

This Module includes:

5.1 Amalgamation

5.2 Demerger

5.3 Slump Sale

5.4 Conversion of Sole Proprietary Business to Company

5.5 Conversion of Firm into Company

5.6 Conversion of Private Limited Company / Unlisted Public Company into LLP

Business Restructuring

SLOB Mapped against the Module:

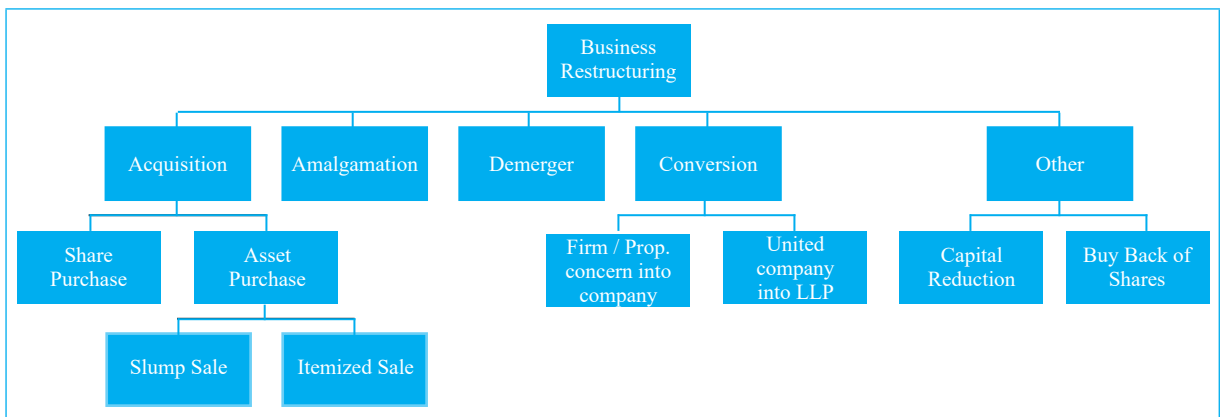
To attain abilities to apply the acquired understanding for solving complex taxation problems and taking tax efficient business decision and execution thereof.

Module Learning Objectives:

After studying this module, the students will be able to -

- ✦ Identify and examine the benefits of various mode of business restructuring
- ✦ Understand the provisions relating to tax impact of such restructuring
- ✦ Appreciate the pre and post compliance to maximize the tax benefit
- ✦ Understand the effect of such restructuring on various stakeholders

Restructuring is term used for the act of reorganizing the legal, ownership, operational, or other structures of a company for the purpose of making it more profitable, or better organized for its present needs. Companies are resorting to acquisitions as a means to consolidate and grow rapidly in an ever changing business environment. As a result, there is an increase in the level of restructuring activity in various sectors. Change in ownership or operational structure transaction have tax implication. The purpose of a suitable business strategy for restructuring must increase efficiency, consolidate operations, increase market share, assist in turn around, increase market capitalization and create entry barrier for competitors. Proper tax planning in this regard shall reduce the cost of restructuring in this front. The chapter highlights the various tax aspect in hands of all concerned person.



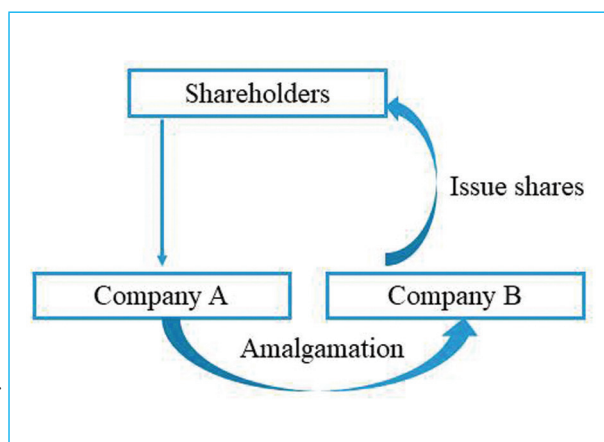
Definition [Sec. 2(1B)]

Amalgamation (in relation to companies) means:

- the merger of one or more companies with another company; or
- the merger of two or more companies to form one company;

in such a manner that—

- all assets and liabilities of the amalgamating company or companies immediately before the amalgamation become the assets and liabilities of the amalgamated company;
- shareholders (both equity or preference) holding not less than 75% in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders (equity or preference) of the amalgamated company.
 - Number of shares allotted to the shareholders of the amalgamating company by the amalgamated company is not relevant.
 - Where C Ltd. merges with Z Ltd., in a scheme of amalgamation, and immediately before the amalgamation, Z Ltd. holds 20% of the share in C Ltd., the aforesaid mentioned condition will be satisfied if shareholders holding not less than $\frac{3}{4}$ th (in value) of the remaining 80% of the shares in C Ltd., i.e., 60% thereof ($\frac{3}{4} \times 80$), become shareholders of Z Ltd., by virtue of the amalgamation. Where, however, the whole of the share capital of a company is held by another company, the merger of the two companies will qualify as an amalgamation within sec. 2(1B), if the other two conditions are satisfied [Circular 5P, dated 9-10-67]



Exceptions:

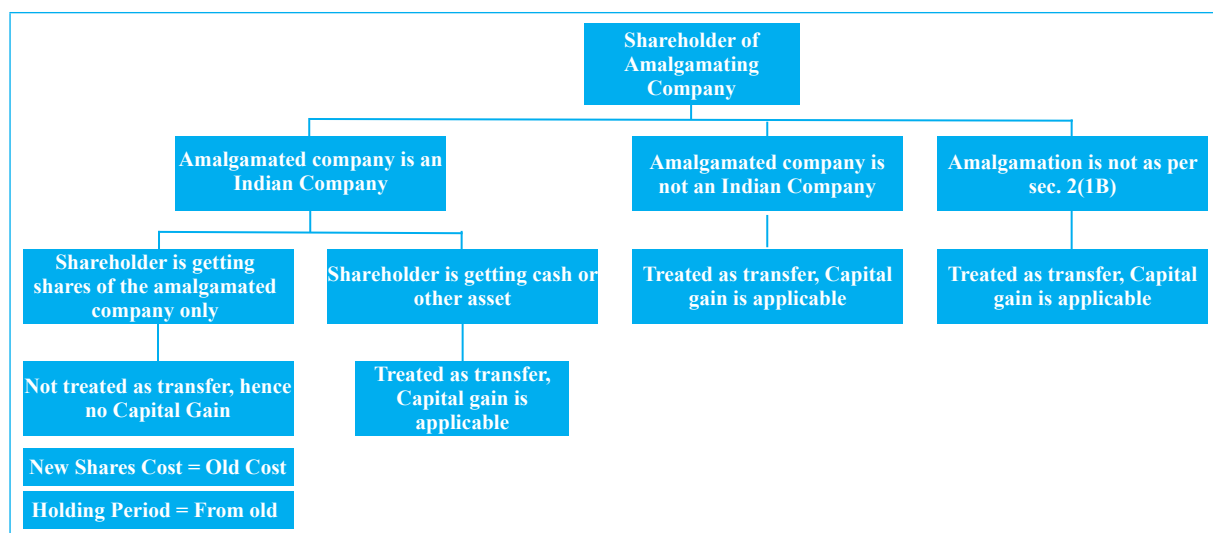
Following mergers shall not be treated as amalgamation -

- Merger as a result of acquisition of the property of one company by another company pursuant to the purchase of such property by the other company; or
- Merger as a result of distribution of such property to the other company after the winding up of the first-mentioned company.

Amalgamation & Shareholder of amalgamating company

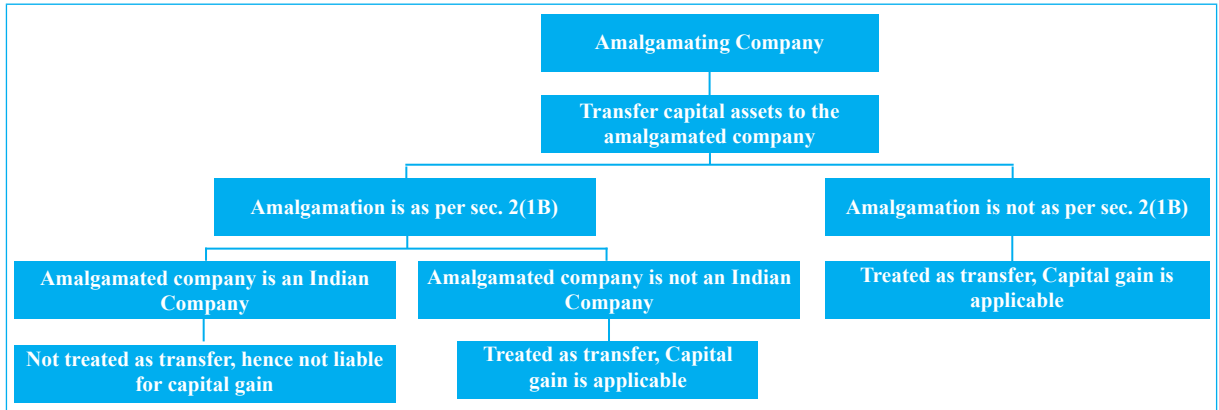
Effect of amalgamation on a shareholder are as under:

Transfer of shares of amalgamating company	As per sec. 47(vii), any transfer by a shareholder, in a scheme of amalgamation, of share(s) held by him in the amalgamating company is not treated as transfer and hence not liable to capital gain tax, if following conditions are satisfied: <ol style="list-style-type: none"> The transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company; and The amalgamated company is an Indian company.
Cost of shares in amalgamated company	The cost of shares in amalgamating company shall be deemed to be the cost of shares in amalgamated company. [Sec. 49(2)]
Determination of nature of assets	To find whether shares in amalgamated company are long-term or short-term capital asset, the period of holding shall be calculated from the date when shares in the amalgamating company were acquired. [Sec. 2(42A)]



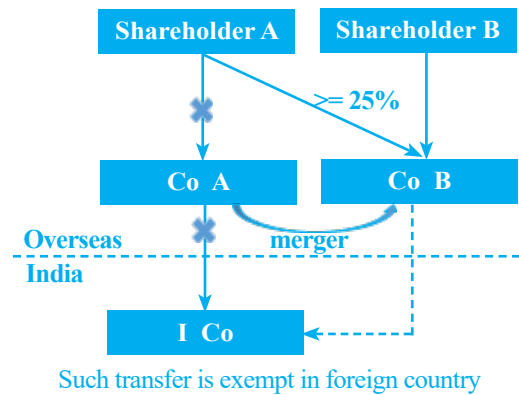
Amalgamation & amalgamating company

- As per sec. 47(vi), any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company is not treated as transfer (hence not liable to capital gain) provided the amalgamated company is an Indian company.
- If amalgamation does not satisfy condition of sec. 2(1B) and of sec. 47(vi), then exemption is not available.



As per sec. 47(viab), any transfer, in a scheme of amalgamation, of a capital asset, being a share of a foreign company, (referred to in the Explanation 5 of sec.9(1)(i)), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company, if:

- a. at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and
- b. such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated.



As per sec. 47(via), any transfer, in a scheme of amalgamation, of a capital asset being a share or shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company is not treated as transfer (hence not liable to capital gain) provided:

- a) at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and
- b) such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated.

Taxpoint

- Such transfer is in a scheme of amalgamation by the amalgamating foreign company to the amalgamated foreign company.
- Transferred asset must be a capital asset being a share or shares held in an Indian company.
- At least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company.
- Such transfer does not attract tax on capital gain in the country, in which the amalgamating company is incorporated.

Amalgamation & amalgamated company

◉ Value of non-depreciable capital assets for the purpose of capital gain

- As per sec. 49(1), where a capital asset became the property of amalgamated (Indian) company in a scheme of amalgamation, the cost of acquisition of the asset to the amalgamated company shall be deemed to be the cost for which the previous owner (i.e., amalgamating company) of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.
- It is to be noted that where non-depreciable asset was acquired before 1-4-2001, the cost of acquisition can be taken as cost of acquisition or fair market value of the asset as on 1-4-2001, at the option of the assessee.
- In determining the period of holding of such asset, period of holding of previous owner shall also be considered.

◉ Value of depreciable asset for the purpose of business income

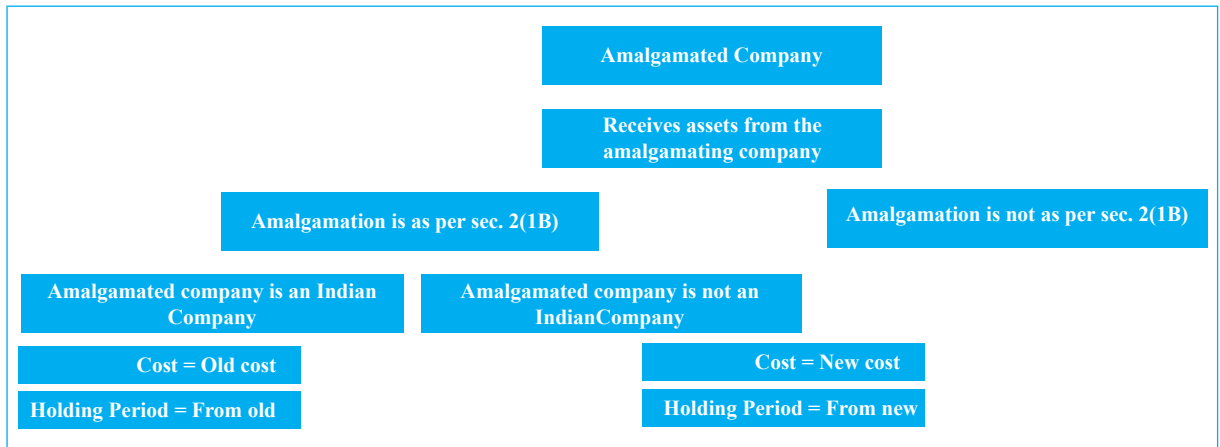
- Where in any previous year, any block of assets is transferred by the amalgamating company to the amalgamated (Indian) company in a scheme of amalgamation, then, the actual cost of the block of assets in the case of the amalgamated company shall be the written down value of the block of assets as in the case of the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year [Exp. 2 to sec. 43(6)]
- Allocation of depreciation in the year of amalgamation: The aggregate deduction, in respect of depreciation allowable to the amalgamating company and the amalgamated company in the case of amalgamation shall not exceed in any previous year the deduction calculated at the prescribed rates as if the amalgamation had not taken place and such deduction shall be apportioned between the amalgamating company and the amalgamated company in the ratio of the number of days for which the assets were used by them.

◉ Value of asset transferred as stock in trade

- Where an asset [not being an asset referred to in sec. 45(2)] which becomes the property of an amalgamated company under a scheme of amalgamation, is sold by the amalgamated company as stock-in-trade of the business carried on by it, the cost of acquisition of the said asset to the amalgamated company in computing the profits and gains from the sale of such asset shall be the cost of acquisition of the said asset to the amalgamating company, as increased by the cost, if any, of any improvement made thereto, and the expenditure, if any, incurred, wholly and exclusively in connection with such transfer by the amalgamating company [Sec. 43C(1)]

Taxpoint: The provision is applicable where following asset of the amalgamating company is taken over by the amalgamated company as stock-in-trade at revalued price:

- a) Stock-in-trade
 - b) Capital asset converted to stock-in-trade
 - c) Capital asset
- Sec. 43C is also applicable where an asset becomes the property of the assessee on the total or partial partition of HUF or under a gift or will or irrevocable trust.



- ⊙ Set-off and carry forward of business loss and unabsorbed depreciation [Sec. 72A]

Applicable

1. There has been an amalgamation of a company owning -

- an industrial undertaking; or
- a ship; or
- a hotel,

with another company; or

Taxpoint: Industrial undertaking means an undertaking engaged in—

- manufacture or processing of goods; or
- manufacture of computer software; or
- business of generation or distribution of electricity or any other form of power; or
- business of providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services; or
- mining; or
- the construction of ships, aircrafts or rail systems.

2. There has been amalgamation of a banking company with a specified bank.
3. There has been amalgamation of one or more public sector company or companies with one or more public sector company or companies; or
4. There has been amalgamation of an erstwhile public sector company with one or more company or companies, if the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company and the amalgamation is carried out within 5 years from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends
 - “Erstwhile public sector company” means a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government;

- “Strategic disinvestment” means sale of shareholding by the Central Government or any State Government or a public sector company, in a public sector company or in a company, which results in:
 - a. reduction of its shareholding to below 51%; and
 - b. transfer of control to the buyer.

However, the first condition shall apply only in a case where shareholding of the Central Government or the State Government or the public sector company was above 51% before such sale of shareholding.

Further requirement of transfer of control may be carried out by the Central Government or the State Government or the public sector company or any two of them or all of them

Conditions to be satisfied

The accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless:

- (a) The amalgamating company—
 - (i) has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years;
 - (ii) has held continuously as on the date of the amalgamation at least $\frac{3}{4}$ th of the book value of fixed assets held by it two years prior to the date of amalgamation.
- (b) The amalgamated company—
 - (i) holds continuously for a minimum period of 5 years from the date of amalgamation at least $\frac{3}{4}$ th of the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;
 - (ii) continues the business of the amalgamating company for a minimum period of 5 years from the date of amalgamation;
 - (iii) fulfils such other conditions* as may be prescribed to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.

* Conditions for carrying forward or set-off of accumulated loss and unabsorbed depreciation allowance in case of amalgamation [Rule 9C]

- (a) The amalgamated company, owning an industrial undertaking of the amalgamating company by way of amalgamation, shall achieve the level of production of at least 50% of the installed capacity (i.e., the capacity of production existing on the date of amalgamation) of the said undertaking before the end of 4 years from the date of amalgamation and continue to maintain the said minimum level of production till the end of 5 years from the date of amalgamation.

Provided that the Central Government, on an application made by the amalgamated company, may relax the condition of achieving the level of production or the period during which the same is to be achieved or both in suitable cases having regard to the genuine efforts made by the amalgamated company to attain the prescribed level of production and the circumstances preventing such efforts from achieving the same.

- (b) The amalgamated company shall furnish to the Assessing Officer a certificate in Form No. 62, duly verified by an accountant, with reference to the books of accounts and other documents showing particulars of production, along with the return of income for the assessment year relevant to the previous year during which the prescribed level of production is achieved and for subsequent assessment years relevant to the previous years falling within five years from the date of amalgamation.

