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New Act, Old Problems

What the Income Tax Act, 2025 Did Not Fix for M&A and Succession

Effective 1 April 2026 | Fundamental Structural Gaps | Zero Fixes

Re-drafted
New Sections, Same Policy

Fundamental Gaps
M&A, Demerger, Succession

Zero Fixes
Semantic, not Strategic Redraft

Swipe →

01

THE FAST-TRACK GAP

S. 233 Expanded. Different Frameworks. None Aligned.

Tax
S. 2(35) defines 'demerger' only for S. 230-232. S. 233 confirmations excluded. No tax neutrality. Shareholder payout risks deemed dividend at 36%. Gaps in other laws as well

SEBI Takeover
Reg 10(1)(d)(ii) exempts acquisitions only under 'order of a court or tribunal.' S. 233 confirmation is by Regional Director, not tribunal. Open offer exemption may not apply.

SEBI LODR
Reg 37 requires prior SEBI approval for schemes under S. 230-234 approved by NCLT. Language does not extend to 'any other competent authority.'

Stamp Duty
Some states extend concessional rates to 'Tribunal orders.' S. 233 produces a 'confirmation,' not an 'order.' Concessional stamp duty may not apply. Some states, however, do recognize this

FEMA NDI Rules
FEMA NDI Rules extend automatic route for mergers/ demergers, if approved by a "competent authority"

One Route, Multiple Divergences

MCA expanded the scope of fast-track route and included demergers explicitly in September 2025. Tax, SEBI Takeover Code, SEBI LODR, stamp duty, and NDI Rules all remain misaligned.

02

THE DEMERGER DEFINITION

Narrow. Outdated. Commercially Incoherent. Unresolved Pathway.

I

Undertaking Requirement

Must transfer a self-contained 'undertaking' with its properties and liabilities, on a going concern basis

II

Loss Allocation

Losses 'directly relatable' to the demerged undertaking transfer automatically. If no undertaking, no loss transfer at all.

III

The Fix: Expand the Definition

'Undertaking' should be clarified to include shares of subsidiaries or SPVs (typically required for regulated entities, sector-specific needs such as infrastructure, or diversified businesses) where such entities represent genuine business operations, not merely non-business holdings or treasury investments. Without this, holding company demergers and vertical splits remain outside the definition.

Still Phase 1

The new Act re-drafts the definition without expanding it.
The same structural gaps that constrained demergers persist.

03

THE CONSIDERATION GAP

Deferred Consideration. Taxed Before Receipt. Phantom Income.

India: Current Position

The Problem

- Tax triggered at point of transfer, not receipt in case of deferred consideration
- Earnouts, milestones, escrows create phantom income
- No safe harbour for genuine deferred or contingent consideration
- Contingent consideration may be taxed as income from other sources at higher rate

⚠ *Workarounds add cost and complexity*

Global Practice

The Solution

- Multiple Jurisdictions: tax on actual receipt
- Earnouts taxed when milestones are met
- Escrow releases taxed on disbursement
- Contingent consideration: tax when certainty crystallises
- *Aligns tax with commercial reality*

Phantom Income

The seller pays tax on consideration that may never accrue or pays the tax on income not received. Global jurisdictions resolved this decades ago. The new Act did not.

04

THE VALUATION TRAP

Signing Price.
Closing Price.
Taxed on the Delta.

S. 56(2)(x) / Section 92 (New Act)

THE TRAP

Buyer receives shares below FMV at closing (due to genuine market movement since signing). The delta may be taxed as deemed income, especially for listed company acquisitions. Price was arm's-length at signing, but FMV shifted by closing.

S. 50CA / Section 79 (New Act)

THE MIRROR

Seller transfers unlisted shares below FMV at closing, if consideration is lower. FMV is deemed to be the adjusted net book value (including adjusting the underlying values of listed companies and reckoner values of immovable properties). Seller is taxed on a higher price than actually received. Both provisions bite on the same transaction from opposite sides.

Safe Harbour for Genuine Transactions

THE FIX NEEDED

Where price is determined at signing on an arm's-length basis, the delta should not be taxed. The new Act does not provide this safe harbour.

The Double-Edged Sword

The market moves between signing and closing. Commercial realities may not reflect price of unlisted shares. The tax law treats the delta as deemed income. No safe harbour. No fix in the new Act.

05

DISJOINTED RELATIVES: SUCCESSION VACUUM

Same Relationship. Different Route. Different Tax.

ROUTE 1: Direct Gift (Exempt)

Uncle gifts shares to nephew directly. Exempt under Section 92(2)(m) because 'relative' is tested from the recipient's perspective, and brother/sister of parents qualifies.

Recipient's perspective: nephew looks up. Uncle is brother of parent. Exempt. However, reciprocal gift i.e., nephew to uncle is not considered as inter - se relative transfer!

