



# Corporate reorganizations, M&A

PRESENTED BY

Kreston South Africa

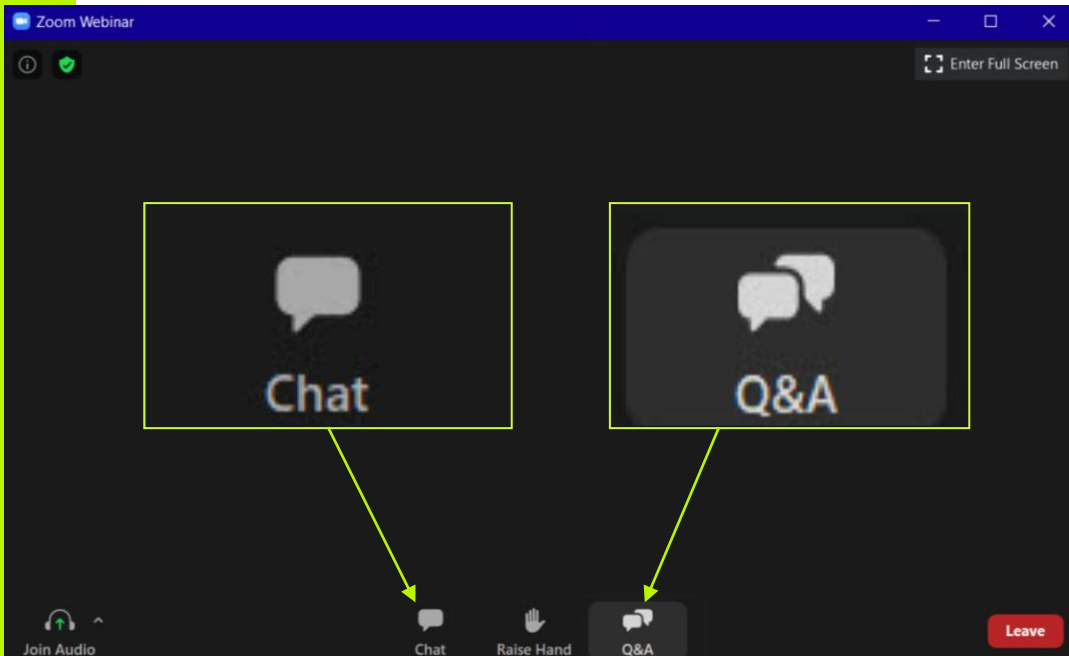
Johan Heydenrych: Director Tax Services

Marina Pretorius: Associate Director: Tax Services

21 September 2022



# EVENT PROCEDURE



**CHAT** Join the discussion.

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**Q&A** Questions will only be visible to presenter who will address questions after each topic



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SARS is closing the GAP

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# TAX WORKING GROUP

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**Barend van der Westhuizen**  
BAP(SA)



**Annece Olivier**  
BAP(SA)



**Tania Lee**  
SAIBA



**Ilana de Jager**  
SAIBA Academy



# ABOUT THE PRESENTER

## Johan Heydenrych Kreston South Africa



Johan is a Chartered Accountant who specialised in taxation since 1991. He holds the following qualifications:

- B. Com (Accounting) (Cum Laude)
- B. Com (Accounting) (Hons) (Cum Laude) (Award: "Best student in Audit 700")
- Certificate in the Theory of Accounting
- M. Com (Taxation) (Cum Laude) (Award: "Best M. Com (Tax) student")
- Chartered Accountant (Specialising in Taxation)
- Member of SAICA
- Registered Tax Practitioner

Johan was a tax partner at KPMG from 1997 to 2020 and is currently a partner in the Kreston SA network specialising in taxation.

He provides a wide range of tax services to various clients across industries. These include but are not limited to the following:

- Advice on Tax Risk Management and Tax Governance.
- Tax compliance services including but not limited to ITR 14 and IT 14SD
- Dealing with tax disputes including representing clients at Alternative Dispute Resolution (ADR) hearings.
- Submission of documentation and revised returns under the Voluntary Disclosure Programme.
- Issuing of tax technical opinions on Income Tax, VAT and PAYE. This include preparing briefs to Senior Counsel and submissions of requests for Binding Opinions from SARS.
- Audit support services that includes Normal Tax and Deferred Tax disclosure and disclosure of uncertain tax positions.
- Assistance with implementation of tax reporting for new accounting standards such as IFRIC 23, IFRS 9, IFRS 15 and IFRS 16.
- Facilitation of tax diagnostic sessions with existing and prospective clients.
- Advice on mergers, acquisitions and reorganizations.
- Tax due diligences
- Advice on tax implications of recapitalization transactions, debt restructures, liquidations and deregistration's



# ABOUT THE PRESENTERS

## Marina Pretorius

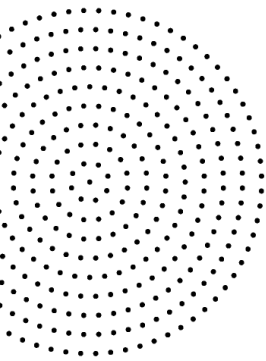
### Kreston South Africa



- Marina joined the Kreston Pretoria team on 1 March 2021 after specialising in tax at KPMG for the last 13 years. She is an experienced tax advisor who holds an H. Dip(Tax) Degree. She completed her articles at Deloitte where she also passed the CA(SA) qualifying examination.
- She worked in the UK on large listed clients for 2 years and joined KPMG tax department in 2007.
- As Associate Director and head of KPMG's Global Compliance Managed Services business unit, she is very experienced in tax and accounting reporting requirements for large multi-nationals.
- This includes ITR 14 disclosures required for multi-nationals as well as submissions of CbC Reports, Master Files and Local Files.

#### Education and Qualifications

- B. Com (Accounting)
- B. Com (Accounting) (Hons)
- Certificate in the Theory of Accounting
- Passed qualifying CA(SA) exam.
- H.Dip (Tax)
- Registered Tax Practitioner



# Topics for September, October and November 2022

*Businesses met and continue to meet numerous challenges over the past 3 years. Not only did management need to deal with Covid-19, it also needed to address widescale unrests and floodings and the global impact of the Ukraine War. To meet these challenges, many businesses need to restructure, introduce new investors, dispose of non-core businesses, raise capital and streamline businesses. Many businesses are currently under business rescue where debts are restructured or other drastic measures introduced to rescue the entity. In the next three Tax Happy Hours, we will address the tax implications of some of these “out of ordinary” transactions that many businesses are currently considering.*

## September Happy Hour

*In the September Happy Hour, we will consider the tax implications of the following:*

- *Asset for share transactions*
- *Amalgamation Transactions*
- *Unbundling Transactions*
- *Intergroup transactions*
- *Liquidation transactions*

*Whilst we will focus on the corporate rules as found in sections 41 to 47 of the Income Tax Act, we will also address capital gains tax rules such as Par 43A of the 8<sup>th</sup> Schedule and specific dividend tax rules.*

# Topics for September, October and November 2022

## October Happy Hour

*In the October Happy Hour, we will specifically deal with tax pitfalls and opportunities in so far as the following are concerned:*

- *Sale of shares vs sale of business*
- *Raising share capital*
- *Raising loans*

*We will not only analyse the impact of the specific transactions, but will also consider the tax treatment of transactional costs incurred.*

