AMCHAM EVENT

ASSETS TRANSFER/ BUSINESS TRANSFER/ SHARE TRANSFER/ MERGER & ACQUISITION

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DFDL

DFDL SPEAKER

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Vajiravann is a Tax Director based in DFDL's Phnom Penh office. She has worked professionally in Cambodia for over 10 years with expertise in compliance, tax audits, and tax advice for local and international companies in Cambodia.

She has extensive experience in delivering compliance, tax audit, and tax advisory services to clients from diverse industries.

She holds a Bachelor of Accounting degree from Paññāsāstra University and a degree in Cambodian Tax Law from CamEd Business School. She is currently pursuing her ACCA qualification at CamEd.

CAMBODIA

Helping you achieve your commercial goals

DFDL established its office in Phnom Penh in January 1995, as the first officially authorized foreign investment advisory and tax firm in Cambodia. In 2016, DFDL and Sarin & Associates joined forces and established a commercial association and cooperation in order to form a new business transactions platform to serve clients with interests in Cambodia and across the expanding ASEAN marketplace.

“Well-regarded regional firm, DFDL is considered a go-to for Cambodian counsel by many international law firms and clients. The full-service firm offers guidance on acquisitions and corporate restructuring, as well as land use, securities, tax and project finance. Also handles employment, immigration and commercial dispute resolution mandates. Represents both Local and foreign corporates, particularly in the energy, finance and real estate sectors.”

(Chambers Asia Pacific 2023)

DFDL Firm-wide Awards

The Legal 500 Southeast Asia Awards 2023 – Winner Tax Firm of the Year – #L500AWARDS

Chambers Top Ranked Asia-Pacific 2023 – DFDL

IFLR 1000

ITR World Tax – Top Tier Firm 2023

ITR World Tax – Recommended Firm 2023

The Legal 500 Asia Pacific – Top Tier 2023

A COMPREHENSIVE REACH IN **SOUTHEAST & SOUTH ASIA**

- **10 countries**
- **12 offices**
- **150+ legal and tax advisers**
- **25 nationalities**

Bangladesh (2011)	**Myanmar (1995)**
3 Partners | 16 Advisers	2 Partners | 10 Advisers
Cambodia* (1995)	**Philippines* (2015)**
8 Partners | 52 Consultants	5 Partners | 19 Advisers
Lao PDR (1994)	**Singapore (2010)**
3 Partners | 8 Advisers	1 Partner | 1 Adviser
Indonesia* (2011)	**Thailand (2005)**
3 Partners | 3 Advisers	6 Partners | 22 Advisers
Malaysia* (2023)	**Vietnam (2006)**
3 Partners | 2 Advisers	7 Partners | 22 Advisers

DFDL collaborates with the following local firms:

- Sarin & Associates, Cambodia
- Nusantara DFDL Partnership, Indonesia
- Robin Teow & Co, Malaysia
- Ocampo and Suralvo Law Offices, Philippines

DFDL in Singapore is qualified as a foreign law practice and is not licensed to practice Singapore law.

LOCAL PRESENCE, REGIONAL EXPERTISE

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10 Countries 12 Offices	Bangladesh	Cambodia*	Indonesia*	Lao PDR	Malaysia*	Myanmar	Philippines*	Singapore	Thailand	Vietnam
	Dhaka	Phnom Penh	Jakarta	Vientiane	Kuala Lumpur	Yangon Naypyidaw	Manila	Singapore	Bangkok	Hanoi Ho Chi Minh City

Practices and Sectors		
	Anti-Trust and Competition	Energy, Natural Resources and Infrastructure
	Aviation and Logistics	Investment Funds
	Banking and Finance	Real Estate and Hospitality
	Compliance and Investigations	Restructuring
	Corporate, Mergers and Acquisitions	Technology, Media and Telecoms
	Dispute Resolution	Tax and Transfer Pricing
	Employment	-

Desks	China	EU	India	US

* DFDL collaborating firms

KEY TOPIC

- ASSETS TRANSFER
- BUSINESS TRANSFER
- SHARE TRANSFER
- MERGER AND ACQUISITION

COMMON TYPES OF RESTRUCTURING

Assets Transfer	Business Transfer	Share Sale
Merger	Etc.	

