

Restructuring Group Relief. What is new in the FTA's Guide?

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Multiple Examples

The FTA gives examples to illustrate Article 27 of the Corporate Tax Law and Ministerial Decision No. 133/2023

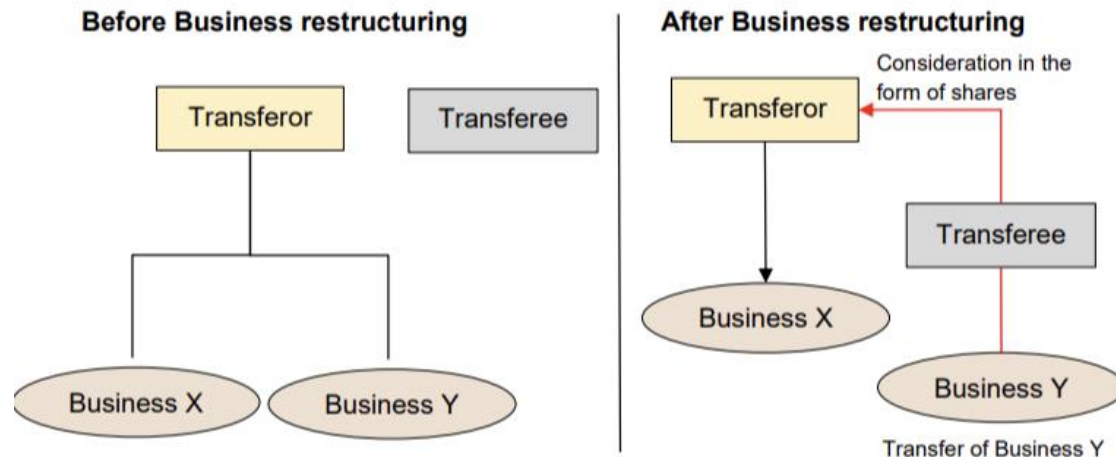


The examples, in particular, illustrate that, generally, the contribution of assets to the share capital is subject to Corporate Tax in hands of the transferor. If a Business or an independent part of it is transferred, an election may be made for BRR (Business Restructuring Relief) to exempt the gain.

Business Restructuring Relief

Corporate Tax Guide | CTGBRR1

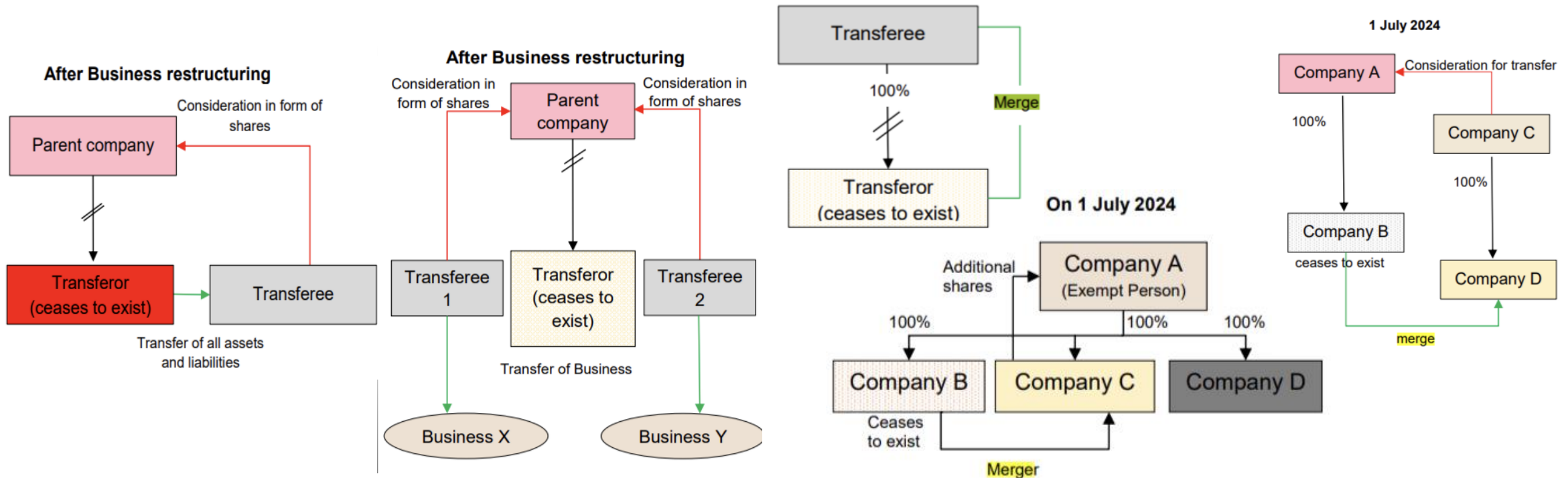
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If not, but the parties are members of a Qualifying Group, and the property is on capital account, then QGR (Qualifying Group Relief) may exempt the gain. **And if not, then capital gains are taxable in hands of the transferor.**

Succession in Title (merger, absorption, demerger...)

Examples show that Succession in Title is subject to Corporate Tax. If it does not fall under Business Restructuring or Qualifying Group Reliefs, the gain is taxable in hands of the successor.



And it is not only in the FTA's examples: '*Ordinarily, Business restructuring transactions such as mergers or demergers **could result in a taxable gain or loss...***'.

The FTA has unveiled the meaning of an 'independent part of Business'.



