



# Monthly Tax Update: JULY 2021

Presented by: Professor Jackie Arendse PhD MTP(SA) CA(SA)

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# What we are covering this month

- Latest on 2021 filing season
- Latest from SARS
  - VAT Connect Issue 12 (June 2021)
  - BCR077 - CGT consequences of an in-specie distribution to shareholders
- Other notices

# PAYE penalties for employers

## SARS 13 July 2021

- The penalty for late filing of a PAYE (EMP501) reconciliation implemented for the first time this year.
- SARS is still in the process of enhancing the Dispute Resolution process so that this penalty can be disputed separately from a PAYE late payment penalty.
- If an employer receives another PAYE penalty for the same tax period, it will not yet be able to do a RFR or lodge an Objection against the added penalty on eFiling when the prior RFR or Dispute has already been finalised.



# PAYE penalties (cont.)

- Enhancements to the Dispute Resolution process should be ready soon, but in the event that you wish to do a RFR or Dispute in relation to such an added penalty, SARS will as an interim measure accept a written Request for Remission or ADR1/ADR2 forms in relation to the added PAYE penalty.



# PAYE penalties (cont.)

Steps to make use of the interim process to submit a RFR, NOO or NOA:

1. Check on eFiling that the penalty amount for which you wish to request remission, object or appeal against is indeed blocked from being submitted. If eFiling blocks you then proceed to Step 2.
2. Type or write a RFR, and make sure that you include the reason for your request as well as the PAYE reconciliation period or transaction numbers of the penalties incurred or the EMP201 periods.



# PAYE penalties for Employers

3. Submit your RFR, ADR1 or ADR2 to [contactus@sars.gov.za](mailto:contactus@sars.gov.za) or [pcc@sars.gov.za](mailto:pcc@sars.gov.za) You will receive a case number which must be used in any future correspondence with SARS relating to this matter.

4. Once SARS has considered the request for remission, objection or appeal, they will notify you by way of a letter addressed to your preferred channel of communication.

See the guide for [How to submit a Dispute via eFiling](#) here.



# PAYE penalties (cont.)

- If you already submitted a RFR but you remain aggrieved by the outcome then use the ADR1 form in the case of an objection.
- If you already objected and the objection was dismissed, and you wish to appeal, then use the ADR2 form.
- The ADR1 and ADR2 forms can be downloaded here <https://www.sars.gov.za/find-a-form/>.
- Before you do all of this please visit the [Request for Remission of Administrative Non-compliance penalty webpage](#) to understand the legislative requirements.



# Tax Compliance Status system enhancements

SARS 9 July 2021

The Tax Compliance Status (TCS) system has been enhanced to reissue the original PIN number for any subsequent “New PIN” requests in relation to active Foreign Investment Allowance (FIA) and Emigration TCS types.

For more information see the [Guide to the Tax Compliance Status functionality on eFiling](#):

<https://www.sars.gov.za/gen-elec-08-g01-guide-to-the-tax-compliance-status-functionality-on-eFiling-external-guide/>





# Company tax returns

SARS 16 July 2021

- The eFiling pop up message for the filing of the Income Tax Return for companies (ITR14) for the 2021 year of assessment that intend to deregister with CIPC ONLY has been removed.
- SARS apologises for any inconvenience caused.
- A company must submit its ITR14 tax return within 12 months of its financial year-end. For more information, see the Guide on [How to complete the Income Tax Return ITR14 for Companies.](#)



# SARS MobiApp

SARS 9 July 2021

- Lwazi ChatBot
  - An interactive self-service platform available via the eFiling web or the MobiApp. Taxpayers can ask Lwazi tax related questions using the convenience of their smart phone, tablet or computer.
  - Enhanced to provide additional self-service options that enable users to query and request specific services that they would otherwise receive via SARS service channels such as the Contact Centre or the Branch Office.
  - Will now present to the user services in a structured menu option and additionally a call back request can be made to SARS. These service options can be accessed on eFiling web and MobiApp.
  - For more information, see the updated [Guide to the SARS MobiApp](https://www.sars.gov.za/it-ae-40-g02-guide-to-the-sars-mobiapp-external-guide/):  
<https://www.sars.gov.za/it-ae-40-g02-guide-to-the-sars-mobiapp-external-guide/>



# Deduction of home office expenses

Relevant provisions

- s 23(b) – private expenses
- S 23(m) – employees

See <https://www.sars.gov.za/types-of-tax/personal-income-tax/tax-season/home-office-expenses/>

9 July 2021 – SARS hosted a webinar on ‘Home Office Tax Requirements’:

If you missed the live streaming, [it's now available to watch here:](#)

<https://www.youtube.com/watch?v=JOCnHA7FFzU>

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# Deducting donations

s 18A

SARS website:

See the [Tax Exempt Institution webpage](#):

<https://www.sars.gov.za/businesses-and-employers/tax-exempt-organisations/>



# Deducting donations (cont.)

## FAQs:

- How do I claim S18A deductions on the ITR12 return?
  - Answer the following questions on the return wizard:
    - Do you want to claim donations made to an approved organization(s) in terms of s18A?
    - How many organizations did you donate to?  
Upon answering these questions, the donation containers for both source codes 4055 & 4011 will open on the return.
- Which container is applicable for donations made to S18A-approved institutions, other than the Solidarity Fund?
  - Select source code 4011 (4055 only relates to donations made to the Solidarity Fund during the period April 2020 and September 2020).



# Deducting donations (cont.)

## FAQs:

- Which documents are required to support my s18A claim?
  - A valid s 18A certificate provided by a s18A-approved organization.
  - If the donation was made through your employer, the IRP5 issued by your employer will suffice.
- Where will I see the donations made through my employer on my return?
  - The amount will be reflected on the IRP5 and pre-populated on your return under “Employee Tax Certificate Information [IRP5/IT3 (a)]”.



# 2021 filing season: SARS resources

For the latest information, changes and enhancements on Filing Season, visit the [Filing Season 2021 webpage](https://www.sars.gov.za/types-of-tax/personal-income-tax/tax-season/). <https://www.sars.gov.za/types-of-tax/personal-income-tax/tax-season/>

Guides published so far are:

[IT-AE-36-G06 – How to eFile your Personal Income Tax Return – External Guide](https://www.sars.gov.za/wp-content/uploads/Ops/Guides/IT-AE-36-G06-How-to-submit-your-individual-income-tax-return-via-eFiling-External-Guide.pdf)

<https://www.sars.gov.za/wp-content/uploads/Ops/Guides/IT-AE-36-G06-How-to-submit-your-individual-income-tax-return-via-eFiling-External-Guide.pdf>

[IT-AE-36-G05 – Comprehensive Guide to the ITR12 Return for Individuals – External Guide](https://www.sars.gov.za/it-ae-36-g05-comprehensive-guide-to-the-itr12-income-tax-return-for-individuals-external-guide/)

