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Plenary IV: M&A Global Transactions – New Considerations Under Scrutiny

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M&A tax in the new environment

- ● What does it mean for you?

Introduction

- ❖ Substance: management and control of Holdcos
- ❖ Case study introduction
- ❖ Starting point
- ❖ Target structure
- ❖ Key challenges for Taxand
- ❖ Global closing
- ❖ India / Vodafone case
- ❖ Global closing



Introduction

❖ Local carve out

UK

Turkey

❖ Other tax aspects

❖ Taxand's Take

❖ Conclusions



It's easier for a camel to pass through the eye of a needle than for a rich man to enter the kingdom of god



- ❖ No place for purely theoretical tax planning
- ❖ Tax advisor needs to understand business

Identify more
opportunities

Safer
planning

Walk the Talk eg Laerstate case

Heard evidence in person from Mr B's PA

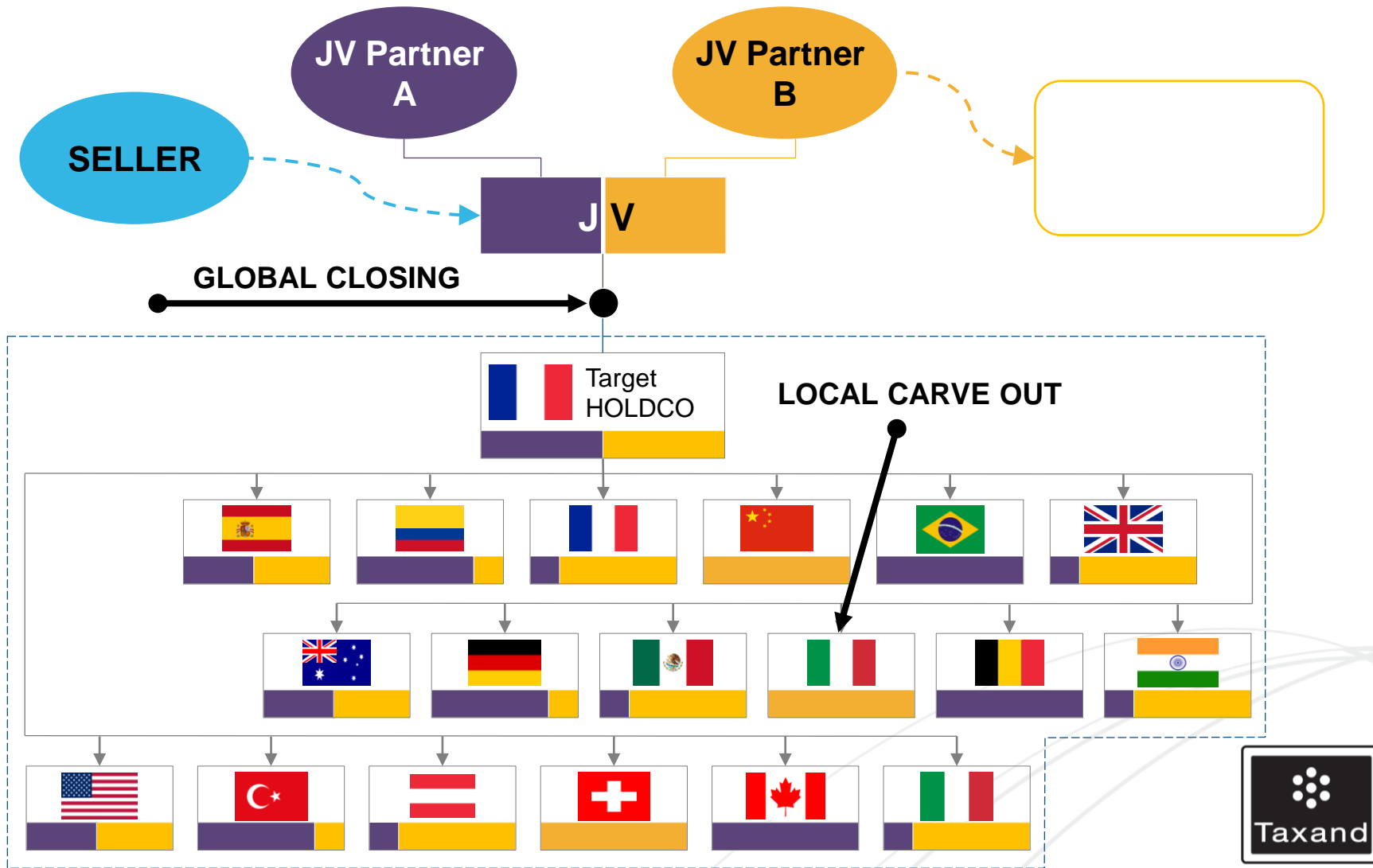
“ *I was concerned my phones were bugged so I tried not to conduct business from London* ”

