



# Tax considerations for corporate restructuring

## SPEAKERS



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该二维码7天内(7月27日前)有效, 重新进入将更新



# Agenda

01

**Setting the scene**

02

**Key tax considerations on various  
corporate restructuring forms**

03

**Q&A**



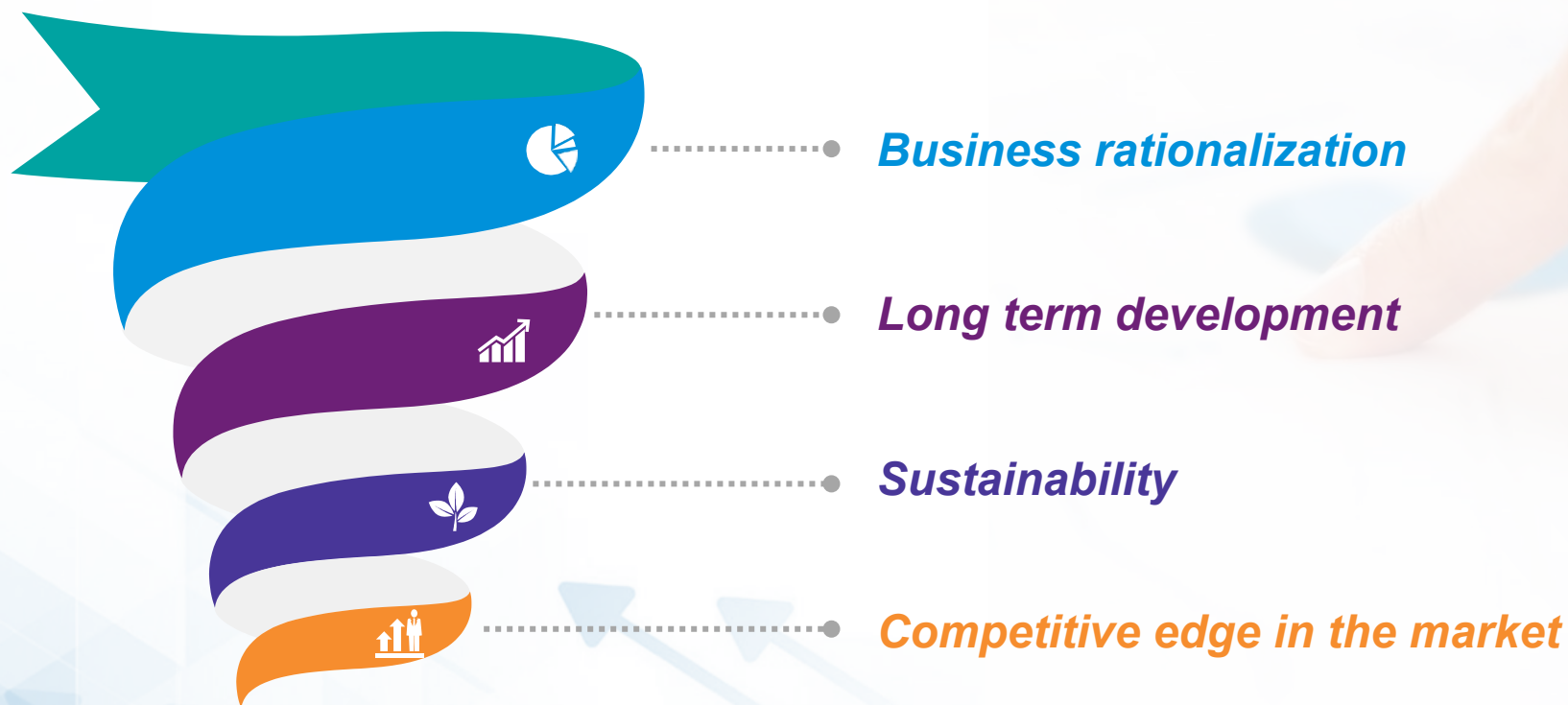


01

Setting the scene

# Setting the scene

The COVID 19 has accelerated a lot companies' needs for corporate restructuring, including:



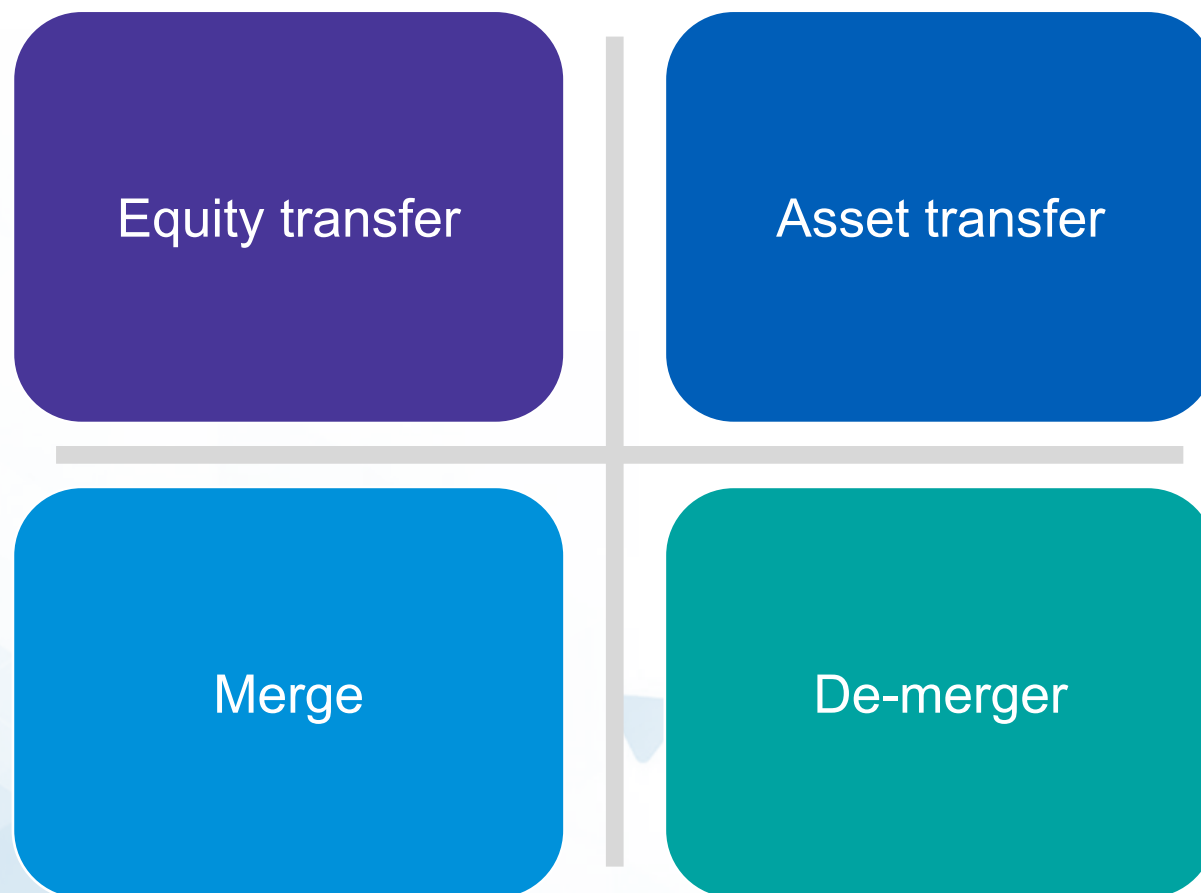




02

Key tax considerations  
on various corporate  
restructuring forms

# Forms of corporate restructuring







# Special reorganization under Circular 59 - universal rule

To qualify as a Special Restructuring under Circular 59, a corporate restructuring in the form of an equity transfer should meet ALL the following conditions:



The equity transfer should have “reasonable commercial purposes”, and does not aim at primarily reducing, eliminating or deferring taxes;



The percentage of equity interests acquired is not lower than 50% of the total equity interests of the enterprise to be transferred;



The amount of equity consideration paid by the transferee at the time of such equity acquisition is not lower than 85% of the total consideration;




Within 12 consecutive months after the equity transfer, the original business operations of the restructured entities should not be altered;



Within 12 months after the equity transfer, the original major shareholders which obtain the share consideration in the equity transfer should not transfer the equity interests in the transferee;



# Cross border special reorganization under Circular 59




Transfer of the equity of a resident enterprise held by a non-resident enterprise to another non-resident enterprise in which it **holds 100% direct controlling shares** which does not cause **subsequent change in withholding tax burden on income from transfer of such equity**, and the transferor of the non-resident enterprise has provided a written undertaking to the tax authorities in charge that it will not transfer the equity of the transferee of the non-resident enterprise owned by it within three years (including three years);

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Transfer of the equity by a non-resident enterprise of the equity of another resident enterprise owned by the non-resident enterprise to a resident enterprise in which it holds 100% direct controlling shares;

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Investment by a resident enterprise with assets or equity it owns in a non-resident enterprise in which it holds 100% direct controlling shares;

