

### **The Last Few Weeks Have Changed -The Financial Industry**

- The transformation of the financial landscape continues to power forward as leverage is flushed from the system
- The US government nationalized Fannie Mae and Freddie Mac in early September and has since provided support / asset injection to most major US financial institutions, including two loans to AIG
- In the UK, the largest financial institutions, including Northern Rock, Bradford & Bingley, HBOS, Lloyds and RBS were also in one way or the other nationalized as government injected capital into the UK financial sector to shore up confidence (the Benelux governments have also announced a rescue of Fortis Bank)
- Many strategic takeovers / investments have also taken place. Lehman Brothers' operations have been purchased by Barclays and Normura; Bank of America has acquired Merrill Lynch; Lloyds has agreed to purchase HBOS; WaMu acquired by JPMorgan.
- Clearly balance sheet strength and access to deposits are required to survive in today's financial markets

### **The Coordinated Global Central Bank Response**

- Since September 2008, governments and central banks around the world have acted more than once to provide support by enacting various new policies / measures
- For example, The world's central banks have stepped up with a US\$ 180bn liquidity injection in to the financial markets in mid-Sept – ECM, FED, BOJ, BOE, Bank of Canada, and the Swiss national Bank are leading a coordinated effort to stabilise markets
- Short selling have been more strictly monitored than ever in many jurisdictions The US Congress has also approved the US\$700bn “Emergency Economic Stabilisation Act”, which is primarily aimed to take out illiquid assets that has clogged up the credit markets
- Other examples of such rescues include a coordinated international interest rate cut by central banks on 8<sup>th</sup> Oct and the EU nation's €1.3 trn commitment to bank bailouts on 13<sup>th</sup> Oct

### **Implications for Capital Raisings**

- Access to capital in present environment is difficult and is likely to continue to be over the short to mid-term
- There will be windows of opportunity and shrewd investors will position themselves to capitalise
- Investors have considerable cash positions to deploy but they need stability in markets to start re-investing - issuers with strong capital adequacy will be the first to be supported.
- Underwriters and advisors must similarly have a strong capital adequacy as well - investors will not take counter-party risk to “unstable” underwriters.

**The series of events that happened over the past few weeks have pushed global equity markets to new lows and the cost of capital higher**

**Current (cheap) valuations continue to be irrelevant to investors who are presently focused entirely on capital preservation and de-risking of portfolios except Warren Buffet and his likes.**

#### **Raising capital in present environment is a challenge –**

- Cost of debt and equity funding will be higher
- Scale / volume of finance available has diminished
- But windows of opportunities will exist

#### **Corporate Perspectives**

- The present market is all about balance sheet (funding) - not cash flow (interest cost) or income statement (operational performance)
- The global economy, including the Indian economy, and the equity markets (World at large) will remain soft in the next 12 months

#### **Redemptions Will Continue To Hit Institutional Investors All Over The World**

- One of the reasons that lead to the recent tumble in the global equity market is that institutional investors are currently facing heavy redemption pressures
- The 1st week of October 2008 saw US\$41bn of redemptions from mutual funds in the US the same measure for the entire month of September was US\$26bn
- Such pressures will persist and mutual funds and hedge funds will continue to suffer – there may be further redemption-forced trades that may drive down equity markets

#### **Earnings Revision Will Also Exert Downward Pressure To The Market**

#### **Consumer De-Leveraging Yet To Bring A Negative Impact**

- Money markets have been more squeezed than ever over the past few weeks and we believe the impact on the consumer level has yet to be seen.
- In fact, consumer credit has been on a rise and in August 08, the US registered a record high of US\$2.58trn worth of total outstanding consumer credit (and major holders of consumer credit) - personal leverage continues to increase .
- As consumers start to de-leverage, this will impact the real economy and by then we will be able to say we are starting to see the bottom.

### Companies Act 1956

#### Application to National Law Tribunal

- Statutory Provisions
- Class representation
- Fair and reasonable scheme
- Bonafide scheme
- Intimation to the Creditors and Members
- Power of the Central Government
- Restrictions on acquisition of shares

#### Buy Back of Shares

- Hostile Take over
- The regulatory framework involving the buy- back of shares
- Source from where company can purchase its own share

#### Relevant Provisions of The Companies Act

- Section 390 to 396 of the Companies Act, 1956 deals with reconstruction, compromise and arrangement of companies.
- Sec 108A to 108F of the companies Act, 1956 details with takeover procedure
- Sections 372 and 372a of the companies Act, 1956 deals with acquisition of shares
- Section 77A, 77AA and 77B of the Companies Act, 1956 deals with buy back of shares

- **Rule 67** : Summons for direction to convince a meeting
- **Rule 68** : Service on company
- **Rule 69** : Directions at hearing of summons
- **Rule 70**: Proxies
- **Rule 71** : Application for stay
- **Rule 72** : Application to vacate or vary order of stay
- **Rule 81** : Order on petition
- **Rule 83** : Directions at hearing of application
- **Rule 84** : Order under section 394
- **Rule 85** : Compromise or arrangement involving reduction of capital
- **Rule 86** : Report on working of compromise or arrangement
- **Rule 87** : Liberty to apply

**Takeover Code**

- Public announcement by the acquirer
- Public announcement through a merchant banker
- Filing of documents with SEBI
- Incorporate comments on Letter of Offer
- Send offer letter to shareholders of Target company
- Acceptance by shareholders of Target company
- Determine the Offer Price

**SEBI Guidelines**

- SEBI buy back regulations
- Buy back from Open market
- Obligations of Merchant Bankers
- Contents of public announcement
- Disclosures in offer letter
- Details to be filed with Stock Exchange
- General Obligations,
- Penalties and Procedure