Treatment

- The accumulated business (non-speculative) loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for depreciation of the amalgamated company, and provisions relating to set off and carry forward of loss (for remaining life of the loss) and allowance for depreciation shall apply accordingly.

Taxpoint: Such non speculative business loss shall be carried forward by the successor entity for not more than 8 assessment years immediately succeeding the assessment year for which such loss was first computed for original predecessor entity.

- In a case where any of the conditions are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the amalgamated company shall be deemed to be the income of the amalgamated company chargeable to tax for the year in which such conditions are not complied with.

Deduction of expenses incurred in case of amalgamation or demerger [Sec. 35DD]

Applicable to: An Indian company

Conditions

- Assessee has incurred certain expenditure wholly & exclusively for the purpose of amalgamation or demerger.
- No deduction has been claimed for such expenses under any other section.

Quantum of deduction: 1/5th of expenses so incurred for a period of 5 years commencing from the year in which amalgamation or demerger takes places.

Other Provisions

Capital Expenditure on Scientific Research [Sec. 35(5)]: Provisions of sec. 35 shall apply to the amalgamated company, as it would have been applied to the amalgamating company, if the latter had not transferred such asset.

Telecom or spectrum licence: The amalgamated company or resulting company (being Indian company) as the case may be shall be entitled to claim deduction u/s 35ABB (or sec. 35ABA) for the residual period as if the amalgamating or demerged company had not transferred the licence.

Amortisation of Preliminary Expenses: In case of transfer of undertaking under the scheme of amalgamation or demerger, the amalgamated company or resulting company (being Indian company) shall be entitled to claim deduction u/s 35D for the residual period as if the amalgamation or demerger had not taken place.

Amortisation of expenditure incurred under VRS: In case of transfer of undertaking under the scheme of amalgamation or demerger, the amalgamated company or resulting company (being Indian company) as the case may be, shall be entitled to claim deduction u/s 35DDA for the residual period as if the amalgamation or demerger had not taken place.

Illustration 1.

Mr. Joseph has 1,000 equity shares of X Ltd. that he acquired on 17/08/2007 through will of his father. His father acquired such shares on 17/07/2004 through gift from his father in law (Mr. Z). Mr. Z acquired such shares on 18/08/2000 for ₹ 20 each. Fair market value of such shares as on –

<u>1/04/2001</u>	<u>17/07/2004</u>	<u>17/08/2007</u>
₹ 18 each	₹ 25 each	₹ 40 each

On 31/03/2013, X Ltd. amalgamated with Y Ltd. and amalgamated company issued its 3 equity shares for every two equity shares of amalgamating company. On 2/10/2025, Mr. Joseph sold 1,000 shares of Y Ltd to one of his friends for ₹ 75 each. Compute capital gain.

Solution:

- When any shares become the property of assessee in a scheme of amalgamation, period of holding of shares in amalgamated company shall be aggregate of period of holding of shares in amalgamating company prior to amalgamation and period of holding of share in amalgamated company. Hence, in the given case, asset transferred (being shares of Y Ltd) were treated as long-term capital asset.
- Calculation of cost of acquisition of shares of Y Ltd.

Cost of shares of X Ltd. (i.e., cost of the previous owner [#]) (1,000 share @ ₹ 20 each)	₹ 20,000
Shares received on amalgamation of Y Ltd. (3 for every 2 shares held)	1,500 shares
Cost of acquisition per share of Y Ltd. (₹ 20,000/1,500)	₹ 13.33
[#] Previous owner: Previous owner means the last owner who acquired the asset for a value. In the given case Mr. Joseph acquired the shares through will of his father. Hence, literally Joseph's father is previous owner. But since Joseph's father has not purchased such shares but acquired by way of gift from his father in law, hence for this purpose, Mr. Z is the previous owner. [Sec. 49(1)]	

Computation of capital gains in the hands of Mr. Joseph for the A.Y. 2026-27

Particulars	Workings	Details	Amount
Sale consideration	1,000 * ₹ 75		75,000
Less: Expenses on transfer			Nil
Net Sale Consideration			75,000
Less: Cost of acquisition	1,000 * ₹ 13.33	13,330	
Less: Cost of improvement		Nil	13,330
Long Term Capital Gain			61,670

Definition [Sec. 2(19AA)]

Demerger (in relation to companies) means the transfer, pursuant to a scheme of arrangement u/s 230 to 232 of the Companies Act, 2013, by a demerged company of its one or more undertakings to any resulting company in such a manner that:

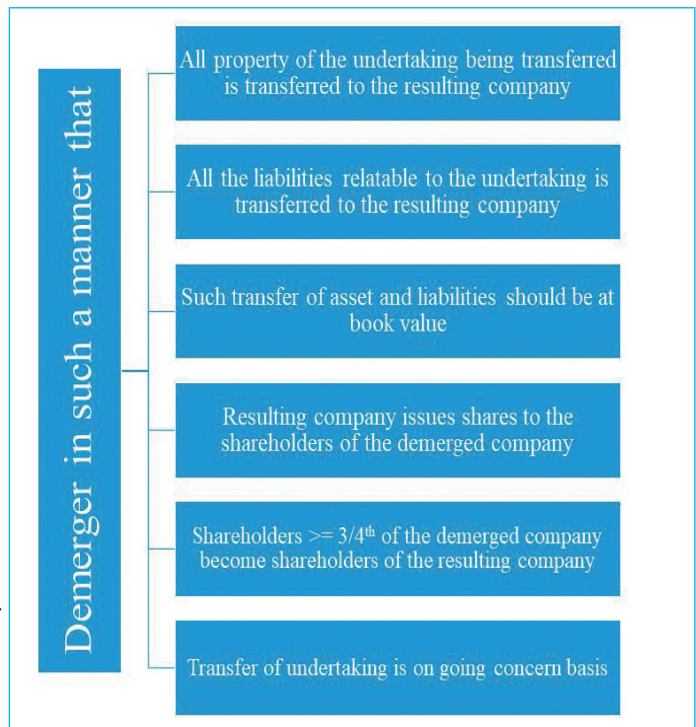
i. All assets and liabilities are transferred:

All assets and liabilities of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the assets and liabilities of the resulting company.

ii. Transfer at Book value: Assets and liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at its book-value (without considering revaluation) immediately before the demerger.

Note: Any change in the value of assets consequent to their revaluation shall be ignored.

Exception: The provisions is not applicable where the resulting company records the value of the property and the liabilities of the undertaking or undertakings at a value different from the value appearing in the books of account of the demerged company,



immediately before the demerger, in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015.

iii. Consideration in shares: Resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis except where the resulting company itself is a shareholder of the demerged company.

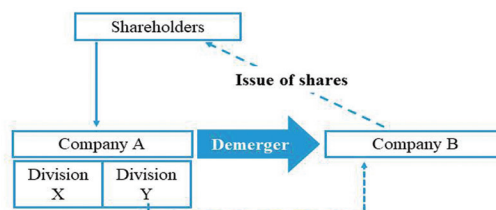
iv. Common share-holders: Shareholders holding not less than 75% in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of

the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company.

- v. **Going concern:** Transfer of the undertaking is on a going concern basis.
- vi. **Other specified condition:** The demerger is in accordance with the conditions, if any, notified u/s 72A(5) by the Central Government in this behalf.

Taxpoint

- Undertaking shall include (i) any part of an undertaking, or (ii) a unit or division of an undertaking or (iii) a business activity taken as a whole, (iv) but does not include individual assets or liabilities or any combination thereof not constituting a business activity.
- The liabilities referred above, shall include:



- (a) the liabilities which arise out of the activities or operations of the undertaking;
- (b) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and
- (c) in cases of general borrowings, so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger, i.e.,

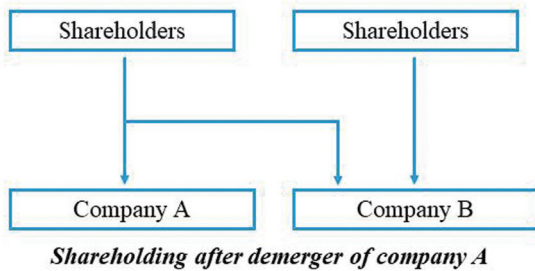
General/multi-purpose borrowings of the demerged company	×	Book value of assets (ignoring revaluation) transferred in the demerger
		Total book value of assets (ignoring revaluation) of the demerged company before demerger

- The splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils such conditions as may be notified by the Central Government.
- The reconstruction or splitting up of a company, which ceased to be a public sector company as a result of transfer of its shares by the Central Government, into separate companies, shall be deemed to be a demerger, if such reconstruction or splitting up has been made to give effect to any condition attached to the said transfer of shares and also fulfils such other conditions as may be notified by the Central Government.
- Demerged company means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company [Sec. 2(19AAA)]
- Resulting company means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger [Sec. 2(41A)]
- The reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resulting company and the resulting company—

- i. is a public sector company on the appointed day indicated in such scheme, as may be approved by the Central Government or any other body authorised under the provisions of the Companies Act, 2013 or any other law for the time being in force governing such public sector companies in this behalf; and
- ii. fulfils such other conditions as may be notified by the Central Government in the Official Gazette in this behalf

Demerger and Shareholder of demerged company

As per sec. 47(vid), any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company shall not be treated as transfer if the transfer or issue is made in consideration of demerger of the undertaking.