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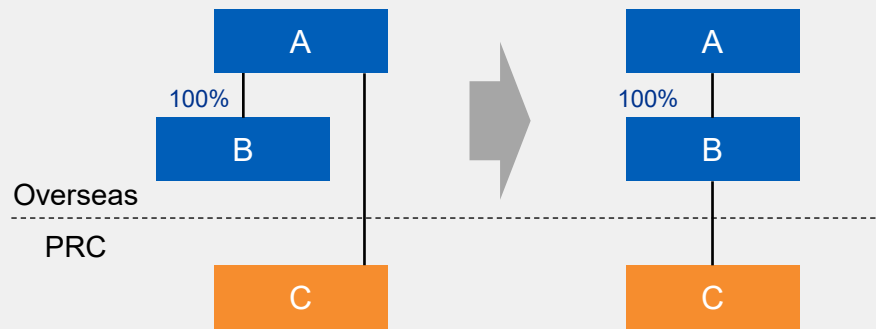
# Common seen cross border reorganization scenarios

Legend

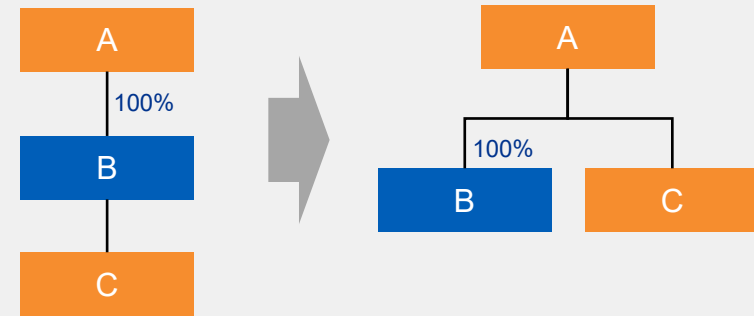
Overseas

PRC

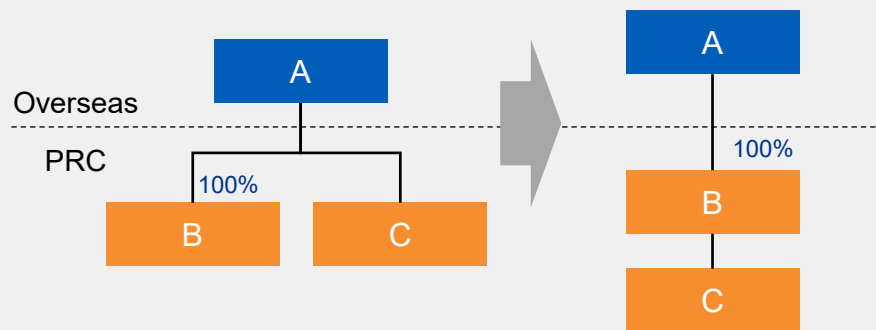
Scenario 1



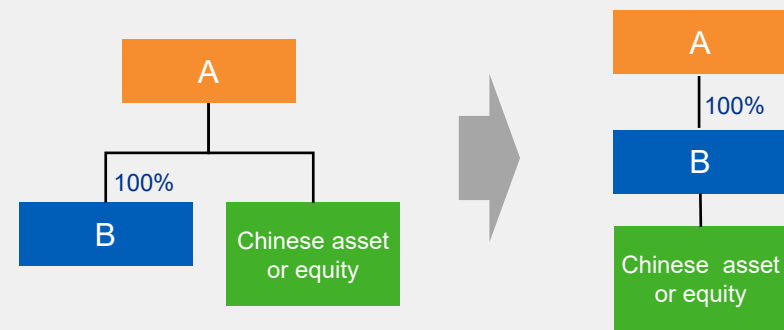
Scenario 2B



Scenario 2A (Typical CHC structure in China)

