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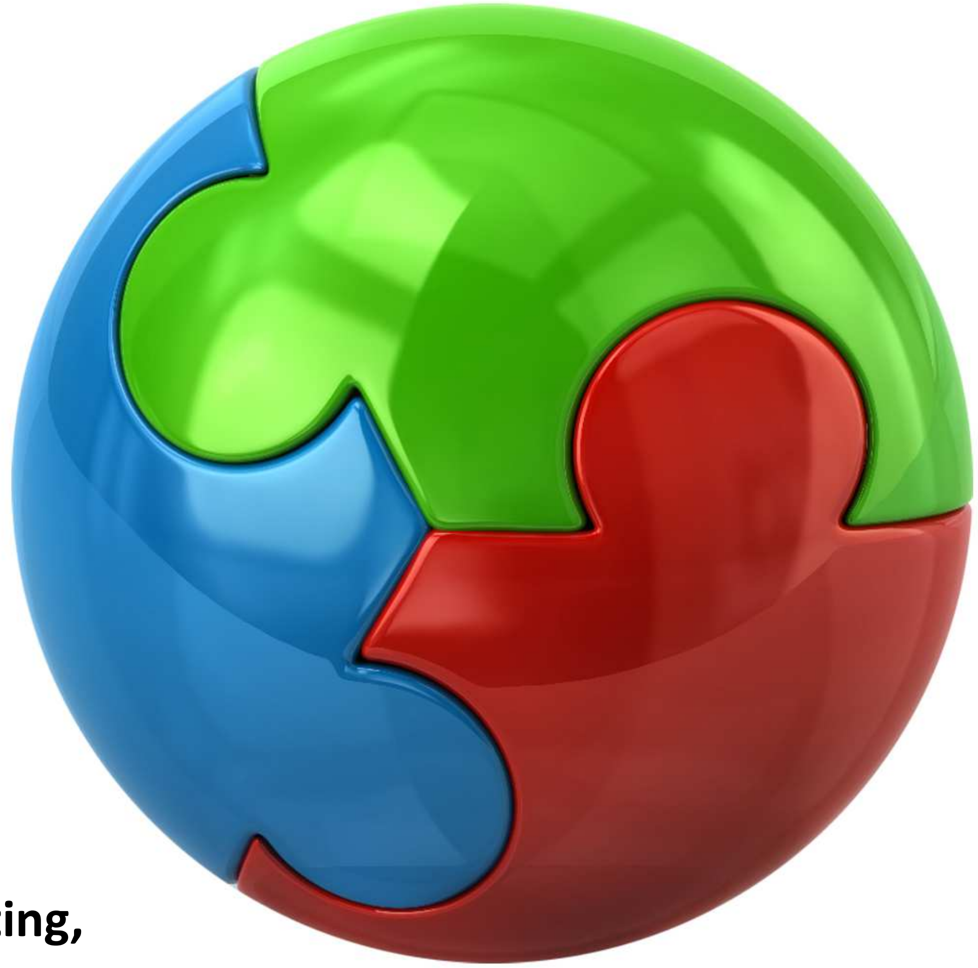

Structuring for special-purpose acquisition company (SPAC) listing, tax consequence and other key aspects

The Dbriefs Corporate Income Tax series

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Agenda

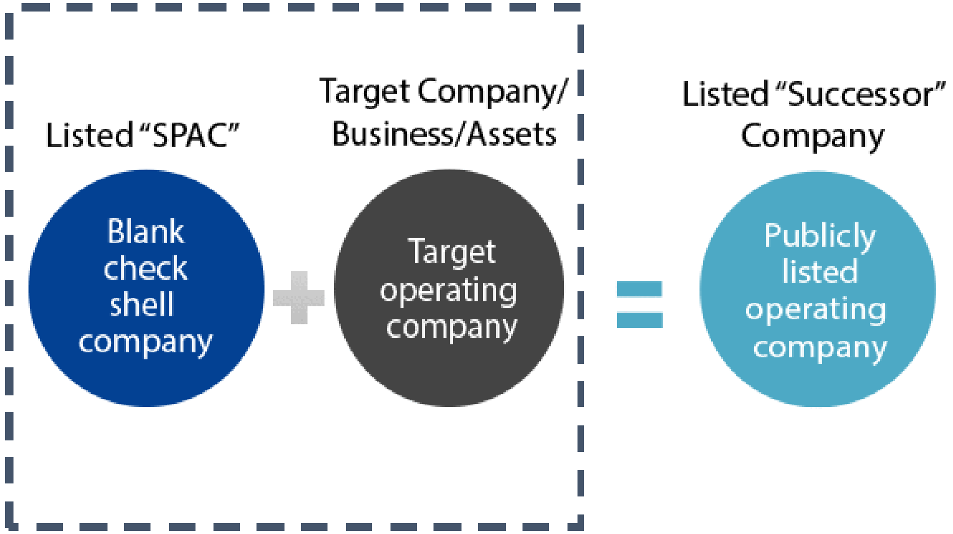
- Overview of a Special Purpose Acquisition Company (SPAC)
- Tax and regulatory – China
- Tax and regulatory – India
- Service offerings
- Questions and answers

