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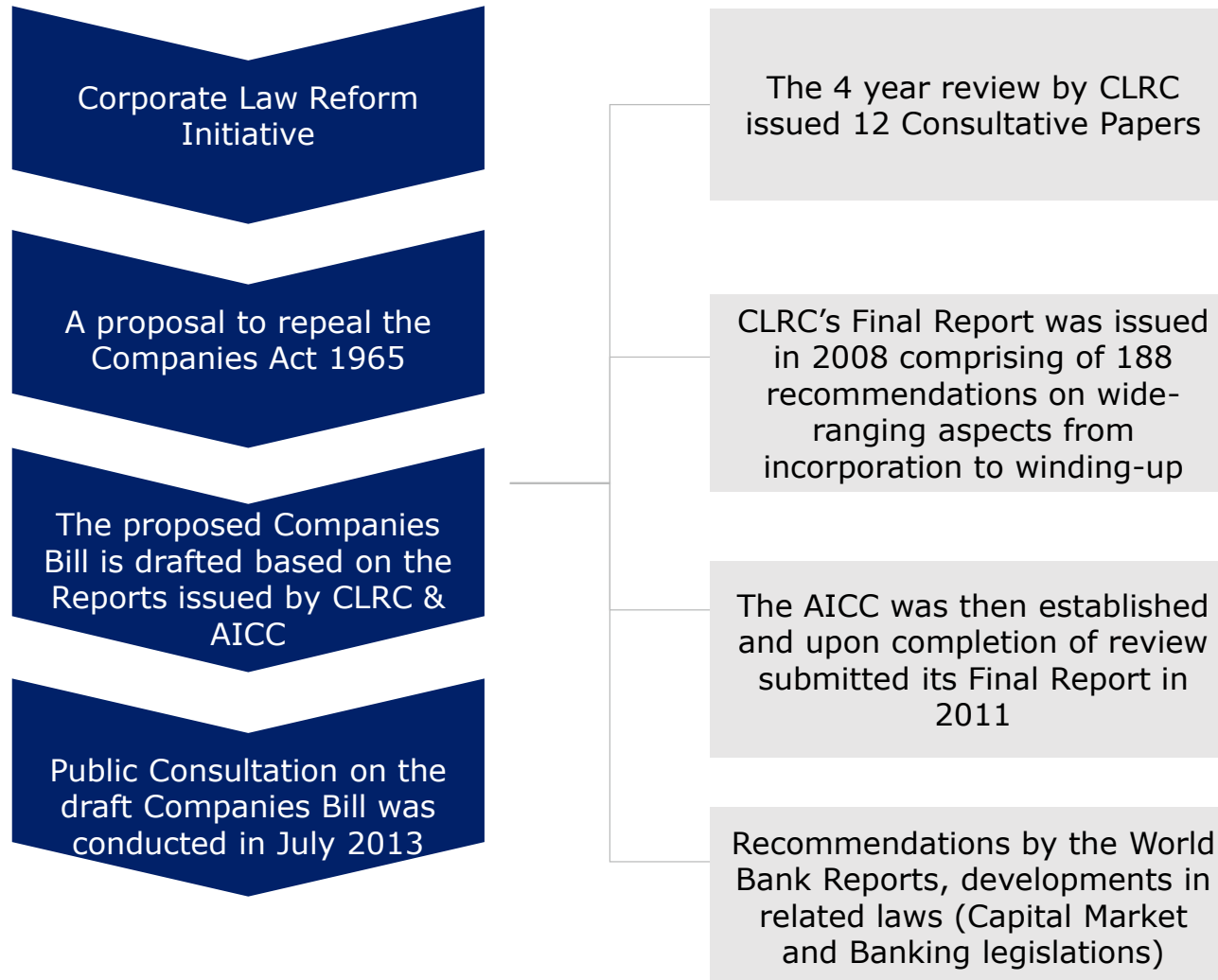


Deloitte TaxMax- the 42nd series

Brave decisions, Brave actions.