“ *If Mr B had broken a family holiday to go to Netherlands on Easter Monday he might have been expected to remember it* ”

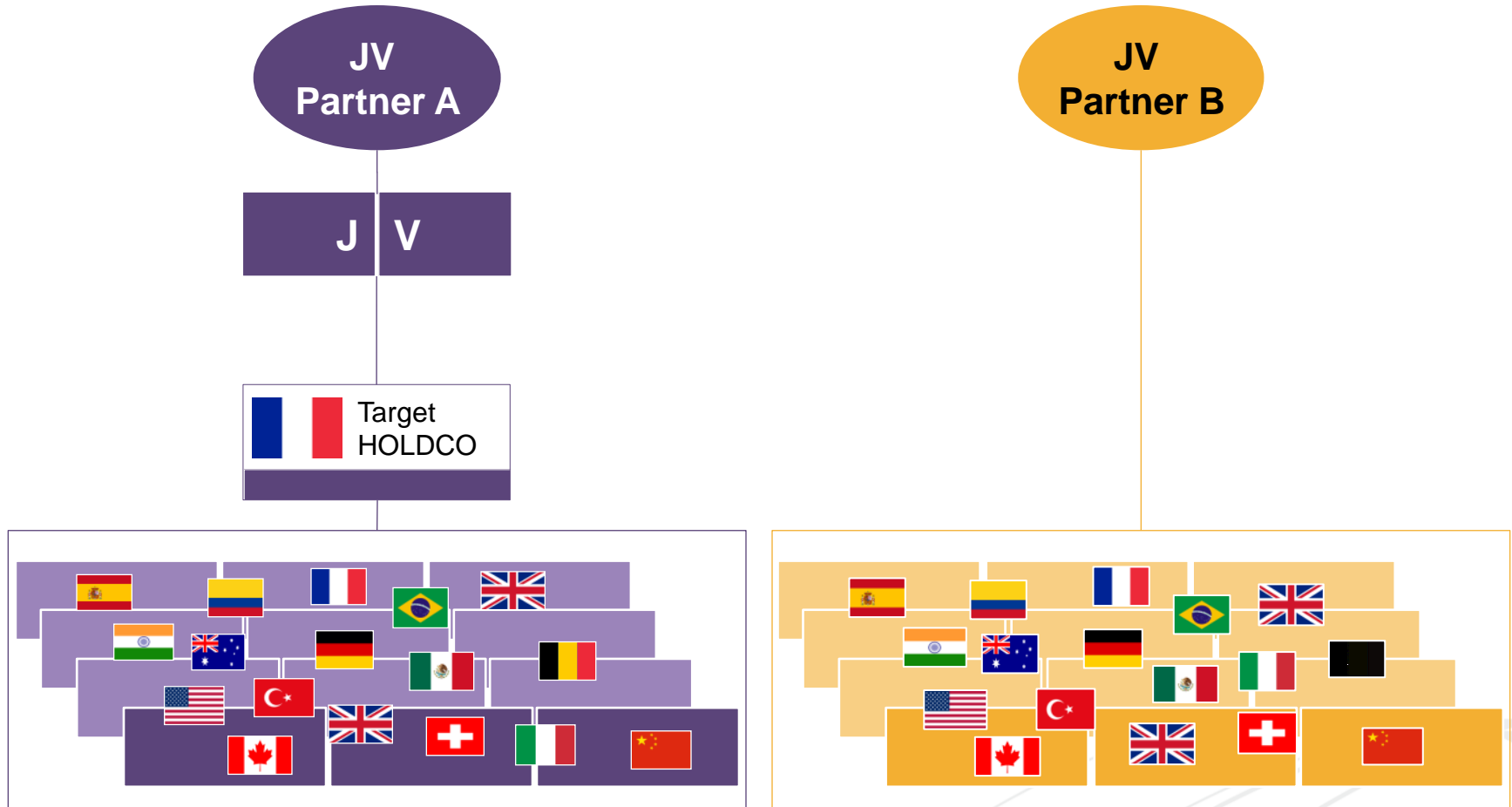
Case Study Introduction

- ❖ One of the most significant transactions in Europe in the last two years
- ❖ A two-step transaction
 - Joint venture
 - ❖ Acquisition of 100% of the share capital of the target
 - Separation of two businesses
 - ❖ Local share and asset deals

Starting Point



Target Structure



Key Challenges For Taxand

Global control

- ❖ Due diligence
- ❖ Structuring local carve outs
- ❖ Closing
- ❖ Post-closing



Estimating the tax costs

- ❖ Review all tax assets and liabilities
- ❖ Identify NOLs / tax credit
- ❖ Carve out costs
- ❖ Loss of NOLs due to change in indirect control
- ❖ Capital gains tax triggers eg India



India / Vodafone Case

- ❖ Acquisition of shares
- ❖ Substance issues
- ❖ Lower Court decision
- ❖ Supreme Court decision awaited

Impact on global deals

- ❖ Indian capital gains
- ❖ Potential double taxation
- ❖ Capital gains on subsequent transfer
- ❖ Tax collection enforced
- ❖ Vodafone's plea and MAP

Global Closing

- ❖ Need to obtain tax indemnities from the seller
- ❖ Timing for completing the carve out



