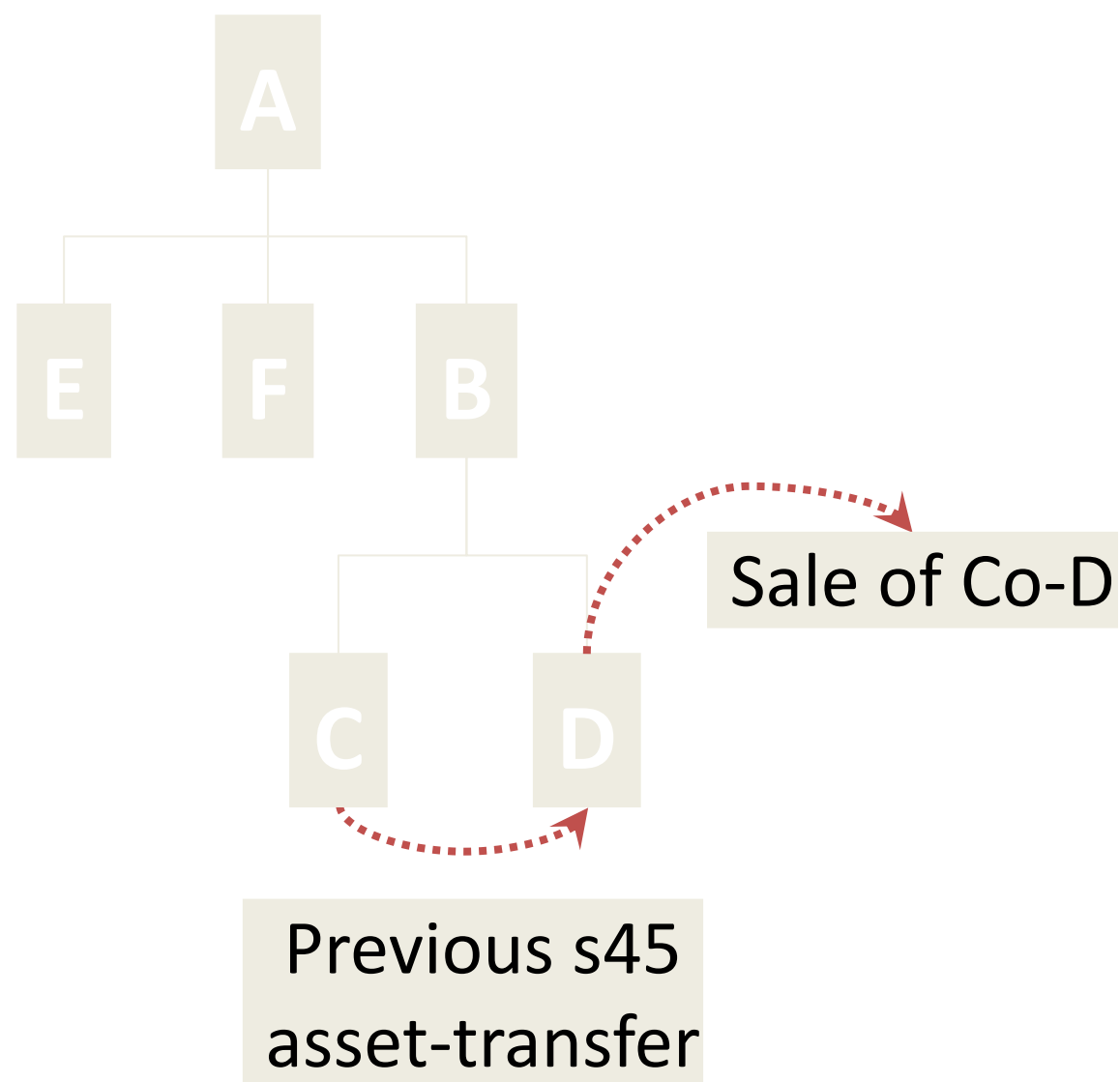
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- De-grouping charge: Tax charge for Transferee
- Six-year restriction
  - Transferee must remain in same “group” as transferor (and with transferor’s controlling companies)
- Two-year restriction
  - Consideration must remain with transferor/group



