INDIA

Country M&A Team

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1. Introduction

1.1 General Information on M&A in India

India is the largest democracy in the world with a stable political system. Although agriculture plays a crucial role in maintaining its economy, the developing Indian economy is supported by a sophisticated industrial base with a wide spectrum of industries. There has been a phenomenal growth in the service sector in the past few years particularly in the areas of financial services, computer software development, IT-enabled services and telecommunications.

With substantial foreign exchange reserves showing a rising trend, India's balance of payments position is comfortable. Its current inflation rate is among the lowest in the world.

Some factors which make India an attractive destination for foreign investors include an established and fair judicial system, the widespread use of English in business and commerce, and a pool of low-cost and highly skilled workforce especially in the field of software development and IT-enabled services. These factors, coupled with the burgeoning middle class, have turned the Indian marketplace into a hot spot for foreign investors.

1.2 Corporate Tax

The corporate income tax rates for a domestic company and a foreign company are as follows:

Domestic Company:	33.66% (30% plus surcharge of 10% and education cess of 2%)
Foreign Company: (Branch/Project office)	41.82% (40% plus surcharge of 2.5% and education cess of 2%)

All incomes accruing or arising in India are taxable in India. A resident of India is liable for tax on its worldwide income subject to double tax relief provided under either the domestic law or a relevant double tax agreement. A non-resident is only subject to India tax on income sourced or received in India.

Taxable income is computed for uniform accounting year, i.e. the fiscal year from 1st April to 31st March.

The taxable income, called "Total Income", is computed after adding certain disallowances, such as book loss on sale of asset and miscellaneous expenditure written off, and reducing certain allowances/benefits from the book profits.

1.2.1 Minimum Alternate Tax

With an object to bring zero tax companies under the tax net, Minimum Alternate Tax (MAT) at 7.5% (plus applicable surcharge and education cess) of book profits is levied on companies whose tax payable under normal Income Tax provisions is less than 7.5% of book profits. MAT rate is proposed to be increased to 10% with effect from 1st April 2006 under the Finance Bill 2006.

However, an exemption is granted in the case of profits of units set up under the 100% Export Oriented Units (EOU), Software Technology Park (STP), Export Processing Zones (EPZ), Special Economic Zones (SEZ) scheme and developer of an SEZ.

A credit of such tax paid under MAT provisions by a company with effect from FY 2005/2006 is allowed against the tax liability which arises in subsequent five years under the normal provisions of the Income Tax Act. The Finance Bill 2006 has proposed to increase the MAT credit period to seven years.

The effective MAT rates are as follows:

- in the case of a domestic company - 8.42%, including surcharge and education cess (11.22% w.e.f. 1st April 2006); or
- in the case of a foreign company - 7.84%, including surcharge and education cess (10.46% w.e.f. 1st April 2006).

Per the proposals of Finance Bill 2006, MAT is also payable on otherwise exempt long-term capital gains from the sale of listed equities through stock exchange or units of equity oriented mutual funds.

1.2.2 Dividends

Dividend income is exempt in the hands of the shareholders. However, a dividend distribution tax at 12.5% (plus surcharge and education cess) is levied on companies declaring dividend. An exemption from this tax is granted in the case of profits from SEZ developments. Effective dividend distribution tax rate on domestic companies is 14.03%.

1.2.3 Capital Gains

Gains on sale of assets are subject to tax at the rates depending on the duration of ownership. The rates are as follows:

Short-term capital assets (other than short-term capital assets below – refer to Note A)	Normal corporate/tax rates
Short-term capital assets: Listed shares and units of equity fund, which have been charged to Securities Transaction Tax (STT)	10% (refer to Note B)
Long-term capital assets: Listed shares and units of equity fund, which have been charged to STT	Exempt (Refer to Note C)
Other long-term capital assets	20%

Notes:

- Short-term capital asset is one which is held for a period of less than three years (one year in the case of shares and securities).
- Short-term capital gains on securities sold by any person, including a registered Foreign Institutional Investor (FII), through a recognised stock exchange are taxed at a flat concessional rate of 10% (plus applicable surcharge and education cess) provided such sales have been charged to STT ranging from 0.013% to 0.2% (0.017% to 0.25% w.e.f. 1st April 2006) depending on nature and mode of transaction.
- Income from transfer of stocks and securities with a holding period of 12 months, through a recognised stock exchange in India, is exempted from tax provided such transfer has been charged to STT. However, such income will be subject to MAT w.e.f. 1st April 2006, per the proposal of Finance Bill 2006.