<https://www.sars.gov.za/it-ae-36-g05-comprehensive-guide-to-the-itr12-income-tax-return-for-individuals-external-guide/>

[IT-GEN-06-G01 – Guide to the Individual ITR12 Return for Deceased and Insolvent Estates – External Guide](https://www.sars.gov.za/wp-content/uploads/Ops/Guides/IT-GEN-06-G01-Guide-to-the-Individual-ITR12-Return-for-Deceased-and-Insolvent-Estates-External-Guide.pdf)

<https://www.sars.gov.za/wp-content/uploads/Ops/Guides/IT-GEN-06-G01-Guide-to-the-Individual-ITR12-Return-for-Deceased-and-Insolvent-Estates-External-Guide.pdf>

[GEN-REG-48-G01 – Venture Capital Companies – External Guide](#)

[GEN-PT-01-G01 – Guide for Provisional Tax – External Guide](#)

[GEN-BO-09-G01 – Book an Appointment with a SARS Branch – External Guide](#)

[DT-GEN-01-G02-Declaration-of-Dividends-Tax-via-eFiling-External-Guide](#)

[IT-AE-45-G01 – Guide to SARS Mobile Tax Services – External Guide](#)

Remember to watch our easy tutorial videos on [www.youtube.com/sarstax](https://www.youtube.com/sarstax).

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# VAT on imported services

Section 7(1)(c): VAT is levied on imported services

Section 1: “imported services” = a supply of services by a non-resident/ foreign business to a resident to the extent that the services are used other than for making taxable supplies.

Section 14(1)(a): where VAT is payable under s 7(1)(c), the recipient must, in the case of a -

non-vendor: declare and pay the VAT within 30 days from the time of supply (VAT 215) OR

vendor: declare the VAT in the VAT return for the tax period in which the time of supply falls.

Section 14(2): time of supply is when the supplier issues an invoice or any payment is made by the recipient, whichever happens first.

Section 14(3): value of supply is the greater of consideration or OMV.



# Section 14(5): VAT is not payable on imported services where:

- (i) The supply would be exempt from VAT or zero-rated if supplied in the Republic
- (ii) The supply of the service is subject to VAT at the standard rate (presently 15%)
- (iii) A supply is of an educational service by an educational institution established in an export country which is regulated by an educational authority in that export country
- (iv) The supply is of services by an employee in the course of their employment or the rendering of services by a holder of any office to the extent that remuneration is paid or payable to such employee or holder of office
- (v) The value of the imported services does not exceed R100 per invoice.

# SARS VAT Connect (June 2021)

- Section 14(1)(a) amended in the 2020 TALAA to require the recipient of imported services to obtain, complete and retain form VAT215: the recipient no longer has to submit the VAT215 form to SARS, but is only required to keep the completed form as documentary evidence.

# *SARS External Guide: Manage VAT on Imported Services*

- Recipient of the imported services must
  - obtain the VAT 215 from the SARS website, complete and retain it; and
  - pay the VAT using eFiling, under the recipient's IT reference no.  
(Returns>Additional payments>Create additional payment> Tax type: VAT for non-registered (VNR)> Payment type VAT non-registered normal payment).
  - Enter the receipt number generated from the eFiling system where the payment transaction reflected a successful status on the VAT 215.
  - If not registered for IT, the recipient can register a SARS Efiling profile or email [importedservices@sars.gov.za](mailto:importedservices@sars.gov.za) for further guidance.

## *SARS External Guide: Manage VAT on Imported Services*

- The recipient must retain the VAT 215 record and the relevant invoices as relevant material for the prescribed period (5 years).
- Failure to pay the VAT within 30 days will result in a 10% late payment penalty and interest.
- SARS may also issue an estimated assessment for the VAT liability.

# Section 72 rulings

- SARS may issue a ruling as to the manner in which provisions of the VAT Act will apply, or the calculation or payment of VAT will apply in certain circumstances, to a vendor or class of vendors, to overcome difficulties, anomalies or incongruities, provided the requirements and decisions set out in the Act.
- Following 2019 Amendment (effective 21/7/19)
  - The hardship must be similar to that experienced by other vendors or class of vendors of the same kind or who make similar supplies of goods or services - removes preferential treatment.
  - SARS can no longer make a ruling regarding the application of the zero rate or providing an exemption from tax.
  - A SARS ruling must not have the effect of reducing or increasing the liability for VAT levied under the VAT Act and cannot be contrary to the construct and policy intent of the VAT Act as a whole, or with reference to any specific provision contained therein.
  - SARS may publish by public notice a list of transactions or matters in respect of which a ruling under section 72 may be declined. See Notice No. 300 published 1 April 21.

# Impact on existing and new rulings

- The amended s 72 applies to ruling applications made on or after 21/7/19.
- Rulings issued in respect of applications made before 21/7/19 and that expire before 31/12/21 may be reconfirmed by SARS on application but the renewed ruling may not extend beyond 31/12/21.
- Rulings issued before 21/7/19 that cease to be effective after 31/12/21 will automatically expire on 31/12/21.

# VAT Connect (Issue 12 - June 2021)

- BGR 56 “Application for a Decision under Section 72” (6 April 2021): details required in the application.
- More comprehensive information on the process of applying for a decision under s 72 and related administrative matters can also be found in the VAT Section 72 Decisions Process Reference Guide, also published on 6 April 2021.
- Public Notice 299 sets out the fees for Advance Tax Rulings, including s 72 rulings.
- Public Notice 300: no-rulings lists

# Notice 300: transactions or matters in respect of which the Commissioner may decline to make a decision

(a) The transactions or matters referred to in—

- s 80(1) and the additional considerations referred to in ss 80(2) & 80(3) of the TAA
- any regulation issued under s 74.

(b) A request to deem—

- a project to be a “foreign-donor funded project”
- a payment made to or on behalf of a vendor in terms of a national housing programme;
- a payment to be a “donation” or “grant”;
- an activity to be a “welfare organisation”;
- a supply to be made or not made;
- a person to be the “recipient” of a supply;



# Notice 300: transactions or matters in respect of which the Commissioner may decline to make a decision

(b) cont.

- the issue of a token, voucher or stamp to fall within s 10(18), (19) or (20) respectively, otherwise than provided for in these sections;
- an exemption to apply on the importation of goods, as contemplated in s 13(3) read with Schedule 1 or the zero-rate to apply on the supply of goods contemplated in ss 11(1)(g), 11(1)(j) and 11(1)(w) read with Schedule 2; and
- any branch or main business of an enterprise, permanently situated at premises outside the Republic, to be carried on by a person separate from the vendor, as contemplated under proviso (ii) of the definition to "enterprise" in s 1(1).