# INTRA-GROUP TRANSACTIONS (S45)

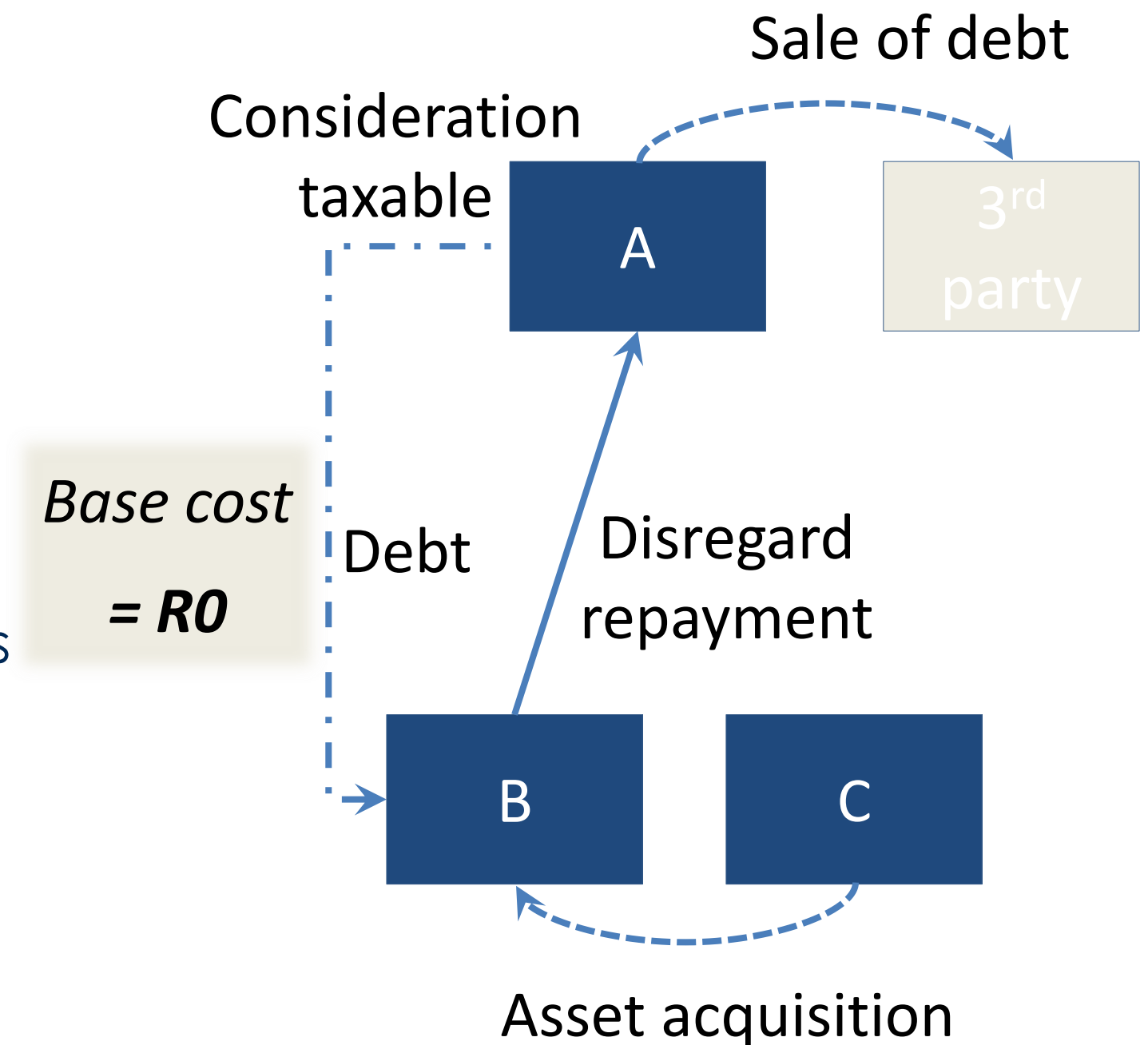
## WHAT IS DEGROUING?