Overview – Special Purpose Acquisition Companies (SPACs)

Overview – Special Purpose Acquisition Companies (SPACs)

Definitions

- A Special Purpose Acquisition Company (SPAC) is a company with no commercial operations, formed strictly to raise capital through an Initial Public Offering (IPO) for acquiring an existing company. It is also known as "blank check companies“
- Proceeds from its IPO will be held in a trust account and cannot be used for any purpose other than
  - Funding a De-SPAC transaction
  - Redeeming the shares sold to the public shareholders in the IPO



Overview – Special Purpose Acquisition Companies (SPACs)

Special purpose

- Raise capital in an IPO to acquire one or more operating companies through an acquisition. Note that SPACs do not have any commercial operations until acquisition
- A SPAC has a defined life of 18–24 months to consummate an acquisition—this period can be extended up to a maximum of 36 months with shareholder approval
- If the SPAC has not consummated an acquisition by the end of its life, then it must dissolve; the SPAC returns money raised in its IPO to public shareholders

Structure of SPAC

- Listed on the Nasdaq exchange or NYSE; 81% listed on Nasdaq
- IPO units have historically been priced at $10.00; IPO proceeds are held in independently run trust account. Units contain common + warrants to purchase common
- Comply with SEC and stock exchange rules around disclosures and corporate governance like any other public company

Source: Nasdaq

Transaction

- Fair market value of initial transaction must be at least 80% of the assets held in the trust account; in reality the acquisitions are typically 2x-4x the size of SPAC
- Typically require board and shareholder approval to consummate an acquisition

Source: FINRA

Overview – Special Purpose Acquisition Companies (SPACs)

Illustrative life cycle

Formation	IPO	Target search	Stock holder vote	Acquisition close
2–4 months		12+ months	3–6 months	

Formation

- Team and board appointments
- Investment strategy
- Retain advisors
- Pre-IPO investment

- Sponsors pay nominal amount in exchange for founders' stock (promote)
- Sponsors lend $100–200k to fund expenses
- Choose counsel and underwriter

IPO

- Background checks
- S-1 filing
- Roadshow
- Initial public offering

- File Form S-1 with SEC, like an operating company
- 2–3 months SEC review process
- Raise money from institutional and retail investors
- Sponsors buy "at risk" warrants (2–3% of IPO proceeds)
- Almost all of IPO proceeds placed in trust (98–100%)
- Offering expenses (underwriters, legal, and audit etc.) paid out of IPO proceeds
- Units, common stock, and warrants trade in market

Target search

- Background checks
- S-1 filing
- Roadshow

- Search for target—value must be at least 80% of SPAC's funds held in trust
- Sponsors reimbursed by SPAC for deal-hunting expenses out of interest earned by the trust
- Trust announces definitive agreement and begins communication with investors
- Warrants trade in market

Stock holder vote

- Testing the waters process
- Private investment in public entity (PIPE)/ debt financing

- Super 8-K filing (4 days following close)
- Proxy filing

- File proxy with SEC (2–4-month review) and mail to shareholders in advance of vote
- Reposition stock with ongoing fundamental investors
- Vote must meet pre-specified shareholder approval threshold (60–80%)
- Dissenting shareholders have right to claim their pro rata share of trust
- "Yes" vote: acquisition closes
- "No" vote: trust (including interest earned) liquidated and returned to investors