- The definition of Business had already been set out in the Law, but an 'independent part thereof' wasn't defined.
- *'An independent part of a Business refers to a part of the Business that may be operated independently and separately from the other Business of the Taxable Person'.*
- *'Individual assets or liabilities cannot be considered as an independent part of a Business, if they require ongoing support from the other assets and liabilities to be operated'.*
- *Part of 'an integrated pool of assets and liabilities could' be an independent part of a Business. For example, if a real estate investment company transfers pieces of real estate to individual holding companies, this can be an independent part of a Business, if the piece(s) transferred are capable of being operated independently and are not intertwined with the rest of the real estate'.*
- 'operational support' (accounts department, IT support, HR, etc.) is not required to be passed together with the principal component.

The FTA has added 'a going concern basis' condition



i.e. management neither intends to liquidate the relevant part of the Business nor to cease trading.

The FTA's Public Clarification VATP015 may come in handy.



'Part of a Business is transferred on a going concern basis as per' IFRS.

This concept is defined in IAS 1 (para 25-27).

Find the clarification from IASB [here](#).

Does ongoing mean unmodified?

In other words:

- Is it necessary to conduct the same business only to transfer the losses incurred by the transferred business,
- or
- Is this required for a tax neutral transfer itself.

Attributes of similarity

'Relevant factors for determining whether the Transferee has continued to conduct the same or a similar Business or Business Activity which was conducted by the Transferor prior to the transfer include:

The Transferee uses some or all of the same assets that were used by the Transferor prior to the transfer

The Transferee has not made significant changes to the core identity or operations of the Business since the transfer

Where there have been any changes, these result from the development or exploitation of assets, services, processes, products or methods that existed before the transfer

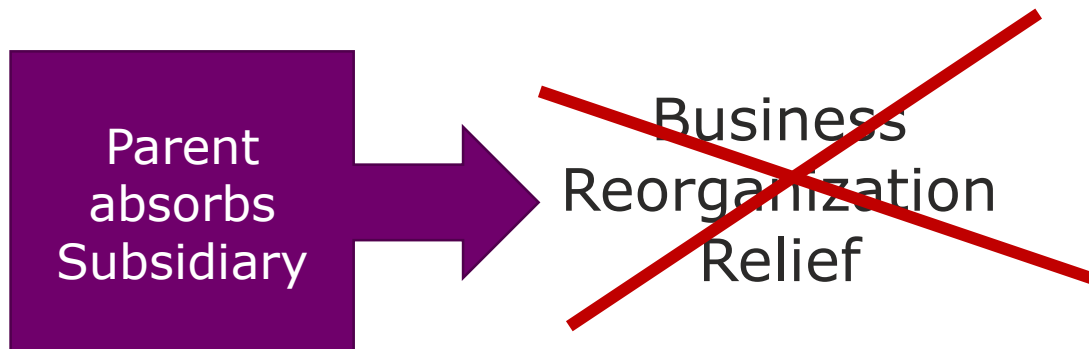
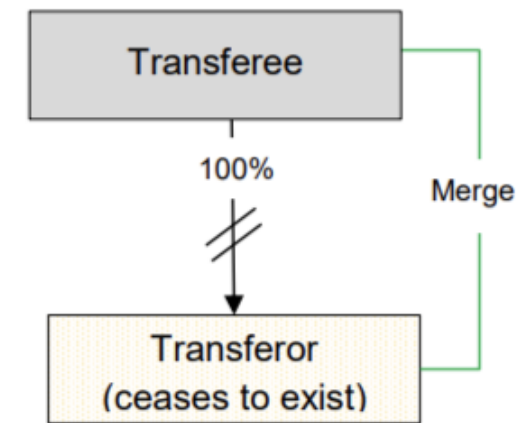


Apparently, '*continues to conduct the same or a similar Business*' doesn't matter for the Relief itself.

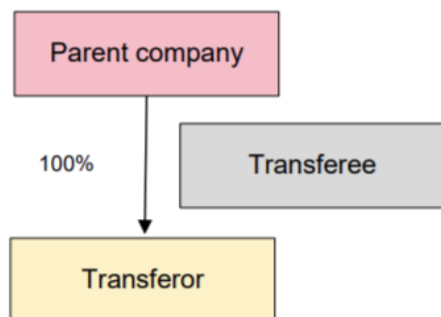
As per the Guide:

- Continuity requirements must be met on the basis of IFRS, and not according to the rules for transferring losses,
- The FTA provides continuity criteria in the section on transferring losses, but does not mention it in the sections on conditions for Relief.