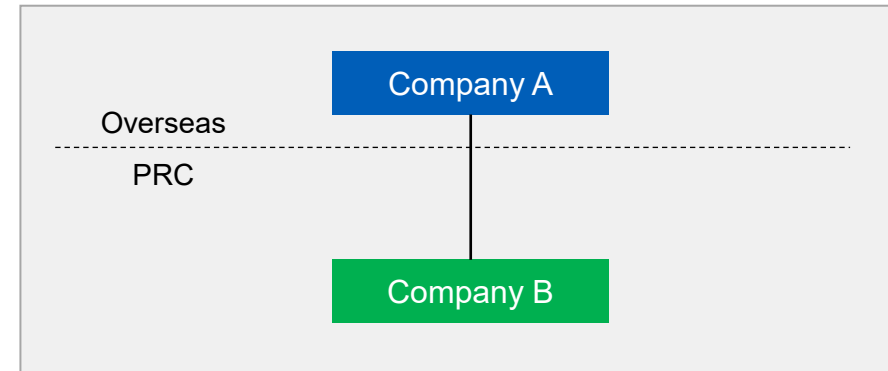
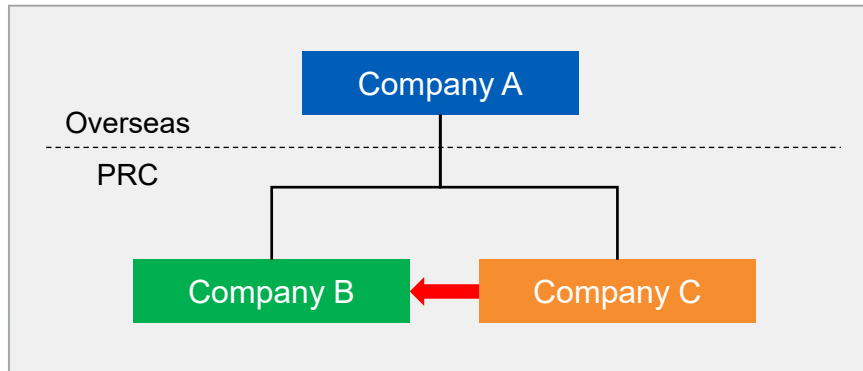


Scenario 3

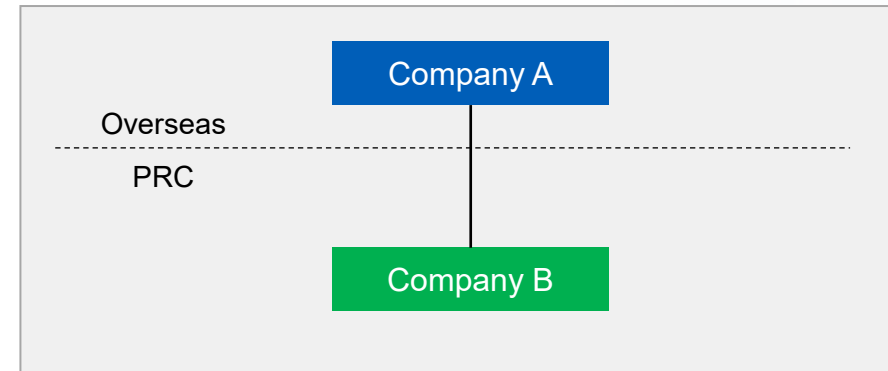
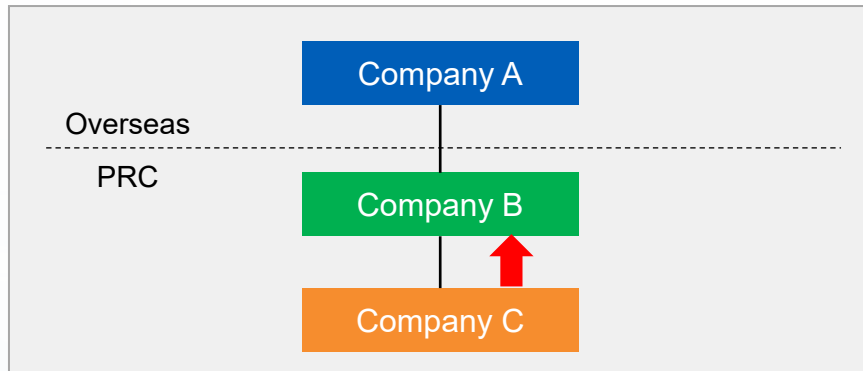