# Notice 300 (cont.)

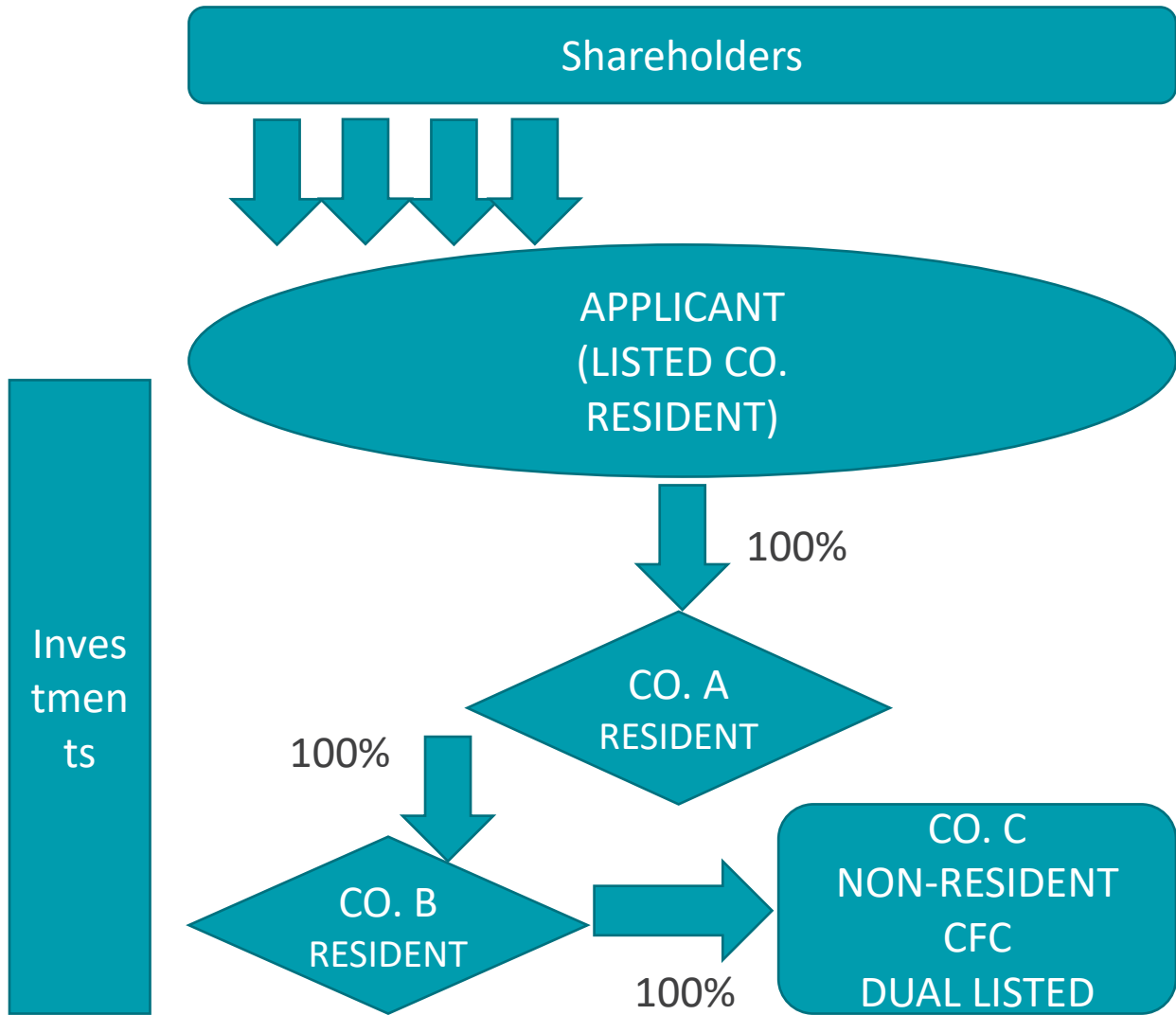
(c) A request to allow—

- the invoice or payments basis, other than under s 15;
- the submission of VAT returns and payment under s 28 by a person other than the vendor, or an agent under s 54;
- the tax invoices envisaged in s 20, in the name of any person other than the vendor, or an the agent under s 54;
- an input tax deduction under s 16(2) & 16(3) by any person other than the vendor, or an agent under s 54;
- an enterprise carried on under para (b)(v) of the definition of enterprise (*implementing agency of a foreign donor funded project*) and any other enterprise activity, using a single VAT registration number.
- an “intermediary” to register and account for the supply of “electronic services” where the foreign supplier of “electronic” services is liable to register for VAT under s23(1A).
- the non-payment of VAT charged under the circumstances prescribed in s 31(1)(e).

# BCR 077: CGT consequences of an *in-specie* distribution to shareholders

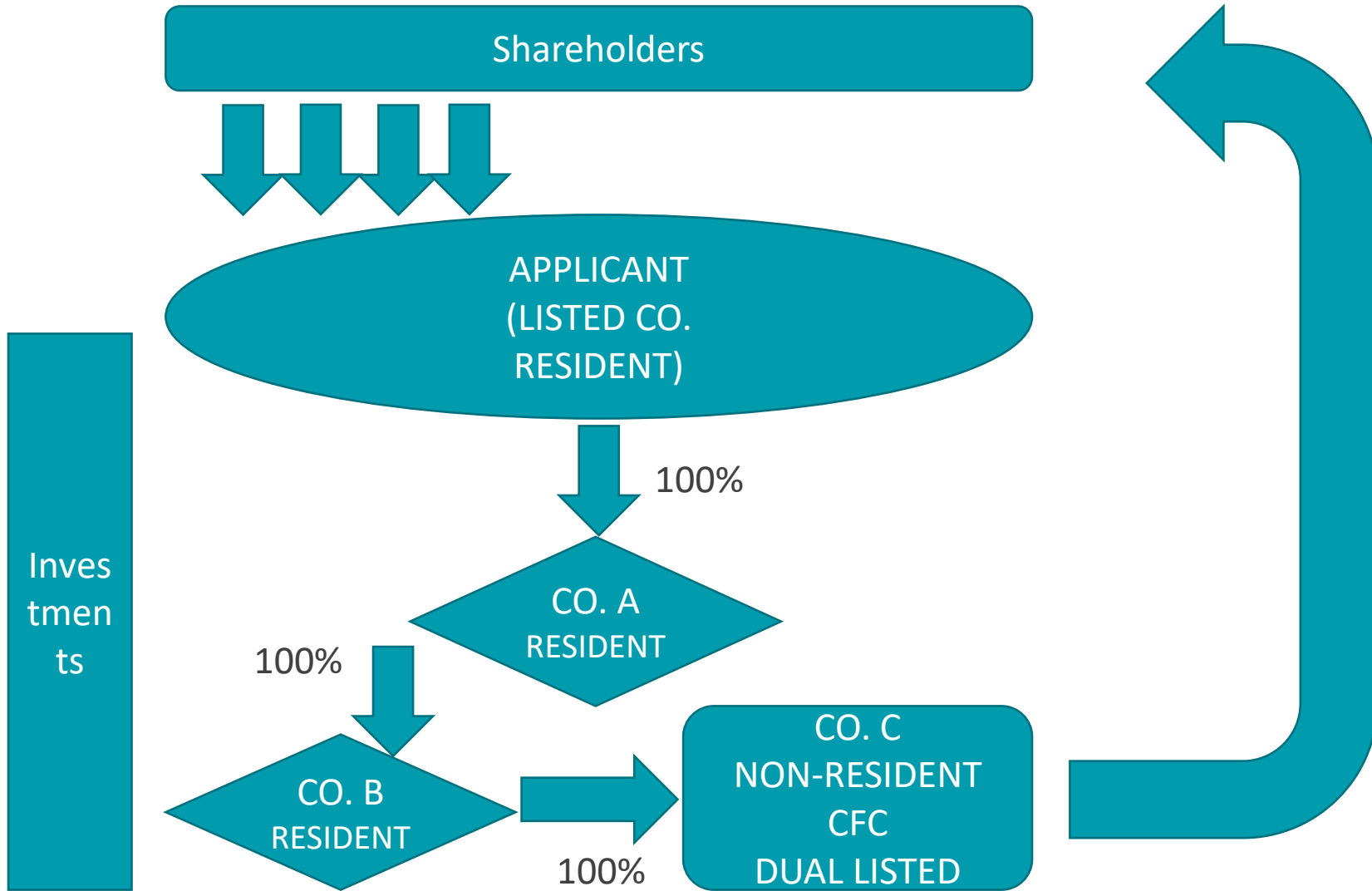
- A ruling on the interpretation and application of paragraph 75 and paragraph 76B of the Eighth Schedule (as at 27 May 2021).
- The class members to whom this ruling will apply are the shareholders of the applicant referred to in 4.
- 4. Parties to the proposed transaction
  - The applicant: listed company incorporated in and resident of SA
  - Company A: resident; wholly-owned subsidiary of the applicant
  - Company B: resident; wholly-owned subsidiary of Company A
  - Company C: not resident; majority of its shares held by Co. A
  - Shareholders: shareholders of the applicant.