# DEBT RESTRICTION — INTRA-GROUP TRANSACTIONS (S45)

## Debt or Non-equity shares used to fund s45 transaction

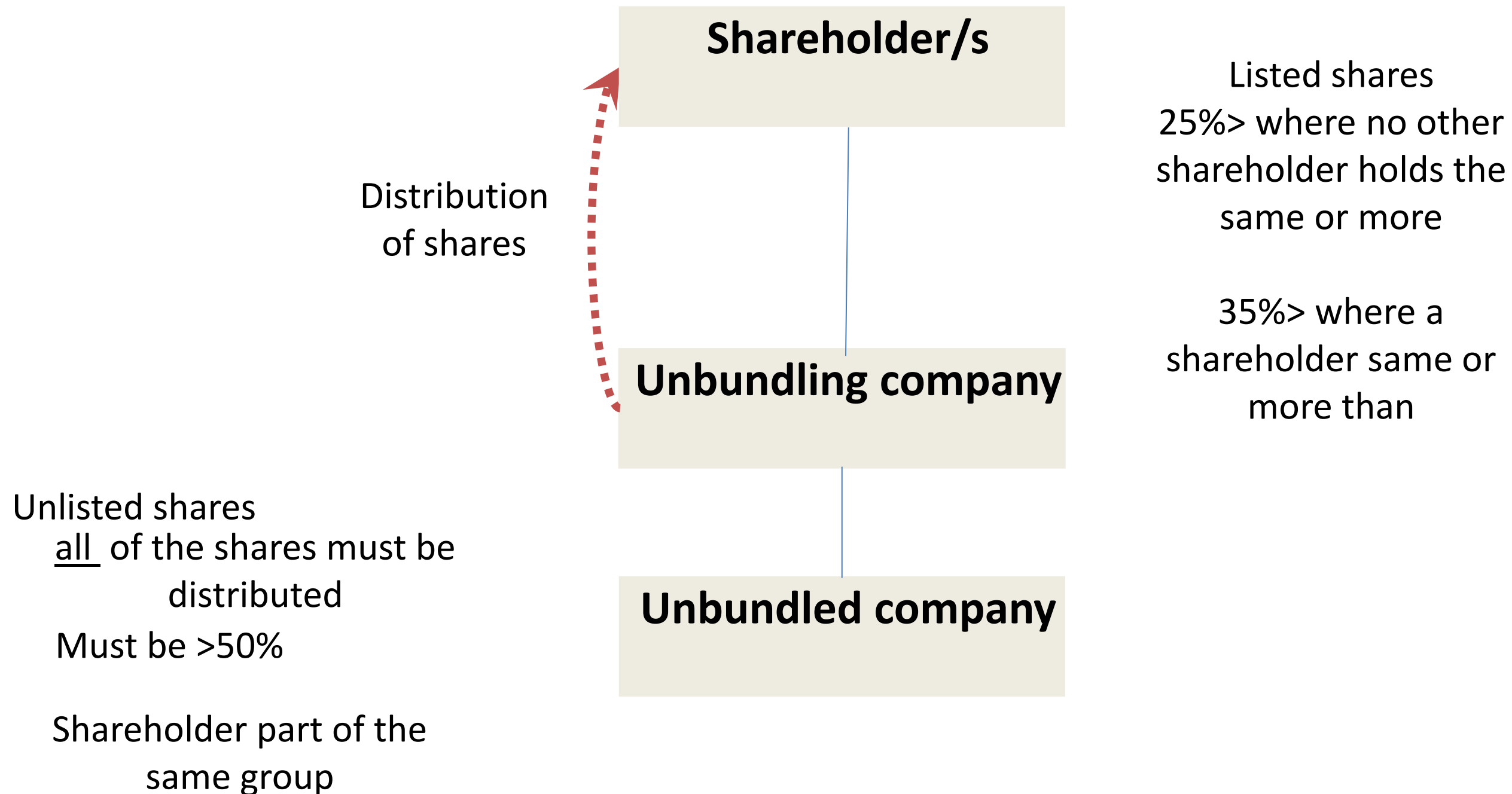
- **Nil tax cost** for lender (holder) :
  - If borrower (issuer), transferor, transferee in the same “group”
- Intra-group capital repayments disregarded
- Disposals to 3<sup>rd</sup> parties taxed
- Rebasing events



# UNBUNDLING TRANSACTIONS (S46)

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# UNBUNDLING TRANSACTIONS (S46)



# UNBUNDLING TRANSACTIONS (S46)

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## Definitions

- Unbundling transaction
  - Where the equity shares of a resident company (unbundled company) which are held by resident company (unbundling company) are all distributed by that unbundling company to the shareholders of the unbundling company.
  - In an unlisted environment, the unbundling company must hold more than 50% of the shares in the unbundled company.
  - In a listed environment there are multiple provisos.