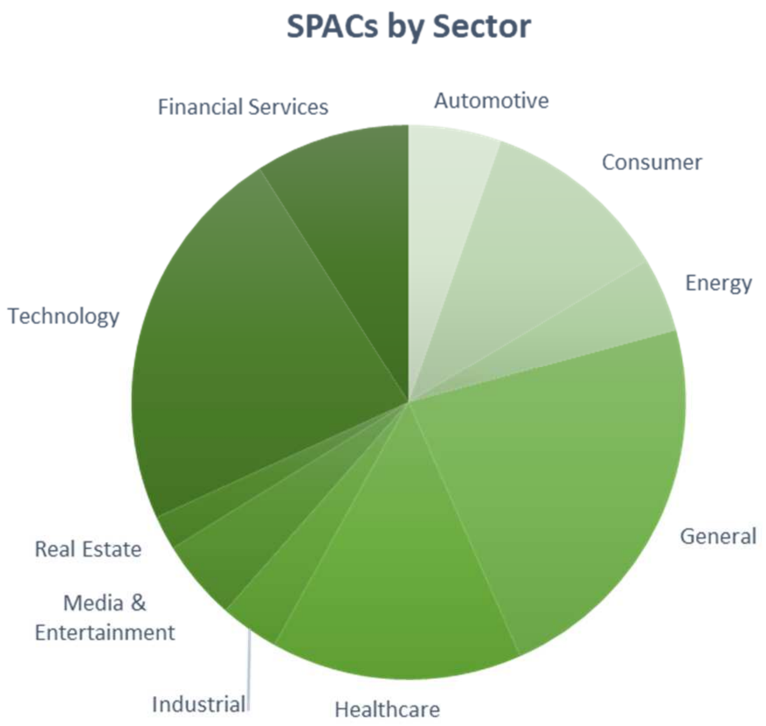
Acquisition close

- Transaction close
- Warrants redemption
- Common stock redemption

- SPAC becomes normal operating company
- Sponsors "promote" crystallized (subject to lock-up)
- Sponsors' warrants crystallized (subject to lock-up)

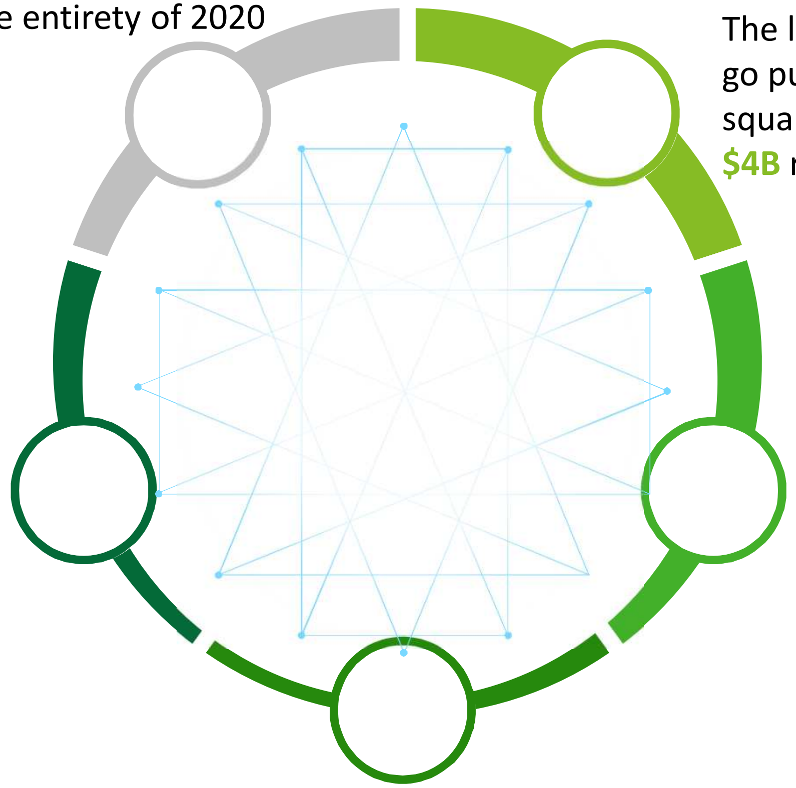
Overview – Special Purpose Acquisition Companies (SPACs)

- As of 31 March 2021 there are **553 SPACs** yet to complete an acquisition with **$178B** of funding



1Q 2021 saw **more** SPAC IPOs and proceeds raised than in the entirety of 2020

The largest SPAC ever to go public: pershing square tontine **$4B** raised



The largest announced SPAC merger: grab and altimeter growth corp (**$40B**)

The biggest quarter ever by proceeds: 1Q 2021, 298 SPACs and **$97B**

Significant SPAC deal activity in the electric vehicle sector – **Nikola, Fisker, Canoo, Lordstown Motors, XL Fleet, and ChargePoint**

Source: SPAC Research (as of 3/31/21)

Overview – Special Purpose Acquisition Companies (SPACs)

SPAC versus traditional IPO

	SPAC	Traditional IPO
1. Access to additional capital	✓	✓
2. Public currency for M&A	✓	✓
3. Public currency for management/employee compensation	✓	✓
4. Use of projections in marketing materials	✓	✗
5. IPO process requirements including delivery of audit and SEC review process	✓	✓
6. Transparent price discovery mechanism	✓	✗
7. Additional cost in form of sponsor promote	✓	✗
8. Flexibility in structuring economics	✓	✗
9. Closing risk due to shareholder voting and redemption rights	✓	✗
10. Speed in execution/closing	✓	✗
11. Post-closing compliance with public company requirements	✓	✓

Reporting considerations

Key information of target to be included in SEC filing

Target financial information

- Target financial statements* as well as financial statements for
  - Significant businesses acquired by the target
  - Significant equity method investees of the target
- Unaudited pro forma financial information reflecting the proposed acquisition
- MD&A
- Selected historical financial data