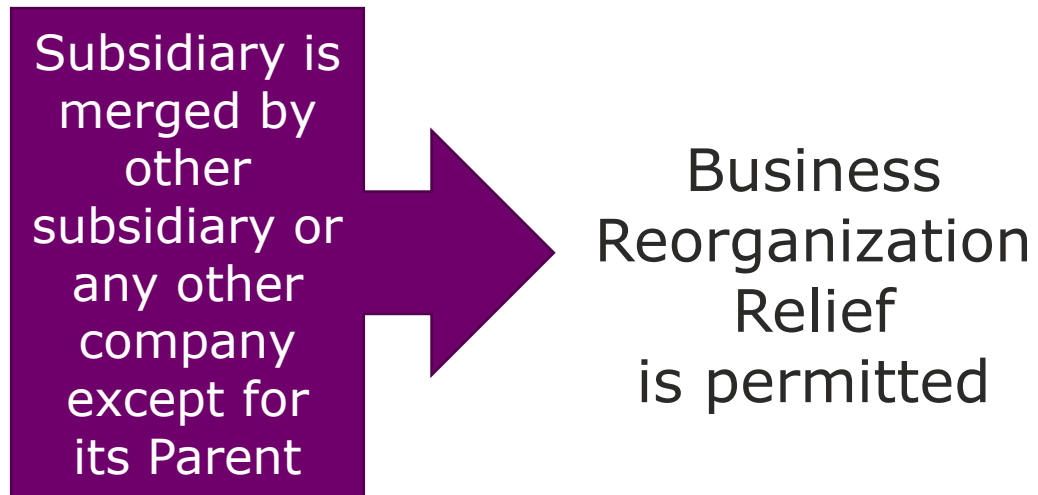
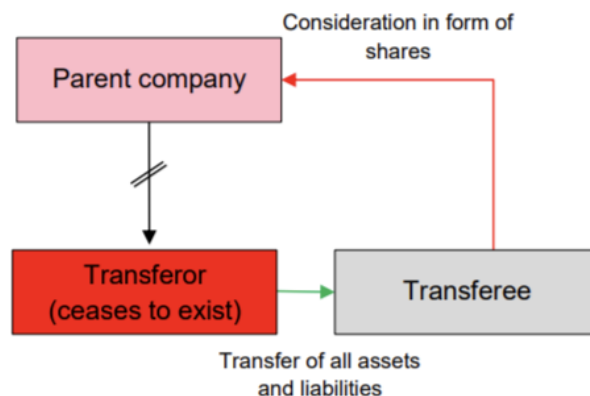
Examples with a merger (absorption)