## Sub-section 3: Apportionment of Base Cost-

- A- MV of unbundled shares at COB
- B- MV of unbundling company at COB
- C- BC/cost of shares for shareholders

$$Y = \frac{A}{A + B} \times C$$

## Sub-section 3A: CTC

- Depends of whether there are one or two shareholders in unbundled company.
- Essentially it is to reallocate CTC based on relative market values



# UNBUNDLING TRANSACTIONS (S46)

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## **Sub-section 5: Dividends tax implications**

- The distribution by the unbundling company should be disregarded in determining any liability for dividends tax

## **Sub-section 5A: Base Cost implications**

- The distribution by the unbundling company should be disregarded in determining any reduction in the Base Cost of the shares as a result of the unbundling distribution.

# UNBUNDLING TRANSACTIONS (S46)

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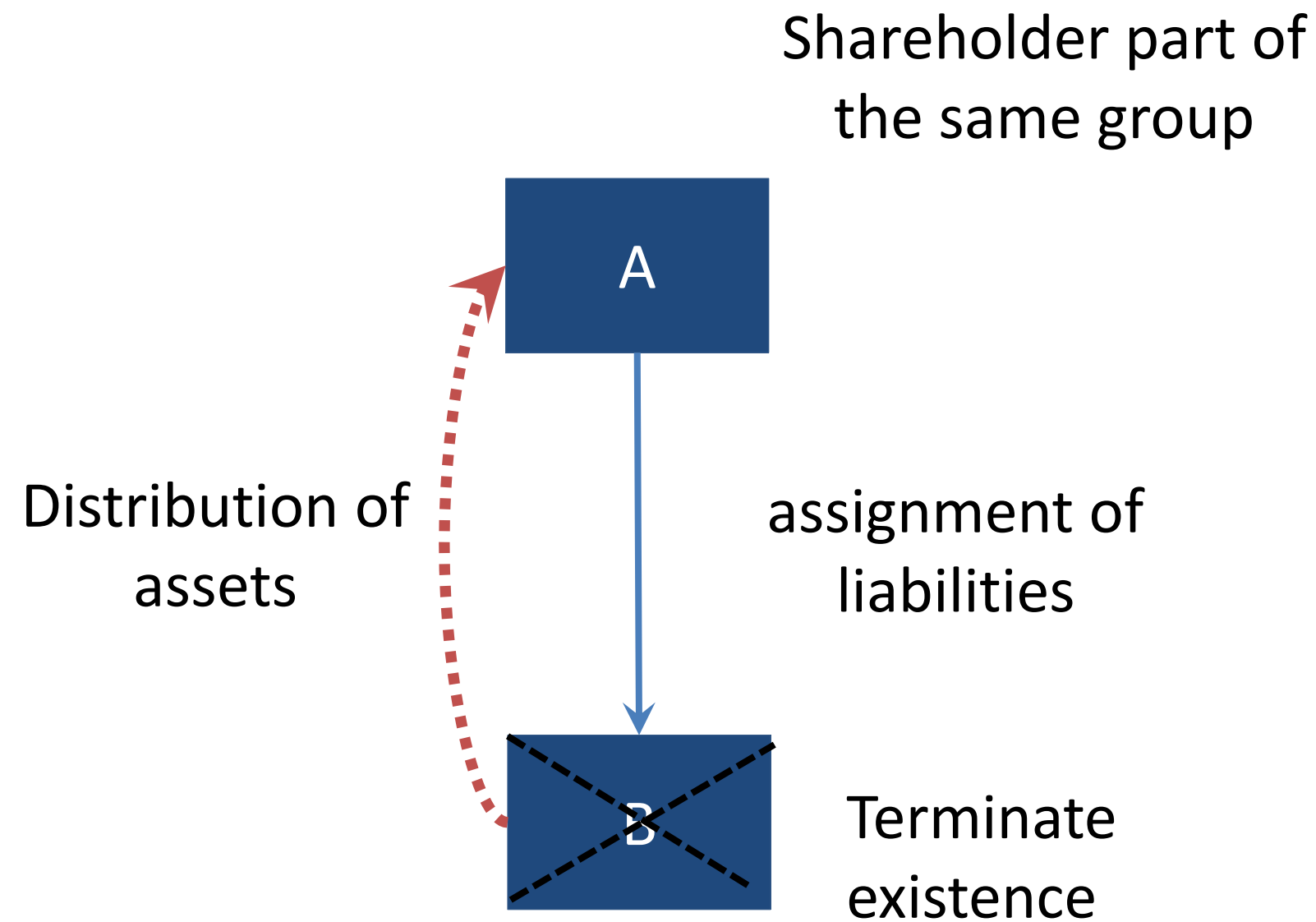
## **Sub-section 7: Where s46 does not apply**