Indexation of the cost of acquisition and improvement of a long-term capital asset other than debentures is available to residents.

1.2.4 Tax Losses

Change in ownership of a “widely held” company through share acquisition does not affect the carry forward and setoff of unabsorbed business loss and unabsorbed depreciation within the permitted period.

However, where the acquired company is a company in which the public is not substantially interested (i.e. a closely held company whose shares are not listed in any recognised Indian stock exchange), the benefit of unabsorbed business loss is lost if on the last day of the fiscal year in which the acquisition takes place, shares carrying at least 51% of the voting rights are not beneficially held by the same shareholders who beneficially held shares of the acquired company carrying not less than 51% of the voting power as on the last day of the fiscal year in which the loss was incurred.

The above restriction is not applicable where the acquired company is a subsidiary of a foreign company and at least 51% of the shareholders of the parent foreign company pursuant to a scheme of amalgamation or de-merger continue to remain shareholders of the amalgamated or de-merged foreign company.

1.2.5 Thin Capitalisation

India does not have formal thin capitalisation rules for tax purposes. But for the prescribed debt-equity ratio under the exchange control regulations, debt-equity mix is generally driven by commercial considerations.

1.3 Other Taxes

Other taxes relevant for the purpose of mergers and acquisitions are as follows.

1.3.1 Value Added Tax (VAT) & Sales Tax

State level sales tax has been replaced by VAT with effect from 1st April 2005 in a majority of Indian States. The sales tax regime will continue in the States which have decided against introducing VAT at this point of time.

Under the VAT regime, the VAT paid on goods purchased from within the State will be eligible for VAT credit. The input VAT credit may be utilised against the VAT/Central Sales Tax (CST) payable on the sale of goods thus ensuring that cascading effect of taxes is avoided and only the value addition is taxed.

CST will continue to coexist with the State VAT. Inter-state procurement, on which CST is charged by the originating State, will not be eligible for input tax credit. Further, inter-state branch/ consignment transfers will be exempt from VAT and hence not eligible for input tax credit. However, certain States are allowing input tax credit in excess of 4% on inter-state stock transfers.

Presently, there would be no VAT on imports into India. Exports will be zero-rated. This would mean that while output exports will not be charged with VAT, inputs purchased and used in the manufacture of export goods will be refunded.

The State VAT will be charged at uniform tax rates of 1%, 4% and 20%. Goods that are presently charged at either 8% or 12% will be charged at a Revenue Neutral Rate (RNR) of 12.5%. Most goods will thus be charged at this RNR.

Turnover thresholds have been prescribed to keep out small traders from the ambit of the VAT. A turnover tax may be levied on such small traders in lieu of the VAT.

VAT registered dealers will need to issue serially numbered invoices with prescribed particulars.

The periodicity of filing of VAT returns will remain the same as prescribed in the erstwhile sales tax regime.

With this introduction of a comprehensive self assessment VAT, turnover taxes, surcharges, additional surcharges and the special additional tax have been abolished.

An Empowered Committee is currently considering introduction of coding in terms of the Harmonised System of Nomenclature for commodities under the VAT.

1.3.2 Stamp Duty

Stamp duty is not imposed on transfer of shares held in the dematerialised mode. However, transfer of shares held in physical form attracts stamp duty generally at 0.5% statutorily payable by the buyer. Stamp duty is levied on transfer of immovable property at rates varying from state to state.

1.3.3 Banking Cash Transaction Tax

With effect from 1st June 2005, banking cash transaction tax is imposed at 0.1% on amount of cash withdrawn or cash received on encashment of term deposits on a single day from an account (except savings account) exceeding:

- INR 25,000 in the case of individual; and
- INR 100,000 in other cases.

1.4 Common Forms of Business Entity

The principal forms of business organisation in India apart from Government concerns are:

- Company

  A company may be incorporated under the Indian Companies Act either as a public or private company. To qualify as a private company, its Articles of Association must provide for the restriction of the right to transfer its shares, limit the number of shareholders to 50 and prohibit invitation to the public to subscribe to shares or debentures. All companies other than private companies are public companies.

  The liability of the company may be limited by shares.

- Partnership

  The Indian Partnership Act is the governing law which prohibits partnerships of more than 10 persons from carrying on the business of banking and more than 20 persons for other business.