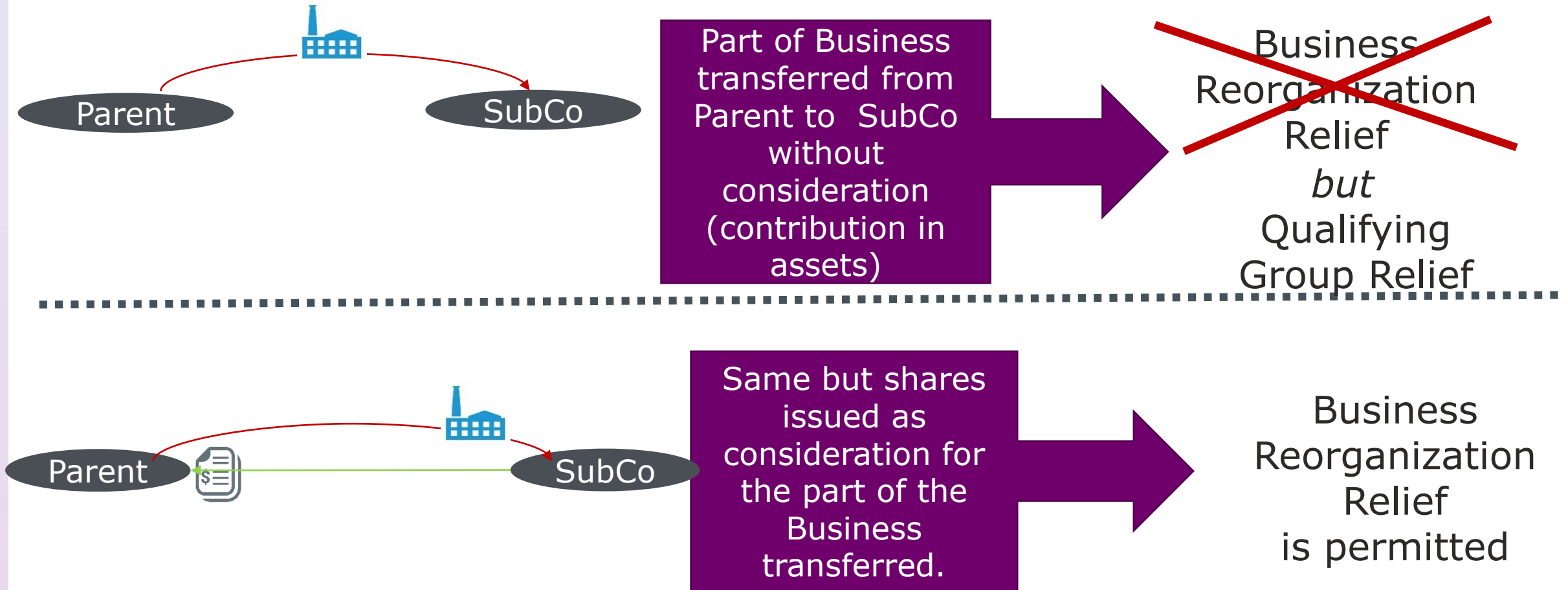
Before Business restructuring



After Business restructuring



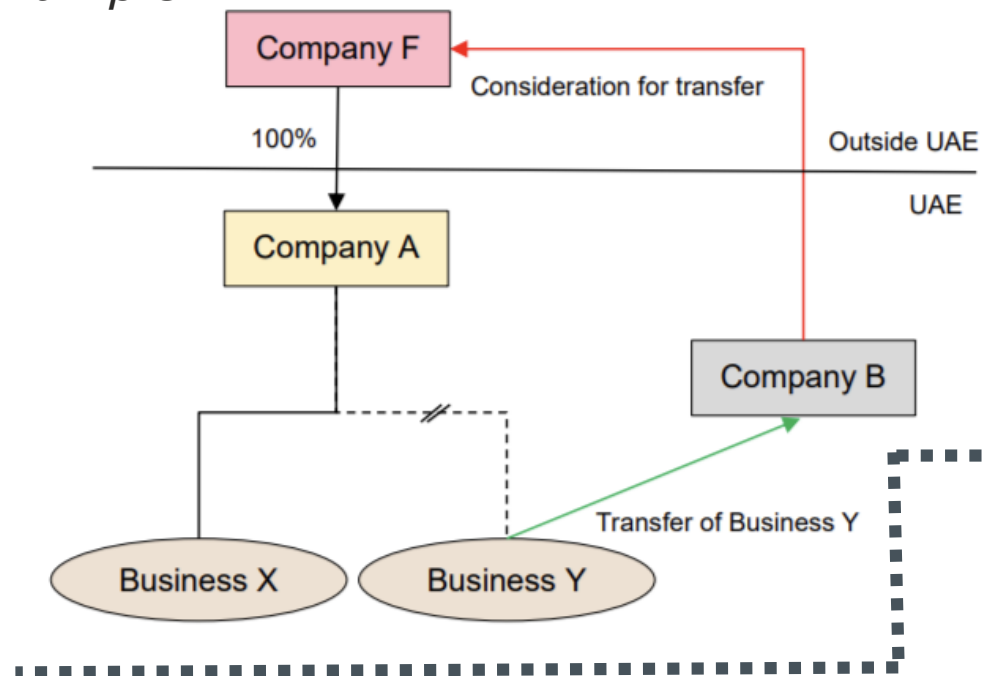
Transfer with or without the issuing of shares



Mismatch 1: One transferred the Business but another received the shares

Mismatch 2: One received the Business but another issued the shares

Example 1



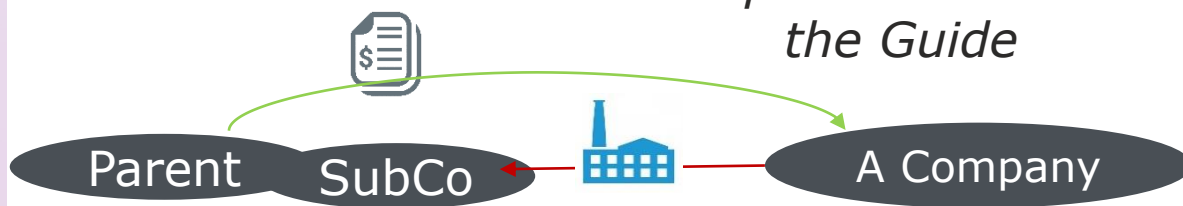
HoldCo transferred Business to SubCo but the latter issued shares to the Parent of HoldCo

Business Reorganization Relief

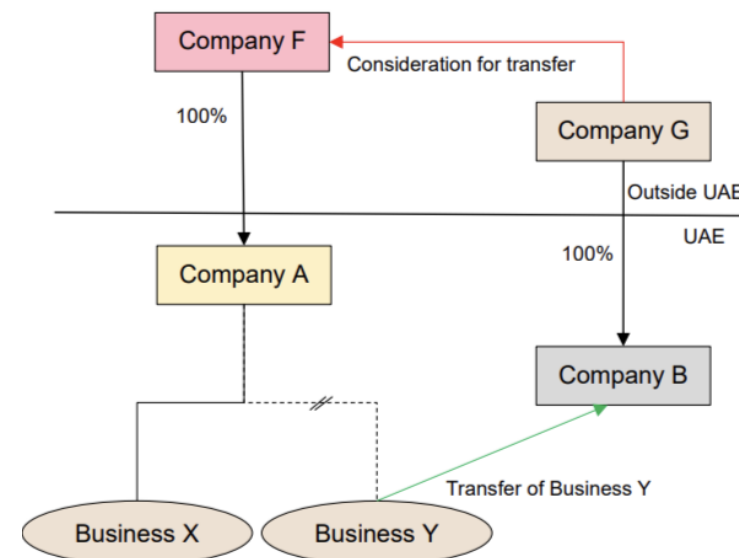
Parent issued shares in consideration for Business transferred to its SubCo



Example not included in the Guide



Example 2



Clarification for a 'legally compliant condition'

'By way of example', for 'a merger, all the requirements for a valid merger in terms of Articles 285 to 293 of the Commercial Companies Law must be met'

Nothing is said on compliance with Articles 36-68 of the Commercial Transaction Law, which governs Business Concern transfers.



Article 36

Business concern is the total tangible and intangible properties allocated for the practice of actual or virtual commercial business, whether in the technological circles, through the modern means of technology or through the conventional means.

Article 37

1. Business concern shall comprise the necessary elements for commercial work. Such elements are divided into tangible elements such as goods, equipment, machinery and tools, and intangible elements such as communication with customers, goodwill, trade name, right to lease, industrial, literary and artistic property rights and licenses.
2. Tangible elements in the business concern shall not be considered substantial, unlike the intangible elements without one element or more of which, there shall be no business concern.

Article 39 Each disposition which subject is the **transfer of title to the business concern** or creation of right in rem thereto **shall be notarized** or authenticated by the notary public as per the procedures defined by the competent authority **and registered in the commercial register**, or shall be invalid.

The unique specifics are yet to be clarified

The examples of adjustments for a transferee do not differ much from those given in the Guide for Qualifying Groups.

Apparently, assets and liabilities shall be transferred in tax accounting line by line.



The Qualifying Groups Guide states that assets not accounted for on the balance sheet (self-generated intellectual property, such as goodwill, a brand, or customer lists) do not fall under Qualifying Group Relief, but may fall under Business Restructuring Relief.