In case of demerger, the existing shareholder of the demerged company will now hold:

- a) Shares in resulting company; and
- b) Shares in demerged company.

and in case the shareholder transfers any of the above shares subsequent to the demerger, the cost of such shares shall be determined as under:

Cost of acquisition of the shares in the resulting company [Sec. 49(2C)]

The cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger.

Net worth shall mean the aggregate of the paid up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.

Cost of acquisition of the shares in demerged company [Sec. 49(2D)]

The cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as so arrived at u/s 49(2C).

Taxpoint:

Cost of shares	Resulting company	$\frac{\text{Cost of acquisition of Original shares} \times \text{Net book value of assets transferred to resulting company}}{\text{Net worth}^\# \text{ of the company immediately before such demerger}}$						
		# Net worth= Paid-up share capital + General reserves (as per books of account of the demerged company immediately before demerger)						
	Demerged company (after demerger)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Cost of acquisition of the original shares</td> <td style="text-align: right;">****</td> </tr> <tr> <td>Less: Cost of shares of resulting company (as above)</td> <td style="text-align: right;">(***)</td> </tr> <tr> <td>Cost of shares of demerged company</td> <td style="text-align: right;">****</td> </tr> </table>	Cost of acquisition of the original shares	****	Less: Cost of shares of resulting company (as above)	(***)	Cost of shares of demerged company	****
Cost of acquisition of the original shares	****							
Less: Cost of shares of resulting company (as above)	(***)							
Cost of shares of demerged company	****							

Determination of nature of asset	Resulting company	To find whether shares in resulting company are long-term or short term capital asset, the period of holding shall be calculated from date of acquisition of original shares in demerged company (before demerger).
	Demerged company	

Illustration 2.

Dona purchases 600 equity shares in XY (P) Ltd. on 1-04-2025 @ ₹ 150 each. On 31-12-2025, XY (P) Ltd. is demerged. In the scheme of demerger, division Y was transferred to Y (P) Ltd. (resulting company). On that date balance sheet of XY (P) Ltd. is as follow –

Liabilities	Division		Total	Asset	Division		Total
	X	Y			X	Y	
6,000 E. Shares			6,00,000	Land	-	2,50,000	2,50,000
General Reserve			4,00,000	Plant	1,75,000	1,00,000	2,75,000
Loan (General)			2,00,000	Investment	2,50,000	-	2,50,000
Loan (Specific)	60,000	75,000	1,35,000	Stock	1,95,000	2,30,000	4,25,000
Creditors	25,000	40,000	65,000	Debtors	55,000	45,000	1,00,000
				Cash and Bank	25,000	75,000	1,00,000
			14,00,000				14,00,000

Y (P) Ltd., in consideration of the demerger, issued equity share of ₹ 100 each (at par) to the shareholders of XY (P) Ltd. on proportionate basis. You are required to compute –

- Number of shares of Y (P) Ltd. received by Dona and cost thereof.
- Cost of acquisition of shares held by Dona in XY (P) Ltd. after demerger.
- Capital gain, if Dona sold 200 shares of XY (P) Ltd. @ ₹125 & 100 shares of Y(P) Ltd. @ ₹ 110 on 31-03-2026.

Solution:

(a) Calculation of number of shares of Y (P) Ltd. received by Dona

Particulars	Amount	Amount
Net asset taken over by Y (P) Ltd		
Assets taken over		
Land		2,50,000
Plant		1,00,000
Stock		2,30,000
Debtors		45,000
Cash and bank		75,000
		7,00,000
Less: Liabilities		
Loan (Specific)	75,000	
Creditors	40,000	
Share of General loan (₹ 2,00,000 × ₹ 7,00,000) / ₹ 14,00,000	1,00,000	2,15,000
Net asset taken over		4,85,000

Particulars	Amount	Amount
No. of shares issued by Y (P) Ltd. (Consideration of ₹ 4,85,000 was discharged by issuing equity shares of ₹ 100 each)		4,850 shares
% of Dona's holding in XY (P) Ltd. (600 shares, out of 6,000 shares of XY (P) Ltd.)		10%
No. of shares allotted in Y (P) Ltd to Dona (10% of 4,850 shares)		485 shares

Cost of such shares is –

$$(a) \frac{\text{Cost of acquisition of shares in XY (P) Ltd.} \times \text{Net book value of asset transferred to Y (P) Ltd.}}{\text{Net worth of XY (P) Ltd. immediately before demerger (i.e. Paid up capital + General Reserve)}} = \frac{(600 \times ₹ 150) \times ₹ 4,85,000}{₹ 6,00,000 + ₹ 4,00,000} = ₹ 43,650$$

$$(b) \text{ Cost of acquisition of shares of XY (P) Ltd. (after demerger) } = \text{Original cost of acquisition} - \text{Cost of acquisition of shares of Y (P) Ltd. (as computed above)} \\ = ₹ 90,000 - ₹ 43,650 = ₹ 46,350$$

Computation of capital gain in the hands of Dona for the A.Y. 2026-27

Particulars	Details	Shares of	
		XY (P) Ltd.	Y (P) Ltd.
Sale Consideration	200 × ₹ 125	25,000	-
	100 × ₹ 110	-	11,000
Less: Expenses on transfer		Nil	Nil
Net Sale Consideration		25,000	11,000
Less: i) Cost of acquisition	[(₹ 46,350 × 200)/600]	15,450	-
	[(₹ 43,650 × 100)/485]	-	9,000
ii) Cost of improvement		Nil	Nil
Short Term Capital Gain		9,550	2,000

Demerger and Demerged company

- ⊙ As per sec. 47(vib), any transfer, in a demerger, of a capital asset by the demerged company to the resulting company is not treated as transfer (hence not liable to capital gain) provided the resulting company is an Indian company.
- ⊙ As per sec. 47(vic), any transfer in a demerger, of a capital asset, being a share or shares held in an Indian company, by the demerged foreign company to the resulting foreign company is not treated as transfer provided:
 - a) the shareholders holding not less than $\frac{3}{4}$ th in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and
 - b) such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated.

The provisions of the Companies Act shall not apply in case of demergers referred to in this clause.

- ⊙ As per sec. 47(vicc), any transfer in a demerger, of a capital asset, being a share of a foreign company (referred to in the Explanation 5 of sec. 9(1)(i)), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company, if:

- a) the shareholders, holding not less than 3/4th in value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company; and
- b) such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated.

WDV of depreciable asset in hands of demerged company

Where in any previous year, any asset forming part of a block of assets is transferred by a demerged company to the resulting company, then, the written down value of the block of assets of the demerged company for the immediately preceding previous year shall be reduced by the written down value of the assets transferred to the resulting company pursuant to the demerger [Explanation 2A to Sec. 43(6)]

Demerger and Resulting Company

Actual cost of assets to the resulting company

Where, in a demerger, any capital asset is transferred by the demerged company to the resulting company and the resulting company is an Indian company, the actual cost of the transferred capital asset to the resulting company shall be taken to be the same as it would have been if the demerged company had continued to hold the capital asset for the purpose of its own business.

However, such actual cost shall not exceed the written down value of such capital asset in the hands of the demerged company. [Explanation 7A to sec. 43(1)]

WDV of depreciable asset in hands of resulting company

Where in a previous year, any asset forming part of a block of assets is transferred by a demerged company to the resulting company, then, the written down value of the block of assets in the case of the resulting company shall be the written down value of the transferred assets of the demerged company immediately before the demerger [Explanation 2B to Sec. 43(6)]

Allocation of depreciation in the year of demerger

The aggregate deduction, in respect of depreciation allowable to the demerged company and the resulted company in the case of demerger shall not exceed in any previous year the deduction calculated at the prescribed rates as if the demerger had not taken place and such deduction shall be apportioned between the demerged company and the resulting company in the ratio of the number of days for which the assets were used by them.

Set off and carry forward [Sec. 72A]

In the case of a demerger, the accumulated business loss (other than speculation loss) and the allowance for unabsorbed depreciation of the demerged company shall:

- (a) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company;
- (b) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be.

The Central Government may, for the purposes of this Act, by notification in the Official Gazette, specify such conditions as it considers necessary to ensure that the demerger is for genuine business purposes.

Definition [Sec. 2(42C)]: It means transfer, by any means, of undertaking(s) for a lump sum consideration without assigning values to the individual assets of such undertaking(s)

Undertaking shall include any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Computation of capital gain

Sale consideration	Fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset Accordingly, the CBDT has prescribed that the fair market value (FMV) of capital assets would be the higher of – a. FMV 1, being the fair market value of capital assets transferred by way of slump sale (determined on the date of slump sale); and b. FMV 2, being the fair market value of the consideration (monetary and non-monetary) received or accruing as a result of transfer by way of slump sale
Cost of Acquisition or Improvement	Net worth [#] of the undertaking
Nature of gain whether short term or long term	If undertaking is owned and held by the assessee for not more than 36 months, then capital gain shall be deemed to be short-term capital gain otherwise long-term capital gain. Note: Where an undertaking is owned and held by an assessee for more than 36 months immediately preceding the date of its transfer, then it shall be treated as a long-term capital asset. It makes no difference that few of the assets of the undertaking are newly acquired (i.e. for less than 36 months).
Net worth shall be the –	
Aggregate value of total assets of the undertaking	****
Less: Value of liabilities of such undertaking as appearing in the books of account	****
Net worth	****
Notes	
1. Effect of revaluation: If any change has been made in the value of assets on account of revaluation of assets etc. then such change in value shall be ignored.	