ASSETS TRANSFER

ASSETS TRANSFER - TAX IMPLICATIONS

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- **Value Added Tax (VAT)**
  - Transferor will need to charge 10% VAT on the transfer of the assets at the market value.
  - VAT charged –claim as input credit.
  - No VAT is applied on the sale of land and money.

- **Transfer Tax**
  - 4% tax imposed when there is a transfer of legal ownership of immovable property and movable property.
  - The seller of the immovable property must pay the tax within three (3) months of the transfer of immovable and movable property.
  - The value of immovable and movable property – market value

- **Tax on Income (TOI):** Any gain realized from the transfer of assets will be taxed at 20% TOI of the Transferor.

II BUSINESS TRANSFER

BUSINESS TRANSFER - TAX IMPLICATIONS

- **VAT:** VAT does not apply to the transfer of a business when all of the following conditions are met:
  - *The business is transferred as a going concern and continues the business under the new ownership;*
  - *The transferor notifies the GDT within 10 days of the date of transfer;*
  - *The transferor applies for the cancellation of its registration;*
  - *The transferee is registered for VAT as a taxable person at the time the business is acquired and must account for the VAT in its books when it sells/disposes of the assets;*
  - *The transferee retains the tax records related to the transferred business for a period of 10 years.*

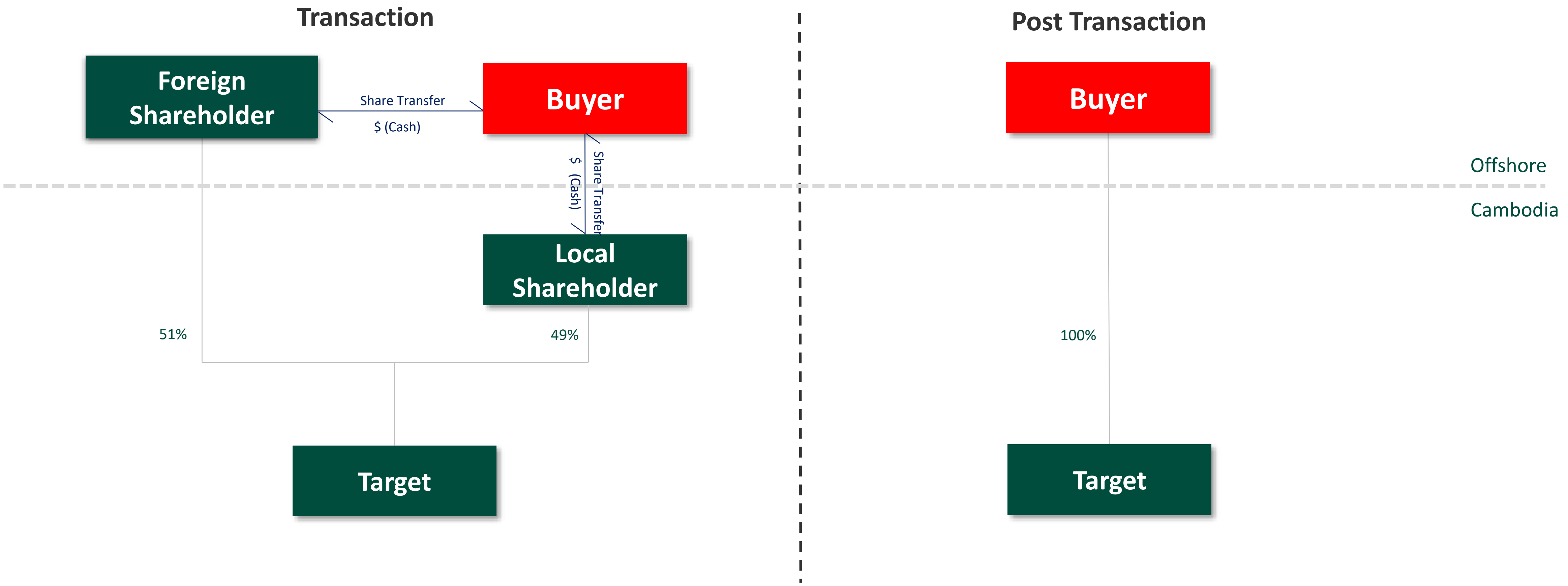
- **Transfer tax:**
  - 4% tax is imposed when there is a transfer of legal ownership of immovable property and movable property.
  - The seller of the immovable property must pay the tax within three (3) months of the transfer of immovable and movable property.
  - The value of immovable and movable property – market value