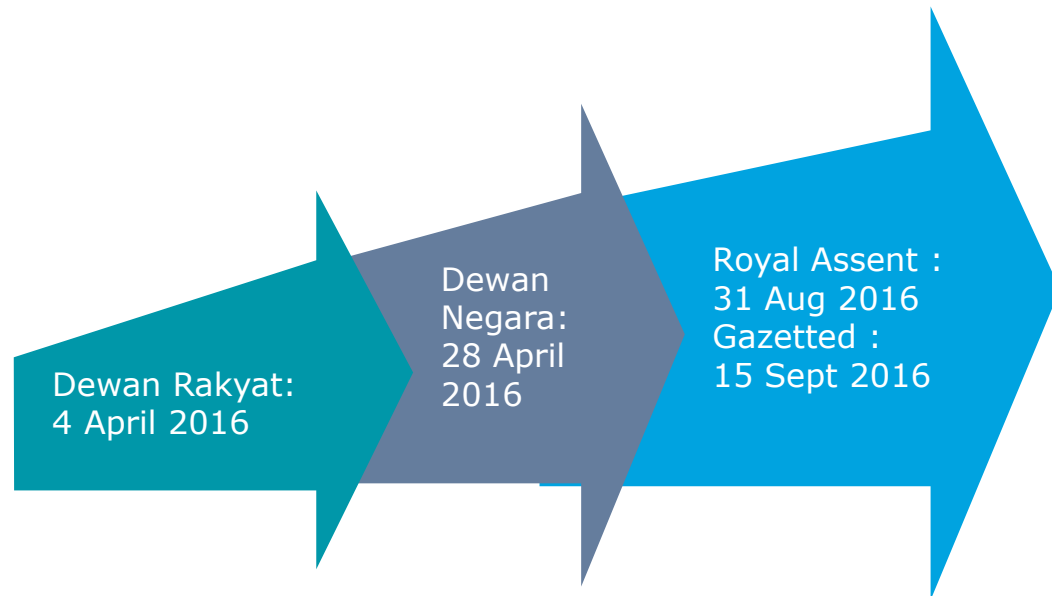
Tan Hooi Beng
8 November 2016

The Journey

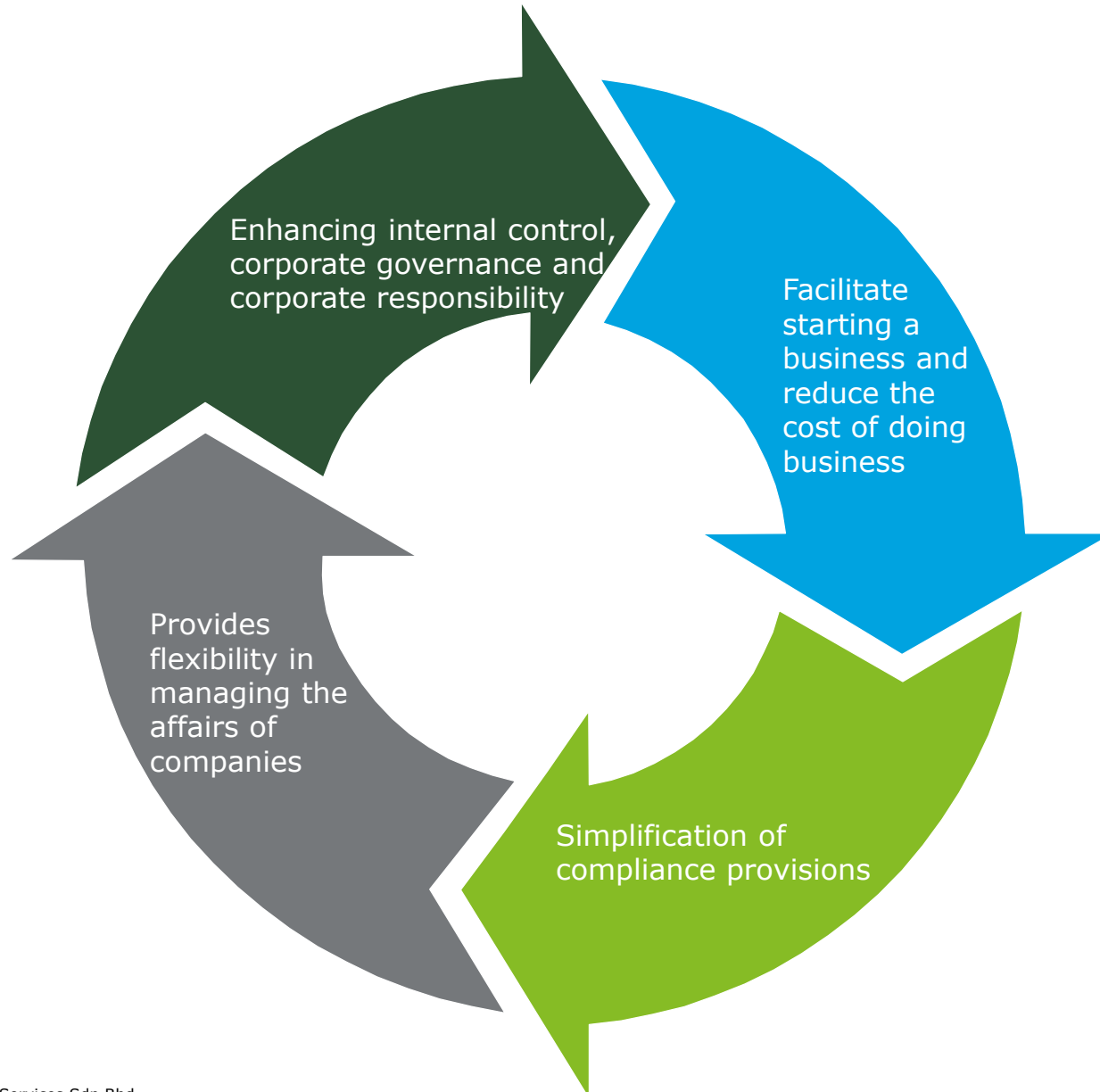


The Journey

Companies Act 2016



Salient Changes in Companies Act 2016



Salient Changes in Companies Act 2016

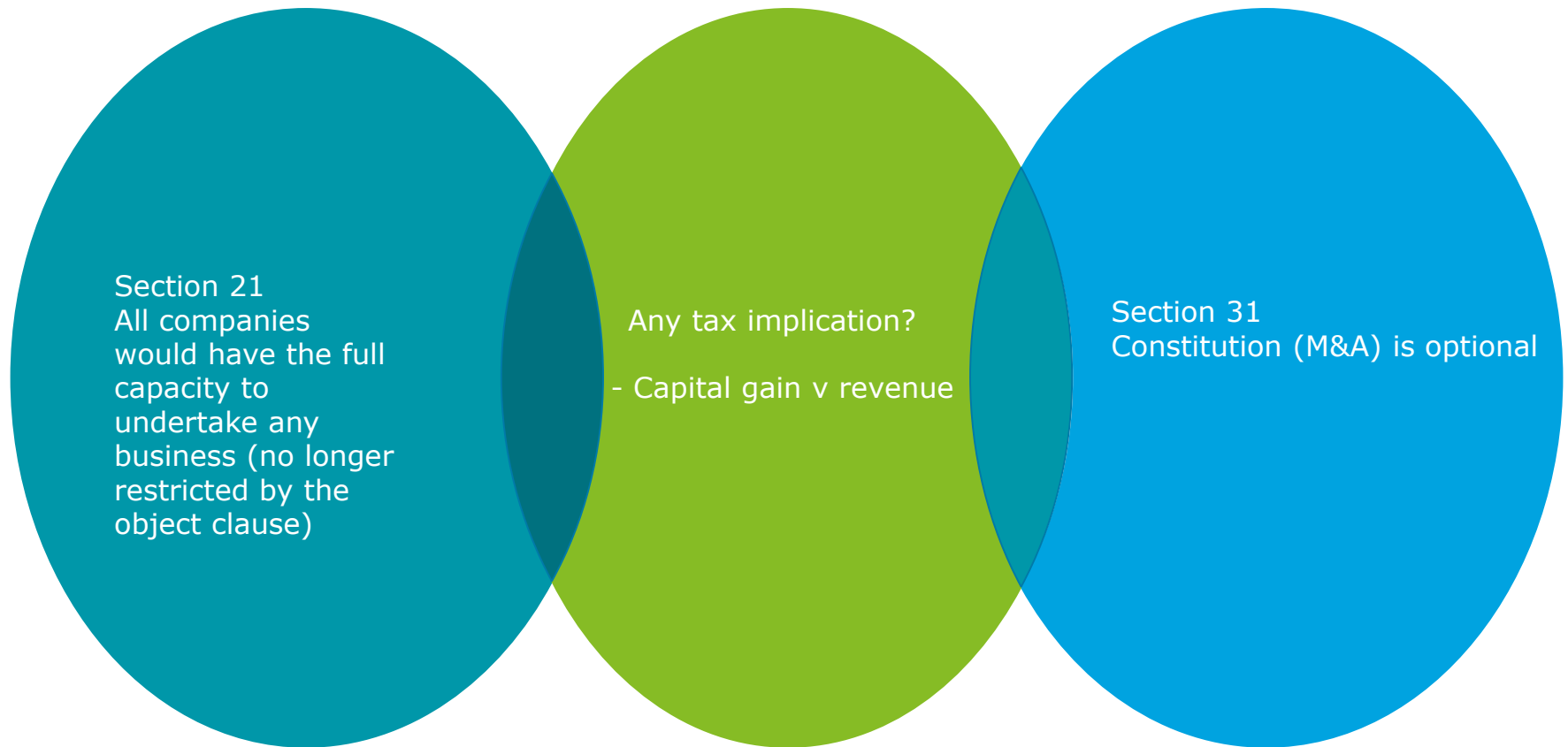
Existing

- Incorporation process by submission of Form 6, a copy of M&A, Form 48A
 - Incorporation to be done through a secretary
 - Company must have a memorandum of association and the option of having articles of association (in default Table A will be applicable)
-
- Effect of incorporation – company is a body corporate and capable of suing and being sued, having perpetual succession and a common seal with a power to hold land. (S.16(5))

New

- Incorporation process through a superform/template by promoter(s)/shareholder(s)
 - M&A and appointment of secretary at point of incorporation is optional.
 - Constitution (M&A and AA) is optional.
 - A company may adopt constitution after incorporation.
 - However, company limited by guarantee (CLBG) is still required to have constitution at the point of incorporation.
-
- Effect of incorporation – company is a body corporate with legal personality separate from its members.
 - Company has **full capacity to undertake any business activities.**

Tax Consideration



Salient Changes in Companies Act 2016

Existing

- **Certificate** of registration is conclusive evidence [S.16(4)]

Common seals

- Company are required to have common seals.

- Execution of documents are usually through affixing common seal and countersigned by a person authorized to do so.

Name of companies

- Names must be approved.
- Names cannot be similar
- Names must be reserved [S.22(6) CA1965]

New

- **Notice** of registration is conclusive evidence
- Purchase of certificate is optional

Common seals

- **Optional.**
- If a company decides to have a common seal, the provisions of the law must be observed.

Execution of documents

- by affixing common seal as provided in the constitution or by at least 2 persons authorized by the Board.
- In cases of single director, by that director and must be witnessed.

Name of companies

- Names must be approved
- Names cannot be identical
- Reservation of names is optional
- If proposed name is not available, Registrar has the power to assign specific expression for the company name