There is no explanation on this issue in the Restructuring Guide.

Apparently, it is to be recognized for tax accounting with zero value.





NEW

Clawback for a case of a subsequent transfer of shares issued by the transferee is inherent to this Relief only. Thus, there is no guidance on this in the Qualifying Group Guide.

The FTA in Example No. 9 illustrates that clawback is applicable only if shares issued as consideration for the transfer are transferred outside of the Qualifying Group.

The Qualifying Group saves you from clawback only if shares are transferred. This is not an excuse for a subsequent transfer of the Business or part thereof (compare Example 13 and Example 15)

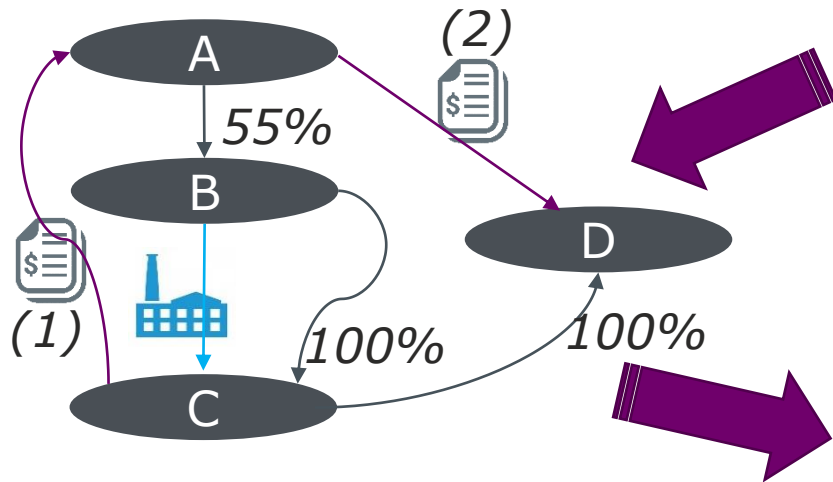
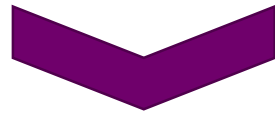


CLAWBACK



'The shares ... in the **Taxable Person that is the transferor or the transferee** are ... disposed of... to a Person that is not a member of the Qualifying Group **to which the relevant Taxable Persons belong.**

Art. 27(7)(a)



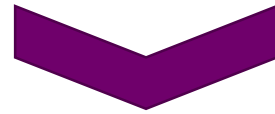
The FTA: 'The clawback can apply if the shares ... disposed of ... to a Person which does not form part of the **Qualifying Group with the Person transferring shares** ... Relief is not clawed back where shares... are transferred within a Qualifying Group of which the Person **who is transferring the shares** ... is a member.

C (transferee) and D (subsequent transferee) are members of the Qualifying Group, but A and D aren't (there is a 55% indirect holding). A↔D is relevant, but C↔D isn't. The clawback shall be applied



The transfer of even one share from the received package triggers the clawback

Art. 27(7)(a): the shares ... are sold,
transferred or otherwise disposed of, **in
whole or part, ...**
...



The FTA: *'This means the transfer **of a single share** which was earlier issued as part of Business Restructuring Relief could trigger the clawback, **even if the owners of the other shares in the Transferee remain unchanged.**'*

Apparently, the Relief shall
be lost for the whole
package, and pro rata



Which moment is relevant to check the Qualifying Group excuse?



- Option 1: moment of the transfer of the issue of shares
- Option 2: moment of the subsequent transfer of shares
- Option 3: moment of the subsequent transfer of shares
- Option 4: during the entire 2-year period



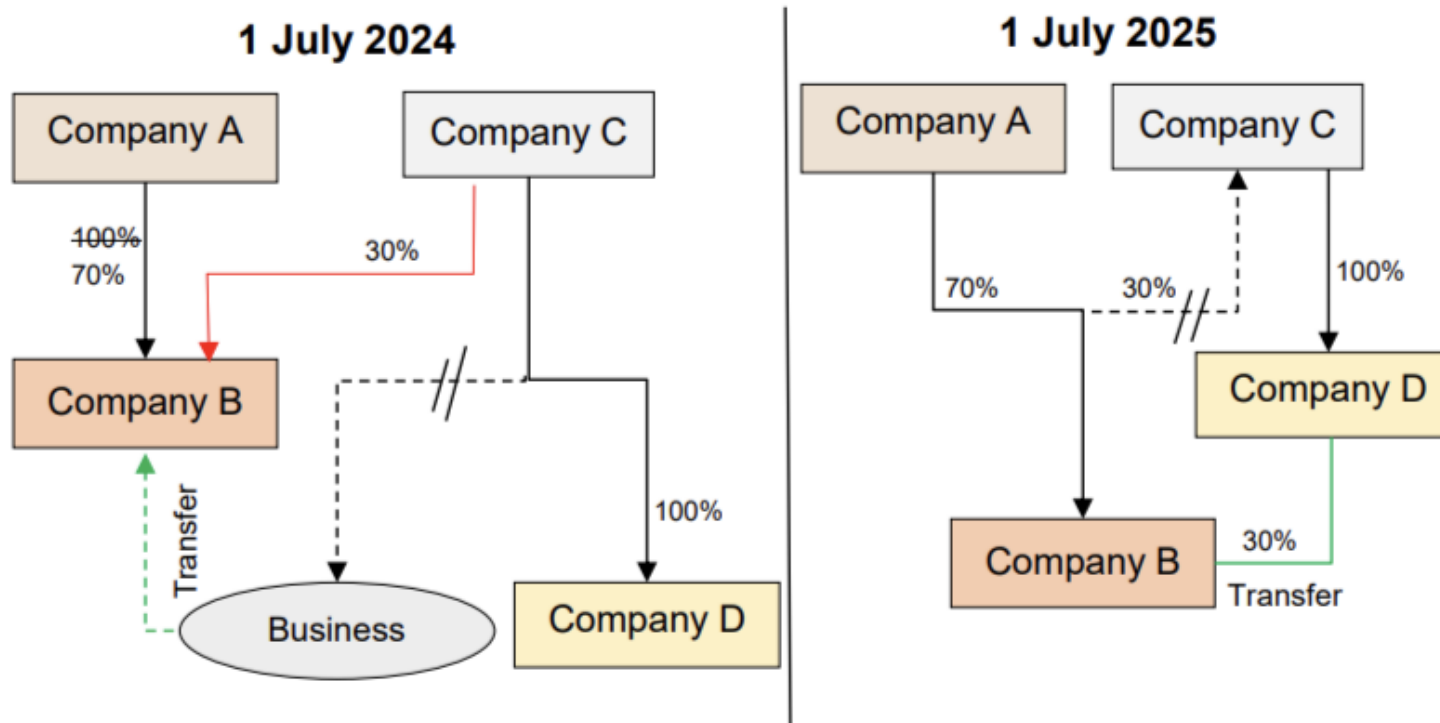
The FTA has elected the 2nd option: *'Whether the relevant Taxable Persons are in a Qualifying Group is tested at the time the shares in the Transferor or Transferee are being transferred'*.