## November Happy Hour

*In the November Happy Hour we will discuss tax pitfalls and opportunities arising from typical Business Rescue activities.*

*This will include VAT and Income Tax implication of inter alia the following:*

- *Conversion of loans to shares*
- *Compromise with creditors*
- *Retrenchments*
- *Sale and leaseback arrangements*

# INDEX

1. Definitions: Section 41
2. Asset for Share transactions: Section 42
3. Amalgamation Transactions: Section 44
4. Intra-Group Transaction: Section 45
5. Unbundling Transactions: Section 46
6. Transactions in anticipation of liquidation, deregistration: Section 47
7. Section 8(25) of the VAT Act
8. Par 43A of the 8<sup>th</sup> Schedule to the Income Tax Act
9. Summary

**tax happy hour**



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Definitions

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# Group of companies

## Section 1 of the Income Tax Act

*“group of companies” means two or more companies in which one company (hereinafter referred to as the “controlling group company”) directly or indirectly holds shares in at least one other company (hereinafter referred to as the “controlled group company”), to the extent that—*

- (a) at least 70 percent of the equity shares in each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and*
- (b) the controlling group company directly holds at least 70 per cent of the equity shares in at least one controlled group company;*

Wider definition  
Includes NPC's, PBO's, Non-resident companies



# Group of companies

## Section 41 of the Income Tax Act

“group of companies” means a group of companies as defined in [section 1](#):  
Provided that for the purposes of this definition—

- (i) any company that would, but for the provisions of this definition, form part of a group of companies shall not form part of that group of companies if—
  - (aa) that company is a company contemplated in [paragraph \(c\), \(d\) or \(e\)](#) of the definition of “company”;
  - (bb) that company is a non-profit company as defined in [section 1](#) of the Companies Act;
  - (cc) 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 that company;
  - (dd) that company is a public benefit organisation or recreational club that has been approved by the Commissioner in terms of [section 30](#) or [30A](#);
  - (ee) that company is a company contemplated in [paragraph \(b\)](#) of the definition of “company”, unless that company has its place of effective management in the Republic; or
  - (ff) that company has its place of effective management outside the Republic; and

Excludes:

- NPC's
- PBO's
- Non-resident companies
- Exempt companies
- Co-operatives
- Associations formed for specific purpose
- Collective investment schemes

Extremely poorly drafted!!

# Group of companies

## Section 41 of the Income Tax Act

“group of companies” means a group of companies as defined in [section 1](#): Provided that for the purposes of this definition—

- (ii) any share that would, but for the provisions of this definition, be an equity share shall be deemed not to be an equity share if—
  - (aa) that share is held as trading stock; or
  - (bb) any person is under a contractual obligation to sell or purchase that share, or has an option to sell or purchase that share unless that obligation or option provides for the sale or purchase of that share at its market value at the time of that sale or purchase;

Cannot automatically accept that all shares are equity shares

2

Section 42: Asset for share transactions

**tax happy hour**

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# What is it?

“asset-for-share transaction” means any transaction—

(a)(i) in terms of which a person disposes of an asset (other than an asset which constitutes a restraint of trade or personal goodwill), the market value of which is equal to or exceeds—

(aa) in the case of an asset held as a capital asset, the base cost of that asset on the date of that disposal; or

(bb) in the case of an asset held as trading stock, the amount taken into account in respect of that asset in terms of [section 11 \(a\)](#) or [22 \(1\)](#) or [\(2\)](#),

to a company which is a resident, in exchange for the issue of an equity share in that company and that person—

(A) at the close of the day on which that asset is disposed of, holds a qualifying interest in that company; or

(B) is a natural person who will be engaged on a full-time basis in the business of that company, or a controlled group company in relation to that company, of rendering a service; and

Does not apply where there is a loss

Qualifying interest

- Non-listed: 10%
- of equity shares and voting rights
- Listed: No %

- No % required
- Cannot work for holding company or sister company
- Must be company or controlled group company

# What is it?

- (ii) as a result of which that company acquires that asset from that person—
  - (aa) as trading stock, where that person holds it as trading stock;
  - (bb) as a capital asset, where that person holds it as a capital asset; or
  - (cc) as trading stock, where that person holds it as a capital asset and that company and that person do not form part of the same group of companies:

Generally no change in use allowed.

# What is it?

- (ii) as a result of which that company acquires that asset from that person—
  - (aa) as trading stock, where that person holds it as trading stock;
  - (bb) as a capital asset, where that person holds it as a capital asset; or
  - (cc) as trading stock, where that person holds it as a capital asset and that company and that person do not form part of the same group of companies:

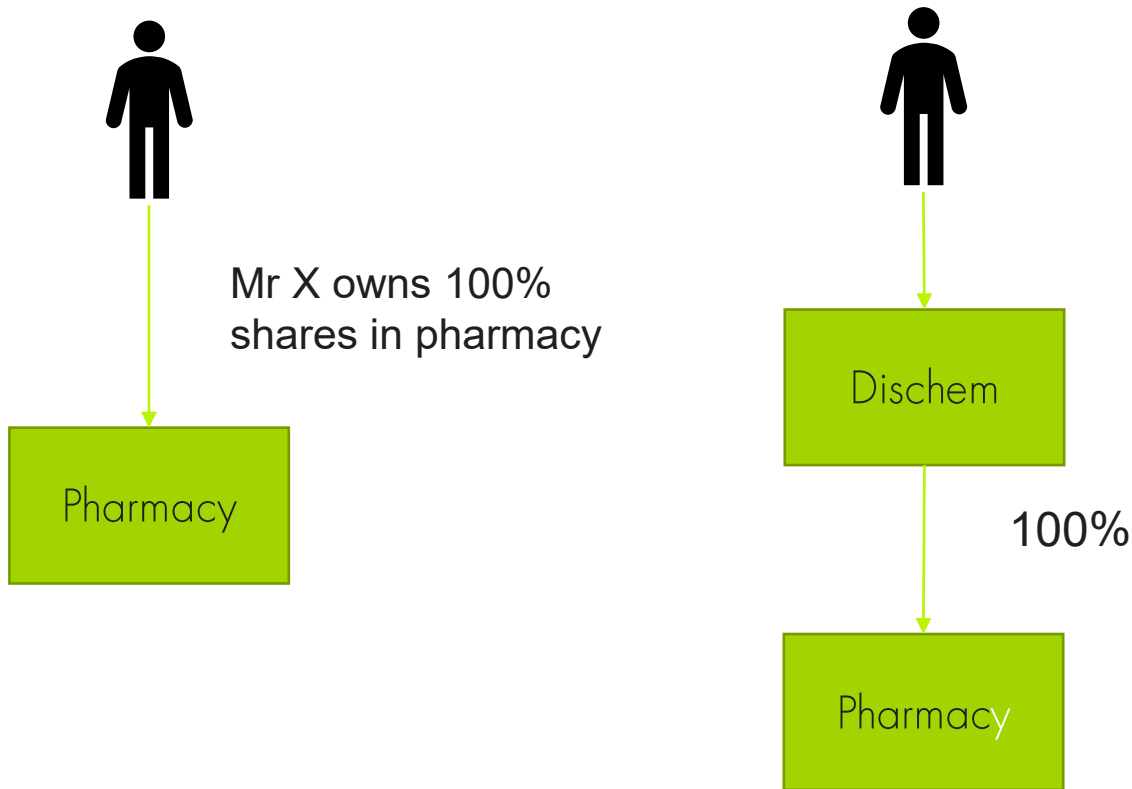
Generally no change in use allowed.