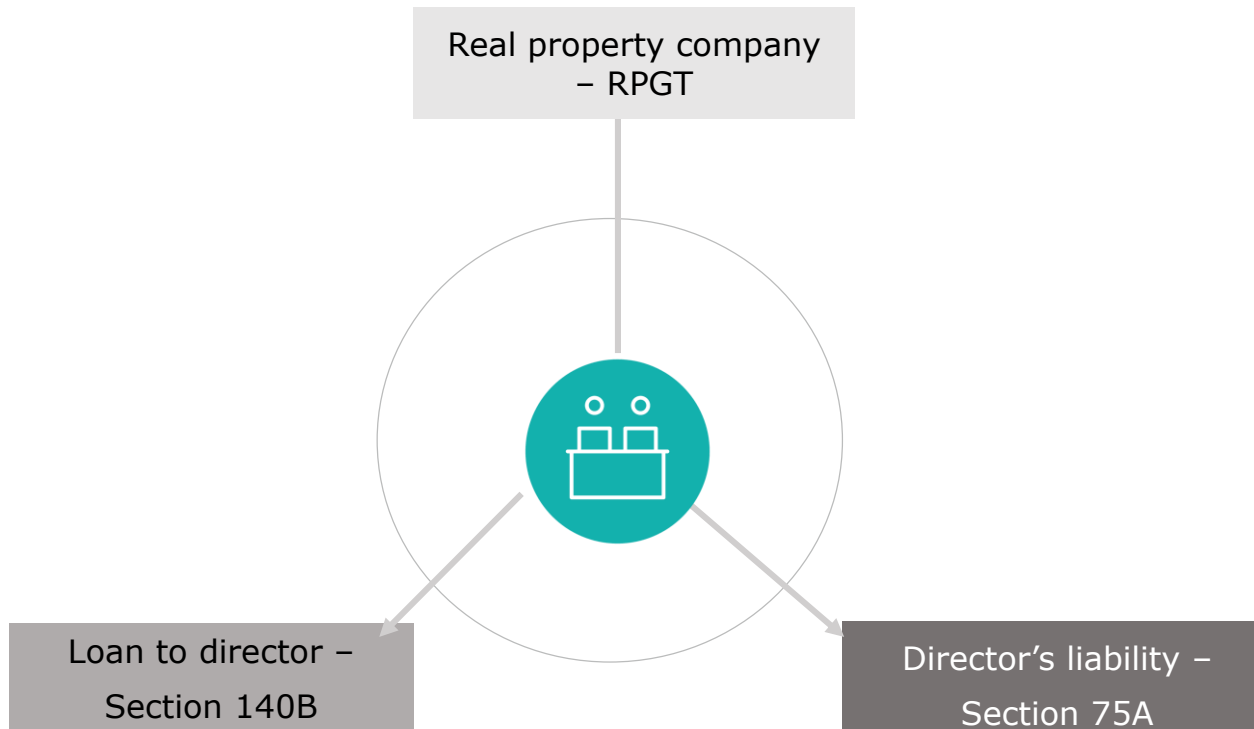
Salient Changes in Companies Act 2016

Existing

- Two members/directors company

New

- A company can be incorporated by a single member and that single member can also be the sole director
- Public company must have at least two directors



Tax Considerations

Income Tax Act

Directors with more than 20% shareholding (directly or indirectly) in the ordinary share of a company will be jointly and severally liable to the tax (e.g. corporate income tax, MTD payment etc) of the company.

GST Act

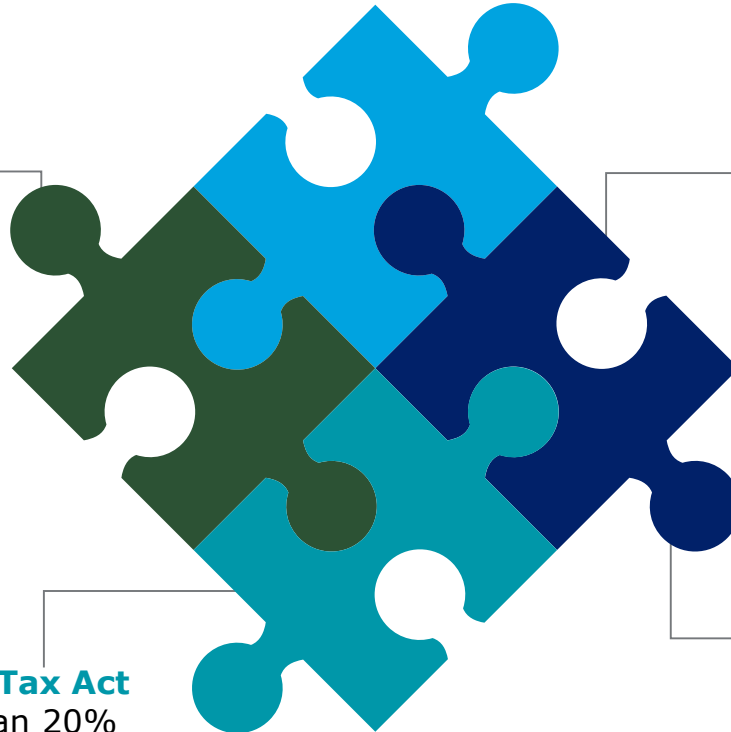
All directors are jointly and severally liable to the tax, surcharge, penalty, fee or any other money of the company

Real Property Gains Tax Act

Directors with more than 20% shareholding (directly or indirectly) in the ordinary share of a company will be jointly and severally assessable and chargeable with the tax payable by the company

Companies Act

Dividend can only be distributed if the directors is satisfied that the company will be solvent immediately after the distribution is made.



Salient Changes in Companies Act 2016

Existing

Shares

- Shares **with par value**
- Share premium account
- Capital redemption reserves (CRR)