  Limited liability partnerships are currently not legally recognised. However, as per the partnership bill introduced in the Parliament, there is a proposal to allow limited partnership for certain kind of professionals.

- Sole Proprietor

  There are no special provisions corresponding to Companies Act or Partnership Act governing sole proprietorships. However, the Indian Income Tax Act makes it obligatory to have compulsory audit if the turnover/gross receipts from a business or profession exceeds certain prescribed limits.

- Association of Persons

  A joint venture, distinct from a partnership, is formed for a specific purpose. It is not a legal entity separate from the joint venture members. For tax purposes, a joint venture formed with the intention of carrying out a common purpose and produce income jointly is treated as an association of persons and constitutes a taxable entity.

1.5 Foreign Ownership Restrictions

1.5.1 Foreign Direct Investment (FDI)

Today, India has probably one of the most open liberal investment regimes among the emerging economies with a conducive FDI environment. Opportunities exist for investment in India in sectors as diverse as tourism, infrastructure, petrochemicals and mining technology and engineering. There are new areas where companies may invest such as real estate development, biotechnology and bio-informatics. Indian's government has passed the Special Economic Zones Act 2005 which provides an internationally competitive and comfortable environment to manufacture and/or provide services for export out of India.

The combination of macro economic stability, commitment to continued liberalisation and the expanding trade and economic linkages make India an attractive destination for companies worldwide. During the first two months of FY 2005/2006, India received FDI inflows of USD 912 million, registering an increase of more than 116% over the same period during the last FY. There have been a number of key elements in India's growth, but among the most critical is a democracy with political consensus on the economy. India has a well-established, independent judiciary where normal business risks are tempered by the presence of independent courts, politicians, and a free

press. India has an abundantly qualified and competent human resource base – fluent in English with research and development (R&D) skills, technological training and managerial capabilities. India has untapped natural resources, rich mineral base, agricultural surplus and a huge manufacturing capability spanning almost all sectors. The consumer market is large and expanding exponentially. Special investment and tax incentives are available for promoting exports and for infrastructural development. In terms of potential, with its large scale investment absorption capacity and with strong economic fundamentals and momentum, India offers attractive returns to prospective investors.

1.5.2 Automatic Route

FDI up to 100% for new and existing companies, joint ventures and firms is permitted under the automatic route (i.e. without requiring prior approval) for all items and activities except the following:

- proposals that require compulsory industrial licensing;
- where the foreign collaborator has an existing venture/tie-up in India in the same field ("same field" means 1987 NIC code) as on 12th January 2005, with the exception of the following cases which would not require prior approval from the regulatory authority - Foreign Investment Promotion Board (FIPB):
  - investment by a Venture Capital Fund registered with Substantial Acquisition of Shares and Takeover (SEBI);
  - existing joint venture has less than 3% investment by either party; and
  - existing joint venture is defunct or sick.
- acquisition of shares from resident shareholders of an existing Indian company in the following cases; and
  - Indian company is engaged in the financial services sector; and
  - where the SEBI Regulation 1997 is triggered.
- proposals falling outside notified sectoral policy/caps or sectors in which FDI is not permitted.

1.5.3 FIPB Route

In all other cases of foreign investment, where the project does not qualify for automatic approval (as given above), prior approval is required from FIPB. Decision of the FIPB is normally conveyed within 30 days of submitting the application. The proposal for foreign investment is decided on a case-to-case basis depending upon the merits of the case and in accordance with the prescribed sectoral policy.

Generally, preference is given to projects in high priority industries, infrastructure sector, those having export potential, large-scale employment opportunities, linkages with agro sector, social relevance or relating to infusion of capital and induction of technology.

1.5.4 Downstream Investment

Downstream investments by foreign-owned Indian holding companies are treated at par with FDI guidelines. Prior approval of FIPB is required to act as a holding company. Domestic funds may not be leveraged by the foreign-owned Indian holding company for downstream investments.

1.5.5 Investment by Non-Resident Indians (NRIs)

NRIs are also permitted to purchase and sell shares/convertible debentures under the portfolio investment scheme on repatriation and/or non repatriation basis through a branch designated by an authorised dealer for the purpose and duly approved by the RBI, subject to fulfillment of certain conditions.

Under the non-repatriation scheme (i.e. capital is not allowed to be repatriated outside India), NRIs are permitted to invest in all activities except in a company which:

- is a Chit-Fund;
- a Nidhi Company; or
- is engaged in agricultural/plantation activities, or real estate business, or construction of farmhouses or dealing in transfer of development rights.