## BEFORE THE TRANSACTION:



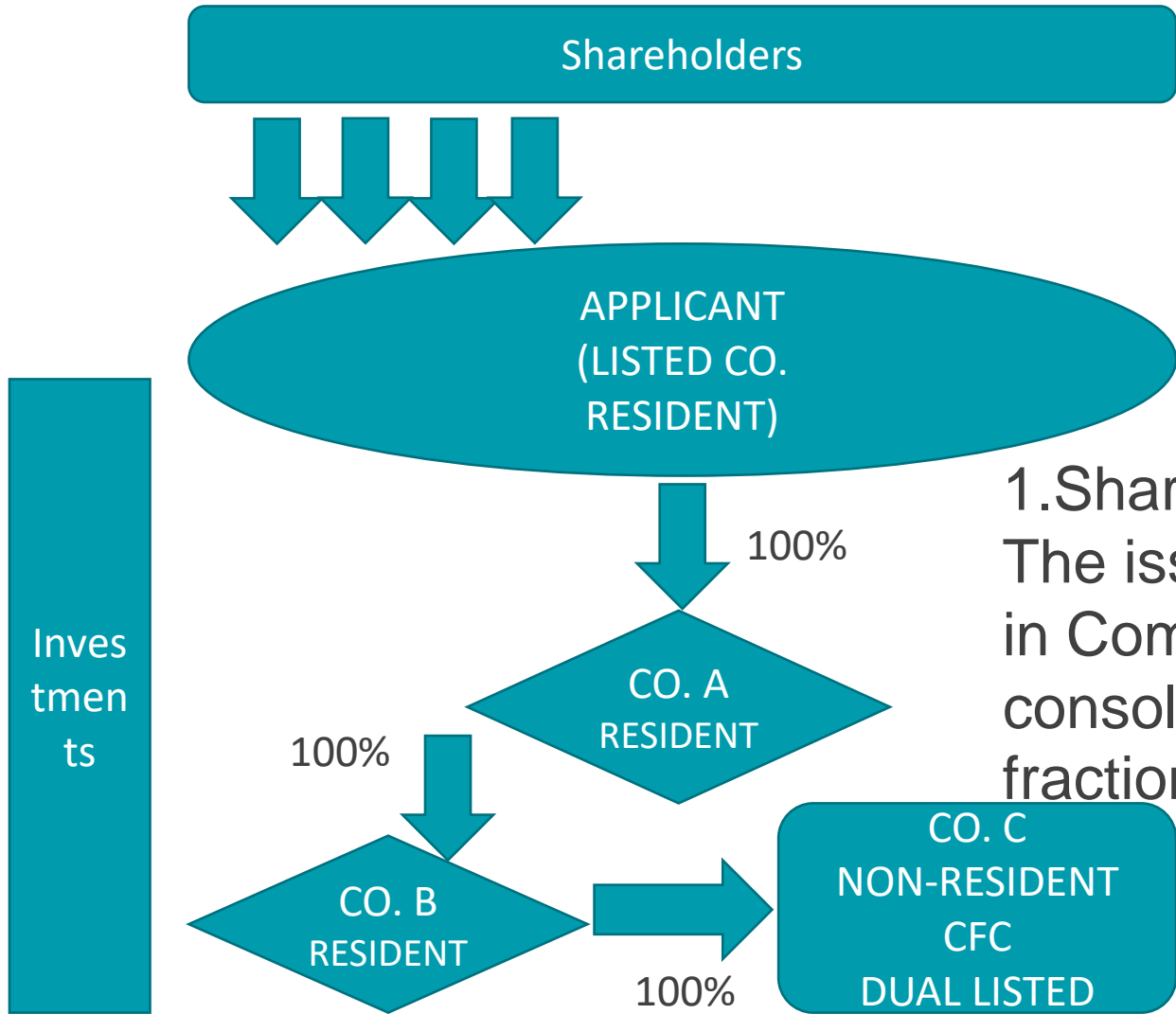
# PROPOSED TRANSACTION:

Distribute C shares to the shareholders in 5 steps



# PROPOSED TRANSACTION:

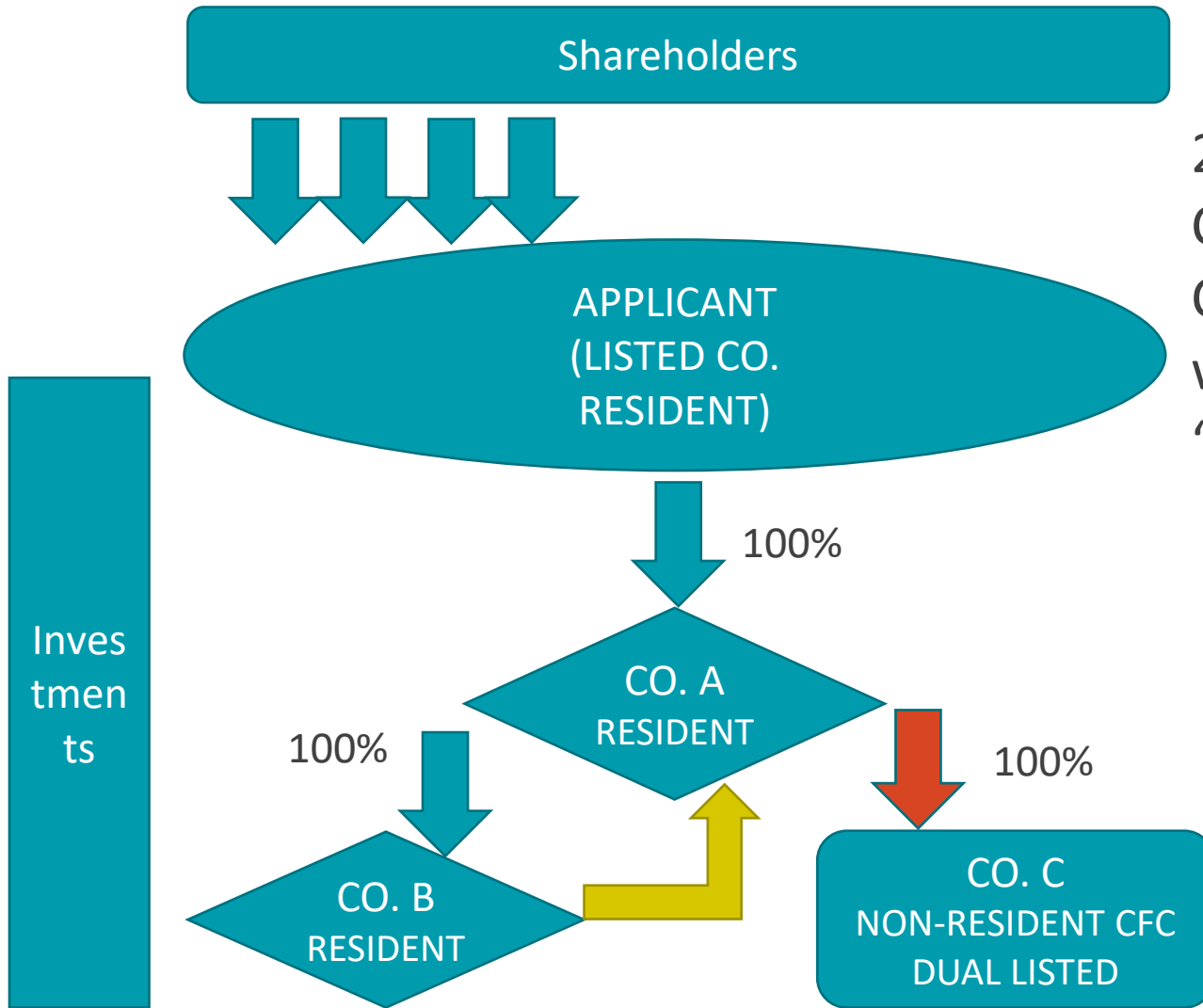
Distribute C shares to the shareholders in 5 steps



1. Share consolidation:  
The issued ordinary shares in Company C were consolidated to eliminate fractional shares.

# PROPOSED TRANSACTION:

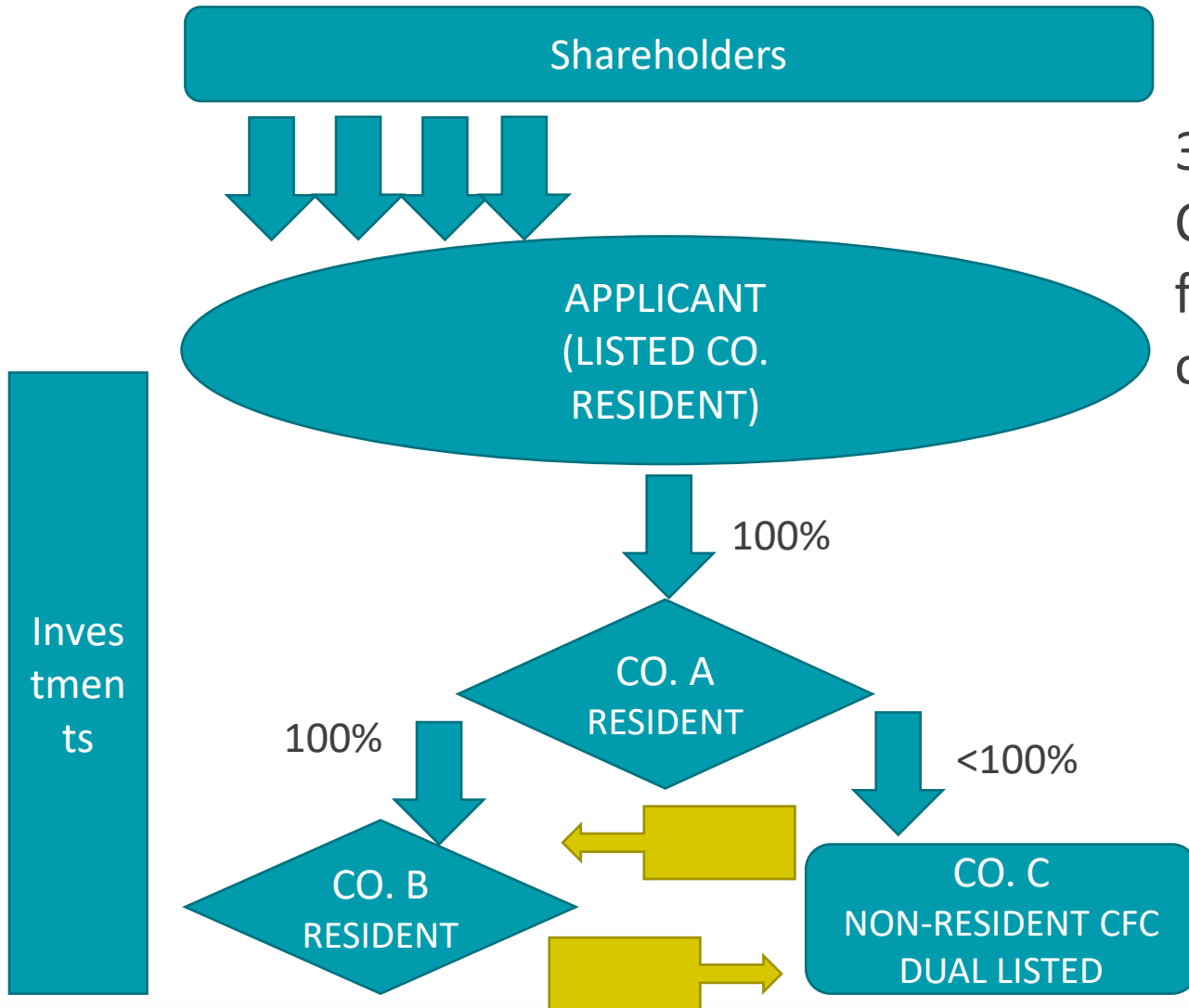
Distribute C shares to the shareholders  
in 5 steps



2. Unbundling of Company C shares  
Company B unbundled all its shares in  
Company C to Company A in accordance  
with paragraph (b) of the definition of  
“unbundling transaction” in s 46(1).