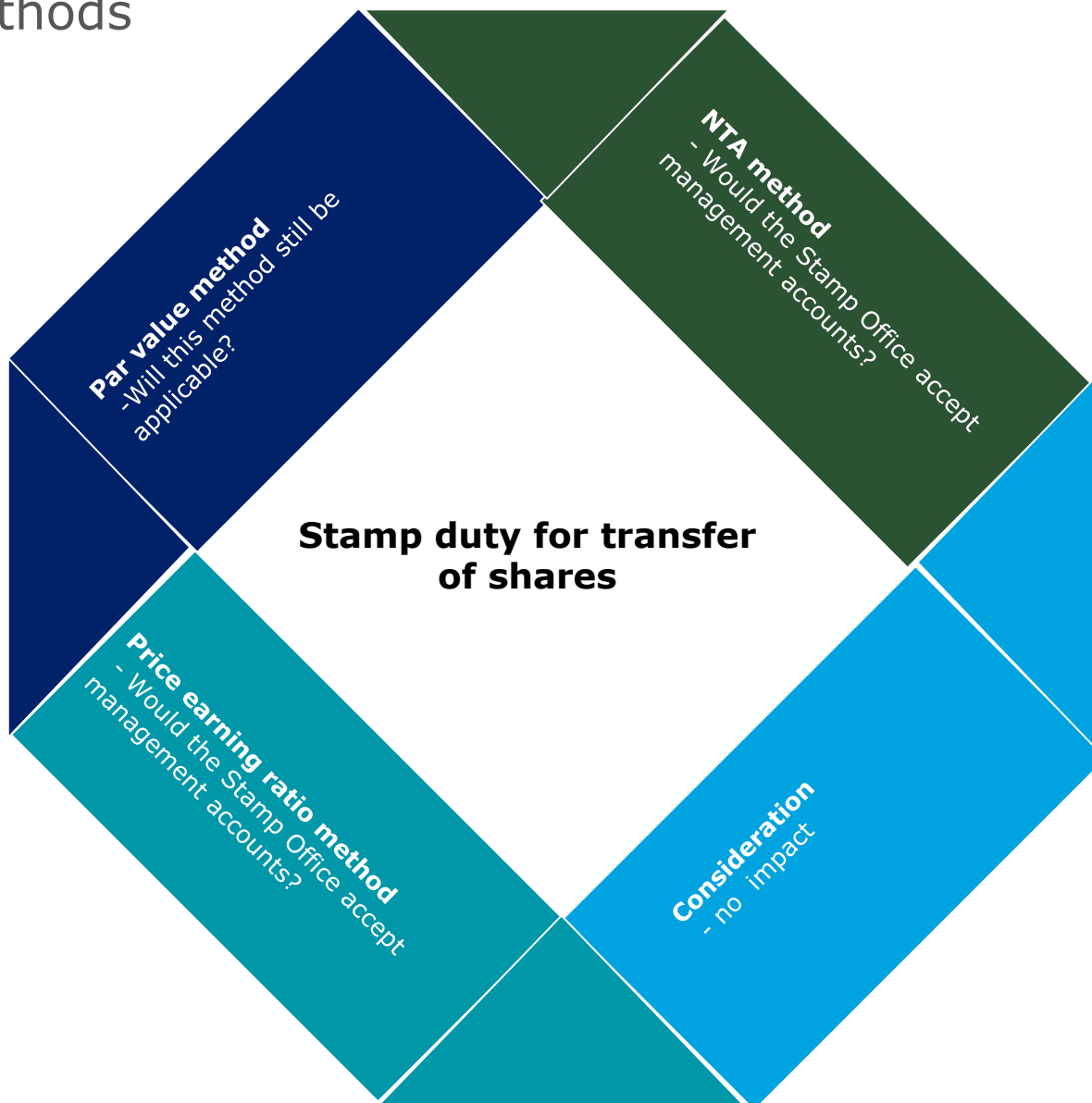
New

Shares

- Shares to be issued **without par value**
 - Shares will be issued at a price
 - Share premium account , Capital Redemption Reserve and the concept of authorised capital will no longer be applicable.
 - Transitional period of 24 months will be given for companies to utilise the amount standing in credit in the company's share premium accounts.
-

Stamp Duty

- Valuation methods



Stamp Duty

- Valuation methods

ABC Sdn Bhd

| Basis of Valuation : | Value of Shares RM | | Stamp duty Payable @ 0.3% RM |
|---|-----------------------|----------------|---------------------------------|
| (a) Par value method (15,000 shares @ RM1 each) | 15,000 | | <u>45</u> |
| (b) Net tangible asset method (based on audited accounts as at 31.12.2015) | | | |
| Share capital | 15,000 | | |
| Retained earnings | 2,331,353 | | |
| | <u>2,346,353</u> | | <u>7,039</u> |
| (c) Net earnings per share method (based on audited accounts as at 31.12.2015) | | | |
| Net profit after tax | 323,393 | | |
| Number of shares | 15,000 | [i] | |
| Earning per share | 21.56 | [ii] | |
| PE ratio (for property sector) | 3.5 | [iii] | |
| Value of shares based on net earnings method (number of shares transferred x EPS x PE ratio) | <u>1,131,900</u> | [i]x[ii]x[iii] | <u>3,396</u> |
| (d) Sales consideration | 1,000,000 | | <u>3,000</u> |
| STAMP DUTY PAYABLE | | | <u>7,039</u> |
| <i>(whichever is the highest)</i> | | | |

Salient Changes in Companies Act 2016

Existing

Share certificate

- Mandatory issuance of share certificate.
- Share certificate is prima facie evidence of title to the shares.

Variation of class rights

- Any variation must be sanctioned by the percentage of members in the class as specified in the M&A.

9th Schedule

New

Share certificate

- Share certificate will only be issued upon application
- Register of members becomes prima facie evidence as to the title of the shares.

Variation of class rights

- Any variation must be made in accordance with the constitution; or if not provided, by at least 75% of members in that class.
- If the constitution provides for procedures for variation, the alteration or deletion of such provision can only be done unanimously.

- Reliance on approved accounting standards and to eliminate inconsistencies between CA and accounting standards.
- Items under the Ninth Schedule which are not adequately dealt with in the present approved accounting standards shall be considered by the Malaysian Accounting Standards Board (MASB) (where relevant) for inclusion in the approved accounting standards.

