

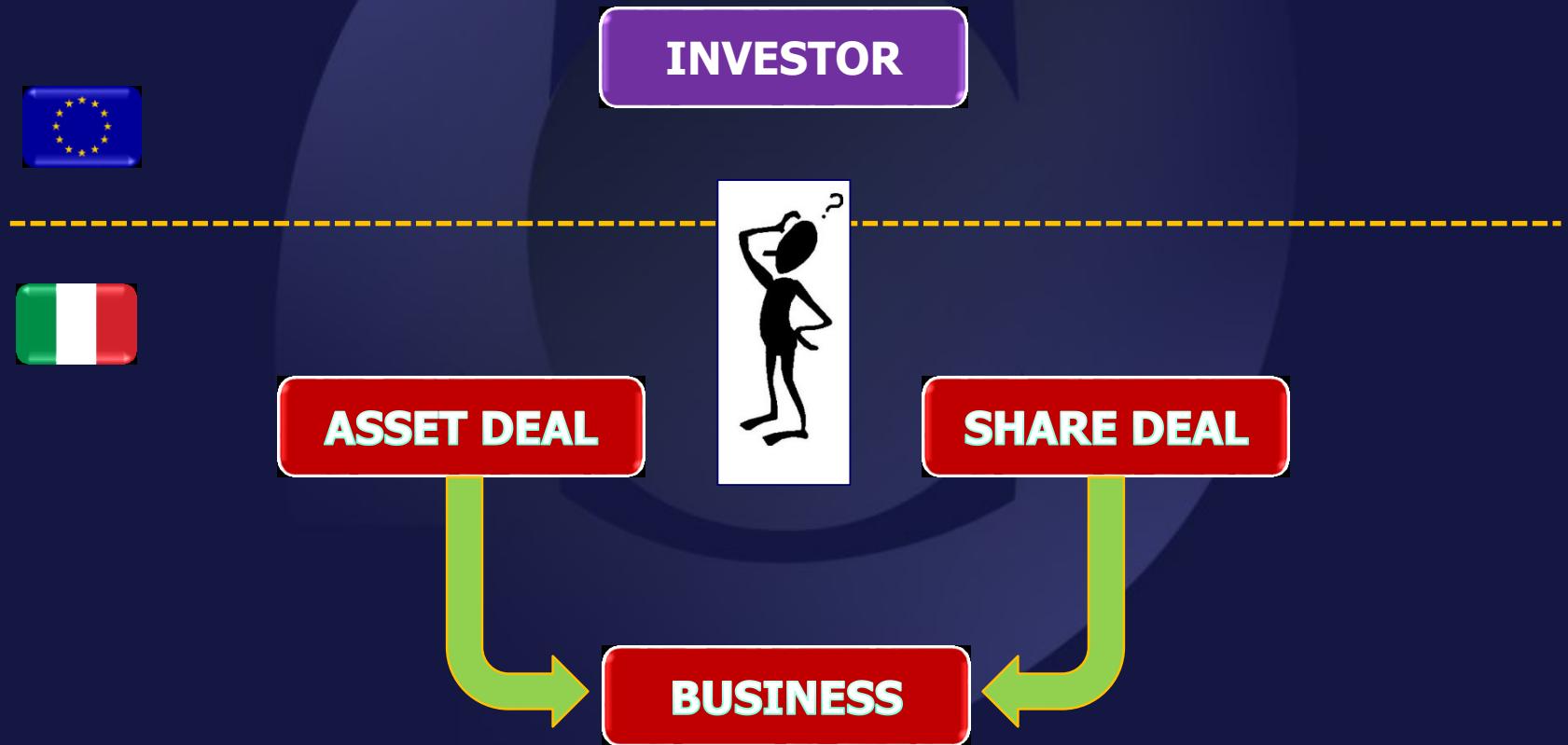
# TAXATION OF CROSS-BORDER M&A IN ITALY

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**GGI ITPG Global Tax Summit**