2. The aggregate value of total assets, in case of:
 - Capital asset being goodwill of a business or profession, which has not been acquired by the assessee by purchase from a previous owner - Nil
 - Depreciable assets - WDV of block of assets
 - Capital assets in respect of which the whole of the expenditure has been allowed as a deduction under section 35AD - Nil
 - Other assets - Book value of all such assets
3. **Treatment of stock:** In case of slump sale, no profit under the head 'Profits & gains of business or profession' shall arise even if the stock of the said undertaking is transferred along with other assets.
4. **Carry-forward of losses:** In case of slump sale, benefit of unabsorbed losses and depreciation of the undertaking transferred shall be available to the transferor company and not to the transferee company.

Report of an accountant

The assessee is required to upload one month prior to the due date of filing of the return of income, a report of a chartered accountant in Form 3CEA indicating the computation of the net worth of the undertaking or division and certifying that the net worth of the undertaking or division has been correctly arrived at in accordance with the provisions of this section.

Illustration 3.

X Ltd. has several undertakings carrying on several businesses. During the year 2025-26, the company sold one of its undertakings (as it was continuously generating loss since last 5 years) for a lump sum value of ₹ 300 lacs without assigning value to individual asset and liabilities. The fair market value of the capital asset of that unit is ₹ 350 lacs. Book value of sundry assets and liabilities of the undertaking as on the date of sale is as under:

Items	Book Value
Land	₹ 50 lacs (Value for the purpose of Stamp duty ₹ 70,00,000)
Machinery	₹ 70 lacs (WDV as per IT Act ₹ 60 lacs)
Furniture	₹ 50 lacs (WDV as per IT Act ₹ 90 lacs)
Stock	₹ 30 lacs
Debtors	₹ 40 lacs
Creditors	₹ 50 lacs

Brokerage on transfer paid @ 5%. Compute capital gain.

Solution:

Since the undertaking is owned by the company for more than 3 years hence the gain on transfer shall be liable to long term. Calculation of cost of acquisition (i.e. Net worth)

Particulars	Workings	Details	Amount
Value of asset taken over			
Land	Book value of non-depreciable assets	₹ 50 lacs	
Stock	Book value of non-depreciable assets	₹ 30 lacs	
Debtors	Book value of non-depreciable assets	₹ 40 lacs	

Particulars	Workings	Details	Amount
Machinery	WDV as per I.T. Act	₹ 60 lacs	
Furniture	WDV as per I.T. Act	₹ 90 lacs	₹ 270 lacs
Less: Value of liabilities taken over			
Creditors	Book Value		₹ 50 lacs
Net worth (cost of acquisition)			₹ 220 lacs

Computation of capital gains in the hands of X Ltd. for the A.Y. 2026-27

Particulars	Details	Amount	Amount
Sale Consideration	Higher of actual consideration and FMV of capital assets transferred		350 lacs
Less: Expenses on transfer	5% of ₹ 300 lacs		15 lacs
Net Sale Consideration			335 lacs
Less: Cost of Acquisition	Calculated above	220 lacs	
Less: Cost of improvement		Nil	220 lacs
Long Term Capital Gain			115 lacs

Computation of written down value of block of assets in case of slump sale

Particulars	Amount
W.D.V of the block at the beginning of the previous year	***
Add: Purchase during the previous year	***
	MNO
Less: Sale consideration for assets sold (to the maximum of MNO)	(****)
	PQR
Less: WDV (Note) of the asset sold under slump sale	(ABC)
[Value of deduction at this stage i.e. ABC cannot exceed PQR]	
	XYZ
Less: Depreciation (as a % on XYZ)	(***)
WDV of the block at the end of year	****

Note: Written down value of the asset sold under slump sale

Particulars	Amount
Original cost of asset sold under slump sale	***
Less: Depreciation (actual) allowed on such asset in respect of any previous year commencing before 1987-88	(***)
Less: Depreciation (notional) that would have been allowable from the previous year 1987-88 onwards as if the asset is only asset in the relevant block.	(***)
Written down value of the asset sold under slump sale	***

Illustration 4.

M/s AP a wholesale enterprises, has sold one of its undertaking consisting of Machinery A (rate of depreciation 30%), Machinery X (rate of depreciation 15%), Building B (rate of depreciation 10%) for ₹ 15,00,000 on 1/9/2025.

- Machinery A, originally acquired for ₹ 5,00,000 on 1/8/2022
- Building B acquired on 17/7/2025 for ₹ 4,00,000.
- During the year, new machinery Z (15%) purchased for ₹ 5,00,000 on 7/7/2025.

Compute depreciation for the A.Y.2026-27:

- Machinery (rate of depreciation 30%) block [WDV as on 1/4/2025 is ₹ 9,00,000]
- Building (rate of depreciation 10%) block [WDV as on 1/4/2025 is ₹ 5,00,000].

Solution:

Computation of depreciation for Block

Particulars	Machinery (30%)	Building (10%)
W.D.V. as on 1/4/2025	9,00,000	5,00,000
Add: Purchase during the year	Nil	4,00,000
	9,00,000	9,00,000
Less: Sale under slump sale (Working)	1,71,500	4,00,000
	7,28,500	5,00,000
Depreciation	2,18,550	50,000

Working: Written down value of the asset sold under slump sale

Particulars	Machinery A	Building B
Original cost of asset sold under slump sale	5,00,000	4,00,000
Less: Depreciation (notional) that would have been allowable if the asset is only asset in the relevant block.		
* Depreciation ₹ 1,50,000 (for 2022-23) + ₹ 1,05,000 (for 2023-24) + ₹ 73,500 (for 2024-25)	3,28,500*	Nil
Written down value of the asset sold under slump sale	1,71,500	4,00,000

Conversion of Sole Proprietary Business to Company

5.4

Transaction not regarded as transfer for the purpose of capital gain [Sec. 47(xiv)]

Where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any capital asset to the company, the transaction is not regarded as transfer provided following conditions are satisfied:

- a) All assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company;
- b) Proprietor holds not less than 50% of the total voting power in the company and his shareholding continues to remain as such for a period of 5 years from the date of succession; and
- c) The sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company.

Taxpoint

- ⦿ Transfer must have taken place as a result of succession of the proprietorship concern to a company.
- ⦿ All assets and liabilities related to the business must have been transferred.
- ⦿ The whole consideration shall be paid by allotment of shares in the company.
- ⦿ Proprietor must hold at least 50% of the total voting power of the company.
- ⦿ Lock in period for above share is 5 years from the date of succession.
- ⦿ Exemption is available for capital gain on transfer of capital asset and not on transfer of stock in trade. Therefore, if stock is transferred at profits, it will be taxable as business income.

Conversion of Firm into Company

5.5

Transaction not regarded as transfer for the purpose of capital gain [Sec. 47(xiii)]

Any transfer of a capital asset, by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, shall not be regarded as transfer provided following conditions are satisfied:

- a) All assets and liabilities of the firm relating to the business immediately before the succession become the assets and liabilities of the company.
- b) All the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of succession.
- c) The partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and
- d) The aggregate of the shareholding in the company of the partners of the firm is not less than 50% of the total voting power in the company and their shareholding continues to be as such for a period of 5 years from the date of succession.

Taxpoint

- Transfer must have taken place as a result of succession of the firm to a company.
- All assets and liabilities related to the business must have been transferred.
- All the partners become the shareholders of the company in their capital ratio (as on the date of the succession)
- The whole consideration shall be paid by allotment of shares in the company
- Partners (altogether) must hold atleast 50% of the total voting power of the company
- Lock in period for above share is 5 years from the date of succession.

Withdrawal of exemption u/s 47(xiii)/47(xiv) [Sec. 47A(3)]

On violation of conditions, exemption earlier allowed shall be withdrawn and the amount of profits or gains arising from the transfer of such capital asset not charged earlier shall be deemed to be the profits and gains chargeable to tax of the successor company for the previous year in which the requirements of sec. 47(xiii)/(xiv) are violated.

Taxpoint

Withdrawal of exemption	The benefits availed shall be deemed to be the capital gain
Year of taxability	The year in which condition u/s 47(xiii) or (xiv) are violated.
Who will be liable for tax	Successor company

Illustration 5.

M/S ABC converted itself into a company as on 31/12/2025. As on date, balance sheet of the firm was as under:

Liabilities	Amount	Assets	Amount
A's Capital	40,000	Machinery (WDV as per IT Act)	1,00,000
B's Capital	1,10,000	Investments (acquired on 14/08/2004)	50,000
C's Capital	50,000	Stock	70,000
Creditors	1,00,000	Debtors	60,000
		Bank	20,000
	3,00,000		3,00,000

Following value was agreed upon on conversion –

Machinery	₹ 1,20,000
Investments	₹ 2,50,000
Stock	₹ 90,000
Debtors	₹ 60,000

The firm fulfilled all the conditions of sec.47(xiii) and partners accounts are settled by way of issuing equity shares in their capital ratio. However, on 01/12/2026, all partners transferred all of their shares. Show tax treatment.