# PROPOSED TRANSACTION:

Distribute C shares to the shareholders in 5 steps

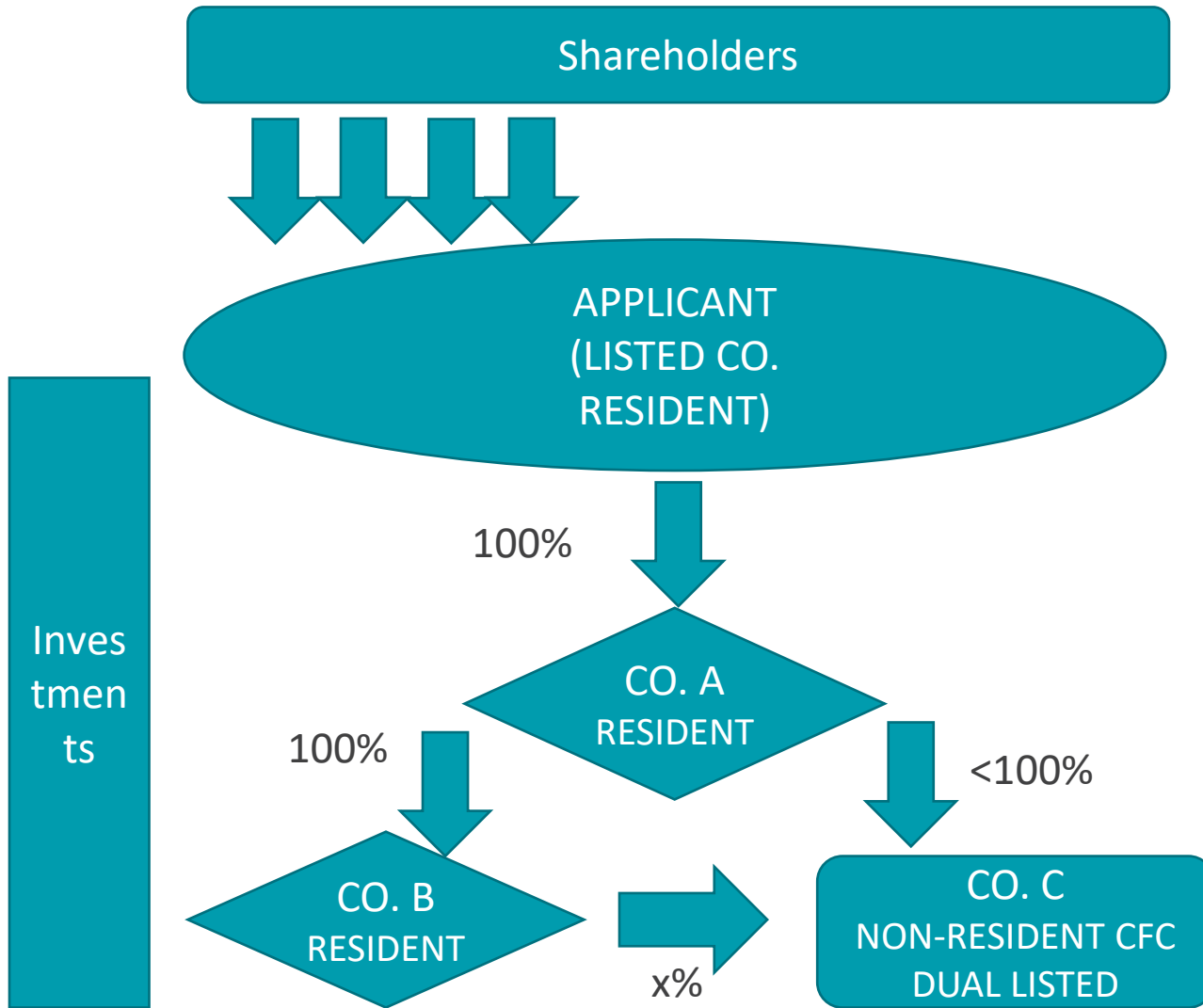


## 3. Asset-for-Share Purchase

Company C acquired investment assets from Company B in exchange for the issue of its own shares to Company B.



After step 3:



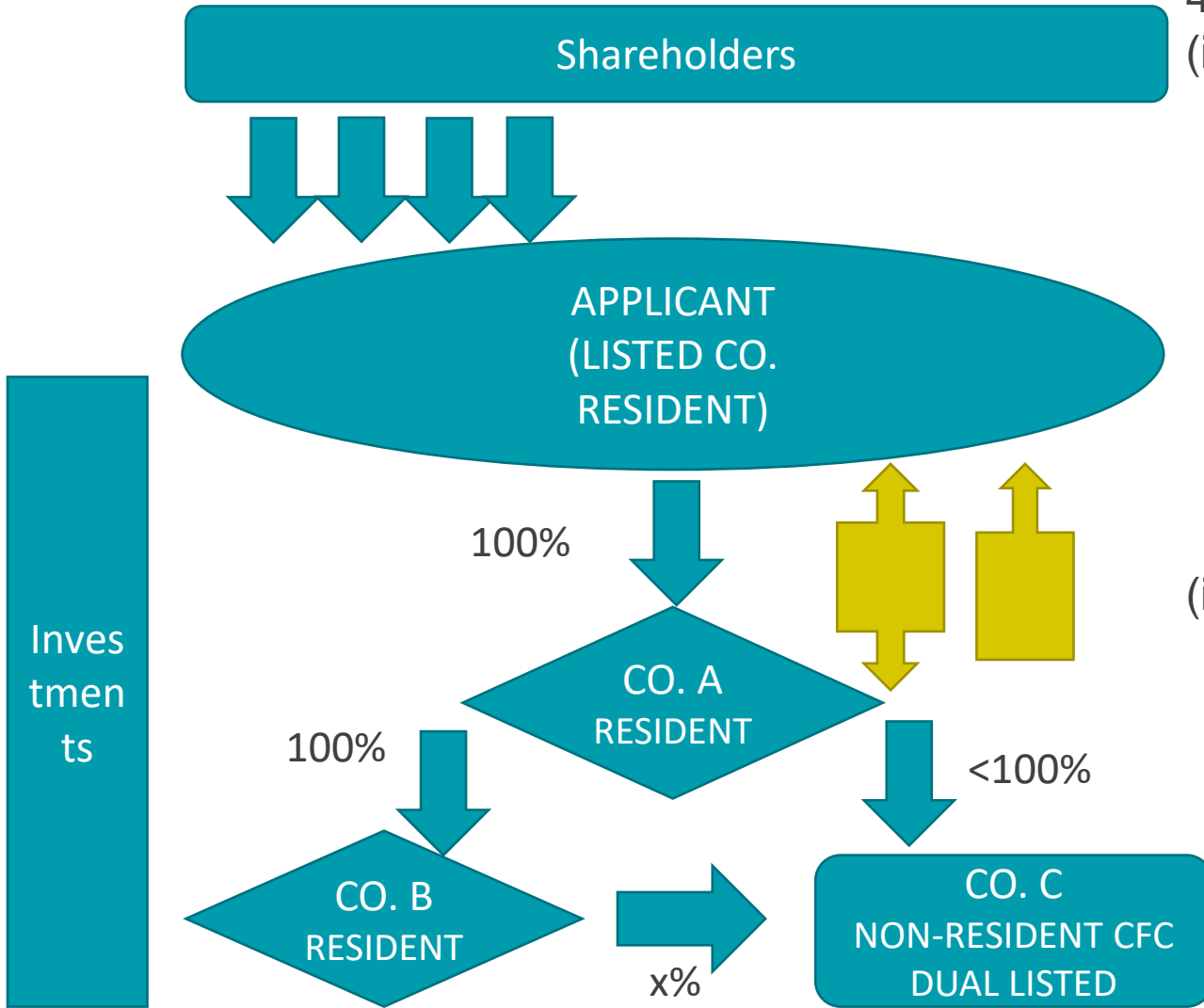
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# PROPOSED TRANSACTION:

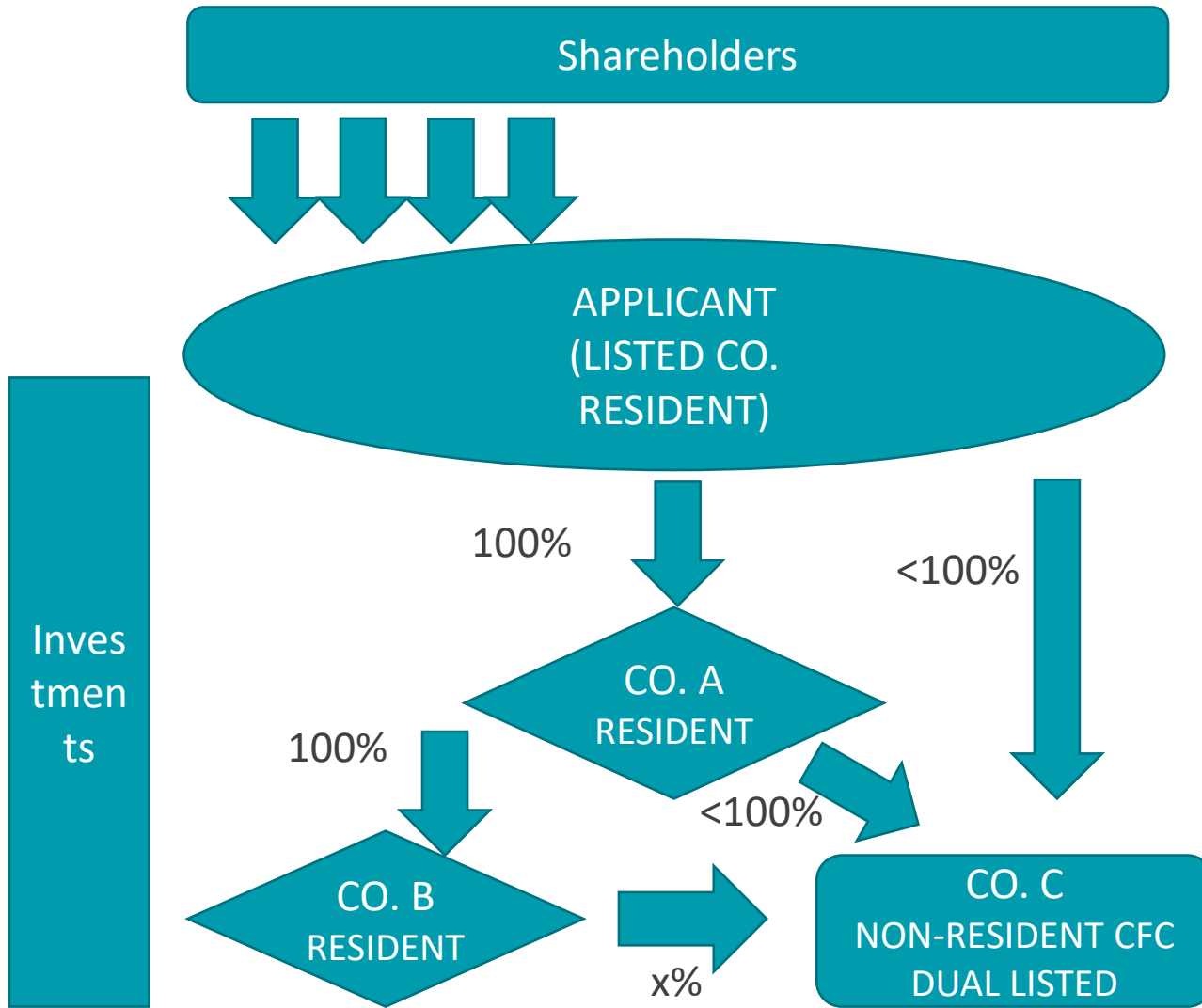
Distribute C shares to the shareholders  
in 5 steps