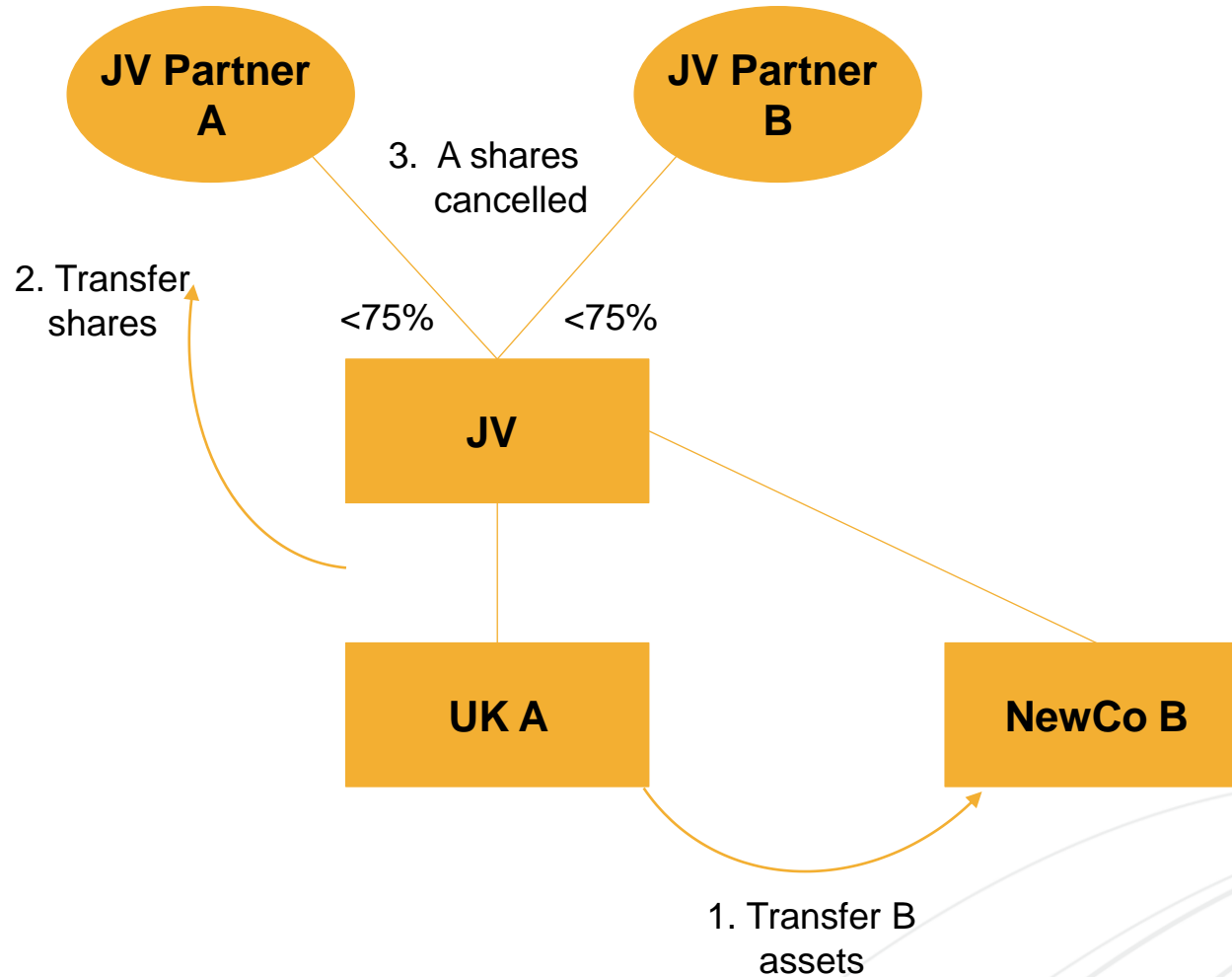
Structuring of local carve out

- ❖ Different concept means different tax impact