The choice is demonstrated with 3 examples (see below)



Example 12

The example demonstrates a lack of the attributes of a qualifying group among those involved in the transfer of the Business.

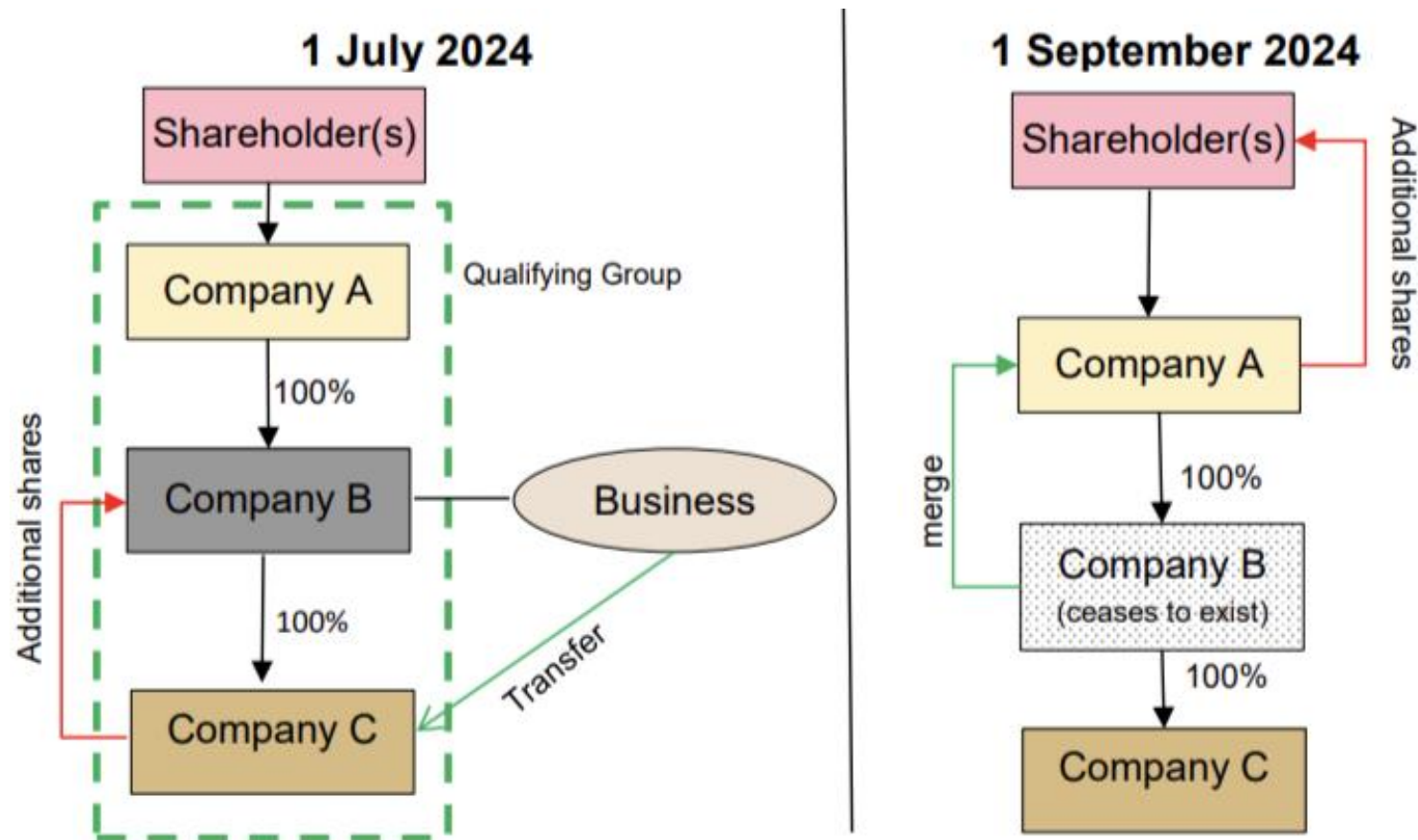


The clawback is not applicable, because the subsequent transfer of shares is between the members of the Qualifying Group.