ROUTE 2: Trust Contribution (Taxable)

Same uncle contributes same shares to a trust for the same nephew. Taxable. 'Relative' is now tested from the contributor's (uncle's) perspective, and lineal descendants of a sibling are excluded from the definition.

Contributor's perspective: uncle looks down. Nephew is not in the definition. Taxable.

The Irony Within the Same Act

Sections 355 and 515 define 'relative' more broadly to include lineal descendants of siblings. Select Committee flagged the asymmetry, parked it as 'policy issue.'

Interpretational Assymetry

Same relationship, same shares, same economic substance.
Different route, different tax. The Select Committee saw it and walked away.

06

THE FAMILY ARRANGEMENT VACUUM

No Framework.
No Recognition.
No Safe Harbour.

Family Settlements

Problem:	No statutory recognition of family settlements as tax-neutral events
Risk:	Genuine arrangements litigated as colourable devices or deemed transfers
Gap:	No safe harbour even when beneficial ownership does not change
Impact:	Business families avoid formal structuring, creating succession risk
Trend:	Succession planning/ Family Arrangement (even if not acrimonious) has accelerated but the tax law has not kept pace

The new Act had the opportunity to create a comprehensive succession framework. It chose not to. Business families continue to structure around the law rather than within it.

The Missing Framework

Indian business families are actively looking at succession planning and family arrangements. The tax-neutrality is a case law-evolved law. A proper framework would bridge this gap

07

THE ILLOGICAL GRANDFATHERING UNCERTAINTY

Cost Splits.
Illogical Outcomes.
Two Problems.

ISSUE 1: Domestic (31 January 2018)

If listed co shares were acquired pre-31 Jan 2018, deemed cost is market price on that date. New shares issued by unlisted co were not 'acquired' before that date. Should cost split use grandfathered cost?

Logically yes. Cost and holding period relate back. But no express clarification

ISSUE 2: Treaty Investors (1 April 2017)

Mauritius / Cyprus / Singapore DTAAs grandfathered gains only for shares acquired pre-1 April 2017. New demerger shares technically issued post that date, even if original shares were acquired before.

Date of acquisition should relate back logically. But no DTAA clarification exists

Edge Case: Negative NBV

If NBV of transferred assets is negative, cost of new shares = NIL. If net worth of demerged co is negative, cost of demerged co shares = NIL.

Two Unresolved Questions

Both the domestic and treaty grandfathering questions remain without express legislative or administrative clarification. The New Act could have addressed this gap cleanly.

08

THE LOSS CARRY-FORWARD CAP

Shorter Runway.
Narrower Scope.
Less Attractive M&A.

S. 72A: Narrow Scope of Industries

S. 72A permits loss carry-forward on amalgamation only for specified industries. Several sectors are not covered:

NBFCs	**Technology Cos**	**Service Firms**
Non-Manufacturing	**Financial Services**	**Others**

M&A involving loss-making entities in these sectors becomes structurally less attractive

S. 79: Continuity on Group Restructurings

S. 79 restricts carry-forward of losses if there is a change in shareholding exceeding 51%. In intra-group restructurings (mergers, demergers, holding company reorganisations), shareholding patterns often change even though the ultimate beneficial ownership remains the same. No carve-out exists for genuine group restructurings where the beneficial owner has not changed. Losses lapse on a technicality.

Shorter Runway, Narrower Door

S. 72A excludes entire sectors. 8 year period is reset. S. 79 kills losses on group restructurings even when beneficial ownership is unchanged. The New Act still does not address these gaps

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The Takeaway

The Income Tax Act, 2025 takes effect 1 April 2026. New sections, same policy. Multiple structural problems continue

Fast-Track Gap	S. 233 expanded but not aligned with tax, SEBI Takeover, SEBI LODR, stamp duty, or NDI Rules.
Demerger Definition	'Undertaking' too narrow. SPVs and holding structures excluded. Loss carry forward fails, if not an “undertaking”
Deferred/ Contingent Consideration	Deferred taxed at transfer, not receipt. Earnouts may be taxed as normal income → Not aligned with global deal realities and regimes
Valuation Trap	S. 56(2)(x) and S. 50CA tax genuine arms’ length transactions if they do not fit the tax floor. No safe harbour.
Disjointed Relatives	Direct gift to nephew exempt. Same shares via trust taxable. Select Committee flagged it, parked it.
Family Arrangements	No statutory framework for family settlements. Tax-neutrality is case-law evolved, not codified.
Grandfathering	31 Jan 2018 (domestic) and 1 Apr 2017 (treaty) cost split traps. No clarification in the new Act.
Loss Carry-Forward	S. 72A excludes entire sectors. S. 79 kills losses on group restructurings. Liberal provisions warranted.