# Exclusions

- (8A) This section does not apply to the disposal of an asset by a person to a company if—
- (a) the person and the company agree in writing that this section does not apply;
  - (b) the disposal would not be taken into account for purposes of determining—
    - (i) any taxable income or assessed loss of that person; or
    - (ii) any proportional amount of the net income of a controlled foreign company which is included in the income of any resident in terms of [section 9D](#); or
  - (c) that asset constitutes a debt owing by or a share in that company.

Applies automatically

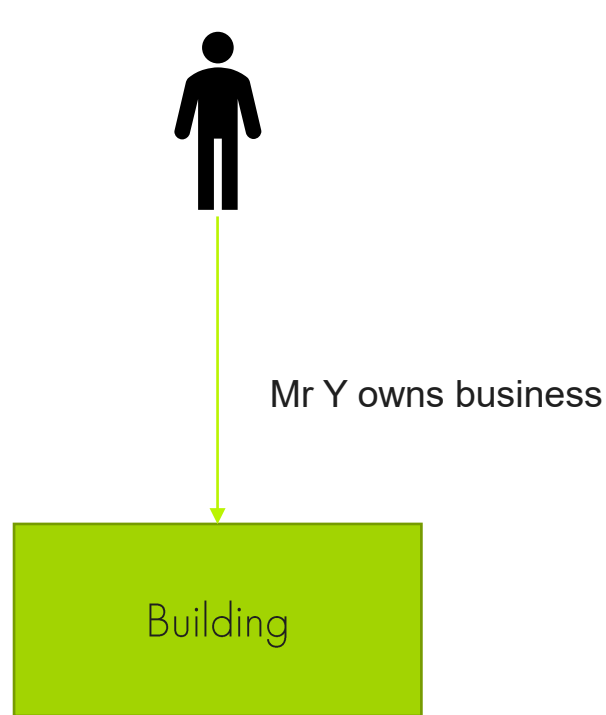
# Mr X sells shares in Pharmacy to Dischem in return for R5m cash and listed shares worth R10m



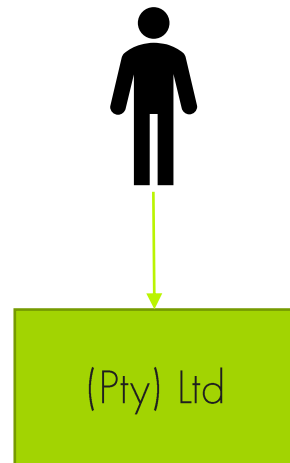
- CGT on R5m
  - How calculate Base Cost?
  - Specific ID or FIFO
- Rollover relief on shares
  - Dischem is listed - No minimum
  - Will apply even if Dischem was not listed if in full time employee of Dischem or any controlled company to Dischem
- CTC of new shares issued by Dischem = base cost of shares in hands of Mr X
- Basecost of Pharmacy shares in hands of Dischem deemed to be the same as base cost of shares in hands of Mr X
- Base cost of Dischem shares in hands of Mr X is same as base cost of Pharmacy Shares



# Mr Y sells business to a (Pty) Ltd in return for shares in company, The shares in the company is worth R1million



- Assets base cost R10m
- Liabilities R9m
- Value of business R1m



- Rollover relief will apply on all assets
- What about the debts?
  - The base cost of the shares received is R10m
  - When dispose of shares, the R9m is deemed to be recouped/recovered by seller
- In practice – very difficult to apply

Cautionary Note: Anti-avoidance if disposals in 18 months

3

## Section 44: Amalgamation Transactions

**tax happy hour**

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# What is it?

“amalgamation transaction” means any transaction—

(a)(i) in terms of which

- any company (hereinafter referred to as the “amalgamated company”)
- which is a resident
- disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade and other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the liquidation or winding-up)
- to another company (hereinafter referred to as the “resultant company”)
- which is a resident, by means of
- an amalgamation, conversion or merger; and

(ii) as a result of which the existence of that amalgamated company will be terminated;

# Example



Amalgamated  
Company

Disposes of all assets in return for:

- Equity share in Resultant Company
- Assumption by Resultant company of debts incurred in ordinary course of business or >18mths

Resultant Company

# Example



Amalgamated  
Company

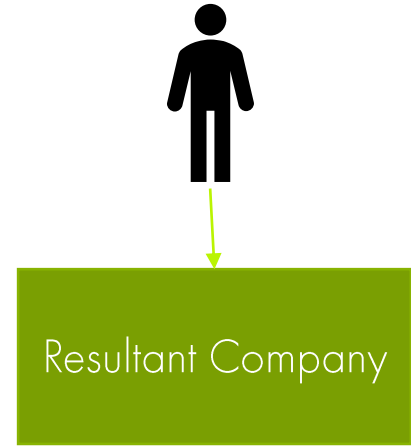
Disposes of all assets in return for:

- Equity share in Resultant Company
- Assumption by Resultant company of debts incurred in ordinary course of business or >18mths

Resultant Company

- Assets are transferred on neutral basis
- CTC in Resultant Company is equal to base cost of assets acquired
- Anti-avoidance rules if assets are disposed on within 18 months
  - Cannot offset gains against other losses
  - But ITR 14 cannot cater for this
- If receive cash/other assets over and above shares in Resultant Company – no rollover relief.

# Example



- When the existence of the Amalgamated company is terminated, the shares in the Resultant company is declared up as a dividend in specie to the shareholders of the amalgamated company
- (c) An equity share in the resultant company that is acquired by the person contemplated in [paragraph \(a\)](#) is deemed not to be an amount transferred or applied by the amalgamated company for the benefit or on behalf of that person in respect of the share held by that person in that amalgamated company – i.e. **No Dividend Tax**
- (8) Where an amalgamated company disposes of any equity shares in a resultant company that were acquired by that amalgamated company in terms of an amalgamation transaction that was subject to [subsection \(2\)](#) or [\(3\)](#), to a shareholder of that amalgamated company as part of that amalgamation transaction, that amalgamated company must disregard that disposal for purposes of determining its taxable income or assessed loss. i.e. **No CGT on dividend in specie declared upon liquidation of Amalgamated Company**

# Section 44 does not apply...

- (14) The provisions of this section do not apply—
- (a) in respect of any transaction that constitutes a liquidation distribution as defined in [section 47 \(1\)](#);
  - (b) in respect of any transaction if the resultant company is a company contemplated in [paragraph \(c\)](#) or [\(d\)](#) of the definition of “company”;
  - (bA) in respect of any transaction if the resultant company is a portfolio of a collective investment scheme in securities and the amalgamated company is not a portfolio of a collective investment scheme in securities;
  - (bB) in respect of any transaction 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;
  - (c) in respect of any transaction if the resultant company is a non-profit company as defined in [section 1](#) of the Companies Act;
  - (d) in respect of any transaction contemplated in [paragraph \(a\)](#) of the definition of “amalgamated company” if the resultant company is a company contemplated in [paragraph \(b\)](#) or [\(e\) \(ii\)](#) of the definition of “company” and does not have its place of effective management in the Republic;