# Merger and demerger scenarios

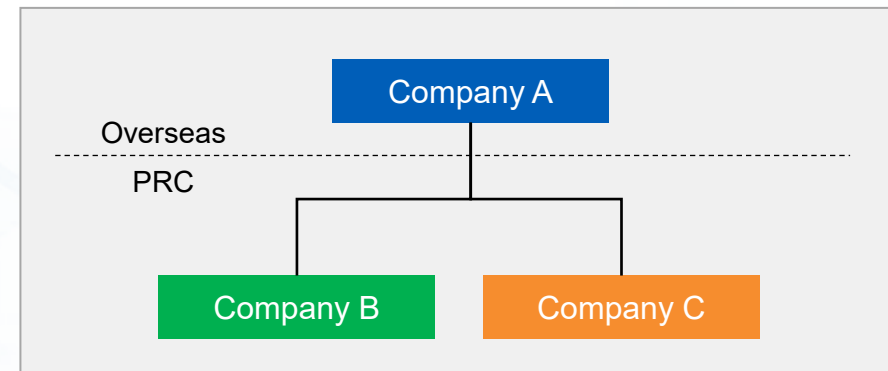
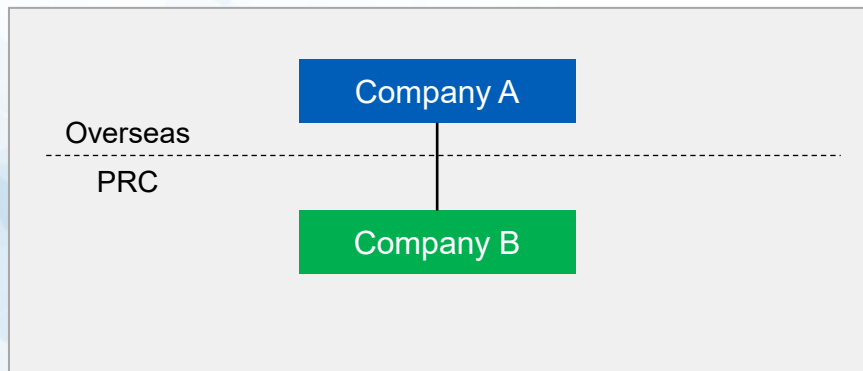
Merge-1