Solution:

As per sec. 47A(3), where any of the conditions laid down in sec. 47(xiii) are not complied with, the gain exempted u/s 47(xiii) shall be charged to tax in the hands of successor company in the previous year in which the requirements of sec. 47(xiii) are violated. One of the conditions stated in sec. 47(xiii) is that the partner of the old firm cannot transfer shares of the successor company till 5 years. In the given case, all partners sold shares of the successor company within 5 years hence earlier exempted gain shall be revoked.

Computation of taxable income in the hands of successor company for the A.Y. 2027-28

Particulars	Investments	Machinery
Sale consideration	2,50,000	1,20,000
Less: Expenses on transfer	Nil	Nil
Net Sale Consideration	2,50,000	1,20,000
Less: Cost of acquisition	50,000	Nil
Less: Cost of acquisition (being WDV)	Nil	1,00,000
Long Term Capital Gain	2,00,000	Nil
Short Term Capital Gain	Nil	20,000
Note: Profit on transfer of stock by firm to company (i.e. ₹20,000 being ₹90,000 – ₹70,000) is taxable as business income of the firm for the A.Y. 2026-27.		

Value of non-depreciable capital assets for the purpose of capital gain

As per sec. 49(1), where a capital asset became the property of the company under transfer referred to in sec. 47(xiii) or 47(xiv), the cost of acquisition of the asset to the company shall be deemed to be the cost for which the previous owner (i.e., erstwhile concern or firm) of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

Allocation of depreciation in the year of conversion

Deduction for depreciation shall be apportioned between the proprietary concern (or firm) and the company in the ratio of the number of days for which the assets were used by them.

Illustration 6.

M/s. QQ Trading Co. a sole proprietary concern, was converted into a company w.e.f. 01-09-2025. Before the conversion, the sole proprietary concern had a block of Plant & Machinery (15%), whose WDV as on 1-4-2025 was ₹ 3,00,000. On 1st April itself, a new plant of the same block was purchased for ₹1,20,000. After the conversion, the company has purchased the same type of plant on 1-1-2026 for ₹1,60,000. Compute the depreciation that would be allocated between the concern & the company.

Solution:

Computation of depreciation on plant and machinery if there were no succession

Particulars	Plant & Machinery
W.D.V. as on 1/4/2025	3,00,000
Add: Purchase during the year	1,20,000
	4,20,000
Less: Sale during the year	Nil
	4,20,000
Depreciation @ 15% of ₹ 4,20,000	63,000

Allocation of depreciation between sole proprietary concern and the successor company

The depreciation of ₹63,000 is to be allocated in the ratio of number of days the assets were used by the sole proprietary concern and the successor company.

Calculation of allowable depreciation to sole proprietary concern

Particulars	Amount
Ex-sole proprietary:	
Plant & machinery are used by sole proprietary concern from 1/4/2025 to 31/8/2026 i.e. 153 days.	
Depreciation for 153 days (₹ 63,000 × 153/365)	26,408

Calculation of allowable depreciation to successor company

Particulars	Amount
Plant & machinery of sole proprietary concern used by the successor company from 1/9/2025 to 31/3/2026 i.e. 212 days. Depreciation for such period (₹ 63,000 x 212/365)	36,592
After conversion	
Depreciation in respect of assets purchased by the successor company on 1/1/2026 is fully allowable in the hands of successor company [50% of 15% on ₹ 1,60,000]	12,000
Total depreciation	48,592

Illustration 7.

M/s S & Co., a sole proprietary concern is converted into a company, Sid Co. Ltd. with effect from November 29, 2025. The written down value of assets as on April 1, 2025 are as follows:

Items	Rate of Depreciation	WDV as on 1 April, 2025
Building	10%	₹ 3,50,000
Furniture	10%	₹ 50,000
Plant & Machinery	15%	₹ 2,00,000

Further, on 15-10-2025, M/s S & Co. purchased a plant for ₹ 1,00,000 (rate of depreciation 15%). After conversion, the company added another plant worth ₹ 50,000 (rate of depreciation 15%). Compute the depreciation available to (i) M/s S & Co. and (ii) Sid Co. Ltd. for the A.Y. 2026-27.

Solution:

Computation of depreciation on assets if there were no succession

Particulars	Building	Furniture	Plant & Machinery
Rate of depreciation	10%	10%	15%
W.D.V. as on 1/4/2025	3,50,000	50,000	2,00,000
Add: Purchase during the year	Nil	Nil	1,00,000*
	3,50,000	50,000	3,00,000
Less: Sale during the year	Nil	Nil	Nil
	3,50,000	50,000	3,00,000
Depreciation	35,000	5,000	37,500

It is assumed that the assessee is not entitled for additional depreciation.

* Without considering assets acquired after succession. ** $[(₹ 2,00,000 \times 15\%) + (₹ 1,00,000 \times 15\% \times \frac{1}{2})]$

Allocation of depreciation between sole proprietary concern and the successor company

The depreciation is to be allocated in the ratio of number of days the assets were used by the sole proprietary concern and the successor company.

Calculation of allowable depreciation to sole proprietary concern

Particulars	Amount
Depreciation on assets held as on 01/04/2025	
Assets are used by sole proprietary concern from 1/4/2025 to 28/11/2025 i.e. 242 days, hence depreciation shall be allowed for 242 days	
- Building (₹ 35,000 × 242/365)	23,205
- Furniture (₹ 5,000 × 242/365)	3,315
- Plant and Machinery (₹ 30,000 × 242/365)	19,890
Depreciation on newly acquired assets	
New asset has been used by it from 15/10/2025 to 28/11/2025 i.e. 45 days, hence depreciation shall be allowed for 45 days	
- Plant and Machinery (₹ 7,500 × 45/168)	2,009
Depreciation allowable u/s 32	48,419

Calculation of allowable depreciation to successor company

Particulars	Amount (₹)
Depreciation on assets held by sole-proprietary concern as on 01/04/2025	
Asset of sole proprietary concern used by the successor company from 29/11/2025 to 31/3/2026 i.e. 123 days, hence depreciation shall be allowed for 123 days	
- Building (₹ 35,000 × 123/365)	11,795
- Furniture (₹ 5,000 × 123/365)	1,685
- Plant and Machinery (₹ 30,000 × 123/365)	10,110
Depreciation on assets acquired by sole-proprietary concern during the year	
New asset has been used by it from 29/11/2025 to 31/03/2026 i.e. 123 days, hence depreciation shall be allowed for 123 days	
- Plant and Machinery (₹ 7,500 × 123/168)	5,491
After conversion	
Depreciation in respect of plant purchased by the successor company is fully allowable in the hands of successor company [50% of 15% on ₹ 50,000].	3,750
Total depreciation	32,831

Carry forward & Set off of losses on conversion of proprietary concern or partnership firm into company [Sec. 72A(6)]

Condition: Where -

- ⊙ a firm is succeeded by a company fulfilling the conditions laid down in sec. 47(xiii); or
- ⊙ a proprietary concern is succeeded by a company fulfilling conditions laid down in sec. 47(xiv).

Tax Treatment: The accumulated loss (non-speculative) and unabsorbed depreciation of the predecessor firm or the proprietary concern, as the case may be, shall be deemed to be the loss or allowance for depreciation of the successor company and provisions relating to set off and carry forward of loss (for remaining life of the loss) and allowance for depreciation shall apply accordingly.

Taxpoint: Non speculative business loss of such firm or concern can be carried forward by the successor company for remaining life of the loss.

Effect of non compliance of conditions given u/s 47(xiii) and (xiv)

If any of the conditions laid down in the sec. 47(xiii) or (xiv) are not complied with, the set off of loss or allowance of depreciation made in any previous year by the successor company shall be deemed to be the income of the company and chargeable to tax in the year in which such conditions are violated.

Conversion of Private Limited Company/ Unlisted Public Company into LLP

5.6

Transaction not regarded as transfer for the purpose of capital gain [Sec. 47(xiiiib)]

Any transfer of -

- a. a capital asset or intangible asset by a private company or unlisted public company¹ (hereafter referred to as the company) to a limited liability partnership (LLP); or
- b. a share(s) held in the company by a shareholder as a result of conversion² of the company into a limited liability partnership (LLP)

shall not be regarded as a transfer, if following conditions are satisfied:

- i. All the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP;
- ii. All the shareholders of the company immediately before the conversion become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion;
- iii. The shareholders of the company do not receive any consideration or benefit other than by way of share in profit and capital contribution in the LLP;
- iv. The aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50% at any time during the period of 5 years from the date of conversion;
- v. The total sales, turnover or gross receipts in business of the company in any of the 3 previous years preceding the previous year in which the conversion takes place does not exceed ₹ 60 lakh;
- vi. The total value of the assets as appearing in the books of account of the company in any of the 3 previous years preceding the previous year in which the conversion takes place does not exceed ₹ 5 crore; and
- vii. No amount is paid (directly or indirectly) to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of 3 years from the date of conversion.

Withdrawal of exemption u/s 47(xiiiib) [Sec. 47A(4)]

On violation of aforesaid conditions, exemption earlier allowed to the company or shareholder shall be withdrawn and amount of profits or gains arising from the transfer of such capital asset or intangible asset or share(s) not charged earlier shall be deemed to be the profits and gains chargeable to tax of the successor LLP or the shareholder (of predecessor company) for the previous year in which the requirements of sec. 47(xiiiib) are violated.