- ❖ Base case versus alternative structure

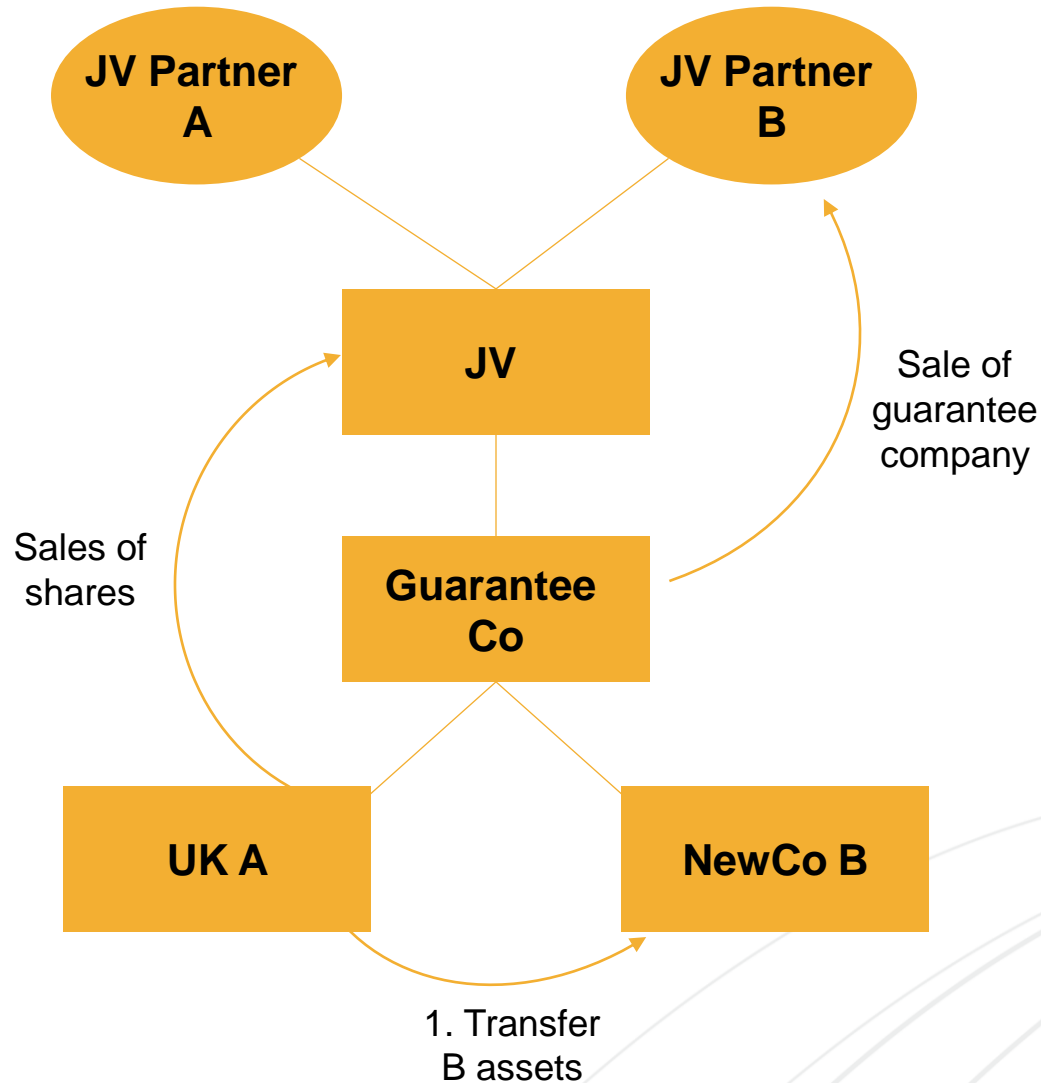
Managing valuation questions from a tax point of view