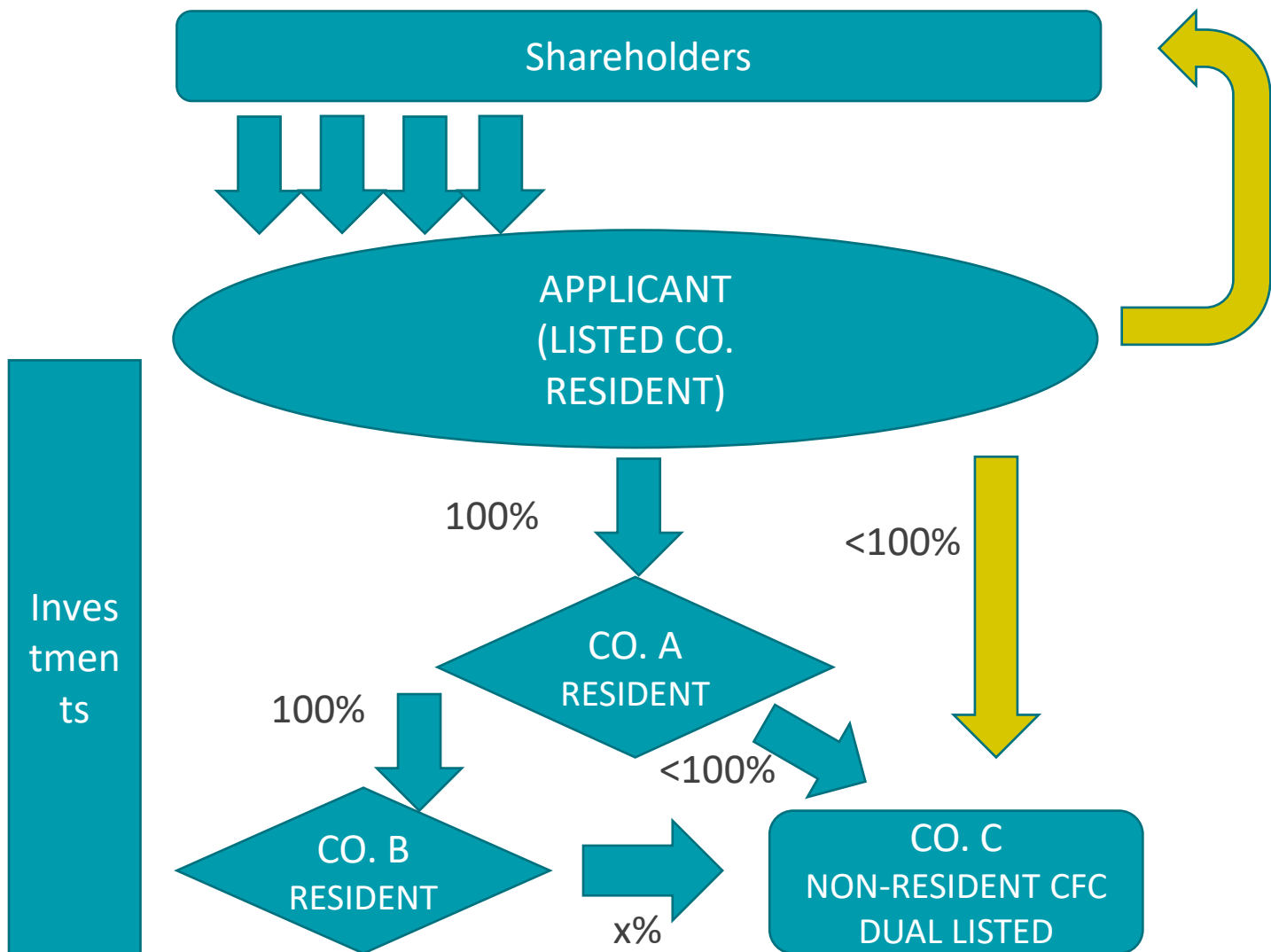
## 4. Equity Repurchase

- (i) Company A will repurchase some of its own ordinary shares from the applicant for a consideration - to be settled by Co. A transferring a number of shares in Co. C to the Applicant
  - and then reduce the contributed tax capital of Company A's ordinary shares. The base cost of shares that the applicant holds in Co. A will also be reduced.
- (ii) The applicant will acquire an aggregate base cost in the Company C shares equal to the value of those shares. The value at which this transaction step will be done will be determined by the applicant.

After step 4:



## PROPOSED TRANSACTION:



5. Distribution of Company C shares  
The applicant will distribute *in specie* all the shares it holds in Co. C to the Shareholders. The distribution will reduce the applicant's contributed tax capital.

The directors of the applicant will pass a resolution directing that the distribution of the Company C shares will constitute a return of capital and not a dividend.

# Ruling

a) ... paragraph 75.

Distributions in specie by company

(1) Where a company makes a distribution of an asset in specie to a person holding a share in that company -

- (a) that company must be treated as having disposed of that asset to that person on the date of distribution for an amount received or accrued equal to the market value of that asset on that date; and
- (b) that person must be treated as having acquired that asset on the date of distribution and for expenditure equal to the market value of that asset on that date, which expenditure must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a).

# Ruling

a) The distribution *in specie* by the applicant of the Company C shares to the shareholders will fall within the ambit of paragraph 75.

Consequently, the Shareholders will be treated as having acquired the Company C shares for expenditure equal to their market values on the date of distribution as contemplated in paragraph 74, which expenditure will be treated as expenditure actually incurred by each shareholder for purposes of paragraph 20(1)(a).

Para 74: “date of distribution” to the extent that the distribution consists of a distribution of an asset in specie, the earlier of the date on which the distribution is paid or becomes due and payable.

# Ruling

b) Shareholders: paragraph 76B(2)

Where-

(a) a return of capital or foreign return of capital by way of a distribution of cash or an asset in specie is received by or accrues to a holder of a share in respect of that share; and

(b) that return of capital or foreign return of capital is received by or accrues to the holder of that share on or after 1 April 2012 and prior to the disposal of that share,

the holder of that share must reduce the expenditure in respect of the share by the amount of that cash or the market value of that asset on the date that the asset or that cash is received by or accrues to the holder of that share.

# Ruling

b) The Shareholders must in terms of paragraph 76B(2) reduce the expenditure in respect of their shares held in the applicant by the amount of the market value of the Company C shares determined on the date that the Company C shares are received or accrued to the Shareholders.



# Ruling

c) Where the market values of the Company C shares as contemplated in para 76B(2) exceed the expenditure in respect of a Shareholder's shares in the applicant, the excess amount must, in terms of para 76B(3), be treated as a capital gain in determining the Shareholders aggregate capital gain or aggregate capital loss for the year of assessment in which the Company C shares are received by or accrue to the Shareholder.

# Impact on a shareholder: illustrative example

Cost of 1 000 shares in Applicant	Acquired 1/6/2015	R30 000
C shares acquired from Applicant	Base cost = MV	R10 000

# Impact on a shareholder: illustrative example

Reduce base cost of Applicant shares by MV of C shares:

Cost of 1 000 shares in Applicant	Acquired 1/6/2015	R30 000
Less: MV of C shares		<u>(10 000)</u>
Base cost of shares in Applicant		<u>R20 000</u>
<b>C shares</b> acquired from Applicant	Base cost = MV	R10 000

# Impact on a shareholder: illustrative example

IF MV of C exceeded BC of shares in Applicant:

Cost of 1 000 shares in Applicant	Acquired 1/6/2015	R30 000
Less: MV of C shares		<u>(40 000)</u>
Base cost of shares in Applicant		<u>R0</u>
CAPITAL GAIN ON ACQUISITION OF C SHARES		<u>R10 000</u>
C shares acquired from Applicant	Base cost = MV	R40 000

# World Bank survey

- 7 July 2021 – Are you a female business owner in South Africa who trades across borders? If so, we want to hear from you. The World Bank Group is conducting a survey on the customs barriers facing women entrepreneurs. We aim to find ways the government can make cross-border trade easier. Take part here: [tfsurveysa.org](https://tfsurveysa.org)

# QUESTIONS?

Please use the Q&A portal or the Chat box

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