Target non-financial information

- Non-financial disclosures for target that are similar to those provided in an annual report. For example, information about
  - Risk factors
  - Quantitative and qualitative disclosures about market risk
  - Business section
  - Directors and executive officers
  - Compensation of directors and executive officers

- *Audited financial statements should be provided for **at least the two most recent fiscal years** (or since inception)
- If the target would qualify as an EGC if it were conducting its own IPO and if the SPAC has not yet filed an annual report on Form 10-K, **only two years** of the target's financial statements are required
- If the SPAC has filed a Form 10-K, **three years** of financial statements for the target are required, unless the target would qualify as an SRC (i.e., had less than $100 million in revenue for the most recent fiscal year)
- Unaudited interim financial statements should be provided as necessary to meet any age requirements

Common challenges

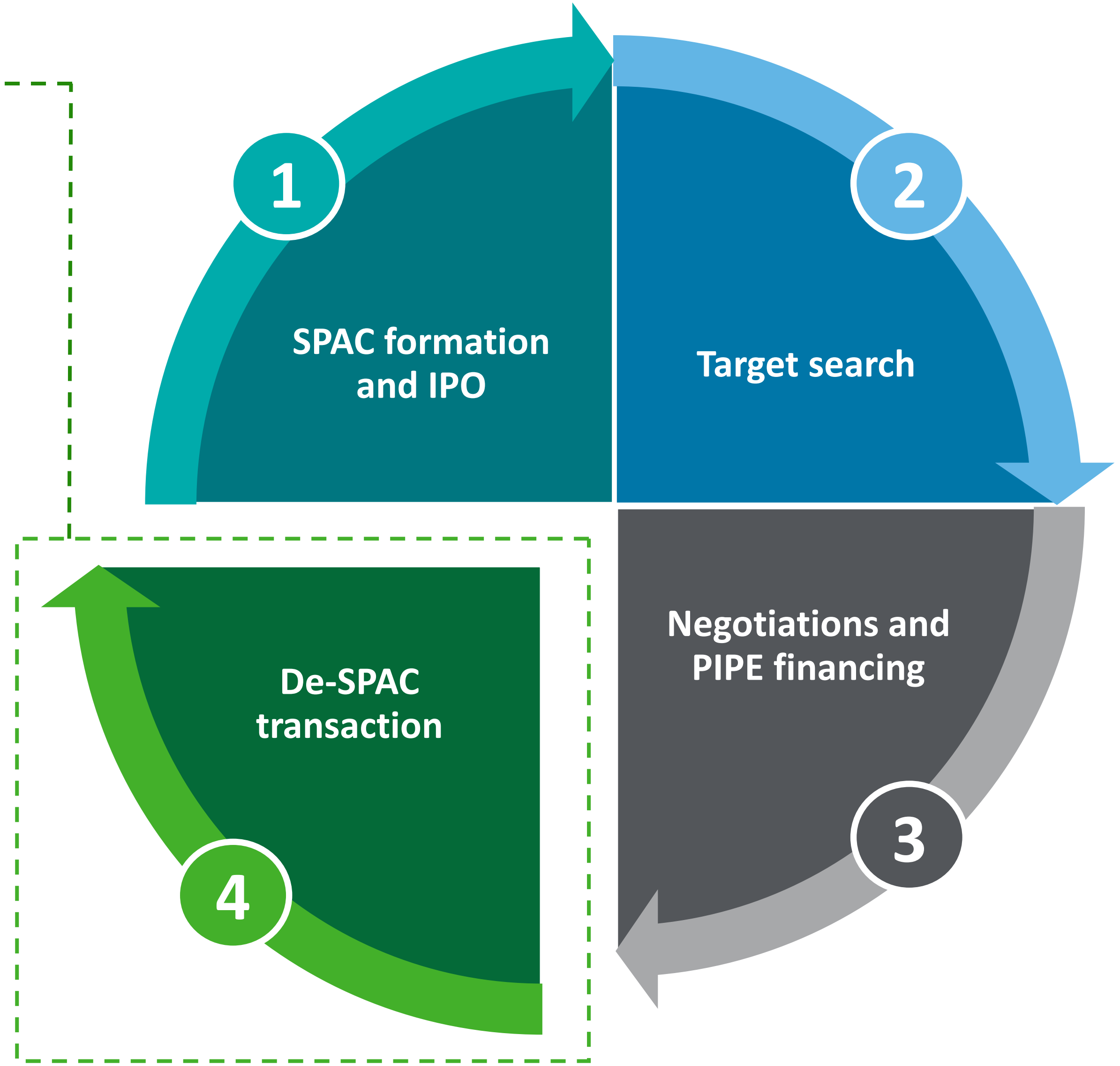
	De-SPAC	Sustainment
	• Challenges typically arise from	• Success during sustainment often happens with the following, which companies typically need assistance with
People	• Internal resources that generally – May have less experience with public company requirements – Lack familiarity with the complex rules related to de-SPACing – Must continue to focus on operations and "day jobs“ – Do not have sufficient time to dedicate to the strong and detailed project management, which is needed to manage the delicate timeline (timing of initial SEC filing, SEC approval, proxy mailing date, voting date, close date, and PIPE date), financial statement preparation, and financial statement audit	• Internal resources will be required to have a strong understanding of SEC regulations and PCAOB standards • Upskilling of current resources and/or talent acquisition takes time
Process	• Rules related to reverse merger and financial statement requirements while balancing a compressed timeline • Reporting requirements related to historical acquisitions of the target company; access to financial information needed • Tax structuring and compliance • Project management and sequencing of the advisors involved in the deal • Coordination with external auditor regarding uplift from AICPA to SEC financial statements and PCAOB audit	• Organized and streamlined financial close process for SEC reporting cycles • Clear governance procedures • Appropriately documented and effective internal controls • Effective investor relations function • Execution of tax strategy • Efficient and effective relationship with external auditor
Technology	• Systems which may not be able to adequately support SEC reporting requirements, complicating the financial statement preparation process	• Upgraded accounting and/or ERP systems to support public company reporting, internal controls, and forecasting