Frankfurt, 28.02.2020

# GENERAL FRAMEWORK



# DIRECTLY

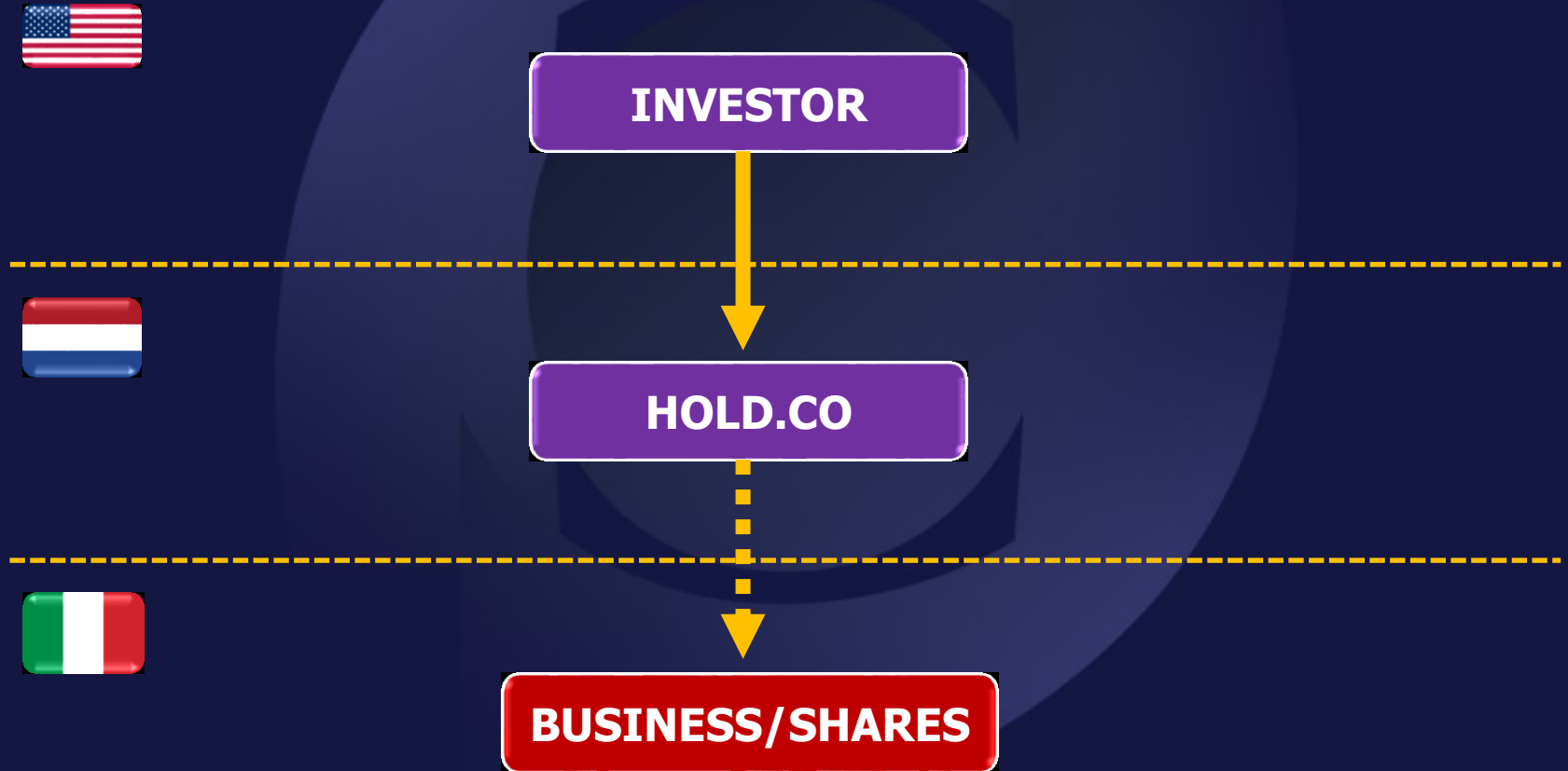
INVESTOR



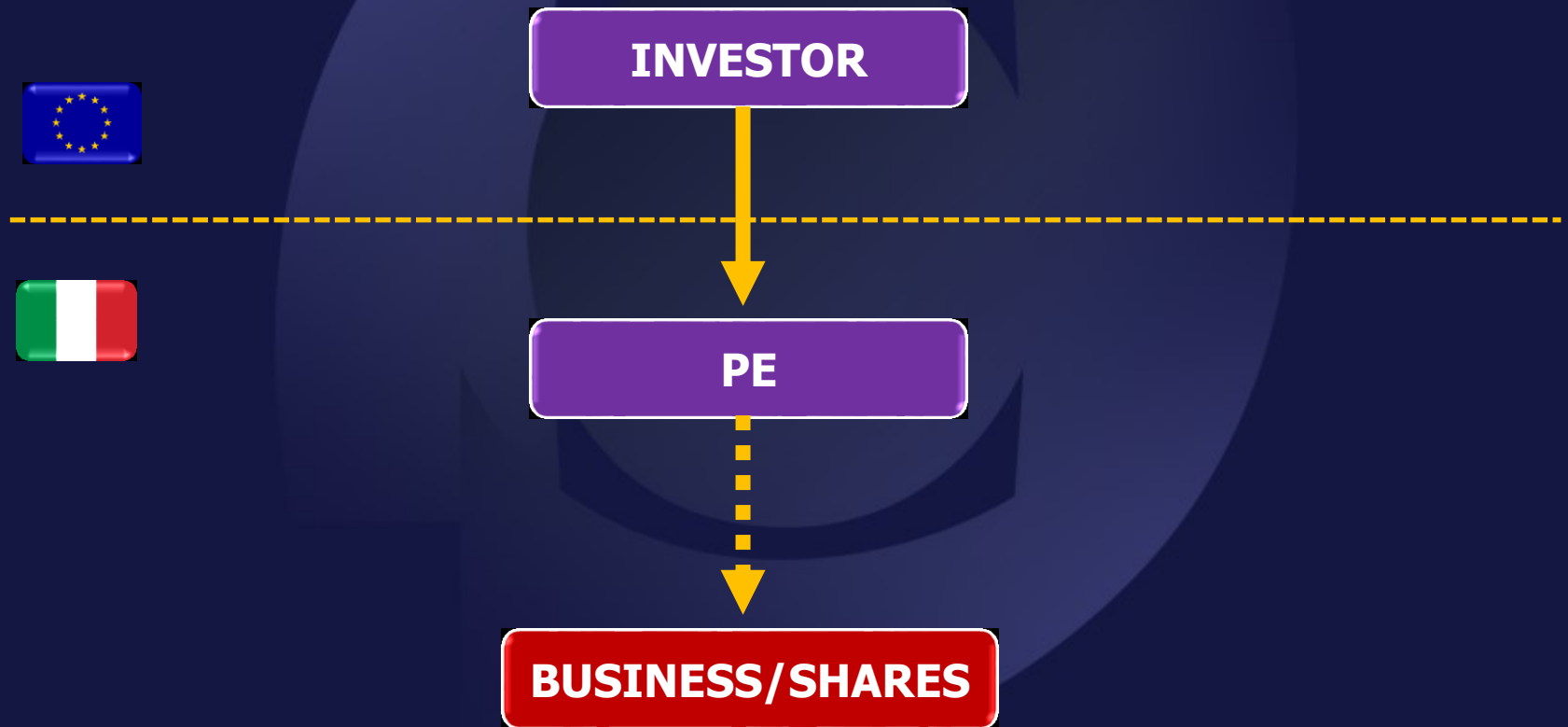
BUSINESS/SHARES



# THIRD JURISDICTION



# PERMANENT ESTABLISHMENT



# SPECIAL PURPOSE VEHICLE



**INVESTOR**

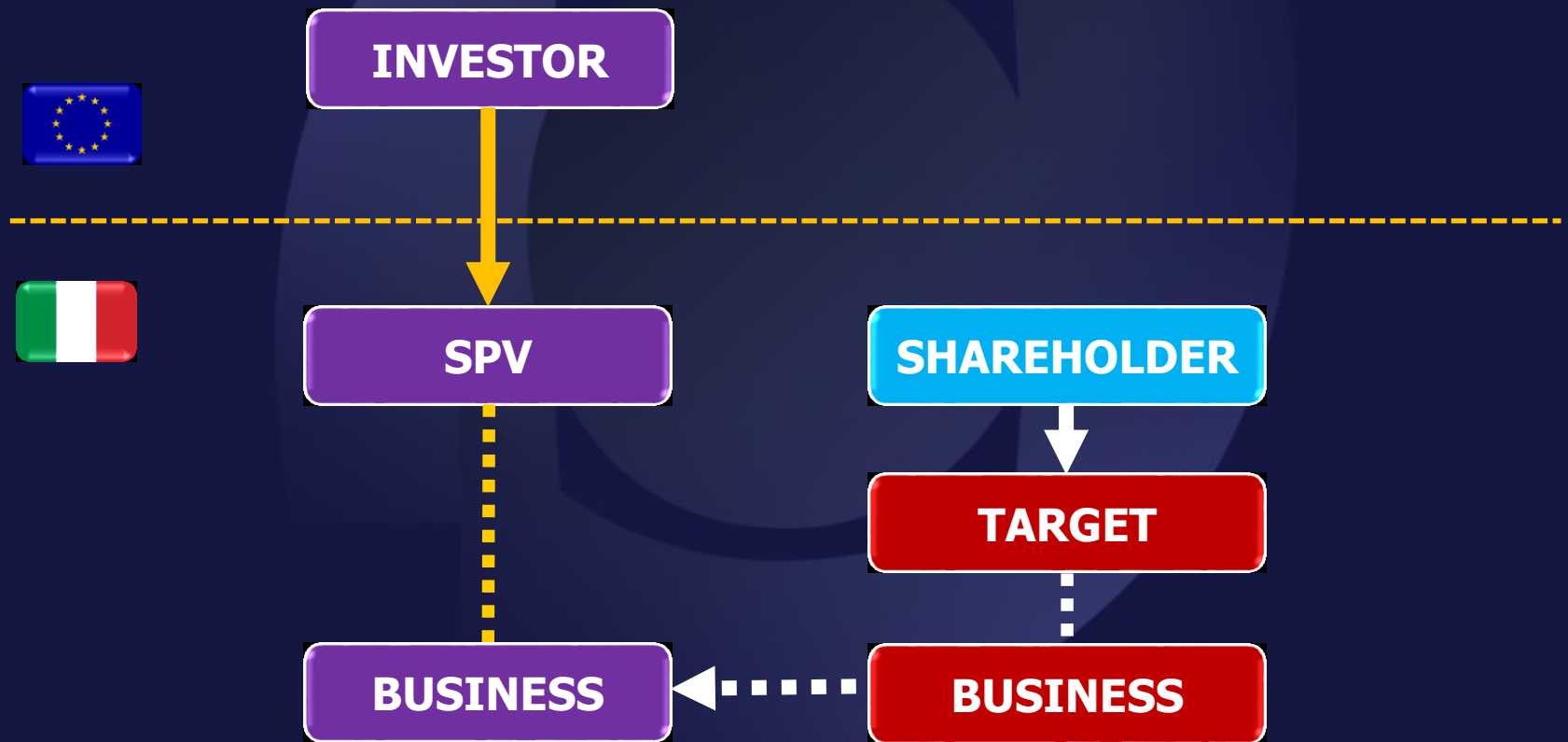


**SPV**



**BUSINESS/SHARES**

# ASSET DEAL



# ASSET DEAL



## ALLOCATION OF PURCHASE PRICE

- No specific tax rule/Fair market value
- Apportion of the purchase price/Deed of purchase



## ASSETS

- Assets recorded at purchase price
- Depreciation based on the new value



## GOODWILL

- Recognized for tax purposes
- Depreciated over a 18 years period



# ASSET DEAL



## TAX LIABILITIES

- Buyer/Seller jointly liable
- Maximum price paid/Certificate Tax Authorities



## TAX LOSSES

- Not transferred
- VAT credits transferred on certain conditions



## VAT/REGISTRATION TAX

- No VAT
- Yes Registration Tax/Different tax rates

# EXAMPLE

	Book Values	Transfer Values
<b>ASSETS</b>		
Fixed assets	1,000	1,200
Inventory	300	300
Trade receivable	200	150
Goodwill	-	200
<b>LIABILITIES</b>		
Trade payable	200	200
Debts	400	400
Equity	900	1,250

# SHARE DEAL



**INVESTOR**



**SPV**



**TARGET**



**BUSINESS**

**SHAREHOLDER**



**TARGET**



**BUSINESS**



# SHARE DEAL



## CLASSIFICATION OF SHARES

- Inventory/Taxed profits
- Fixed Financial Assets/Exempt capital gains



## TAX LOSSES

- Not transferred/Change of control-business activity
- Transferred/Certain conditions-Tax ruling