The total holding by each NRI may not exceed 5% of the total paid-up equity capital or 5% of the paid-up value of each series of convertible debentures issued by an Indian company. Further, the total holdings of all NRIs put together cannot exceed 10% of paid-up equity capital or paid-up value of each series of convertible debentures. This limit of 10% may be increased to 24% by the concerned Indian company by sanction of the shareholders through a special resolution.

1.5.6 Investment by Way of Acquisition of Shares

Acquisitions may be made from an existing Indian company which is either a privately held company or a company in which the public is interested (i.e. a company listed on stock exchange), provided a resolution to this effect has been passed by the Board of Directors of the Indian company.

Acquisition of shares of a public listed company is subject to the guidelines of the SEBI. SEBI's Take-Over Code Regulations require that any person acquiring 15% or more of the voting capital in a public listed company should make a public offer to acquire a minimum 20% stake from the public.

Foreign investors looking at acquiring equity in an existing Indian company through stock acquisitions can do so without obtaining approvals except in the financial services sector, provided:

- such investments do not trigger off the takeover provisions under the SEBI's Substantial Acquisition of Shares and Takeovers Regulations 1997; and
- the non-resident shareholding after transfer complies with sectoral limits under FDI Policy.

As per RBI valuation norms, acquisition price should not be lower than:

- prevailing market price (in the case of listed companies); and
- Fair Market Value as per CCI valuation guidelines (in the case of unlisted companies).

1.5.7 Investment by Foreign Institutional Investors

A registered Foreign Institutional Investor (FII) may, through SEBI, apply to RBI for permission to purchase the shares and convertible debentures of an Indian company under the Portfolio Investment Scheme.

FIIs are permitted by RBI to purchase shares/convertible debentures of an Indian company through registered brokers on recognised stock exchanges in India. They are also permitted to purchase shares/convertible debentures of an Indian company through private placement/arrangement.

The total holding by each FII/SEBI approved sub-account of FII cannot exceed 10% of the total paid-up equity capital or 10% of the paid-up value of each series of convertible debentures issued by an Indian company. Further, the total holdings of all FIIs/sub-accounts of FIIs put together cannot exceed 24% of paid-up equity capital or paid-up value of each series of convertible debentures. This limit of 24% may be increased to the specified sectoral cap/statutory ceiling, as applicable, by the Indian company concerned by passing a Board of Directors' resolution followed by sanction of the shareholders through a special resolution to that effect.

1.5.8 Technology Transfer

For promoting an industrial environment, which accords priority to the acquisition of technological capability, foreign technology induction is encouraged both through FDI and through foreign technology collaboration agreements. Foreign collaboration agreements are permitted either through the automatic approval route or with prior approval from the Government.

1.5.9 Automatic Approval

No approvals are required in respect to all those foreign technology agreements, which involve:

- a lump sum payment of up to USD 2 million; and
- royalty payable up to 5% on net domestic sales and 8% on exports, subject to a total payment of 8% on sales, without any restriction on the duration of royalty payments;

1.5.10 Government Approval

Government approval from the Ministry of Industry is necessary for the following categories of foreign technical collaboration agreements:

- proposals attracting compulsory licensing;
- items of manufacture reserved for the small-scale sector;
- proposals involving any existing joint venture, or technology transfer/trademark agreement in the "same field" in India; and
- proposals not meeting any or all of the parameters for automatic approval.

It is permissible for an Indian company to issue equity shares against lump sum fee and royalty in convertible foreign currency already due for payment/repayment, subject to meeting all applicable tax liabilities and procedures.

2. Structuring a Share Deal

2.1 Seller's Perspective

2.1.1 Profit on Sale of Shares

Gains derived from transfer of shares in Indian companies are subject to tax in India at the rates prescribed previously as Capital Gains (see section 1.2.3).

For the purpose of computing the capital gains tax liability, the cost of acquisition, expenses incurred in connection with the transfer and the consideration receivable for the transfer are required to be converted in the same foreign currency as that utilised for the purchase of such capital asset and the resultant capital gain reconverted into INR.

However, no capital gains tax is imposed on transfers of shares in Indian companies by one foreign company to another in a scheme of amalgamation, if at least 25% of the shareholders of the amalgamating company continue to remain as the shareholders of the amalgamated company and the transfer is exempt from capital gains tax in the country where the amalgamating company is located.