# Section 44 does not apply...

- (14) The provisions of this section do not apply—
- (e) 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;
  - (f) in respect of any transaction if the resultant company is a public benefit organisation or recreational club approved by the Commissioner in terms of [section 30](#) or [30A](#); or
  - (g) to a disposal of an asset by an amalgamated company to a resultant company—
    - (i) in terms of an amalgamation transaction contemplated in [paragraph \(a\)](#) of the definition of “[amalgamation transaction](#)” where that resultant company and the person contemplated in [subsection \(6\)](#) form part of the same group of companies immediately before and after that disposal; or
    - (ii) in terms of an amalgamation transaction contemplated in [paragraph \(b\)](#) of the definition of “[amalgamation transaction](#)” where that resultant company and the person contemplated in [subsection \(6\)](#) form part of the same group of companies (without regard to paragraph (i) (ee) of the proviso to the definition of “[group of companies](#)” in [section 41](#)) immediately before and after that disposal,if that amalgamated company, resultant company and person jointly so elect.



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## Section 45: Intra-group transactions

**tax happy hour**

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# What is it?

“intra-group transaction” means any transaction—

- (a) (i) in terms of which any asset is disposed of by one company (hereinafter referred to as the “transferor company”) to another company that is a resident (hereinafter referred to as the “transferee company”) and both companies form part of the same group of companies as at the end of the day of that transaction; and
- (ii) as a result of which that transferee company acquires that asset from that transferor company—
  - (aa) as a capital asset, where that transferor company holds it as a capital asset; or
  - (bb) as trading stock, where that transferor company holds it as trading stock; or

Generally no change in use allowed.

# Numerous anti-avoidance legislation

- S45(3A) – Acquire assets in return for debt from group company or non-equity instrument
- S45(4) – 6 years de-grouping charge
- S45(5) – Disposal of assets by transferee within 18 months after S45 transaction

# When does S45 not apply

(6) This section does not apply in respect of the disposal of an asset if—

(a) . . . . .

(b) all the receipts and accruals of the transferee company are exempt from tax in terms of [section 10 \(1\) \(cA\), \(cN\), \(cO\), \(cP\), \(d\) or \(f\)](#);

(c) the asset was disposed of by the transferor company in exchange for equity shares issued by the transferee company;

(d) the asset constitutes a share that is distributed by the transferor company to the transferee company;

(e) the asset was disposed of by the transferor company to the transferee company in terms of a liquidation distribution referred to in [section 47](#) regardless of whether or not an election has been made for the provisions of that section to apply and regardless of whether or not that transferee company acquired that asset as a capital asset or as trading stock;

(f) the asset constitutes a share in the transferee company; or

(g) at the time of the disposal of the asset, the transferor company and the transferee company agree in writing that this section does not apply to that disposal.

S42 asset for share will then apply and take precedent

S46 unbundling will then apply and take precedent

Cannot chose between S47 and S45

Mutual agreement

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Section 46: Unbundling transaction

**tax happy hour**

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# What is it?

46. **Unbundling transactions.**—(1) For the purposes of this section, “unbundling transaction” means any transaction—

- (a) (i) in terms of which the equity shares in a company (hereinafter referred to as the “unbundled company”), which is a resident that are held by a company (hereinafter referred to as the “unbundling company”), which is a resident, **are all distributed by that unbundling company to any shareholder of that unbundling company in accordance with the effective interest of the shareholders in the shares of that unbundling company**, and if—
- (aa) all of the equity shares of the unbundled company are listed shares or will become listed shares within 12 months after that distribution;
  - (bb) that shareholder to which that distribution is made by that unbundling company forms part of the same group of companies as that unbundling company; or
  - (cc) that distribution is made pursuant to an order in terms of the Competition Act, 1998 (**Act No. 89 of 1998**), made by the Competition Tribunal or the Competition Appeal Court; and

Declares shares upwards as dividend in specie.

Three scenarios:

- Listed shares
- Group of companies
- Competition Act

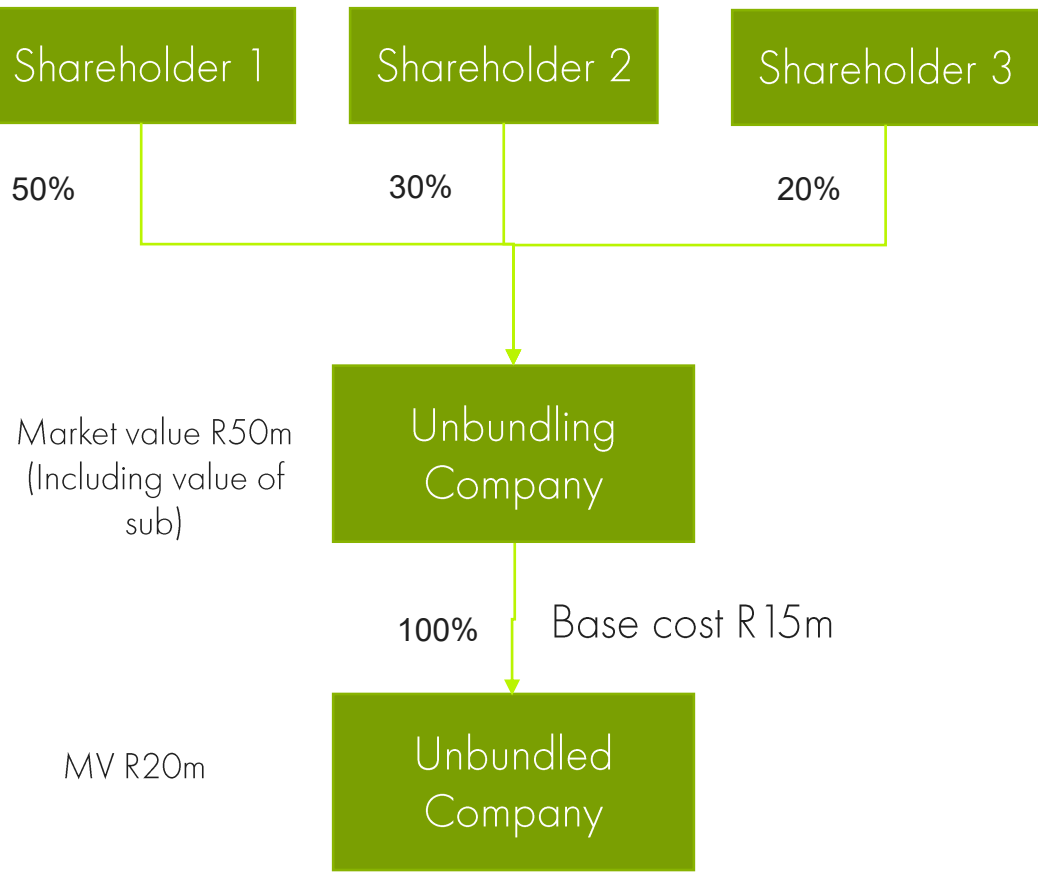
# What is it?