**FEMA ,1999**

- Transfer of Shares
- Issue of shares to employees
- Buy back of shares
- Issue of ADR / GDR

**Sick Companies**

- Most mergers take place between loss making and profit making companies
- Restructuring as per Sick Industrial Companies Act, 1985 (SICA)
- Measures for revival of sick companies
- Amendment of SICA

**Purpose of Competition Act**

- Ensure that small and medium-sized enterprises have an equitable opportunity.
- Provide consumers with competitive prices and product choices.
- Promote employment and advance the social and economic welfare.
- Promote a greater spread of ownership, in particular to increase the ownership stake of disadvantaged persons

### Combination

A merger or amalgamation will amounts to combination

- ☞ The parties to the acquisition jointly have –
  - Assets of more than INR 1000 crore or turnover of more than 3000 crore (in India).
  - Assets of value more than USD 500 million or turnover more than USD 1500 million
- ☞ Post acquisition, the group to which the target company would belong to and the target company itself must jointly have –
  - Assets of the value of more than INR 4000 crores or turnover more than INR 12000 crores( in India)
  - Assets of value more than USD 2 billion or turnover more than USD 6 billion ( anywhere).

### Requirements for Entering into Licit Combination

- Give notice to the Commission in the prescribed form and all necessary details
- On receipt of such notice the Commission will carry out an investigation of combination
- If combination will have an adverse effect on competition, the Commission will issue show cause notices to the concerned parties.
- On hearing the parties it will pass the appropriate order (Sections 29, 30 and 31 of the Competition Act, 2002.)

### References

- Avtar Singh, Company Law
- Muzumdar, Indian Companies Act
- Mergers and Aquisitions,
- [www.wikipedia.com](http://www.wikipedia.com)

# Tax Issues Governing Consolidation

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In the absence of Mr. S.P.Desai , Presentation made by Mr. Zubin Sanghvi (MMS Semester- III 2008-09 batch)

## PRESENTATION

### Tax Aspects of Mergers and Amalgamations

Need for rationalization of `laws relating to business.....

Tax concessions to conversion of proprietary /partnership -

Finance Act, 1998.

#### PROVISIONS OF FINANCE ACT

Amalgamation  
/merger of  
companies

Conversion of  
propriety concern/  
firm into a company

De-merger of a  
company

Slump Sale

### Merger -Combination of two or more companies

Assets and liabilities of one company are taken over by another Consideration is paid for and received in shares and both the merging partners receive money in future in the form of dividend /yields De - Merger

#### Amalgamation

- ☞ Defined u/s 2 (1B) of the Income-tax act
  - PROPERTY
  - LIABILITIES
  - 3/4TH VALUE OF SHARES
- ☞ SET OFF (Sec 72A)
  - NATURE OF COMPANY
  - 75% OF BOOK VALUE
  - CONDITION UNDER RULE 9C

#### Tax concessions/ incentives in the case of amalgamation

##### 1. Tax concessions to Amalgamating Company

Gift Tax Act not attracted

##### 2. Tax concessions to the shareholders of the amalgamating company.

Consideration of the allotment  
to him of any share

##### 3. Tax concessions to the amalgamated company.

As per section 72, the amalgamated company can carry forward the business loss – of the amalgamating company subject to certain conditions. Where it is not possible to satisfy such conditions, the companies may opt for a reverse merger

## Slump Sale -Sec.2(42C)

- ☞ **Transfer of one or more undertaking**
- ☞ **Treatment of profits or gains** “Net Worth” shall be the aggregate value of total assets of the understanding.

## Slump Sale u/s 50B

### Advantages

No distinction between depreciable and non-depreciable assets.  
Only 20% tax rate  
The gain on slump sale is treated as long term  
Exemption under sections 54EC, 54ED

### Disadvantages

Denial of Indexation

## Capital Gains Tax

### Section 47 ( vi ) & ( vii )

- **Transfer does not include any transfer in a scheme of amalgamation**
- **Transfer by Shareholders**
- **Bonds and Debentures**





**Transactions not regarded as Transfer – Sec 47**

**Transactions not regarded as Transfer**

- Transfer of assets to amalgamated company
- Transfer of shares of Indian company in case of foreign amalgamation
- Tax incidence in the hands of shareholders of the amalgamating company
- Composite Consideration
- Period of holding of shares in the amalgamated company
- Cost of acquisition of shares in the amalgamated company

**Value Added Tax**

- Should not apply to Sale of Entire Business
- Sale of Individual Assets

**Stamp Duty**

- Transfer of Assets by way of a slump, sale would attract stamp duty
- Transfer of Shares is subject to transfer taxes

**Tax Issues in  
Hutchison – Essar & Vodafone deal**



**Ranbaxy-Daiichi deal**

Ms. Sukhada Waknis

## HR Issues Governing Consolidation

Though employees are the most important resource of an organization, they become the most ignored ones, when it comes to negotiating a merger or an acquisition. Numerous studies in the past decade indicate that getting HR involved early on in a negotiation significantly increases the chances of success. A properly formulated communication plan will pay dividends.

### Reasons for the negligence of the human resource issues and activities:

- Lack of awareness that the human issues are critical most
- No spokesperson to articulate these issues
- The belief that they are too soft and therefore hard to manage
- There is no model or tool to understand and to manage the human issues
- The focus while Mergers and Acquisitions are on other activities rather than on human issues

HR plays the most critical role in merger and acquisition, by facilitating smooth transition of teams, educating managers and employees, reinforcing new culture, reducing communication gap, developing actions to retain key employees and bringing about slowly and smoothly the cultural change.

M&A should aim at creating a win-win situation, with focus on the value-drivers, creating a strong culture of personal responsibility. The merger and acquisition is not the end, but the beginning.