2.1.2 Distribution of Profits

Distribution of profits will depend on the form of the business entity of the Target Company. In a corporate entity, Indian Company Law regulations require a maximum retention up to 10% of the profits prior to distribution of dividends except in the case of liquidation. Under the existing laws, the company distributing dividend of the balance of the profits after the retention of the amount required under the Indian Company Law regulations has to pay dividend distribution tax at an effective rate of 14.03%.

The balance may be distributed to the shareholders by way of dividend without any withholding tax because dividends under the existing laws are not taxed in the hands of the shareholders.

2.2 Buyer's Perspective

2.2.1 Acquisition Structure

In a share deal, the cost of the assets may not be revalued. Further, in the case of the acquisition of a listed company, the acquirer has to comply with the Takeover Code regulations which, inter alia, make it mandatory for the acquirer to make an open offer to the public shareholders of the acquired company for purchasing their holding.

Acquisition through an overseas intermediate company (having substance) located in Mauritius or Singapore can be considered because of preferential tax treatment with regard capital gains tax under the respective treaties.

This remains the most preferred method of acquisition and it is also cost effective as compared to an asset deal because of stamp duty implications.

2.2.2 Funding Costs

Under the existing tax regime, it is preferable to treat the financing costs incurred in acquiring the shares as a part of the cost of acquisition because such costs are not tax deductible against the dividend income which is exempt from tax in the hands of the shareholders.

2.2.3 Acquisition Expenses

The acquisition expenses directly related to the share purchase are allowed to be added to the cost of the shares and are eligible for tax deduction in determining capital gains on sale.

2.2.4 Debt/Equity Requirements

There are no prescribed debt-equity ratios (except under the exchange control regulations), which are generally driven by commercial considerations.

2.2.5 Preservation of Tax Losses

The benefit of tax concessions, incentives, carry forward of prior years' tax losses and unabsorbed depreciation is not lost in a share deal involving the acquisition of a company except in case of a company in which the public is not substantially interested to the extent indicated under section 1.2.4.

2.2.6 Repatriation of Profits

Repatriation of profits in a share deal can only be through the dividend route. The tax implications, both for the company distributing the dividend and the shareholders, have been dealt with under sections 1.2.2 and 2.1.2.

Stock dividends (on equity shares) in the form of bonus shares are not taxable in the hands of the recipient. However, the entire consideration received on any subsequent sale of such shares would be subject to capital gains as the cost of acquisition of such shares is considered to be nil.

3. Structuring an Asset Deal

3.1 Seller's Perspective

3.1.1 Profit on Sale of Assets

In the case of depreciable assets, the income tax written down value of the block of assets (ITWDV) is reduced by the consideration received from the sale and consequently depreciation at the rate applicable to the block of assets is allowed on the reduced ITWDV. If the consideration receivable for the transfer of the assets exceeds the ITWDV, the excess is considered to be a short-term capital gain and subjected to tax at the corporate tax rate applicable to the entity. In the case of non-depreciable assets, the short-term capital gain is taxed at the corporate tax rate applicable to the entity whereas the long-term capital gains computed (after allowing indexation benefits and substitution of the cost price as on 1st April 1981 if purchased prior to that date) attracts capital gains tax at 20% plus applicable surcharge and cess.

For the purpose of computing the capital gains tax liability, the valuation adopted by the registration authorities for levy of stamp duty in connection with the transfer of immovable property shall be adopted if it is more than the consideration receivable for the transfer of the said immovable property.

The seller would be liable to VAT/sales tax on movable property at appropriate rates depending on whether it is an inter-state or intra-state sale.

3.1.2 Distribution of Profits

Distribution of profits will depend on the form of the business entity of the Target Company. In a corporate structure, it can be distributed by way of dividends. The tax implications for both the company distributing the dividend and the shareholders have been dealt with under sections 1.2.2 and 2.1.2.

3.2 Buyer's Perspective

3.2.1 Acquisition Structure

In an asset deal, the acquirer may opt to buy the assets of the company for a slump price and, based on a valuation report, allocate the purchase price properly to the respective assets to ensure the maximum benefit on account of depreciation and amortisation allowed under the tax laws.

It should be kept in mind that the buyer would be liable for stamp duty on transfer of immovable property at a rate which varies from state to state.

The purchase of assets of an Indian company by a foreign company requires the permission of the regulatory authorities unless the purchase is routed through an Indian subsidiary of the foreign company.