Salient Changes in Companies Act 2016

Existing

Company auditors

- A person shall not be appointed as auditor for a company if he is **indebted to an amount exceeding RM2,500.**

Registration of firm auditors

- Currently contained in Companies Regulations 1966

Appointment of Auditors -

Registration of firm auditors

- Currently contained in Companies Regulations 1966

New

Company auditors

- A person shall not be appointed as auditor for a company if he is **indebted to an amount exceeding RM25,000.**

Registration of firm of auditors

- Becomes part of substantive law.

Appointment as auditors -

- Those existing partners at the date of the appointment of the audit firm.
- For audit firms registered as LLPs, those partners who obtained approval as approved company auditors subsequent to the date of appointment of the audit firm as auditors will also be recognized to take up the role of engagement partners notwithstanding they were not partners of the firm at the date of the said appointment.

Salient Changes in Companies Act 2016

Existing

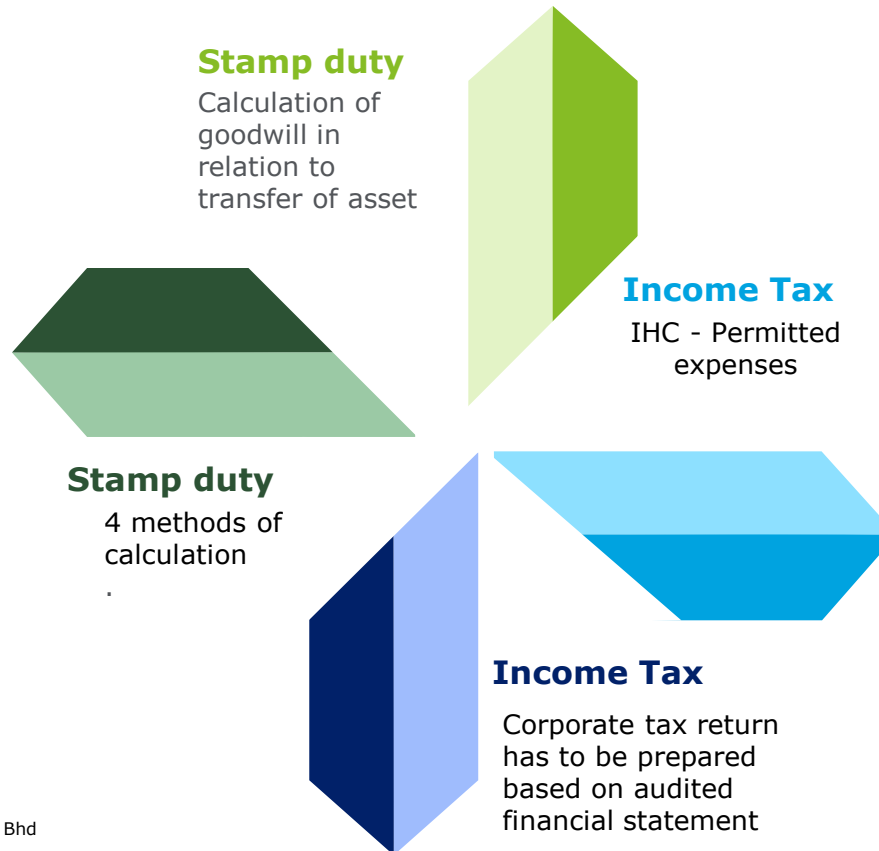
Appointment of auditor

- All companies must appoint auditor

New

Appointment of auditor

- For private company, the Registrar is empowered to **exempt** certain category of companies from having to appoint auditors.



Salient Changes in Companies Act 2016

Existing

Terms of office of auditors

- From one AGM to the conclusion of the next AGM

None

Duties of auditors to state as to whether the accounts of the subsidiary is subject to any qualification

An auditor of a holding company has a right of access to the accounting and other records of subsidiary

New

Terms of office of auditors

- For **private company** – in accordance with the **terms of service**
- For **public company** – from **one AGM to the conclusion of the next AGM.**

Attendance of auditors at meetings where financial statements are laid

- For **public company**, it is **compulsory** for an auditor or his representative to attend.
- For **private company**, only **compulsory if requested by the company.**

This requirement is no longer needed in view of the International Standard of Auditing (ISA) 600 adopted by auditors.

The holding company shall have the power to request all relevant information from its subsidiaries to secure compliance.

Any director who fails to secure compliance commits an offence.

Other tax implications

Authorized share capital

The concept of authorized capital will no longer be applicable

Potential revision of PU order - PU(A)475/2003

- Incorporation fee
 - a) the cost of preparing and printing the M&A, prospectus, circulating and advertising the prospectus;
 - b) the cost of registering the company and the statutory documents, fees and stamp duties payables thereon;
 - c) the cost of drawing up the preliminary contracts and stamp duties payable thereon;
 - d) the cost of printing debentures and stamp duty (if any) payable thereon and of share certificates and letters of allotment;
 - e) the cost of the seal of the company; and
 - f) underwriting commission.

Share premium account

Companies are given 24 months to utilize the amount

Small and medium enterprise status

- A company may become a non-SME upon the conversion of the share premium to share capital
- Benefits of a SME company
 - a) Tax rate – 19% for the first RM500,000 chargeable income
 - b) Capital allowance for small value assets – no restriction
 - c) Exempt from submission of estimate of tax payable (Form CP204) for first 2 years of assessment

Salient Changes in Companies Act 2016

Existing

Compliance with approved accounting standards

- Accounts must be prepared in accordance to accounting standards approved by MASB.