46. **Unbundling transactions.**—(1) For the purposes of this section, “unbundling transaction” means any transaction—

- (a) (ii) if the equity shares distributed as contemplated in [subparagraph \(i\)](#) constitute—
  - (aa) where that unbundled company is a listed company immediately before that distribution—
    - (A) and no shareholder of the unbundled company other than the unbundling company holds the same number of equity shares as or more equity shares than the unbundling company of that unbundled company, more than 25 per cent of the equity shares of the unbundled company; or
    - (B) and any shareholder of the unbundled company other than the unbundling company holds the same number of equity shares as or more equity shares than the unbundling company of that unbundled company, at least 35 per cent of the equity shares of that unbundled company; or
  - (bb) where that unbundled company is an unlisted company immediately before that distribution, more than 50 per cent of the equity shares of that unbundled company;

NB check required  
shareholding of the unbundling  
company into the unbundled  
company

# What is it?

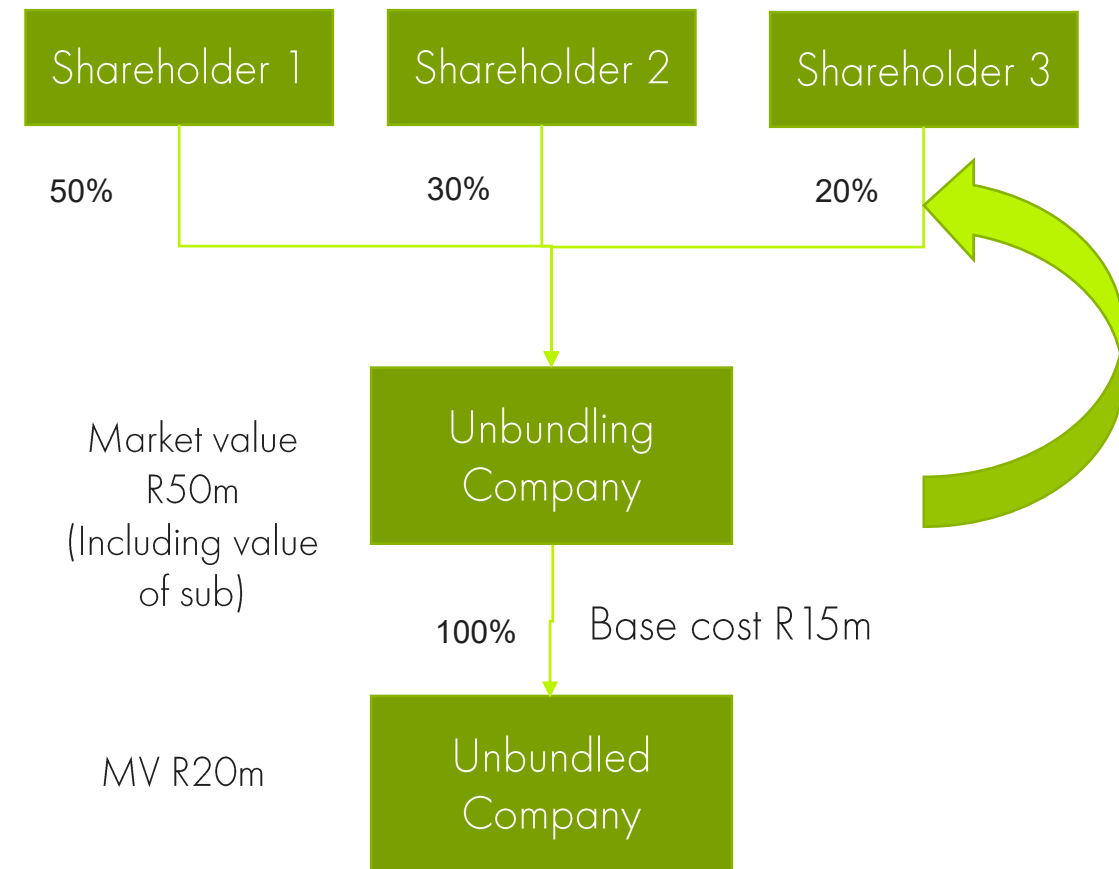


Base Cost of shares in Unbundling Company

Shareholder 1	5 000 000
Shareholder 2	3 000 000
Shareholder 3	2 000 000



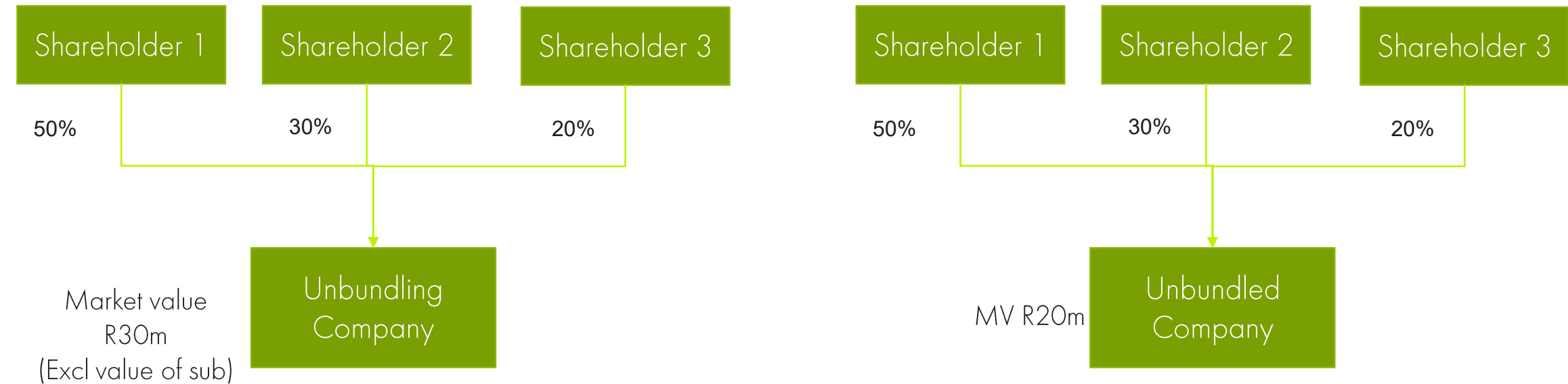
# What is it?



Unbundling company distributes shares in unbundled company to its shareholders as a dividend in specie