- **Tax Credit:** Any tax credits in Transferor would not be able to be transferred to Transferee. (no clear rule, ruling should be submitted to the GDT)

- **TOI**: Any gain realized from the transfer of business will be taxed at 20% TOI of the Transferor (ie: capital gain tax)

III SHARE TRANSFER

SHARE TRANSFER - DEAL STRUCTURE



Tax Notification and Update

WHT on Deemed Dividend

Tax Losses

SHARE TRANSFER TAX ISSUES

Transfer Tax

VAT

Tax on Income

Double Tax Agreements

SHARE TRANSFER - TAX IMPLICATIONS

- **Tax Notification and update-** within 15 days after receiving approval from MOC

- **14% WHT (No DTA) on Deemed Dividend**

  A change of shareholding in the Cambodian entity will trigger a deemed dividend with respect of the retained earnings that relate to the share transfer from non-resident shareholders.

- **Transfer Tax**:
  - *0.1%* : General share transfer in Cambodian entity, not *immovable property company*
  - *4%* : A new Law on Taxation (LOT) was introduced in Cambodia in May 2023. The LOT revised the rate of transfer tax for the transfer of all/part of the shares in an Immovable Property Company from 0.1% to 4%.
  - Share value- the market value of the share.
  - The transfer tax is payable by within three (3) months from the approval of the Ministry of Commerce of the share transfer.

The LOT defines an *Immovable Property Company* as any company that directly or indirectly holds immovable property which makes up more than 50% of the total assets of the company.

SHARE TRANSFER - TAX IMPLICATIONS (CONT.)

- **TOI**: Any gain from the share transfer is taxed at the Cambodian entity as part of taxable income.

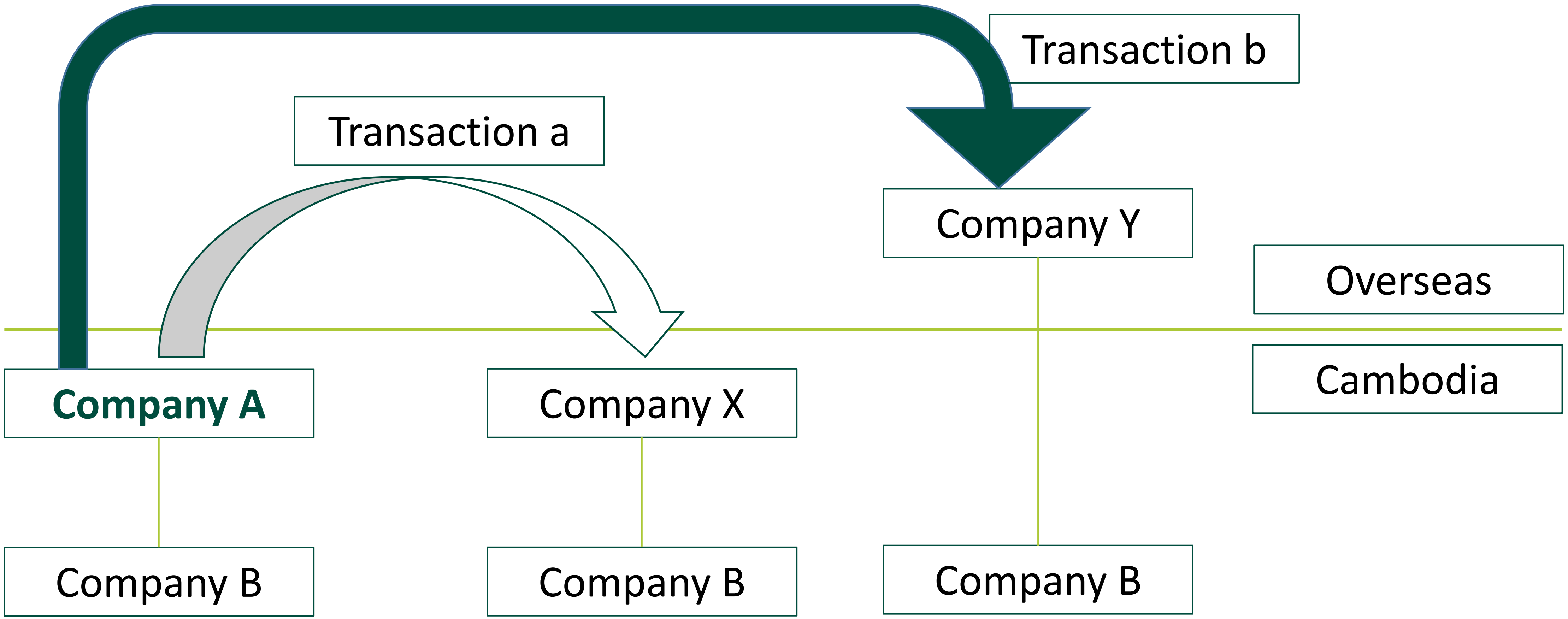
  Note that any gain for the sale of shares in Cambodian Company of individual or non-resident shareholder is taxed through Prakas on Capital gain tax. However, this Prakas will be implemented from 1 January 2024 onwards.