Tax and regulatory – China

Lifecycle of a SPAC

When and what to consider for tax purposes

- **General considerations for De-SPAC transactions with Asian business**
  - Structuring can be complex and highly transaction specific
  - Optimal tax structure for the business combination
  - The desired jurisdiction of incorporation and headquarters of the combined business
  - The desired profile as a US public company
  - Common mechanism: reverse triangular merger
- **Chinese income tax considerations**
  - Indirect share transfer
    - Target has China-based subsidiaries or assets
    - Target is a Chinese based company with offshore holding structure for overseas IPO purpose (red chip structure)
  - Direct share transfer
    - The target has Chinese shareholders



Indirect share transfer

Main operative provision: SAT bulletin [2015] No. 7

Transfer of non-resident companies (in)directly owning Chinese taxable assets may be subject to tax in China

Overview

Exemptions

- Tax treaty exemption
- Listed equity exemption

Safe-harbour

- Internal reorganizations
  – Shareholding requirement
  – Non-reduction of PRC tax burden requirement
  – Equity consideration requirement

Blacklisted transactions

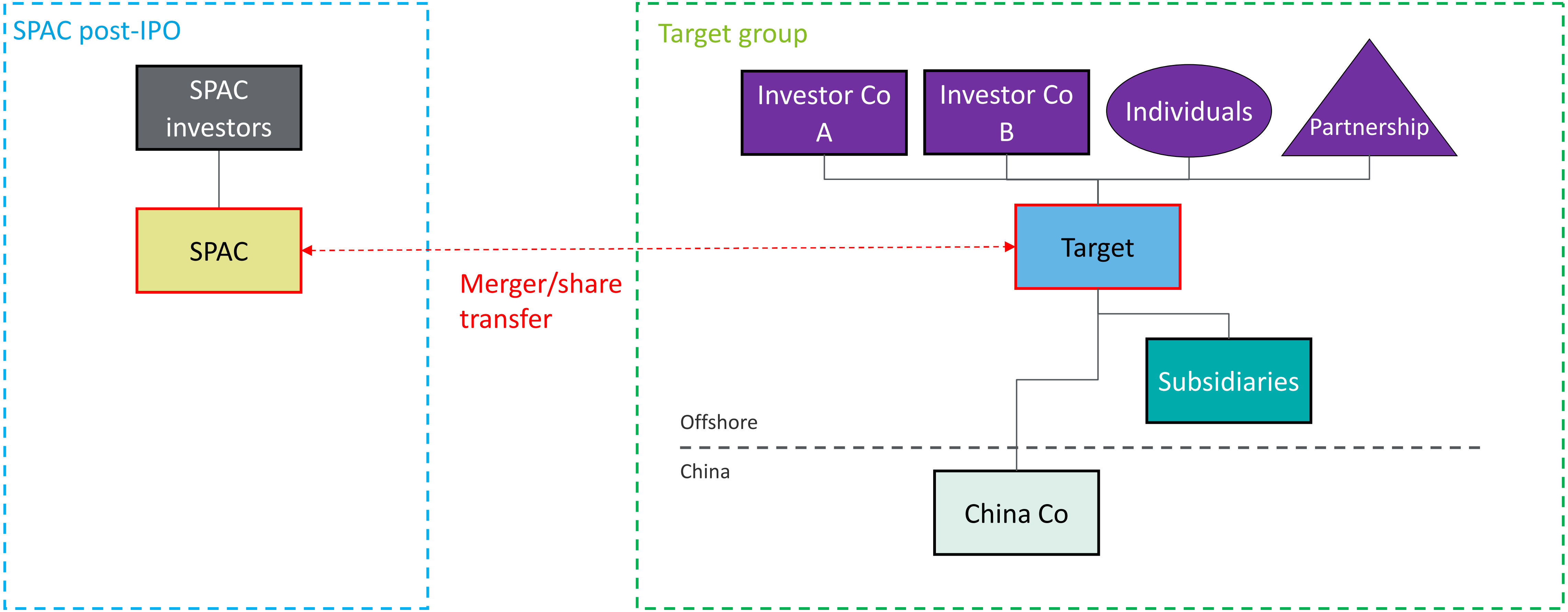
- Majority of transferred entity's equity value, assets, and income sourced from China
- Limited economic risks and functions in offshore holding company
- Low foreign tax paid