- The relief does not apply to the extent that the distribution is to a “disqualified person” that holds at least 5% of the equity shares in the unbundling company prior to the distribution.
- A ‘disqualified person’ is defined as:
  - a non-resident;
  - the government, in the national, provincial or local sphere;
  - a PBO (if approved as tax exempt);
  - a recreational club (if approved as tax exempt);
  - a pension fund / benefit fund as described in section 10(1)(d)(i) or (ii); or
  - certain public entities as contemplated in section 10(1)(cA) or (t).

## **Sub-section 8: Where s46 does not apply**

- If the shareholder and the unlisted unbundling company agree in writing that s46 does not apply.
  - Subject to the fact that the shareholder must be a controlling group company of the unbundled company

# Liquidation distributions (s47)



# Liquidation distributions (s47)

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## Definitions

- Liquidation distribution
  - Where any resident company (liquidating company) disposes of all of its assets to another **resident company** (holding company) and the holding company and liquidating company form part of the same group of companies at the date of the distribution.

## Sub-section 2 and 3: Disposal of capital assets and allowances assets

- Transferor and transferee are deemed to be one and the same person
- No CGT implications
- No income tax implications
- Transferee deemed to have acquired the asset on the same day as the transferor and at the same cost

# Liquidation distributions (s47)

## Sub-section 3A: Qualifying provisions for a section 47 transaction to be valid

- A liquidation distribution is only deemed to have taken place if:
  - equity shares held by that holding company in that liquidating company are disposed of as a result of the liquidation of that liquidating company; **and**
  - that holding company has not assumed any debt of that liquidating company which was incurred by that liquidating company within a period of 18 months before that disposal, unless that debt-
    - constitutes the refinancing of any debt incurred in more than 18 months before that disposal; or
    - is attributable to and arose in the normal course of a business undertaking disposed of, **as a going concern**, to that holding company as part of that liquidation distribution.

## Sub-section 4: Anti - avoidance (disposal of an asset by the holding company within 18 months)

- Capital assets – ring-fenced capital gain and losses. However the losses can be set-off against any ring-fenced capital gains.
- Trading stock – deemed to be a separate trade (N/A to trading stock that is regularly and continuously disposed of)
- Allowance assets – separate trade recoupment and ring-fenced capital gain

# Liquidation distributions (s47)

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## **Sub-section 5: Holding Company disregards the disposal of its shares in the Liquidating Company**

- The holding company must disregard a disposal or return of capital for purposes of determining its taxable income/assessed loss or aggregate capital gain/loss.

## **Sub-section 6: Where section 47 will not apply**

- if the holding company company is a PBO, a recreational club or an exempt person in terms of section 10(1)(cA), (cP), (d), (e) or (t);
- if the holding company and liquidating company jointly elect/agree (in writing) out of section 47; or
- within 36 months of the liquidation distribution, the liquidating company has not taken the necessary steps/withdrawn any step to liquidate wind up or deregister.

# COMMON PRACTICAL ISSUES

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- Record-keeping
- No election required
- Successive transfers



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## THANK YOU