  Please see examples 1 and 2 in the next slides.

- **Loss carried forward**: The change of ownership is no longer effected to the forfeiture of loss carried forward of the Cambodian entity.

- **VAT:** No VAT is applied on the share transfer.

Example 1


Transaction b
Transaction a
Company Y
Overseas
Cambodia
Company A
Company X
Company B
Company B
Company B

EXAMPLE 1

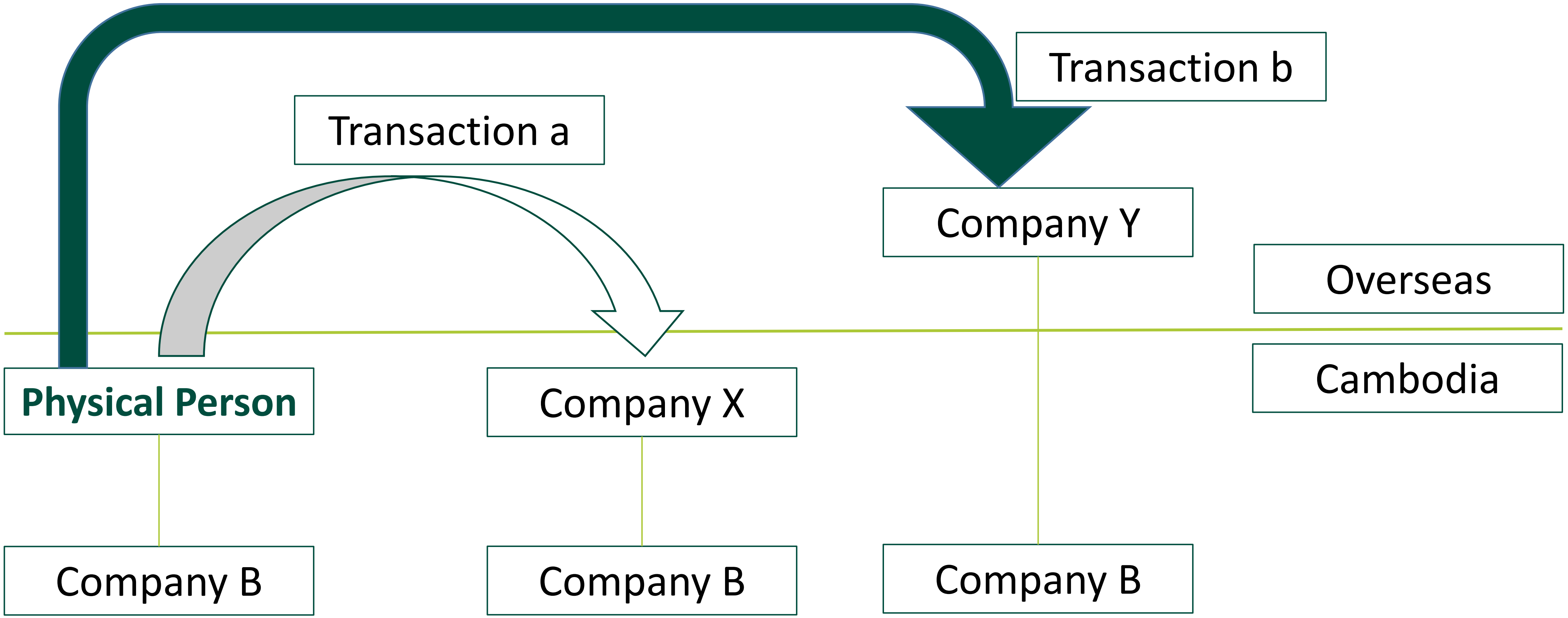
Example 1– Transaction a

- Company A
  - Received Capital Gain
  - Has an obligation to pay tax on Capital Gain under Prakas 098
- Company B
  - Not received Capital Gain
  - No obligation to pay tax
- Company X
  - Not received Capital Gain
  - No obligation to pay tax