3.2.2 Funding Costs

If the assets are acquired through an existing Indian subsidiary engaged in business, the interest on loan taken for the acquisition of the assets is considered as a tax-deductible expenditure to the Indian company.

3.2.3 Acquisition Expenses

The acquisition expenses directly related to the purchase of the assets will be added to the cost of the assets and be eligible for depreciation allowance in the case of depreciable assets. For non-depreciable assets, such costs will be eligible for tax deduction when the assets are sold.

3.2.4 Cost Base Step Up

In an asset deal, the acquirer may opt for buying the assets of the company for a slump price and based on a valuation report allocate the purchase price properly to the respective assets to reap maximum benefit on account of depreciation allowance and amortisation allowed under the tax laws.

This may be resisted by the seller for adverse income tax as well as sales tax implications.

3.2.5 Treatment of Goodwill

The goodwill arising out of an asset deal cannot be amortised by the buyer to claim tax benefits. However, the benefit of the cost of acquisition is available on subsequent disposal. Currently, the cost of intangible assets (such as know-how, patents, copyrights, trademarks, franchises or any other business/commercial rights of a similar nature) can be depreciated at the prescribed rates. Due regard should therefore be given for identifying and allocating proper values to such intangible assets.

3.2.6 Other Matters

An asset deal normally attracts heavy incidence of stamp duty at rates varying from state to state on transfer of immovable property which the acquirer has to bear.

4. Concessions Relating to M&As

Any “transfer”, unless specifically exempted, attracts capital gain tax. However, subject to conditions, specified reorganisation schemes, such as amalgamations or de-mergers are exempted from the levy of such tax.

4.1 Amalgamations

Specified conditions in case of an amalgamation of one or more companies into one includes all assets and liabilities of the amalgamating companies become assets/liabilities of the amalgamated company and the shareholders holding 75% of the share value in the amalgamating companies become shareholders of the amalgamated company.

4.2 De-mergers

A “de-merger” refers to the transfer, pursuant to a scheme of arrangement under the Indian Companies Act, by a de-merged company of one or more of its undertakings to any resulting company in such a manner that all the assets and liabilities being transferred by the de-merged company becomes the property of the de-merged company and appear at its values and the resulting company issues, in consideration of the de-merger, its shares to the shareholders of the de-merged company on a proportionate basis.

Moreover, the shareholders holding at least 75% in value of the shares in the de-merged company become shareholders of the de-merged company and the transfer of the undertaking is on a going concern basis.

4.3 Amortisation of the Amalgamation/De-merger Expenses

In computing taxable income, the reorganisation expenses on account of amalgamation/de-merger is amortised at 20% per annum over a five year period.

4.4. Provisions Relating to Carry Forward and Set off of Accumulated Loss and Unabsorbed Depreciation Allowance in Amalgamation or De-merger

Subject to certain conditions, the accumulated tax loss/depreciation of an amalgamating company engaged in industrial undertaking/ship/hotel/banking business shall be considered as deemed tax loss/depreciation of the amalgamated company provided:

- the amalgamating company having brought forward tax loss/depreciation has been engaged in that business for at least three years, and it has held continuously (as on the date of the amalgamation) at least 75% of the book value of fixed assets for two years prior to the date of amalgamation; and
- the amalgamated company holds at least 75% of the book value of fixed assets of the amalgamating company as well as continuing with the business for five years, besides adhering to certain other prescribed conditions.

4.5 Slump Sale

“Slump sale” refers to the transfer, where an undertaking is transferred at a lump-sum consideration without values being assigned to the individual assets and liabilities in such sales. Any consideration in excess over the “net worth” arising from the slump sale is chargeable to capital gain tax.

The term “net worth” is the excess of book assets over the value of liabilities of the undertaking transferred. The net worth computation requires authentication by a Chartered Accountant.

5. Exit Route

The exit route, in the case of a share deal, is the transfer of the shares of the Indian company. The tax implications are indicated under section 2.1.1. Transfer of shares of offshore holding company can also be considered.

The exit route, in the case of an asset deal, is the transfer of the assets. The tax implications are indicated under section 3.1.1.

6. Ending Remarks: Preparation for a Deal

The relative considerations of the buyer and seller will depend on the facts of each case. The buyer should weigh the possibility of increasing the asset base through asset acquisition against high stamp duty, loss of unabsorbed losses and depreciation, and recapture of past capital allowances. The buyer should ensure that the acquisition is structured in a manner which will result in improving shareholder value and optimising return on investments.