Merge-2



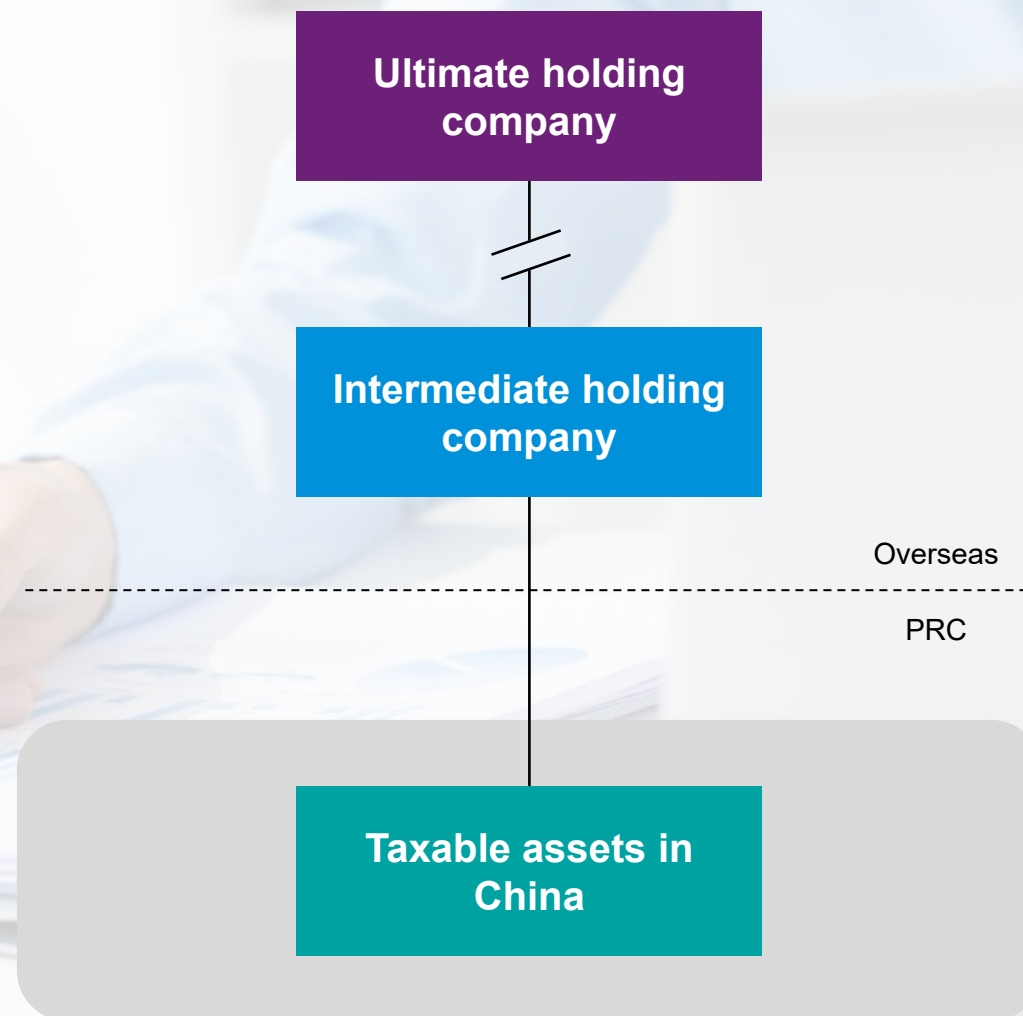
Demerger



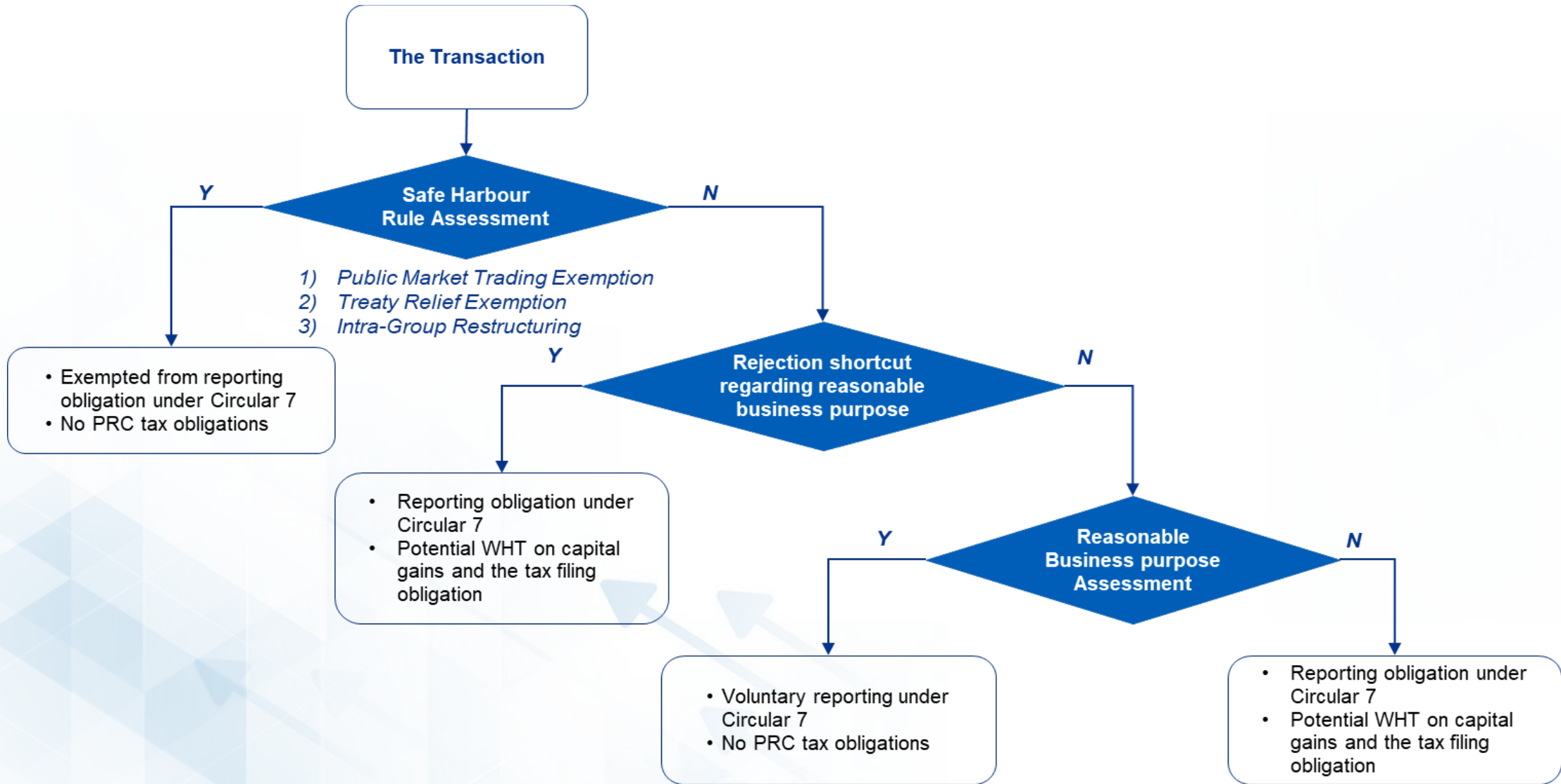


# Circular 7 - indirect transfer tax rule in China

In 2015, the Chinese State Administration of Taxation (“SAT”) released Circular [2015] 7 (“Circular 7”) which addressed the indirect equity transfer undertaken by the non-PRC tax resident enterprise outside China. It demonstrates the China tax authorities’ strong determination to counteract avoidance of China tax on gains derived from indirect transfer of Chinese companies via disposing the shares of the special purpose vehicle offshore.