- ❖ What method to use and defend locally?
- ❖ Consistency with the method applied at global level?

UK Carve Out: Easiest Option



UK Carve Out: More Complex Option



‘Guarantee company’ unfamiliar in France

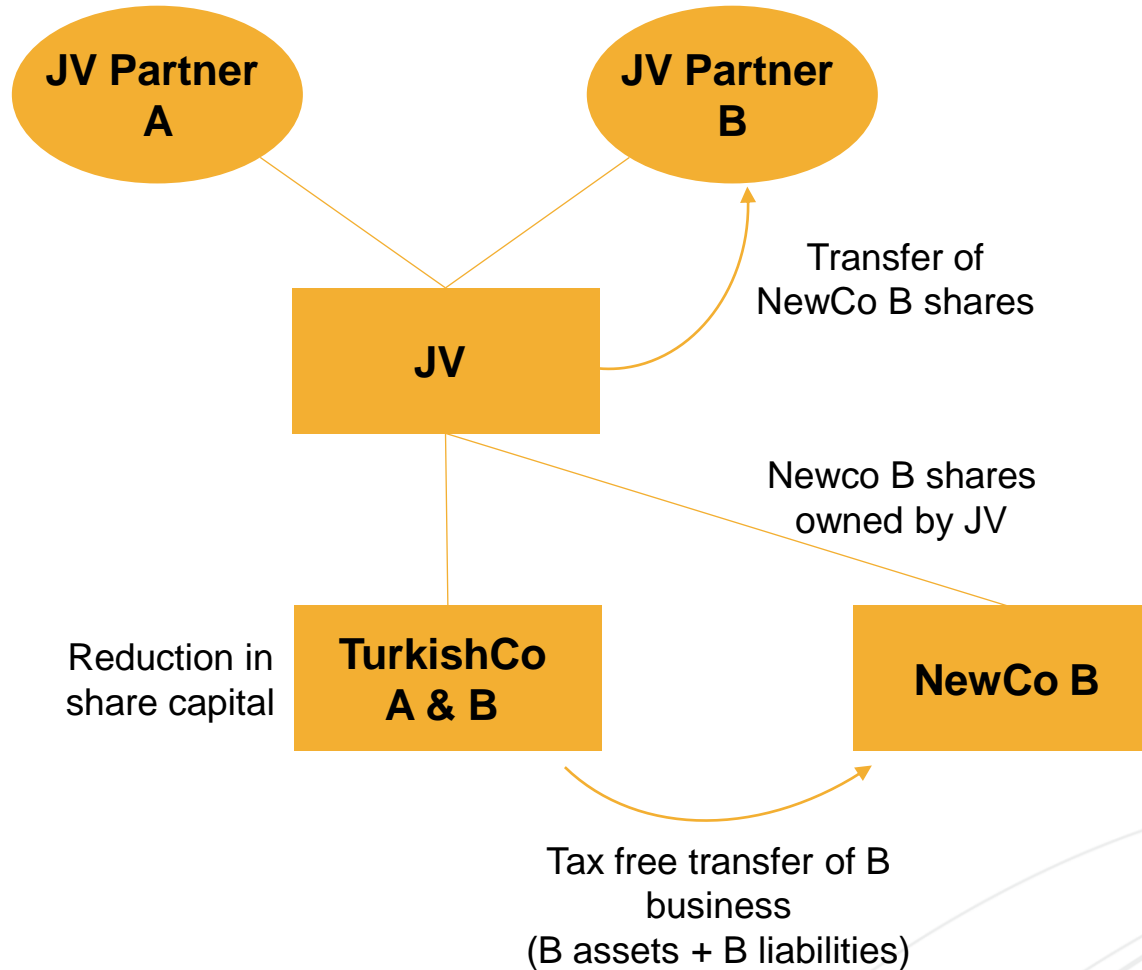
- ❖ Concern French tax authorities would consider that aggressive tax planning was being undertaken
- ❖ Higher scrutiny from French tax authorities

