India's M&A and demerger is still stuck in the old mould

M&A and succession planning are not technical footnotes; they are central to India's corporate growth story. Unless the tax regime adapts to commercial reality, the promise of the new Act will remain only on paper.

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Restructuring remains one of the weakest points of India's tax architecture. Demergers today take close to a year for listed companies under the NCLT process, even when they are mirror-image transactions. The Companies Act permits faster routes, but these do not enjoy tax neutrality—creating a paradox where companies must choose between speed and tax certainty.

The fix is straight-forward - extend tax neutrality to fast-track approvals and allow Sebi to permit parallel approvals instead of the current sequential approach. Such measures would shave months off timelines and inject agility into India's deal ecosystem.

Other gaps persist too. The law insists that only a business "undertaking" qualifies for demerger tax benefits, excluding cases where an undertaking comprises shares in subsidiaries. In sectors where subsidiary structures are mandatory, this risks tax leakage on genuine restructurings. Loss carry-forward provisions also remain tied to legacy manufacturing and banking sectors, leaving out technology, fintech, and services firms that dominate the new economy.

Deal structuring is another sore spot. Deferred consideration is taxed upfront - even before cash is received - while contingent payouts lack explicit rules. This mismatch between taxation and actual inflows discourages flexible deal-making. Adopting a "tax when received" principle, standard in global practice, would resolve this.

Finally, Section 56(2)(x), designed as an anti-abuse rule, continues to tax acquisitions below fair market value. In M&A transactions, the time lag between signing and closing often causes genuine price variations. Exempting commercially negotiated deals would reduce uncertainty, but the new Act repeats the old language without relief.

Succession Planning and Family Arrangements

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India's succession-planning rules also need urgent modernisation. Today, a direct gift from an uncle to a nephew is exempt from tax. But if the uncle places the same asset in a trust for the nephew's benefit, the exemption vanishes. This asymmetry, stemming from inconsistent definitions of 'relative', makes private trusts less attractive for family wealth management - precisely when such vehicles are becoming essential.

Similarly, intra-group transfers risk lapsing accumulated losses because rules emphasise registered rather than beneficial ownership. Clarifying that continuity of real economic ownership suffices would prevent needless loss of tax shields.

On family arrangements, the gap is more fundamental. Indian courts have consistently protected genuine settlements intended to preserve harmony or redistribute pre-existing rights in family businesses from capital gains and deemed gift tax. But this principle remains rooted in jurisprudence, not statute. Codifying it in law would bring clarity at a time when large joint enterprises are splitting into nuclear business units.

The new Income-Tax Act is a cleaner draft of the old code. But drafting reform is not doing reform. If India wants to strengthen its ease of doing business credentials, Phase 2 must focus on the substance—speeding up demergers, recognising modern wealth structures, extending loss relief across sectors, and aligning taxation with cash flows.

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