# Circular 7 impact assessment protocol



# Rejection shortcut for reasonable business purpose

Under Circular 7, certain arrangements can be “automatically” deemed as lack of reasonable business purposes, where ALL of the following criteria are met:

75% or more of the value of the shares of the overseas enterprise directly or indirectly derives from Chinese taxable property;

At any time within the year before the indirect transfer of Chinese taxable property occurs, 90% or more of the total assets (excluding cash) of the overseas enterprise is directly or indirectly constituted by the investment in China; or in the year before the indirect transfer of Chinese taxable property occurs, 90% of the income from the overseas enterprise directly or indirectly originates from China;

Although the overseas enterprise, or its subsidiaries which directly or indirectly hold the Chinese taxable property, are registered in the host country (region) and fulfil organization form requirements of the law of the country of registration, the actual functions performed and risks assumed are too limited to substantiate its economic substance; and

The effective income tax payable overseas on the gains from indirect transfer of Chinese taxable property is lower than the potential PRC tax liability on a direct transfer of Chinese taxable property.





# Comprehensive assessment on reasonable business purpose

If the proposed transfer does not fall into the “black list”, the “reasonable business purposes” of such transaction need to be evaluated by a comprehensive analysis of various facts and circumstances. Circular 7 provides a guideline on how to assess the reasonable business purposes, as listed below:



Whether the value of the overseas enterprise's equity directly or indirectly derives mainly from Chinese taxable property;



Whether the assets of the overseas enterprise are primarily constituted out of direct or indirect investments in China, or the income of the overseas enterprise is derived mainly, either directly or indirectly, from China;



Whether the overseas enterprise, and/or its subsidiaries which directly or indirectly holds Chinese taxable property, actually perform functions and assume risks to an extent sufficient to evidence that the overseas structure possesses economic substance;



The duration of the existence of the non-resident enterprise, the business model and relevant organizational structure;



The overseas tax treatment of the gains arising from the indirect transfer of Chinese taxable property;



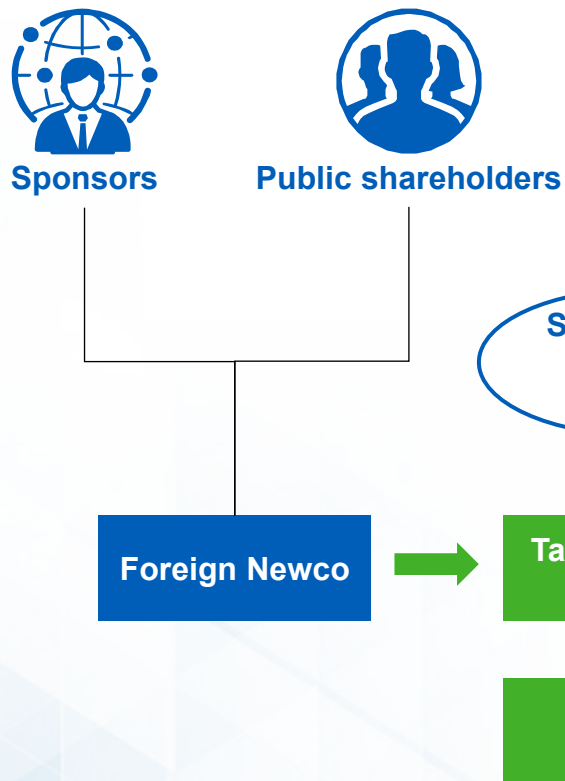
The substitutability, from the share transferor's perspective, of arrangements for the indirect investment and transfer of Chinese taxable property and arrangements for the direct investment and transfer of Chinese taxable property; and