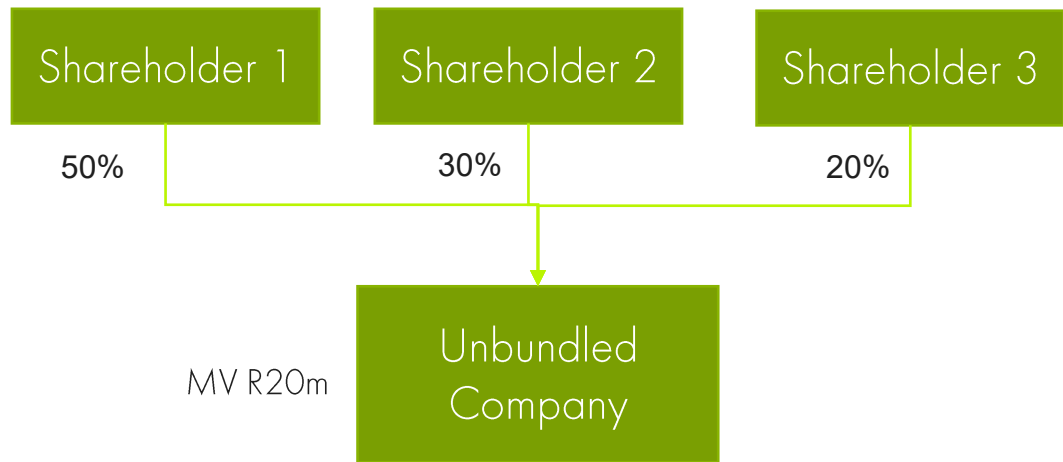
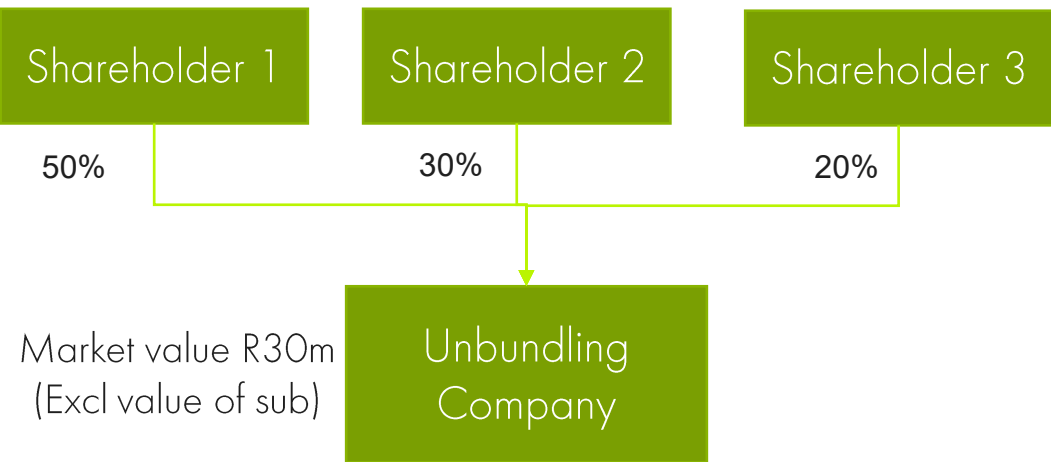
(2) Subject to [subsection \(7\)](#), where an unbundling company distributes shares in terms of an unbundling transaction, that **unbundling company must disregard that distribution** for purposes of determining its taxable income or assessed loss, or its net income as contemplated in [section 9D](#).

# Reallocation of base cost



(v) the proportionate amount of the expenditure and market value to be allocated to the unbundled shares in terms of [subparagraph \(i\) \(aa\)](#) must be determined in accordance with the ratio that the **market value of the unbundled shares**, as at the end of the day after that distribution, bears to the sum of the **market value, as at the end of that day, of the unbundling shares and of the unbundled shares**.

# Reallocation of base cost

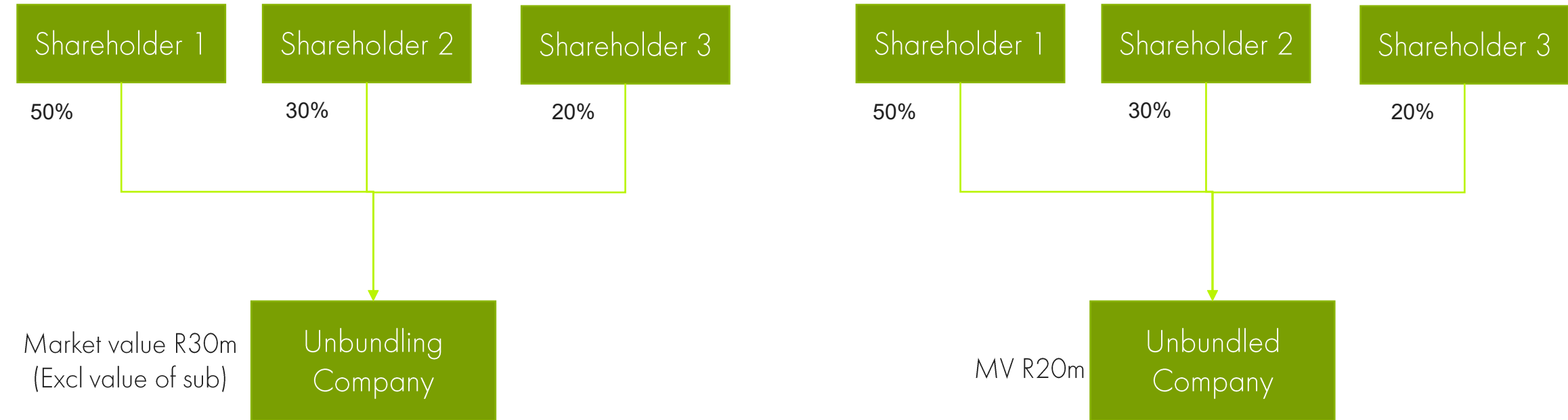


Reallocation of base cost	Total	Unbundling	Unbundled
Shareholder 1	5 000 000	3 000 000	2 000 000
Shareholder 2	3 000 000	1 800 000	1 200 000
Shareholder 3	2 000 000	1 200 000	800 000

Market Value of Unbundled Company	20 000 000
Market value of group pre unbundling	50 000 000
Rewallocation percentage	40%

R15m base cost that Unbundling company had in unbundled company is now lost

# Reallocation of CTC



NB remember: The CTC in both the Unbundling Company and the unbundled company are also reallocated. See formula in Section 46(3A)

# Distributions to disqualified persons

- (7) (a) In the case of an unbundling transaction contemplated in [subsection \(1\) \(a\)](#), this section does not apply in respect of any equity share that is distributed by an unbundling company to any shareholder that—
- (i) is a disqualified person; and
  - (ii) holds at least 5 per cent of the equity shares in the unbundling company immediately before that unbundling transaction.
- (b) For the purposes of [paragraph \(a\)](#), a “disqualified person” means—
- (i) a person that is not a resident;
  - (ii) the government of the Republic in the national, provincial or local sphere, contemplated in [section 10 \(1\) \(a\)](#);
  - (iii) a public benefit organisation as defined in [section 30](#) that has been approved by the Commissioner in terms of that section;
  - (iv) a recreational club as defined in [section 30A](#) that has been approved by the Commissioner in terms of that section;
  - (v) a company or trust contemplated in [section 37A](#);
  - (vi) a fund contemplated in [section 10 \(1\) \(d\) \(i\)](#) or [\(ii\)](#); or
  - (vii) a person contemplated in [section 10 \(1\) \(cA\)](#) or [\(t\)](#).

# Exclusions

(8) Where

- an unlisted unbundling company
- disposes of shares in an unlisted unbundled company in terms of an unbundling transaction
- to a shareholder and that unbundled company is a
- controlled group company in relation to that shareholder immediately before and after that disposal,
- the provisions of this section will not apply to that disposal
- if that shareholder and that unbundling company agree in writing that this section does not apply to that disposal.

Only limited circumstances where one can elect that S46  
will not apply

6

Section 47: Transactions relating to liquidation, winding-up and deregistration

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# What is it?