¹ Private company or unlisted public company as per provisions of the Limited Liability Partnership Act, 2008

² Such conversion should be in accordance with the provisions of sec. 56 or 57 of the Limited Liability Partnership Act, 2008

Taxpoint

Withdrawal of exemption	The benefits availed shall be treated as deemed income
Year of taxability	The year in which condition u/s 47(xiii b) are violated.
Who will be liable to tax	For exemption available to the company: Successor LLP For exemption available to the shareholder: Such shareholder
Cost of acquisition of transferred asset in hands of the LLP	If conditions u/s 47(xiii b) are satisfied: Cost of asset in hands of the company If conditions u/s 47(xiii b) are not satisfied: Value at which such asset were transferred to the LLP at the time of conversion
Period of holding in hands of the LLP	In any circumstances, period of holding will continue. In other words, holding period of the previous owner shall be considered.

Illustration 8.

Balance sheet of Handoo & Handoo (P) Ltd. as on 31/08/2025

Liabilities	Amount	Assets	Amount
Equity Share capital of ₹ 10 each	10,00,000	Land (acquired on 17/05/2007)	10,00,000
Reserves	30,00,000	(Market value ₹ 50,00,000)	
		Building (WDV as per IT Act)	13,00,000
		(Market value ₹ 30,00,000)	
		Machinery (WDV as per IT Act)	6,00,000
		(Market value ₹ 10,00,000)	
		Investments (acquired on 18/08/2008)	4,00,000
		(Market value ₹ 12,00,000)	
		Current Assets (Realizable)	7,00,000
	40,00,000		40,00,000

Additional information

- The company converts itself into limited liability partnership (LLP) [as per conditions mentioned u/s 47(xiii b)] on the date of balance sheet.
- All assets and liabilities of the company was transferred to the LLP. Further, it was also agreed that assets shall be transferred to the LLP at market value.
- Total number of shareholders in the company: 4 (each holding 25% of equity shares capital and acquired at face value on 01-04-2001)
- On 28-02-2026, the LLP has transferred land to Mr. Animesh for a consideration of ₹ 63,00,000.

Discuss tax treatment in hands of company, shareholder and LLP.

Solution:

Computation of capital gain for the A.Y. 2026-27 in the hands of Handoo & Handoo (P) Ltd.

Particulars	Land	Building	Machinery	Investment
Full value of consideration	50,00,000	30,00,000	10,00,000	12,00,000
Less: Cost of Acquisition	10,00,000	13,00,000	6,00,000	4,00,000
Long Term Capital Gain	40,00,000	-	-	8,00,000
Short Term Capital Gain	-	17,00,000	4,00,000	-

Note: Entire capital gain is exempt in hands of Handoo & Handoo (P) Ltd., if such conversion fulfills all the conditions given in sec.47(xiii b). However, if such conditions are not fulfilled at the time of conversion, then entire capital gain would be taxable in hands of the company. Further, if later on, such conditions are violated, then such capital gain shall be taxable in hands of the Limited Liability Partnership in the year of such violation.

Statement showing consideration received by a shareholder of the company

Land	₹ 50,00,000
Building	₹ 30,00,000
Machinery	₹ 10,00,000
Investment	₹ 12,00,000
Current Asset	₹ 7,00,000
Total worth available for 1,00,000 shares	₹ 1,09,00,000
To be received by each shareholder (₹ 1,09,00,000 × 25%)	₹ 27,25,000
- Received as Dividend [(₹ 30,00,000 × 25%)]	₹ 7,50,000
- Received against shares	₹ 19,75,000

Computation of capital gain in hands of each Shareholder

Particulars	Amount
Full value of consideration	19,75,000
Less: Cost of Acquisition (₹ 10,00,000 × 25%)	2,50,000
Long Term Capital Gain	17,25,000

Note: Entire capital gain is exempt in hands of shareholder, if such conversion fulfills all the conditions given in sec.47(xiii b). However, if such conditions are not fulfilled at the time of conversion, then entire capital gain would be taxable in hands of the shareholder. Further, if later on, such conditions are violated, then such capital gain shall be taxable in hands of the shareholder in the year of such violation. Further, dividend is separately taxable in hands of respective shareholder.

Computation of capital gain in hands of LLP (Sale of land)

Particulars	Amount
Full value of consideration	63,00,000
Less: Cost of Acquisition	10,00,000
Long Term Capital Gain	53,00,000

Allocation of depreciation in the year of conversion

Deduction for depreciation shall be apportioned between the company and the LLP in the ratio of the number of days for which the assets were used by them.

Carry forward & Set off of losses on conversion into Limited Liability Partnership [Sec. 72A(6A)]

Condition: Where a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to sec.47(xiiiib).

Tax Treatment: The accumulated loss (non-speculative) and unabsorbed depreciation of the predecessor concern shall be deemed to be the loss or allowance for depreciation of the successor firm and provisions relating to set off and carry forward of loss (for remaining life of the loss) and allowance for depreciation shall apply accordingly.

Taxpoint: Non speculative business loss of such concern can be carried forward by the successor firm for remaining life of the loss.

Effect of non compliance of conditions given u/s 47(xiiiib)

If any of the conditions laid down in the sec. 47(xiiiib) are not complied with, the set off of loss or allowance of depreciation made in any previous year by the successor firm shall be deemed to be the income of the firm and chargeable to tax in the year in which such conditions are violated.

Capital Gain on buy back of own securities [Sec. 46A]

Buy back shall be considered as a transfer for its holder and shall be treated as under:

Sale consideration	Nil
Cost of acquisition/Cost of improvement	As usual
Taxable	In the year when such securities are purchased by the company.

Taxpoint:

- ⊙ Money received by a shareholder on account of the buyback of shares shall be treated as dividend income in the hands of the shareholder and taxable under the head “Income from Other Sources”, without considering any expenses.
- ⊙ The assessee may have nil or negative income under the head Capital Gains on buy back of shares. Such loss can be adjusted with capital gain and unabsorbed capital loss shall be carry forward u/s 74

Succession to business otherwise than on death [Sec. 170]

- ⊙ Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—
 - a. the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;
 - b. the successor shall be assessed in respect of the income of the previous year after the date of succession.
- ⊙ However, when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor
- ⊙ Further, where there is succession, the assessment or reassessment or any other proceedings, made or initiated on the predecessor during the course of pendency of such succession, shall be deemed to have been made or initiated on the successor

- “Pendency” means the period commencing from the date of filing of application for such succession of business before the High Court or tribunal or the date of admission of an application for corporate insolvency resolution by the Adjudicating Authority u/s 5(1) of the Insolvency and Bankruptcy Code, 2016 and ending with the date on which the order of such High Court or tribunal or such Adjudicating Authority, as the case may be, is received by the Principal Commissioner or the Commissioner.
- ⊙ When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the Assessing Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor, and the successor shall be entitled to recover from the predecessor any sum so paid.
- ⊙ Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section.

Effect of order of tribunal or court in respect of business reorganization [Sec. 170A]

Filing of Modified Return

In a case of business reorganisation, where prior to the date of order of a High Court or tribunal or an Adjudicating Authority as defined in sec. 5(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as order in respect of business reorganisation), as the case may be, any return of income has been furnished by an entity to which such order applies u/s 139 for any assessment year relevant to the previous year to which such order applies, the successor shall furnish, within a period of 6 months from the end of the month in which the order was issued, a modified return in such form (ITR-A) and manner, as may be prescribed, in accordance with and limited to the said order.

Taxpoint

- ⊙ Where the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the order in respect of the business reorganisation applies,—
 - a. have been completed on the date of furnishing of the modified return, the Assessing Officer shall pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, in accordance with such order and taking into account the modified return so furnished;
 - b. are pending on the date of furnishing of the modified return, the Assessing Officer shall pass an order assessing or reassessing the total income of the relevant assessment year in accordance with the order of the business reorganisation and taking into account the modified return so furnished.
- ⊙ Save as otherwise provided in this section, in an assessment or reassessment made in respect of an assessment year, all other provisions of this Act shall apply and the tax shall be chargeable at the rate or rates as applicable to such assessment year.
- ⊙ Business reorganisation means the reorganisation of business involving the amalgamation or demerger or merger of business of one or more persons.
- ⊙ Successor means all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.

Illustration 9.

Smile Ltd. is a wholly-owned subsidiary company of Happy Ltd., an Indian company. Smile Ltd. owns Plant-A and Plant-B (depreciation rate 40%, depreciated value of the block ₹ 3,00,000 on 1st April, 2025). Plant-B was purchased and put to use on 10th November, 2023 (cost being ₹ 70,000). Plant-B is transferred by Smile Ltd. to Happy Ltd. on 14th December, 2025 for ₹ 20,000. It is put to use by Happy Ltd. on the same day. Happy Ltd. owns Plant-C on 1st April, 2025 (depreciation rate 40%, depreciated value ₹ 60,000). Find out the amount of depreciation in the hands of Smile Ltd. and Happy Ltd. for the assessment year 2026-27.