General factors test

- Transferred entity's equity value, assets, and income sourced from China
- Economic risks and functions
- Corporate profile and history
- Foreign tax payable
- Other factors

Case studies

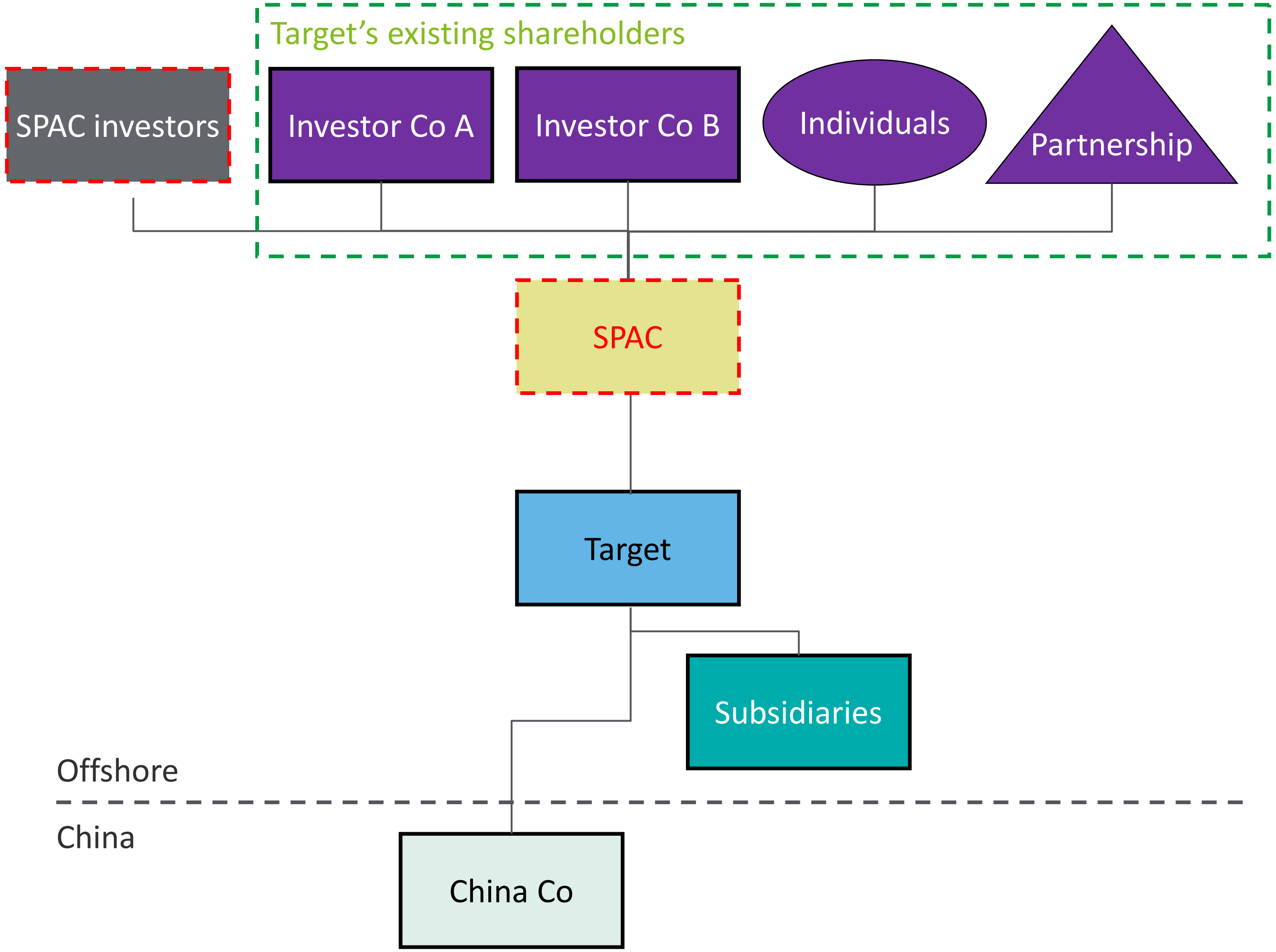
Pre De-SPAC group structures



- **Our observations**
  - Multiple ways to effect a De-SPAC transaction
  - Some methods preferential to others from the China tax perspective based on tax outcomes under bulletin 7