New

Compliance with approved accounting standards

- Accounts must be prepared in accordance to accounting standards approved by MASB.
- However, in cases where certain authorities (e.g. Securities Commission or Bank Negara Malaysia) specify modifications to the approved accounting standards based on FRA 1997, the financial statements must be prepared in accordance to such modifications issued by the authorities.

None

Business Review Report

- Board of Directors is required to prepare Directors' Report and **may** include a business review report.
- Business review report helps to enhance the shareholders' understanding of the company's past performance and assist them to assess how well the directors have performed their duties in elevating the accomplishments of the company.

Salient Changes in Companies Act 2016

Existing

None

- Reduction of capital is pursuant to Court's Order
- Redemption of preference shares by way of special resolution

New

Solvency statements

Introduction of solvency statements for the following corporate exercises:

- Reduction of share capital
- Redemption of preference shares
- Provision of financial assistance
- Share buyback

Reduction of Capital

- Introduction of an **alternative method for reduction of share capital** without having to go through Court provided solvency statements are made by **ALL** directors

Redemption of preference shares

- by way of special resolution AND supported by solvency statements from **ALL** the directors.

Salient Changes in Companies Act 2016

Existing

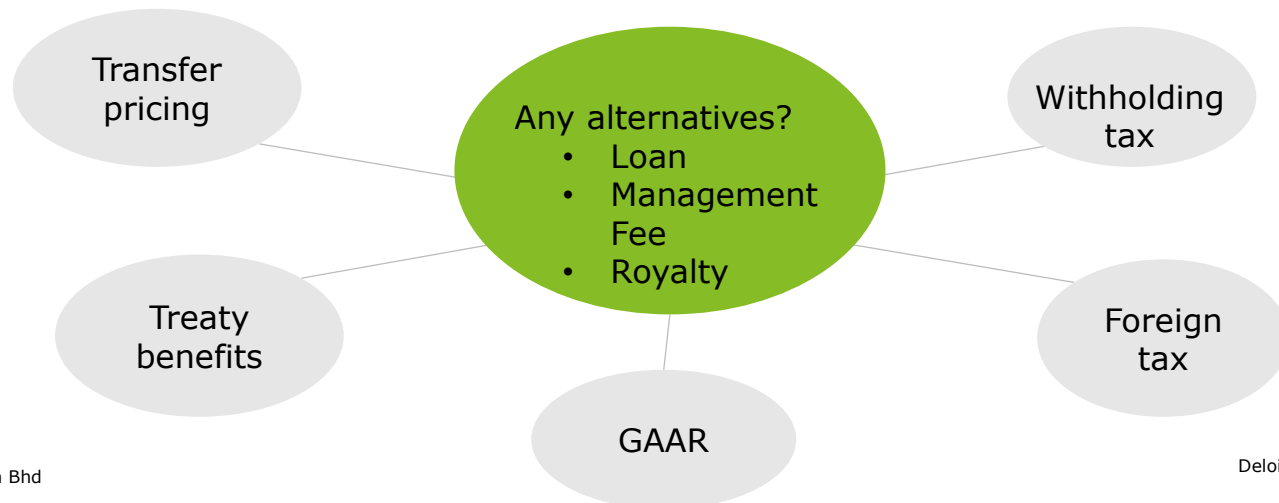
Financial assistance by a company in the purchase of its own shares

- **Strict prohibition** except certain circumstances such as in cases where lending money is part of the ordinary business of the company, the financial assistance is in pursuance to a scheme for the employees of the company or the lending of money is regulated by the Securities Commission.
- Dividends should be distributed out of profits.

New

Financial assistance by a company in the purchase of its own shares shall not exceed 10% of shareholders' fund

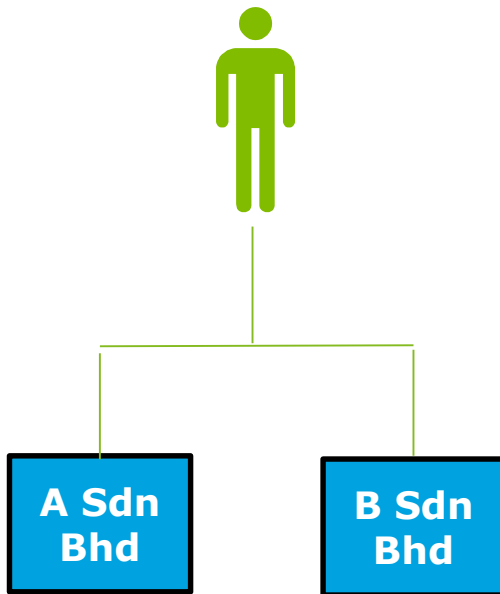
- **The strict prohibition is lifted** for companies (other than listed companies) to provide financial assistance provided that the amount does not exceed 10% of the shareholders' fund and must be supported by a solvency statements by directors.
- Dividends be distributed out of profits and is only allowed if it meets solvency test