Solution: we use a partnership instead of guarantee company

- ❖ French more familiar with partnership
- ❖ UK tax risk higher



Turkey Carve Out: Partial Demerger



Turkey Carve Out: Partial Demerger

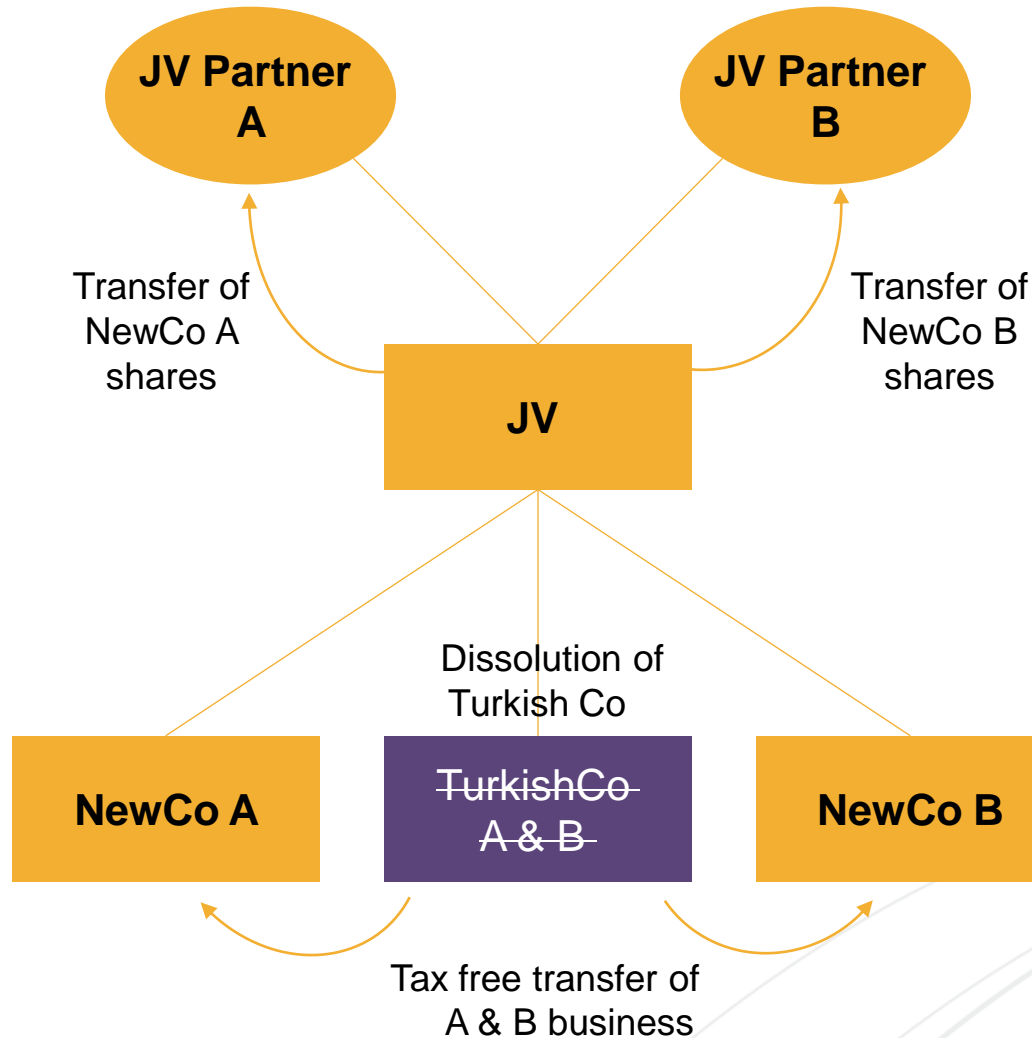
- ❖ Need for capital increase before capital reduction
- ❖ Source of increase