## INDIRECT TAXES

- No VAT
- No Stamp duty

# SHARE DEAL



## STEP-UP OF ASSETS

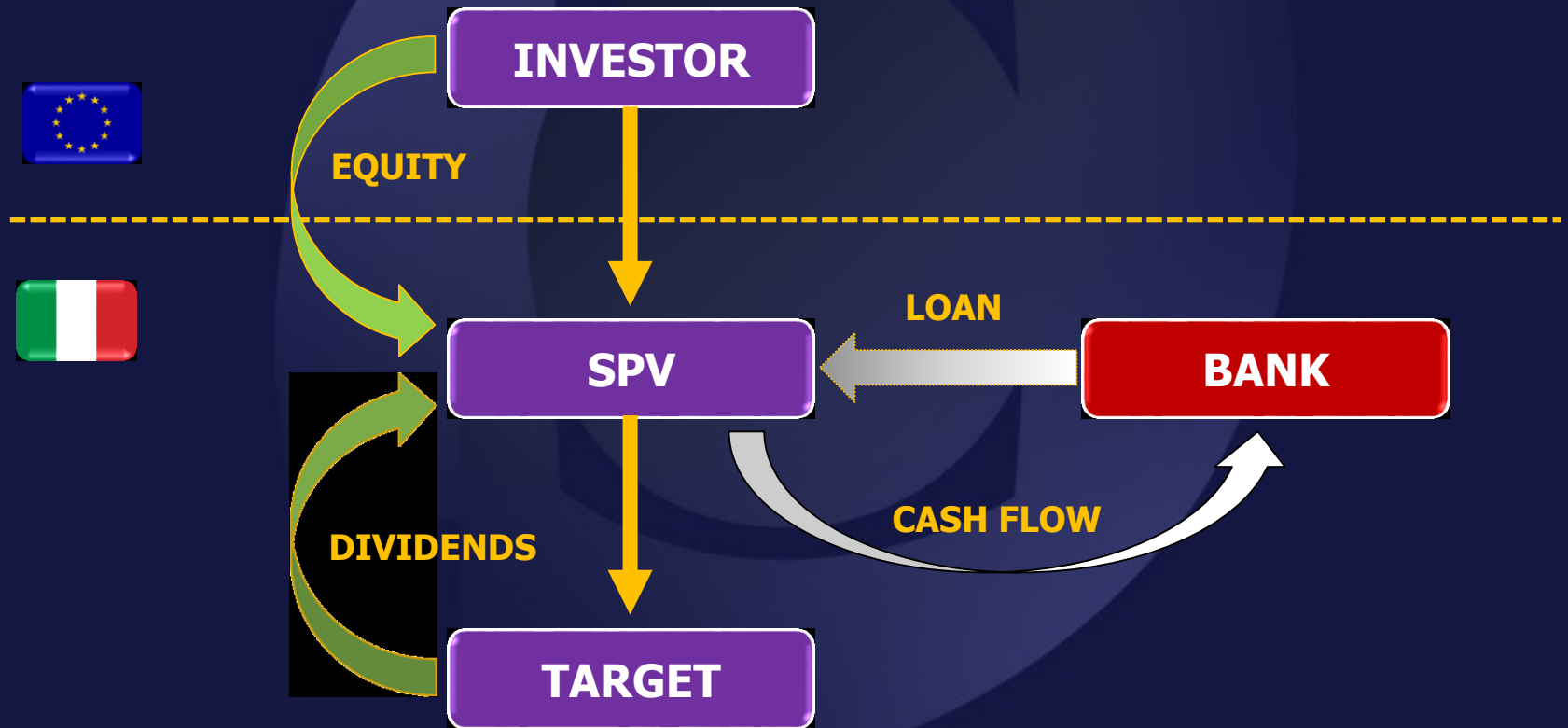
- Assets/No step-up
- Goodwill, trademarks, intangible/Step-up 16% tax



## MERGER

- A way to step-up the assets
- Taxation 12%/14%/16%

# LBO/MLBO



# INTEREST EXPENSES

- ✓ **Amount equal to interest income of year** is fully deductible
- ✓ **Surplus** is deductible up to 30% of EBITDA
- ✓ **Exceeding 30% of EBITDA** is carried forward under certain conditions
- ✓ **EBITDA not offset against interest expenses** is added to EBITDA of subsequent periods
- ✓ **Tax consolidation** offsets taxable income of another company of the tax group

# TAX AUTHORITIES POSITION

- ✓ **Until 2016** used to challenge very aggressively LBO-MLBO
- ✓ **From 2016 on** LBO-MLBO are not tax abusive transactions / Interest expenses deductible under ordinary tax rules
- ✓ **From 2016 on** abusive transactions are subject to review based on general anti avoidance rules



# ASSET DEAL



## ADVANTAGES

- Step-up of the assets allows higher depreciation (including goodwill)
- Previous tax liabilities of the Seller only partially transferred to the Buyer
- Possibility to buy only part of a business



## DISADVANTAGES

- Possibly not attractive to the Seller (PEX)
- Higher Registration Tax
- Higher CIT on capital gains
- TLCF of the Target remains with the Seller

# SHARE DEAL



## ADVANTAGES

- Attractive to the Seller (PEX)
- Buyer may benefit from TLCF of Target
- Lower Registration Tax
- Possibility to reduce the cost of financing the acquisition (LBO/MLBO)



## DISADVANTAGES

- Buyer liable for previous claims/liabilities of Target
- No free step-up in tax basis of purchased assets

**MANY THANKS FOR YOUR ATTENTION!**

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