

SLUMP EXCHANGE

ABOUT

- Slump exchange means acquiring a company by making a lump sum consideration in the form of **shares and debentures** of the acquirer company without assigning individual value to its assets and liabilities.
- **Slump exchange** is one form of business acquisitions and restructuring of a business where the acquiree company's business operation is continued.
- **Under the IT Act, 1961**, there is no provision for Capital Gain Tax on the acquiree company.
- It is an emerging tax efficient mode in line with business restructuring and acquisition of a business.

DIFFERENCE BETWEEN SLUMP EXCHANGE AND SLUMP SALE

- Slump exchange has emerged from Slump Sale.
- In Slump sale, the company's acquiring is done for monetary value, whereas in slump exchange, it is done by providing shares and debentures of Acquirer Company.
- It is considered a Barter system and not a financial transaction, which helps to evade capital gain tax in the acquiree company's hands.

CALCULATION OF NET-WORTH OF ACQUIREE COMPANY

➤ **Net worth = Total Assets – Total Liabilities**

➤ Changes in values taken place due to revaluation of any assets or liabilities cannot be considered while calculating the acquiring company's net worth.

➤ Following points need to be taken into account while calculating the Net worth of a company:

❖ Written down value of depreciable assets should be taken into account.

❖ The 100% deductible assets under section 35AD will not be considered while calculating the company's net worth.

❖ All be considered on the book value.

LEGAL, REGULATORY & TAX IMPLICATIONS

1. Parties to the Transaction

- Both the parties involved in the Slump exchange transaction should be an **Indian juristic person** like individual or corporate entities.
- Non-residential person can't acquire a company in India.
- A non-residential person should have first to use it to acquire a company in India.
- The new company formed to acquire an Indian company can also be a Limited Liability Partnership.

LEGAL, REGULATORY & TAX IMPLICATIONS

2. Corporate Authorizations

- Both buyer and seller should have the provision to enable the Slump exchange transaction, i.e., to buy and sell the authorized division in their charter document.
- Memorandum of Association of the buyer should contain the main object clause stating that a business can be acquired using Slump exchange transaction.
- If the MDA of the buyer does not have this clause, then before entering into a transaction buyer needs to amend this clause in its MDA.
- To execute the transaction, approval from the board of directors of both the companies is required.
- If the seller company is a public company, it requires prior consent from the company's shareholders to sell a part or whole of the company under section 180 of the Companies Act, 2013.
- Also, proper compliance and disclosures should be made under the Securities and Exchange Board of India Regulations, 2015.

LEGAL, REGULATORY & TAX IMPLICATIONS

3. Anti-trust clearance

- If the Slump exchange transaction qualifies as a “**Combination**”, which is defined under the Competition Act, 2002, then the transaction needs to seek approval from the Competition Commission of India (CCI) and would be governed by the Competition Act and the Competition Commission of India Regulations, 2011.
- CCI examines if the business transaction stated as Combination causes or will cause an appreciable adverse effect on India's competition and decide on the matter.

ANTI-TRUST CLEARANCE

Following financial thresholds is required by the business transaction to qualify as “Combination” and governed by CCI:

TYPE 1:	TYPE 2:
<p>➤ In India, both the parties to the transactions should jointly have assets more than INR 2000cr or turnover more than INR 8000cr,</p> <p>OR</p> <p>➤ In India or outside India, both parties should jointly have assets more than USD 1billion, out of which it should be more than INR 1000cr in India, or the turnover should be higher than USD 3billion, out of which more than 3000cr should be in India.</p>	<p>➤ In India, the buyer in the transaction should possess assets more than INR8000cr, or its turnover should be more than INR 24000cr,</p> <p>OR</p> <p>➤ Outside or in India, the buyer should have more than USD 4000million; out of that, in India, it should be at least INR 1000cr, or in India, the turnover should be more than INR 3000cr out of USD 12000million.</p>

LEGAL, REGULATORY & TAX IMPLICATIONS

3. Anti-trust clearance

- In India, if any "Combination" which causes or can cause an AAEC becomes void according to Section 6 of the Competition Act.
- According to Section 6 of the Competition Act, the transaction's buyer parties should notify the CCI and seek approval for enabling the transaction.
- CCI has to decide whether the combination will cause AAEC in the Indian market or not within the 30 days of filing.
- The Slump exchange can be started within the expiry of 210 days of notice filing to CCI or approval received, whichever is earlier.
- If both seller and buyer of slump exchange transactions want to know whether their transaction comes under combination and governed by CCI or not, they can write to CCI and ask for their advice and consultation regarding the same.

CASES OF SLUMP EXCHANGE

1. Commissioner of Income Tax V/s. M/S. Motors and General Stores (P.) LTD.

PETITIONER: Commissioner of Income Tax, Hyderabad

RESPONDENT: M/S. MOTOR AND GENERAL STORES (P.) LTD.

JUDGMENT DATE: 02ND MAY 1967

CASE LAW

- A private limited company which owned a cinema house is a respondent in this case.
- The board of directors of the seller company has given authority to the Managing director to negotiate with the buyer to sell the whole entity with all the equipment and machinery, etc., for Rs. 120,000.
- Both the parties entered into an “**exchange deed**” on February 21, 1956, and the buyer received the consideration in the form of shares of Rs.120,000.
- In the assessment year, the income tax officer calculated a profit of Rs. 43,568 in the hands of the seller.
- The judgment was given in the favour of respondent, due to which respondent was not liable to pay any tax for Slump exchange transaction.

REFERENCES GIVEN FOR THE JUDGMENT

- **"Section 2(10) of the Sale of Goods Act"** defines "price" as meaning the money consideration for a sale of goods. For a sales transaction to take place, consideration in the form of money is an essential element. If the consideration is in any other forms except money, it is regarded as an exchange or barter and not a 'Sale.'
- **"Section 118 of the Transfer of Property Act"** defines exchange as follows: When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange."
- Since the price consideration was not involved in this case, and the transaction was not proved as Sales under the Income-tax Act, the IT department was not allowed to charge tax in the seller's hands.

2. Commissioner of Income Tax V/S. Bharat Bijlee LTD (Bombay High Court)

Petitioner : The Commissioner of Income Tax, Mumbai

Respondent: M/s.Bharat Bijlee Ltd.

Judgment date:09th May 2014

CASE LAW

- **Under the scheme of arrangement u/s 391 & 394** of the Companies Act, 1956, Lift Division of M/s. Bharat Bijlee Ltd. had been transferred to Tiger Elevators Pvt. Ltd.
- This transfer has been done in exchange for preference shares and bonds of Tiger Elevators.
- The respondent claimed that transfer does not attract any capital gain tax as the acquisition cost was not there.
- On the other hand, the IT officer claimed that the transaction was a **"slump sale"** and has calculated profit based on section 50B.
- Again, the judgment was in favor of the respondent since it was proven that it was an **"exchange"** and not a **"sale"** as there monetary consideration was not involved.

CONCLUSION

- Slump exchange has emerged from Slump sale.
- In this transaction, consideration is in the form of shares or debentures of the acquirer company, which is termed a **"Barter System"** and not a sale.
- Also, Company's assets and liabilities are not valued individually, so the price factor is also not involved in this transaction.
- Slump exchange transaction neither has **"Price"** factor nor **"monetary consideration,"** which does not make it a **"Sale,"** so it does not attract any Capital Gain Tax.
- This is an emerging tax-saving method for business acquisition and restructuring.

Thank You!

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