Solution:

Depreciation in the hands of Smile Ltd. for the assessment year 2026-27

Particulars	Amount (₹)
Depreciated value of the Plant A and B on 1 st April, 2025	3,00,000
Less: Plant B transferred to Happy Ltd	20,000
WDV as on 31 st March, 2026	2,80,000
Depreciation for the block P.Y.2025-26	1,12,000
WDV at the end of the year	1,38,000

Depreciation in the hands of Happy Ltd. for the assessment year 2026-27

Particulars	Amount (₹)
Depreciated value of the block on 1 st April, 2025	60,000
Add: Actual Cost of Plant B acquired from Smile Ltd (See Note)	33,600
WDV as on 31 st March, 2026	93,600
Depreciation on transferred asset [$₹33,600 \times \frac{1}{2} \times 40\%$]	6,720
Other Asset @ 40% of ₹ 60,000	24,000
Total Depreciation	30,720

Note: Actual Cost of Plant B in the hands of Happy Ltd.

Particulars	Amount (₹)
Actual Cost of Plant B in the hands of Smile Ltd on Nov 10, 2023	70,000
Less: Depreciation for P.Y 2023-24 (1/2 of 40% of ₹ 70,000)	14,000
Balance on April 1, 2024	56,000
Less: Depreciation for the P.Y.2024-25	22,400
Balance on April 1, 2025	33,600

Solved Case:

Laxmi Ltd transferred its Unit X to Amin Ltd. by way of slump sale on 31st December, 2025. The summarized balance sheet of Laxmi Ltd. as on that date is given below:

Liabilities	₹ in lakhs	Assets	₹ in lakhs
Share capital-paid up	2,000	Fixed Assets:	
Reserves and Surplus	950	Unit X	700

Liabilities	₹ in lakhs	Assets	₹ in lakhs
Liabilities:		Unit Y	900
Unit X	400	Unit Z	1,200
Unit Y	600	Other Assets:	
Unit Z	1,050	Unit X	650
		Unit Y	750
		Unit Z	800
	5,000		5,000

From the information given below compute the capital gain arising from slump sale of Unit X:

- The lump sum consideration received for transfer of Unit X is ₹1,100 lakhs.
- The fixed assets of Unit X includes a vacant land which was purchased in the financial year 2008-09 for ₹ 50 lakhs and it was revalued at ₹ 100 lakhs in the year 2025-26.
- Other fixed assets reflected in the balance sheet ₹600 (₹700 lakhs less value of land) represents WDV of the assets as per books of account. The WDV of these assets under the Income-tax Act is ₹200 lakhs

On the basis of aforesaid information, you are requested to choose correct options for the following:

- What will be the networth of unit X?
- What will be the nature of gain (loss) on such slump sale?
- What will be the taxable income on such slump sale?

Solution:

Computation of Net worth of Unit X

Particulars	₹ in lakhs
Book value of non-depreciable asset	
Land - ignoring the revaluation amount	50
Other assets	650
Depreciable assets - as per WDV	200
	900
Less: Liabilities of Unit X	300
Net worth of Unit X	600

Computation of Capital gain on slump sale of Unit X

Particulars	₹ in lakhs
Sale consideration	1,100
Less: Net worth	600
Long-term capital gain arising on slump sale as the unit is operational since 2008	500

Exercise

Multiple Choice Questions

- In case of amalgamation, eligible loss of amalgamating company shall be available to the amalgamated company for:
 - Remaining tenure
 - Such loss shall be treated as loss of the previous year in which amalgamation took place
 - 5 years
 - 3 years
- In the year restructuring, depreciation shall be:
 - available to the successor company fully
 - apportioned between successor and predecessor on the basis of number of days
 - available to the predecessor company fully
 - None of the above

[Answer: 1 – B; 2 – B]

Short Essay Type Questions

- Define amalgamation.
- Analyse the effect of amalgamation on the shareholder of the amalgamating company.
- Discuss the tax treatment in case of slump sale.

Comprehensive Numerical Problems

M/s. RST Co. a sole proprietary concern, was converted into a company w,e,f. 01-09-2025. Before the conversion, the sole proprietary concern had a block of Plant & Machinery (15%), whose WDV as on 1-4-2025 was ₹ 6,00,000. On 1st April itself, a new plant of the same block was purchased for ₹ 2,40,000. After the conversion, the company has purchased the same type of plant on 1-1-2026 for ₹ 3,20,000. Compute the depreciation that would be allocated between the concern & the company.

[Ans: ₹ 52,816 and ₹ 97,184]

Case Studies - Unsolved

Question: 1

Padmaja Textiles Ltd., (PTL) has two separate divisions J and K. Division K was started on 14-05-2015. The summarized financial position of the company as on 1st October, 2025 was as under:

Particulars	(₹ in lakhs)
Share capital	1,200
Reserves and surplus	500
Loan creditors:	
Division J	400
Division K	300
Total	2,400

Represented by	
Fixed assets:	
Division J	800
Division K	
Goodwill	30
Vacant Land (Purchased on 02.03.2018)	170
Plant and Machinery (WDV)	400
Current assets:	
Division J	550
Division K	450
Total	2,400

On 01.10.2025, Division K was acquired by VK Textile Pvt. Ltd., in a slump sale, the entire sale consideration of ₹ 310 lakhs being paid through RTGS.

The following additional information are available relating to the fixed assets of Division K:

- All the plant and machinery were acquired 11 months back.
- The WDV of the plant and machinery of division K as per the Income-tax Act, 1961 was ₹ 350 lakhs.
- Apart from these, there are plant used in scientific research for which deduction had been availed u/s 35AD in the assessment year 2021-22. The fair market value of these items of plant is ₹ 12 lakhs.

On the basis of aforesaid information, you are require to answer the following questions:

- Calculate the networth of division K
- Calculate the nature of gain (loss) on such slump sale
- Calculate the taxable income on such slump sale

[Hint: (i) ₹ 7,00,000; (ii) Long term capital gain (loss); (iii) (₹ 3,90,000)]

Question: 2

ABC Ltd. was amalgamated with XYZ Ltd. on 01.04.2025. All the conditions of Section 2(1B) were satisfied and amalgamation is within the meaning of Section 72A of Income-tax Act. ABC Ltd. has the following carried forward losses as assessed till the Assessment Year 2025-26

Particulars	(₹ in lakhs)
Speculative loss	4
Unabsorbed depreciation	18
Unabsorbed expenditure of capital nature on scientific research	2
Business loss (Non speculative)	120

XYZ Ltd. has computed a profit of ₹ 140 lakhs for the financial year 2025-26 before setting off eligible losses of ABC Ltd. but after providing depreciation at 15% per annum on ₹ 150 lakhs, being the consideration at which plant and machinery were transferred to XYZ Ltd. The written down value before depreciation as per income tax record of ABC Ltd. as on 31st March, 2025 was ₹ 100 lakhs. Above profit of XYZ Ltd. includes speculative profit of ₹ 10 lakhs.

On the basis of aforesaid information, you are required to answer the following questions:

- (i) State the amount of addition required to be made on account of depreciation (excluding unabsorbed depreciation) while computing income of XYZ Ltd.
- (ii) Calculate the total income of XYZ Ltd

[Hint: (i) ₹ 9.75 lakhs; (ii) ₹ 9.75 lakhs]

Question 3

Kite & Co. (firm) had sold all its assets and liabilities on 31.03.2026 to ABC Co. (P) Ltd. for a lump sum consideration of ₹ 500 lakhs.

The Balance Sheet of Kite & Co. as on 31.03.2026 is as below:

Liabilities	₹ in lakhs	Assets	₹ in lakhs	
Capital	1,500	Fixed Assets:		
Unsecured loans	100	Plant & Machinery at WDV	300	
Bank borrowing	700	Land (At revalued figure)	1,200	1,500
Sundry Creditors	200	Current Assets:		
		Sundry Debtors	500	
		Cash & Bank balance	50	
		Loans & Advances	340	
		Closing stock	110	1,000
	2,500			2,500

Additional Information:

- (a) The land was acquired in March, 2007 for ₹ 200 lakhs.
- (b) WDV of plant & machinery under section 43(6) was ₹ 250 lakhs.
- (c) Stock is overvalued by 10%.
- (d) Loans and advances include ₹ 150 lakhs due from ABC Co. (P) Ltd.

On the basis of aforesaid information, you are required to answer the following questions:

1. Calculate the networth of the concern, if such transfer is treated as slump sale
2. Evaluate the nature of such gain
3. Calculate the tax liability

[Hint: (i) ₹ 440 lakhs; (ii) Long term capital gain; (iii) ₹ 12.48 lakhs]

Question 4

Company X is proposed to be merged with company Y. The following are the particulars of the former company:

Unabsorbed depreciation	₹ 50,00,000
Brought forward business loss (non-speculative)	₹ 80,00,000
Brought forward business loss (speculative)	₹ 10,00,000

On the basis of above information, answer the following:

- (i) State the amount of unabsorbed depreciation and brought forward losses available to the company Y, If the merger is not amalgamation within the meaning of sec. 2(1B)
- (ii) State the amount of unabsorbed depreciation and brought forward losses available to the company Y, If the merger is an amalgamation within the meaning of sec. 2(1B) but it does not fulfill the conditions given u/s 72A
- (iii) State the amount of unabsorbed depreciation and brought forward losses available to the company Y, If the merger is an amalgamation within the meaning of sec. 2(1B) and also fulfill the conditions given u/s 72A

[Hint: (i) Nothing shall be available;

(ii) Nothing shall be available;

(iii) Unabsorbed depreciation and brought forward non-speculative business loss will be available, however brought forward speculative business loss shall not be available]

Reference

<https://www.incometaxindia.gov.in/>

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