Cash
injection

Inflation
reserves =>
?

Retained
earnings

Turkey Carve Out: Full Demerger



Other Tax Aspects

- ❖ Tax leakage on cash repatriation
- ❖ Managing local ruling request / relationship with tax authorities
- ❖ Post closing aspects: purchase price allocation, goodwill amortisation

Global acquisition means
global tax structuring



Speaker Details



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Abhishek is the key Indian member of Taxand's global real estate tax team. He is based in Taxand India where he is a partner of BMR Advisors. He leads the firm's real estate and technology industry practices. Abhishek has more than 12 years of experience in the corporate and indirect tax areas, as well as in the regulatory and policy area. He has advised a number of international and domestic companies on a range of tax and regulatory issues. With his proven expertise, he has advised some of the largest companies in the technology sector on matters ranging from entry strategy and business and transaction structures to mergers, acquisitions and other business reorganisations.



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Ian leads Taxand's global transaction tax service line. He is based in Taxand UK where he is a Managing Director with Alvarez and Marsal Taxand UK. He has 15 years of experience in corporate and international tax advisory, with deep expertise in mergers & acquisitions and transaction tax for private equity firms. Prior to joining the Taxand UK practice, Alvarez & Marsal Taxand UK, Ian was with the Private Equity Tax group of KPMG and before that, was Head of Tax at a FTSE company.



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Laurent is based in Taxand France where he is a partner at Arsene Taxand. Laurent focuses on corporate tax management and strategy, mergers and acquisitions, private equity, tax audit and litigation. Before joining Taxand France Laurent worked as a Tax Associate for Baker & McKenzie.



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Meral is based in Taxand Turkey where she is one of the partners of Erdikler YMM Ltd. Meral has been advising many local and multinational clients on Turkish and international tax matters since 1989. She began her career with Arthur Andersen and joined Ernst & Young after the merger of Andersen's Turkish practice with E&Y in 2002. She joined Turkey's Taxand practice, Erdikler YMM Ltd., at the beginning of 2006. Meral has extensive experience in a broad range of domestic and international tax matters, including tax laws, incentive legislation, capital markets legislation, foreign investment legislation, exchange control regulations, tax treaties, other financial laws and regulations, and tax restructurings. Her particular fields of expertise are VAT, tax planning and inflation accounting.



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