Case study 1 – application of bulletin 7

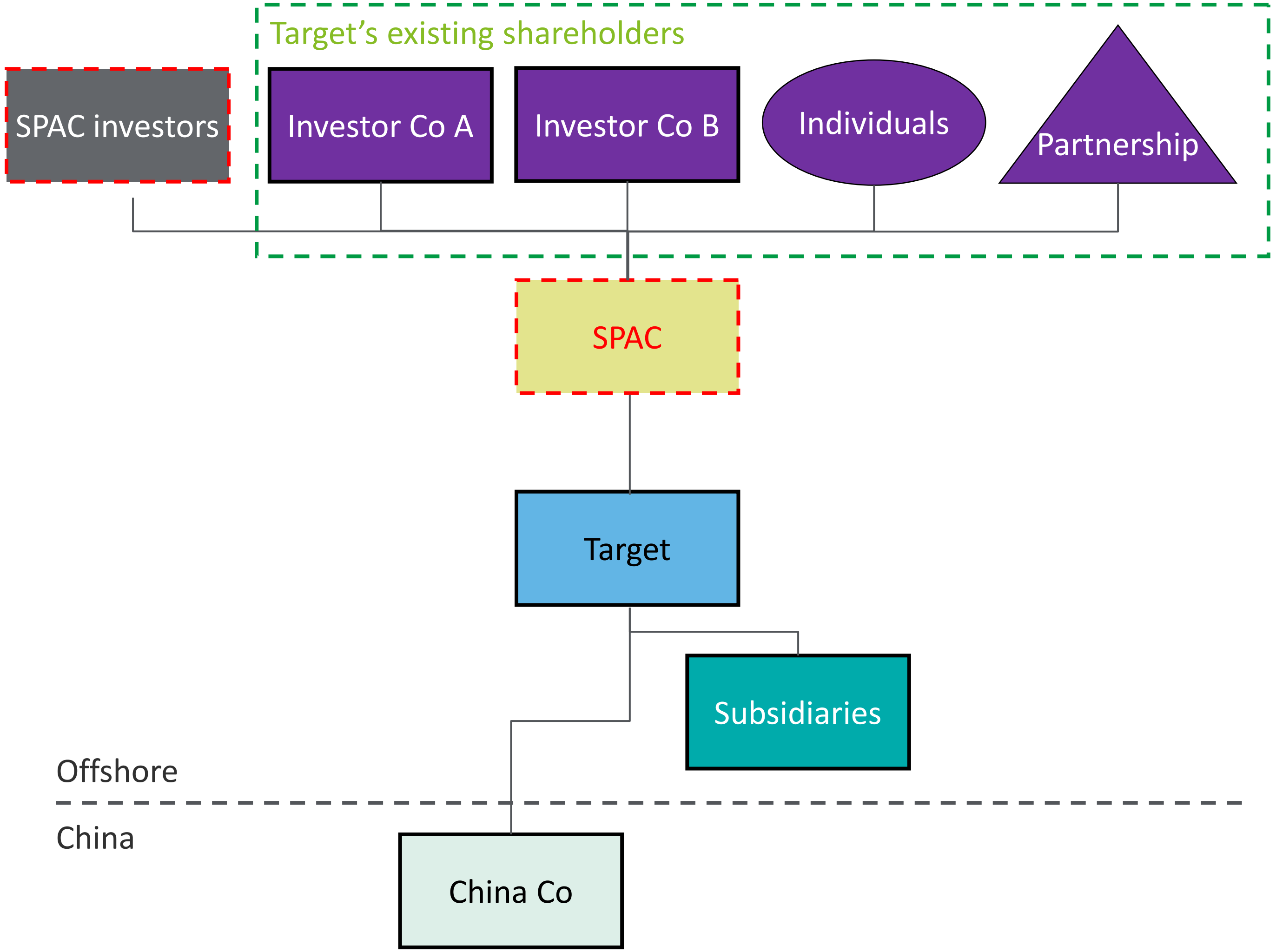
SPAC on top transaction (SPAC owns 100% of shares in target)



- **Facts**
  - Target’s existing shareholders swap shares in target to SPAC in exchange for shares in SPAC
  - Target’s existing shareholders are all non-China tax residents
- **Observations**
  - Corporation and partnership shareholders
  - Indirect transfer of the China Co by target’s existing shareholders. Subject to bulletin 7
  - Tax treaty exemption
  - Relevant tax treaty in force
  - Tax treaty taxing rights: less than 25% equity ownership
  - Limited availability of relief for flow-through entities
    - SAT bulletin [2018] No. 11 – tax treatment of foreign partnerships