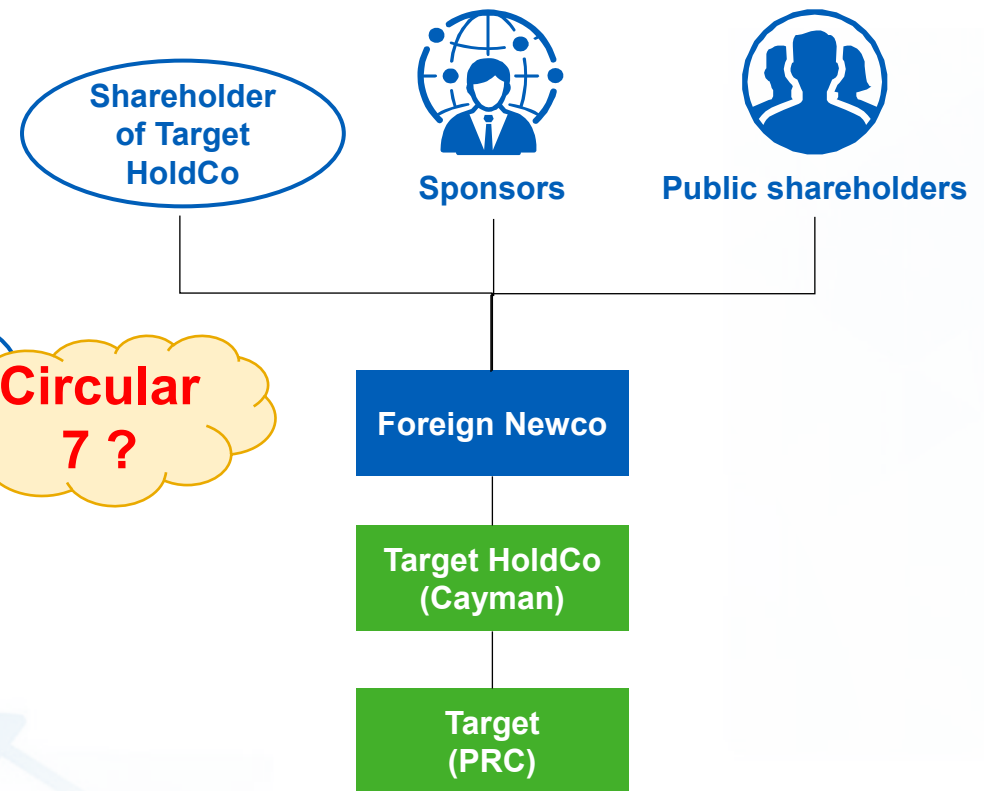
The applicability of a PRC tax treaty or arrangement in respect of the gains arising from the indirect transfer of Chinese taxable property.

# Indirect share transfer in SPAC

At Acquisition



Post Acquisition



Shareholder of Target HoldCo contribute their stock in Target HoldCo in exchange for newly issued Foreign Newco shares.

# Capital Reduction

## Practical feasibility

- Capital reduction is feasible from a technical perspective.
- However, as the incremental amount of Foreign Direct Investment (“FDI”) is one of the KPIs of the local government, there could potentially be practical hurdles for the smooth implementation of capital reduction, which requires certain amount of finesse.

## Tax cost

- The funds to be received by the holding company under the proposed capital reduction will be categorized as the following three types for Corporate Income Tax (“CIT”) purpose:
  - Withdrawal of injected capital - not subject to CIT
  - Dividend repatriation
  - Capital gains
- Negotiation with the tax authority would be required for determining the proportion of dividend repatriation and capital gains.

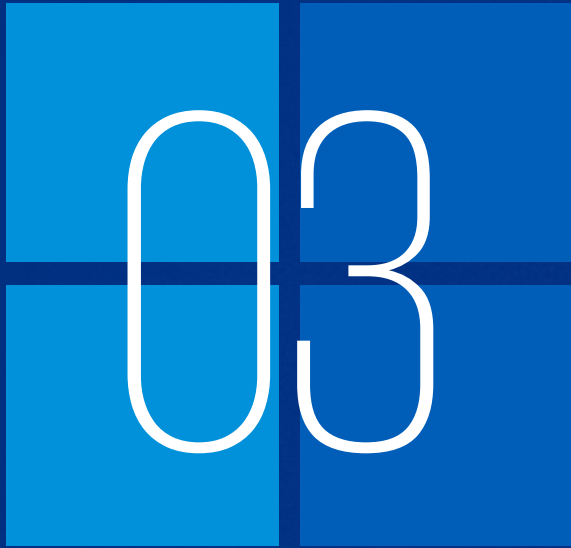


# VAT exemption application for entire business transfer



- Certain transfer of business can be categorized as an entire business transfer where all assets are disposed of, employees transferred and liabilities assumed, are currently outside the scope of VAT, provided certain conditions are met.

- Improve cash flow
- Possibility to qualify as VAT exemption for entire business transfer if AR/AP cannot be transferred in full
- CD considerations for inventories under bonded custodies



Q&A

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