Example 1 – Transaction b

- Company A
  - Received Capital Gain
  - Has obligation to pay tax on Capital Gain under Prakas 098
- Company B
  - Not received Capital Gain
  - No obligation to pay tax
- Company Y
  - Not received Capital Gain
  - No obligation to pay tax

Example 2


Transaction b
Transaction a
Company Y
Overseas
Cambodia
Physical Person
Company X
Company B
Company B
Company B

EXAMPLE 2

Example 2 – Transaction a

- Physical Person
  - Received Capital Gain
  - No tax mechanism for Physical Person to pay tax on Capital Gain
- Company B
  - Not received Capital Gain
  - No obligation to pay tax
- Company X
  - Not received Capital Gain
  - No obligation to pay tax

Example 2 – Transaction b

- Physical Person
  - Received Capital Gain
  - No tax mechanism for Physical Person to pay tax on Capital Gain
- Company B
  - Not received Capital Gain
  - No obligation to pay tax
- Company Y
  - Not received Capital Gain
  - No obligation to pay tax

CAPITAL GAINS TAX - FALSE START BY TAX AUDITORS?

- Prakas 346, auspiciously dated 1 April 2020, introduced a capital gains tax regime to Cambodia
- Focus on immovable property – some reference to shares
- GDT approach – relates to transfers on the CSX
- Deferred to 1 January 2024
- we have seen in recent months an array of various attempts by the Cambodian tax authority to tax deemed gains from share transfers.

- These attempts range from trying to treat the transfer of shares in a Cambodian entity as the disposal of a fixed asset to asserting that deemed gains from share transfers be considered to be Cambodian sourced income of a Cambodian taxpayer that should be taxed at the level of the Cambodian entity.

Square peg – round hole?

- Use of Article 7 of the Law on Taxation – who derives the gains?
- Cambodia’s WHT system requires payments to be made/expensed at the Cambodian level
- If not then need a specific regulation like Prakas 372.

DOUBLE TAX AGREEMENTS?

The expanding double tax agreement (**DTA**) network of Cambodia in recent times has been impressive, with the total number of signed DTA's at eleven at the time of writing, with more slated to be signed shortly.

Countries who have signed DTAs with Cambodia include Singapore, China, Brunei, Thailand, Vietnam, Indonesia, Hong Kong, Malaysia, South Korea, Macau and Turkey.

Much more than reductions in the withholding tax rates of cross-border transactions.

Taxes covered by the DTAs include capital gains tax.

Article 14 of the DTAs, the default position on capital gains tax is that capital gains may only be taxed in the jurisdiction where the transferor of the shares is tax resident unless otherwise stated in Article 14.

IV | MERGER AND ACQUISITION

MERGER AND ACQUISITION - TAX IMPLICATIONS

- **Article 215 of New LOT:**

  Article 215- Business Transfer or Share Transfer or Merger of Enterprise

  - *In the case of business or share transfer, the new owner shall be responsible for all the business enterprise's tax liability.*
  - *In the case of a merger of two or more enterprises, **<u>the enterprise that continues or arises from the merger of two or more shall be liable for all tax liabilities</u>**.*

MERGER AND ACQUISITION - TAX IMPLICATIONS

- Tax Notification and update- 15 days after receiving email approval from the Ministry of Commerce?
- Tax Liabilities?
- Transfer Tax?
- 20% TOI?
- 14% WHT?
- VAT?

CLOSING COMMENTS

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- You can see the potential and benefits of the business restricting, but you could have some serious issues down the road if you don't look under the bonnet!
- Historical undisclosed tax liabilities have always been a big factor when acquiring shares in a Cambodian company.

Mitigation:

- Carrying out a tax due diligence on the target
- Obtaining tax clearance certificates from the tax authority
- Holding back some of the consideration for the share purchase in escrow until certain conditions
- Looking at other ways in which the business can be acquired

Q&A

THANK YOU