## 47. Transactions relating to liquidation, winding-up and deregistration.—

(1) For the purposes of this section “**liquidation distribution**” means any transaction—

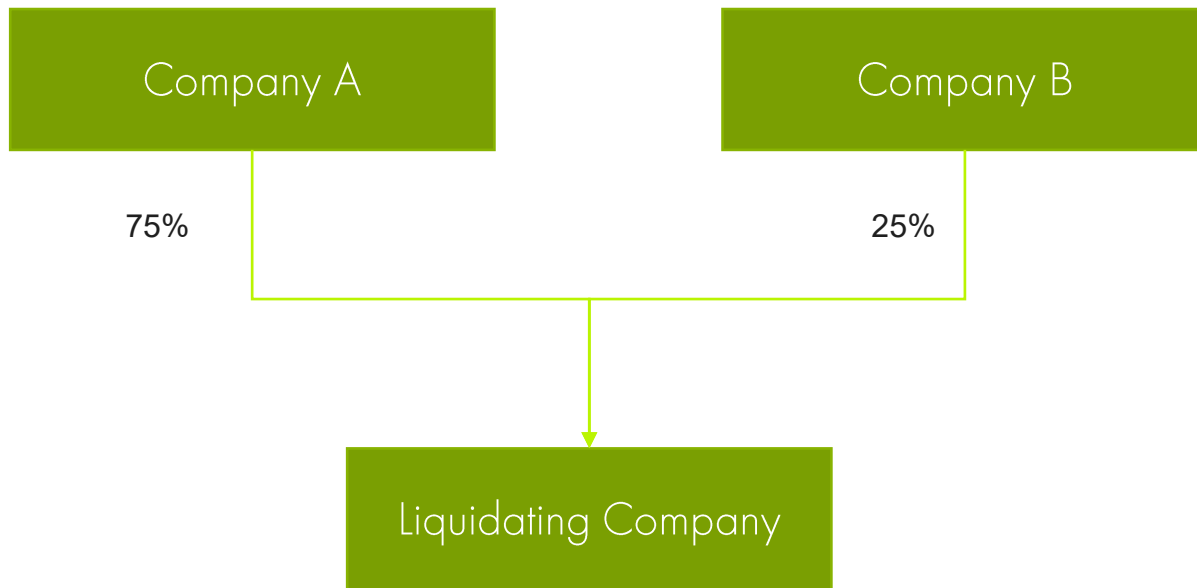
(a) in terms of which

- any company (hereinafter referred to as the “liquidating company”)
- which is a resident
- disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade)
- to its shareholders
- in anticipation of or in the course of the liquidation, winding up or deregistration of that company and other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the liquidation or winding up,
- but only to the extent to which those assets are so disposed of to another company (hereinafter referred to as the “holding company”)
- which is a resident and which on the date of that disposal forms part of the same group of companies as the liquidating company;

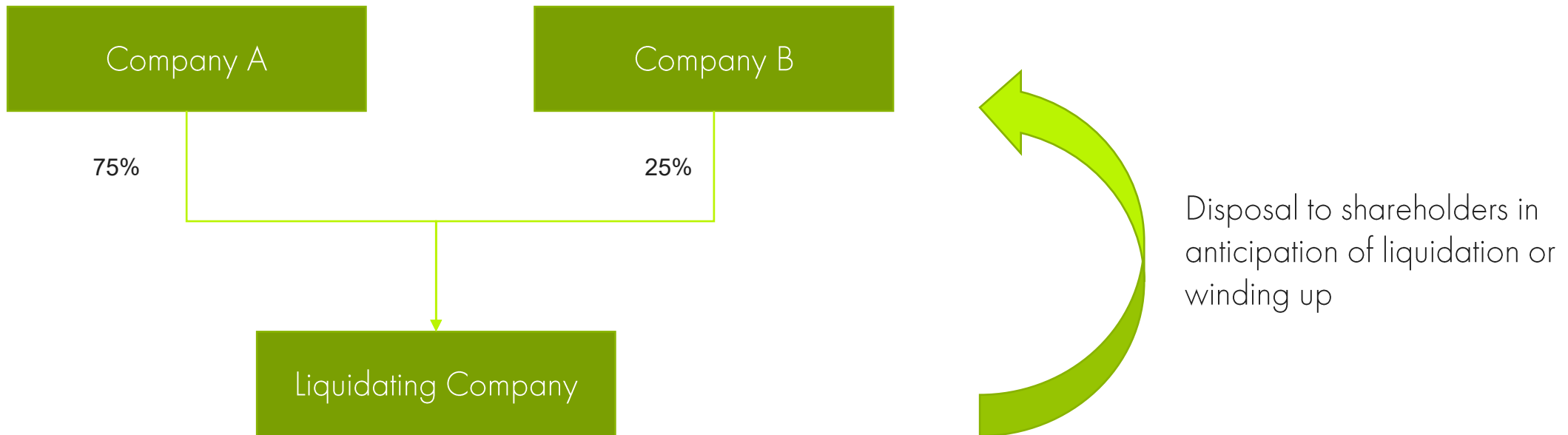
Limited to distributions to shareholders that are part of the same group of companies



# Illustration

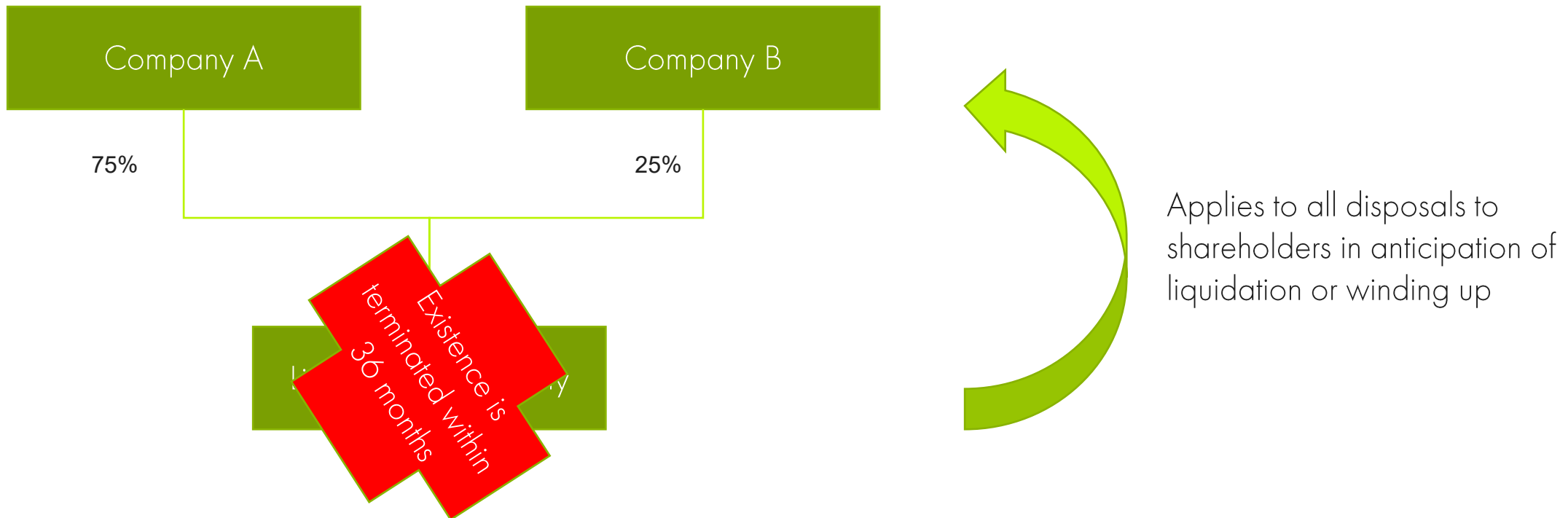


# Illustration



- Rollover relief will apply to all disposals made to Company A
- Rollover relief will not apply to distributions to Company B