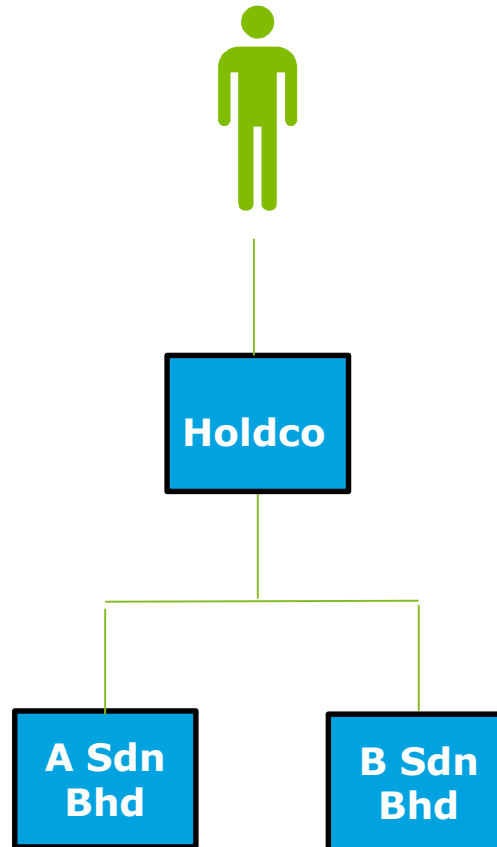
Sole proprietor vs Sdn Bhd

Tax Consideration

Structure 1



Structure 2



Tax consideration

- SME rate
- Intra-group stamp duty exemption
- GST group registration
- RPGT exemption

Sole proprietor vs Sdn Bhd

Tax Consideration



Sole proprietor

| | RM | | RM |
|--------|-----------------|--------|----------------------|
| First | 250,000 | 0%-24% | 47,900 |
| Next | 150,000 | 24.5% | 36,750 |
| | <hr/> 400,000 | | <hr/> 84,650 |
| Next | 200,000 | 25% | 50,000 |
| | <hr/> 600,000 | | <hr/> 134,650 |
| | 400,000 | 26% | 104,000 |
| | <hr/> 1,000,000 | | <hr/> 238,650 |
| Exceed | 1,000,000 | 28% | |

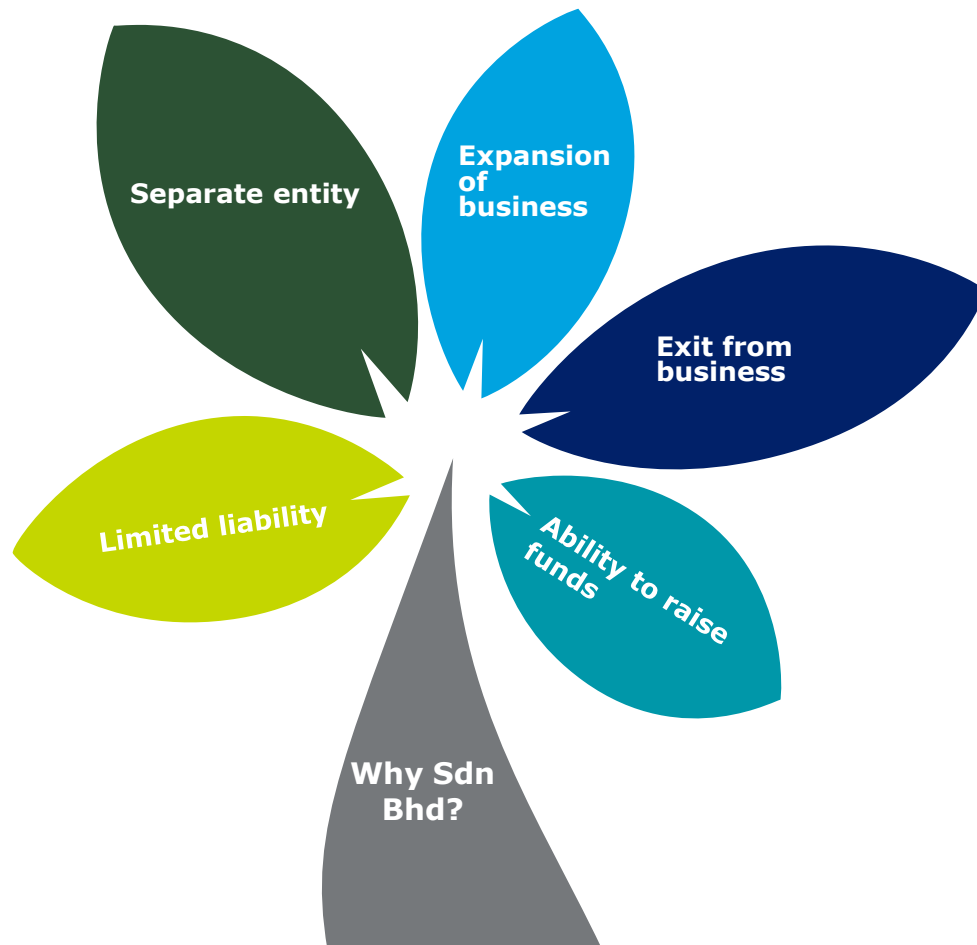


Company

| | RM | | RM |
|--------|-----------------|-----|----------------------|
| First | 500,000 | 18% | 90,000 |
| Next | 500,000 | 24% | 120,000 |
| | <hr/> 1,000,000 | | <hr/> 210,000 |
| Exceed | 1,000,000 | 24% | |

Sole proprietor vs Sdn Bhd

Non-tax perspective



Limited liability
Personal wealth is protected

Separate entity
Separate entity will ensure a continuous existence of a business.

Expansion of business
Expansion of business operation will entail a more structured form of business

Exit from business
The owners can opt to sell or transfer, partially or entirely, the shares in the company. An individual will be unable to sell or transfer partnership or sole-proprietorship to anyone except selling the business.

Ability to raise funds
It is often for companies to raise money than it is for other forms of business (e.g. issuance of new shares to investors, taking bank loans etc)



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