Example 13: a subsequent merger of the Transferor π^g | Tax Consultancy

The example focuses on merger of the Transferor (B) with another member of a Qualifying Group (A), that:

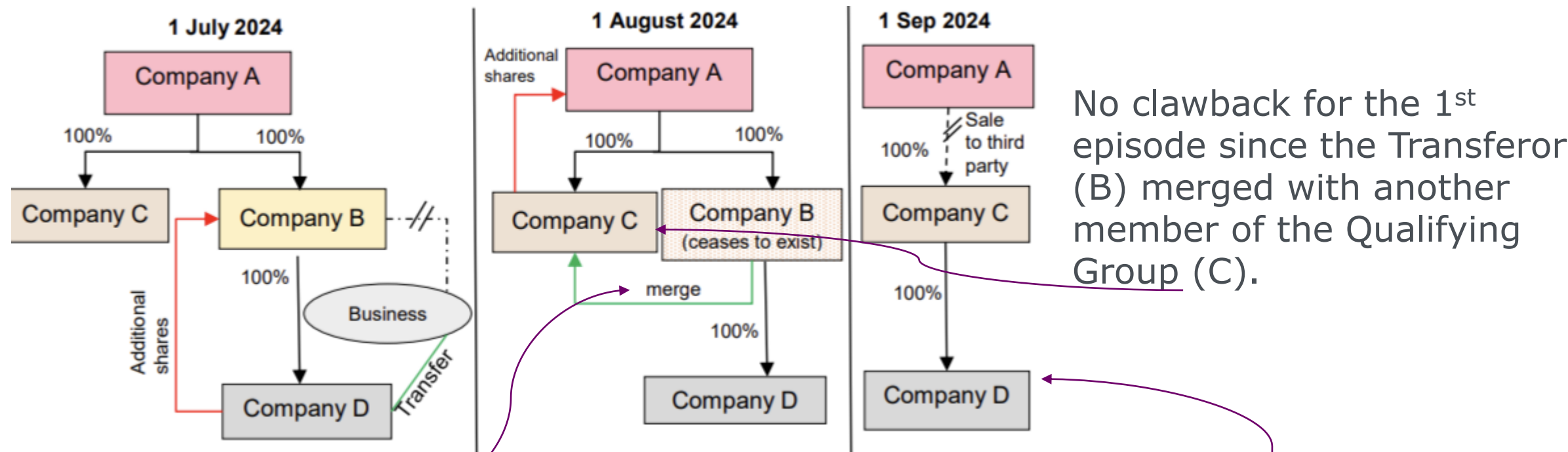
- not only does it fall under the Relief itself,
- but it also does not trigger the clawback for relief earlier exercised.





Example 14: sale after a merger or 3 reliefs in a row

The example continues the previous one and illustrates 3 consecutive episodes of applying the Relief and 1 clawback. 2 years have not elapsed between the first transfer and the third.