# Illustration



- Rollover relief will apply to all disposals made to Company A
- Rollover relief will not apply to distributions to Company B

# Exclusions

(6) The provisions of this section do not apply where—

(a) the holding company is—

- (i) a public benefit organisation as defined in [section 30](#) that has been approved by the Commissioner in terms of that section;
- (ii) a recreational club as defined in [section 30A](#) that has been approved by the Commissioner in terms of that section; or
- (iii) a person contemplated in [section 10 \(1\) \(cA\), \(cP\), \(d\), \(e\) or \(f\)](#);

(b) **the holding company and the liquidating company agree in writing that this section does not apply;** or

(c) the liquidating company—

- (i) has not, within a period of **36 months** after the date of the liquidation distribution, or such further period as the Commissioner may allow, **taken the steps contemplated in section 41 (4) to liquidate, wind up or deregister;** or
- (ii) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in [paragraph \(i\)](#), or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered:

Provided that any tax which becomes payable as a result of the application of this paragraph shall be recoverable from the holding company or, where the holding company is a controlled foreign company, from any resident who directly or indirectly holds any participation rights in that controlled foreign company as contemplated in [section 9D \(2\)](#).

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Value-Added Tax: Section 8(25)

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# Section 8(25) of the VAT Act

## 8. Certain supplies of goods or services deemed to be made or not made.—

(25) For the purposes of this Act, where any goods or services are supplied by a vendor to another vendor, those vendors must for purposes of that supply or subsequent supplies of those goods or services, be deemed to be one and the same person provided the provisions of section 42, 44, 45 or 47 of the Income Tax Act are complied with:

Provided that this subsection shall not apply to a supply contemplated in section 42 or 45 of the Income Tax Act, unless—

- (i) that supply is of an enterprise or part of an enterprise which is capable of separate operation, where the supplier and recipient have agreed in writing that such enterprise or part, as the case may be, is disposed of as a going concern;
- (ii) the enterprise or part, as the case may be, disposed of as a going concern has been carried on in, on or in relation to goods or services applied mainly for purposes of such enterprise or part, as the case may be, and partly for other purposes, such goods or services shall, where disposed of to such recipient, for the purposes of this paragraph be deemed to form part of such enterprise or part, as the case may be, notwithstanding the provisions of paragraph (v) of the proviso to the definition of “enterprise” in section 1; or
- (iii) the supply is of fixed property and the supplier and the recipient have agreed in writing that, immediately after the supply, the supplier will lease the fixed property from the recipient:

Provided further that this subsection shall not apply to a supply as contemplated in section 42 or 45 of the Income Tax Act, where such supplier and recipient have agreed in writing that the provisions of subsection (Z) and section 11 (1) (e) of this Act shall apply.



Par 43A of the 8<sup>th</sup> Schedule

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# Par 43A of the 8<sup>th</sup> Schedule

“extraordinary dividend”, in relation to—

- (a) a preference share, means so much of the amount of any dividend received or accrued in respect of that share as exceeds the amount that would have accrued in respect of that share had it been determined with reference to the consideration for which that share was issued by applying an interest rate of 15 per cent per annum for the period in respect of which that dividend was received or accrued;
- (b) any other share, means so much of the amount of any dividend received or accrued—
  - (i) within a period of 18 months prior to the disposal of that share; or
  - (ii) in respect, by reason or in consequence of that disposal,

as exceeds 15 per cent of the higher of the market value of that share as at the beginning of the period of 18 months and as at the date of disposal of that share:

Provided that a dividend *in specie* that was distributed in terms of a deferral transaction must not be taken into account to the extent to which that distribution was made in terms of an unbundling transaction as defined in section 46 (1) (a) or a liquidation distribution as defined in section 47 (1) (a);



# Par 43A of the 8<sup>th</sup> Schedule

“qualifying interest” means an interest held by a company in another company, whether alone or together with any connected persons in relation to that company, that constitutes—

- (a) if that other company is not a listed company, at least—
  - (i) 50 per cent of the equity shares or voting rights in that other company; or
  - (ii) 20 per cent of the equity shares or voting rights in that other company if no other person (whether alone or together with any connected person in relation to that person) holds the majority of the equity shares or voting rights in that other company; or
- (b) if that other company is a listed company, at least 10 per cent of the equity shares or voting rights in that other company.

# Par 43A of the 8<sup>th</sup> Schedule

(2) Subject to [subparagraph \(3\)](#), where a company holds shares in another company and disposes of any of those shares in terms of a transaction that is not a deferral transaction and that company held a qualifying interest in that other company at any time during the period of 18 months prior to that disposal, the amount of any exempt dividend received by or that accrued to that company in respect of the shares disposed of must—

- (a) to the extent that the exempt dividend constitutes an extraordinary dividend; and
- (b) if that company immediately before that disposal held the shares disposed of as a capital asset (as defined in section 41),

be taken into account as part of the proceeds from the disposal of those shares or, if those shares are treated as having been disposed of in terms of [subparagraph \(4\)](#), as a capital gain in respect of those shares, in the year of assessment in which those shares are disposed of or are treated as having been disposed of or, where that dividend is received or accrues after that year of assessment, the year of assessment in which that dividend is received or accrues:

Provided that where a company disposes of shares that are treated as having been disposed of previously by that company in terms of [subparagraph \(4\)](#), the amount of any extraordinary dividend in respect of those shares must be included in the proceeds from that disposal only to the extent to which it has not previously been taken into account in respect of those shares in terms of this subparagraph.

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Summary

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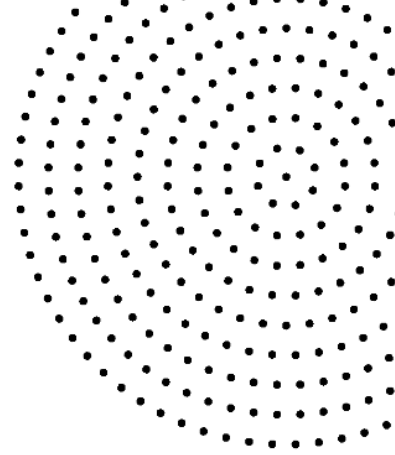
# Summary

- The tax rules are extremely complex
- Be aware of automatic application of the rules
- Numerous anti-avoidance legislation has been included in the Act over time.
- Applying rollover relief is not necessarily good for the purchaser – especially under a S43 transaction.
  - The purchaser assumes responsibilities for the underlying recoupments and lower base cost of business acquired.
  - Deferred tax may need to be raised on business combinations
- In some instances, base costs are lost – e.g. under unbundling transactions
- NEVER ASSUME – always refer back to the legislation

# CPD Code

Please enter this code in the quiz section to obtain your CPD

PTV856



THANK YOU

For joining us.  
Stay In touch.  
[www.saiba.org.za](http://www.saiba.org.za)

SEE YOU AGAIN

19 October 2022  
Wednesday

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