SECTIONS 41 - 47
Sections 41 to 47 of the Income Tax Act allows for the relief from:

- CGT
- Recoupments (allowance assets & trading stock)
- VAT
- STT
- Transfer Duty
• “Group of Companies”
  – Minimum of 70% shareholding
  – Controlling group company (Holdco)
  – Controlled group company (Subco)

Example:

- Other exclusions:
  – PBO’s, recreational clubs, CIS, non-resident companies (except for certain sections)
SECTION 42 : ASSET-FOR-SHARE
Includes share-for-share transactions (foreign companies)

Example:

Current Structure

Proposed Structure
• Requirements:

– ‘Qualifying interest’ – equity shares acquired are:
  • Listed or will be listed within 12 months
  • Part of a CIS
  • At least 10% of the equity shares & voting rights
  • Held by that person in company forming part of the same group of companies
  • Part of a portfolio of a hedge fund CIS
– Full time employee of the company
SECTION 42 CONTINUED

• Assets retain their nature on disposal
  – Capital asset remains capital asset
  – Trading stock remains trading stock (subject to group exception)

• Seller and Purchaser deemed to be one and the same person
  – Base cost transferred to new owner
  – Proceeds deemed to be = Base cost – Nil CGT
    • Non-supply for VAT purpose – (subject to certain conditions)
    • Exemption from STT/Transfer duty
Anti-avoidance provisions

- Assets/shares acquired cannot be disposed of within 18 months
- Cannot lose qualifying interest within 18 months
- Exceptions:
  - Involuntary disposals (lost/destroyed/death)
  - Disposal Sections 45, 46 or 47

Relief in regards of CGT, VAT etc. falls away

Part cash payment – relief only applies to non-cash part
SECTION 44 : AMALGAMATIONS
SECTION 44: AMALGAMATION

3 Scenarios

1) SA CO1 → SA CO2

2) FOR CO1 → FOR CO2

3) SA CO1
   - 70% → FOR CO1
   - 100% → FOR CO2
SECTION 44 CONTINUED

General Scenario

Current Structure

Liquidate or deregister less than 36 months

Proposed Structure
Implications & relief from taxes:

- Same as discussed in terms of Section 42 transactions
Anti-avoidance Provisions

• Disposal of assets by resultant company less than 18 months
  – Same as Section 42

• Failure by amalgamated company to liquidate or deregister within 36 months
  – Relief withdrawn
SECTION 45 : INTRA-GROUP TRANSFERS
“Group of companies” includes foreign

- Includes CFC share transfers

**SECTION 45 : INTRA-GROUP TRANSFERS**

- **Hold Co (Controlling Co)**
- **Sub Co 1 (Controlled Co)**
- **Sub Co 2 (Controlled Co)**

Transfer of assets: Transferor >70% Transferee >70%
Implications & relief from taxes:

- Same as discussed in terms of Section 42 transactions
Anti-avoidance Provisions

• Transferee disposes of asset/s within 18 months
  – Same as Section 42

• Degrouping within 6 years (SA Companies only)
  – Assets still on hand give rise to CGT, recoupments etc.
SECTIONS 46 : UNBUNDLING TRANSACTION
SECTION 46: UNBUNDLING TRANSACTION

- 3 Scenarios
  - Listed shares
  - Unlisted shares
  - By order by the Competition Tribunal
- Unlisted

Current structure

Proposed Structure
Requirements - Unlisted

- Shareholders of Unbundling company: companies – not individuals/trusts
- Shareholder company and Unbundling company: part of same group of companies
- Unbundling co holds more than 50% shares in unbundled company

Relief

- Same as Section 42 but also provides relief for:
  - Dividends Tax
  - Share options gains – Section 8A
Anti Avoidance Provisions
Local Unbundling
- Immediately after unbundling more than 20% of shares held by “disqualified person”
  - Non Resident
  - Government
  - PBO / recreation club
  - Pension / Benefit funds
SECTION 47 : LIQUIDATION, WIND-UP & DEREGISTRATION
Requirements:

• Liquidating company and holding company = part of the same group of companies

• Liquidating company = CFC & part of group

Section 1

Definition

Hold Company

Sub Company

100%

Transfer of assets & liabilities

Liquidate Wind-up deregister less than 36 months
Anti-avoidance

Holding company disposes of asset/s within 18 months
• Same as Section 42

Failure by Subsidiary company to liquidate, deregister within 36 months
• Relief withdrawn
INTEREST DEDUCTIBILITY
SECTION 24O: ACQUISITION TRANSACTIONS

• Acquire a **controlling interest** in an **operating company**
  – **Controlling interest** = at least 70% (become a group)
  – **Operating company** = at least 80% is income from business

• Returns from acquisitions = Dividends (exempt income)
  – **Section 24J** = no deduction
    • not in the production of income
  – This section allows deduction but **limits** the quantum in terms of **Section 23N**
Applies to:
- Acquisition transactions (Section 24O)
- Reorganisation transactions (Sections 45 & 47)

Deduction determined in accordance with complex formula.
- Applied annually from year of acquisition or restructure
SHARE BUY-BACKS VS SALE TO 3RD PARTIES VS SHARE SUBSCRIPTIONS

Buy Back: CGT (minimal) – repayment of CTC (share capital)
  - Dividend Tax – remaining proceeds
  - Cheaper option as Dividend Tax rate is 15% vs CGT lowest effective rate is 16.4%

External Sale: CGT payable at effective rates of 16.4% - 32.8%

Share subscriptions: Existing Shareholder – Generally no disposal for CGT purposes
  - New Shareholder acquires interest and effectively dilutes existing shareholders interest
VALUE-SHIFTING ANTI-AVOIDANCE PROVISION

• Person’s interest in the company is reduced without any disposal
  – E.g. Share subscription by new shareholder

• Connected persons and transactions are less than market value
  – Deemed CGT event for the person whose interest is reduced
THANK YOU