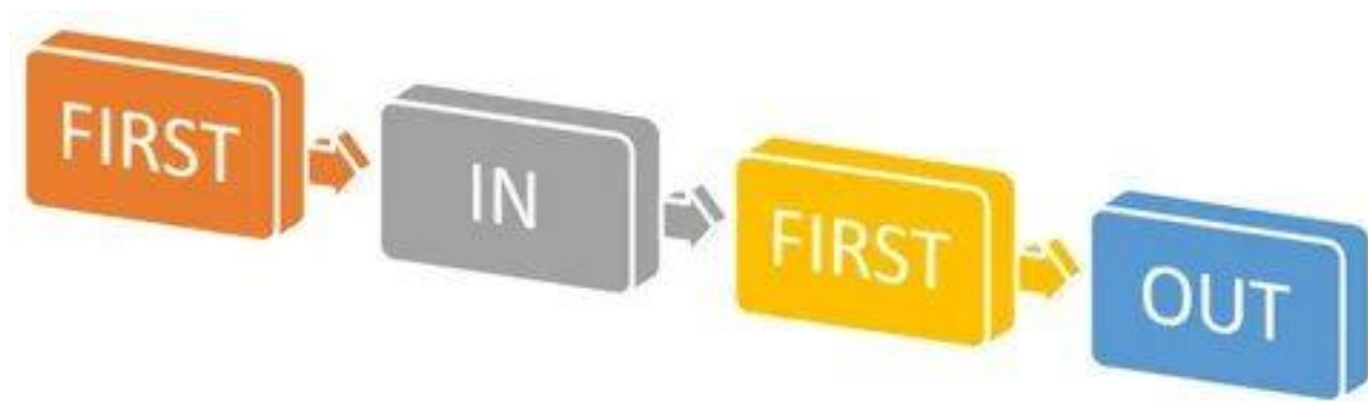


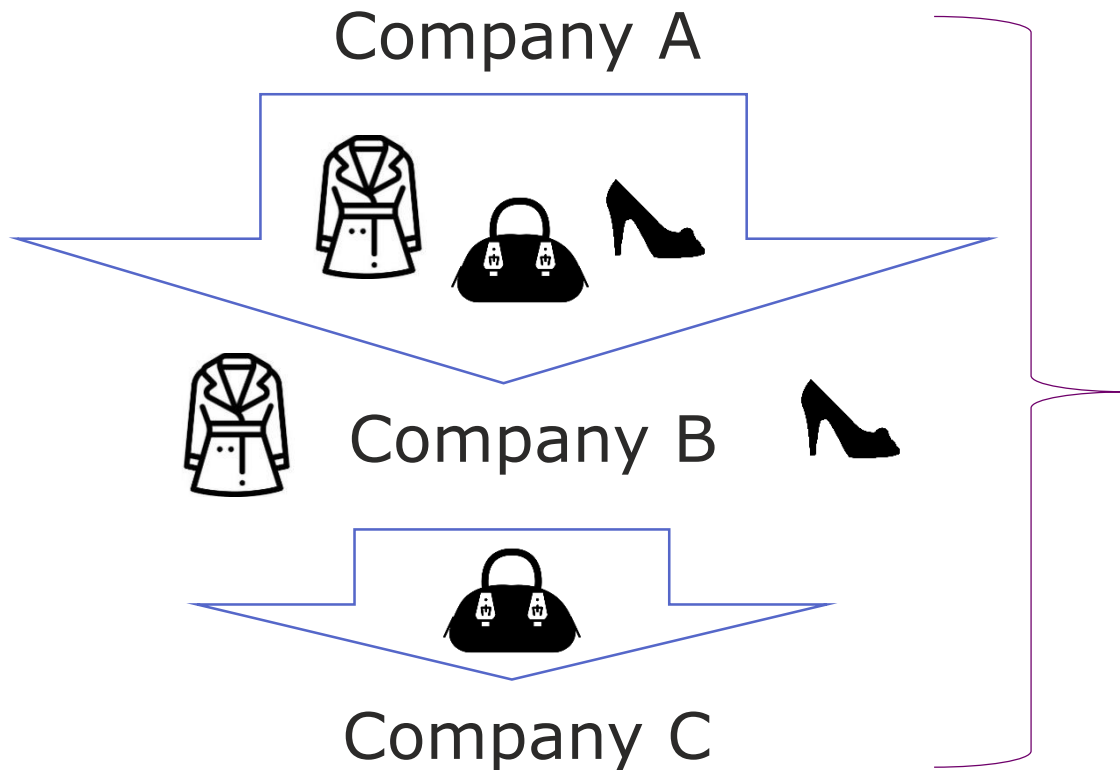
There is a clawback for the 2nd episode since D and A are not members of the Qualifying Group. However, there is still no clawback for the 1st episode



Q.: There are shares received in the course of the restructuring and others. The transferee sells part of the whole pack. How does the transferee determine which shares have been sold?

The FTA: identify if it is possible. If it isn't, use FIFO (First in First Out).





If a sub-part of a transferred Business has been subsequently transferred, the gain/loss is subject to clawback in full.

Example 16: The subsequent transfer of a bag part of the business entails a clawback on the retained part (the shoes and clothing business).

The Law does not use the wording "in full". Disputes regarding a pro rata approach as an alternative are probable.



What is not deemed a subsequent transfer of a Business or part thereof?

Operational changes by consolidating functions and avoiding any duplication of work between the Transferee's existing Business and newly acquired Business.

Example 1.

The assets of the acquired Business involved in the procurement have been transferred to the intra-group center of the Transferee's Group.

Example 2. The Transferee has his own billing software. Therefore, the license agreement for the use of other software, the rights to which were obtained together with the transferred Business, has been terminated.



No Clawback



Consequences of clawback

No need to amend the return earlier filed (via VD)

The transferor recognizes the difference between the Market Value of the Business/Independent Part and the net book value of the transferred assets and liabilities in the tax return for the period in which the clawback was triggered.

If the Transferor has ceased to be a Taxable Person or is a natural person, the exempted gain/ loss shall instead be included in the Taxable Income of the Transferee.

The Transferee reverses all earlier adjustments.



In a clawback, by default, the Transferor recognizes a gain/loss that was earlier exempted and in the case of a disposal after 2 years of holding has expired, the transferee recognizes a gain/loss exempted by the transferee.

Depreciation adjustment for the transferee

The FTA believes that no depreciation shall be deducted until the amount of the revenue exempted by virtue of the Qualifying Group Relief is reached

Example 6 from the Guide employs the same figures as in Example 10 of the Qualifying Group Relief Guide.



Tax Period	Opening net book value (in AED)	Depreciation (using straight line method over 10 years, in AED)	Closing net book value (after depreciation, in AED)
2025	12 million	1.2 million	10.8 million
2026	10.8 million	1.2 million	9.6 million
2027	9.6 million	1.2 million	8.4 million



Tax Period	Opening net book value (in AED)	Depreciation (using straight line method over 10 years, in AED)	Closing net book value (after depreciation, in AED)
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2027	9.6 million	1.2 million	8.4 million

where 12M is the Market Value, 10M is the net book value and 2M is the transferor's capital gain that is exempted.

Depreciation adjustment for the transferee



The last two columns demonstrate the difference between economic and legal logic and the FTA's approach:

Year	Depreciable amount in the Accounting	Depreciable amount for tax purposes	Depreciation yearly rate	Amount of depreciation in Accounting	Amount of depreciation in Tax Accounting	Adjustment	Adjustment as per the FTA
2025	AED 12M	AED10M	10%	AED 1.2 M	AED 1M	AED 200K	AED 1.2 M
2026	AED12M	AED10M	10%	AED 1.2 M	AED 1M	AED 200K	AED 0,8M
2027	AED12M	AED10M	10%	AED 1.2 M	AED 1M	AED 200K	NIL

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