Case study 1 – application of bulletin 7(cont'd)

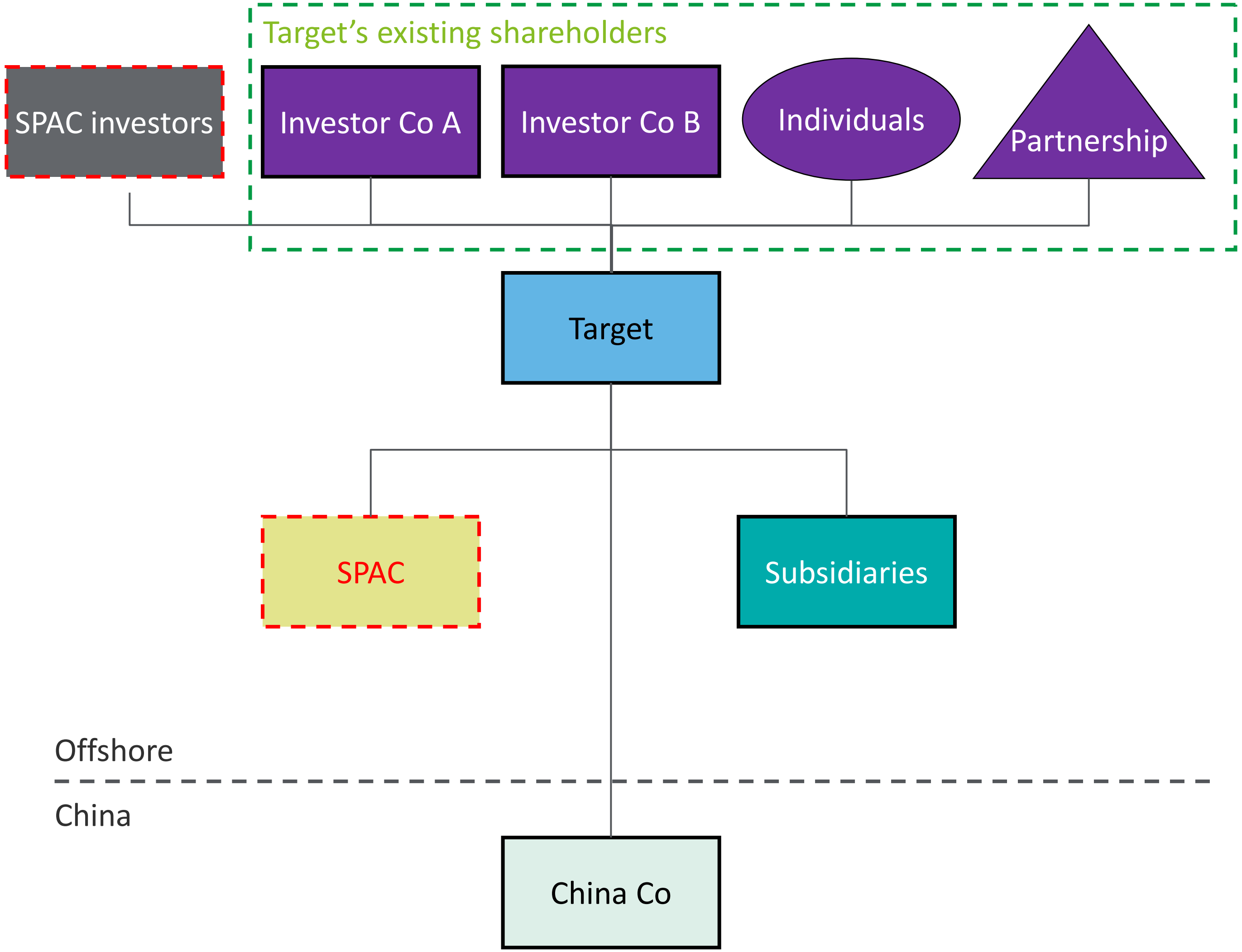
SPAC on top transaction (SPAC owns 100% of shares in target)



- **Observations (cont'd)**
  - Corporation and partnership shareholders
  - General factors test
    - Not subject to China income tax if target's asset, value and income are not mainly from China, and the target Co has business substance
  - Blacklisted transactions
    - Subject to China income tax at 10% if majority of the target group's equity value, assets, and income are sourced from China, and the offshore holding company has limited economic risks and functions. (e.g., Chinese companies with red chip structure)
  - Individual shareholders
    - Technically, Individuals are not subject to bulletin 7
    - GAAR under the new individual income tax (IIT) law?
    - Availability of tax treaty exemptions if bulletin 7 principles apply

Case study 2 – application of bulletin 7

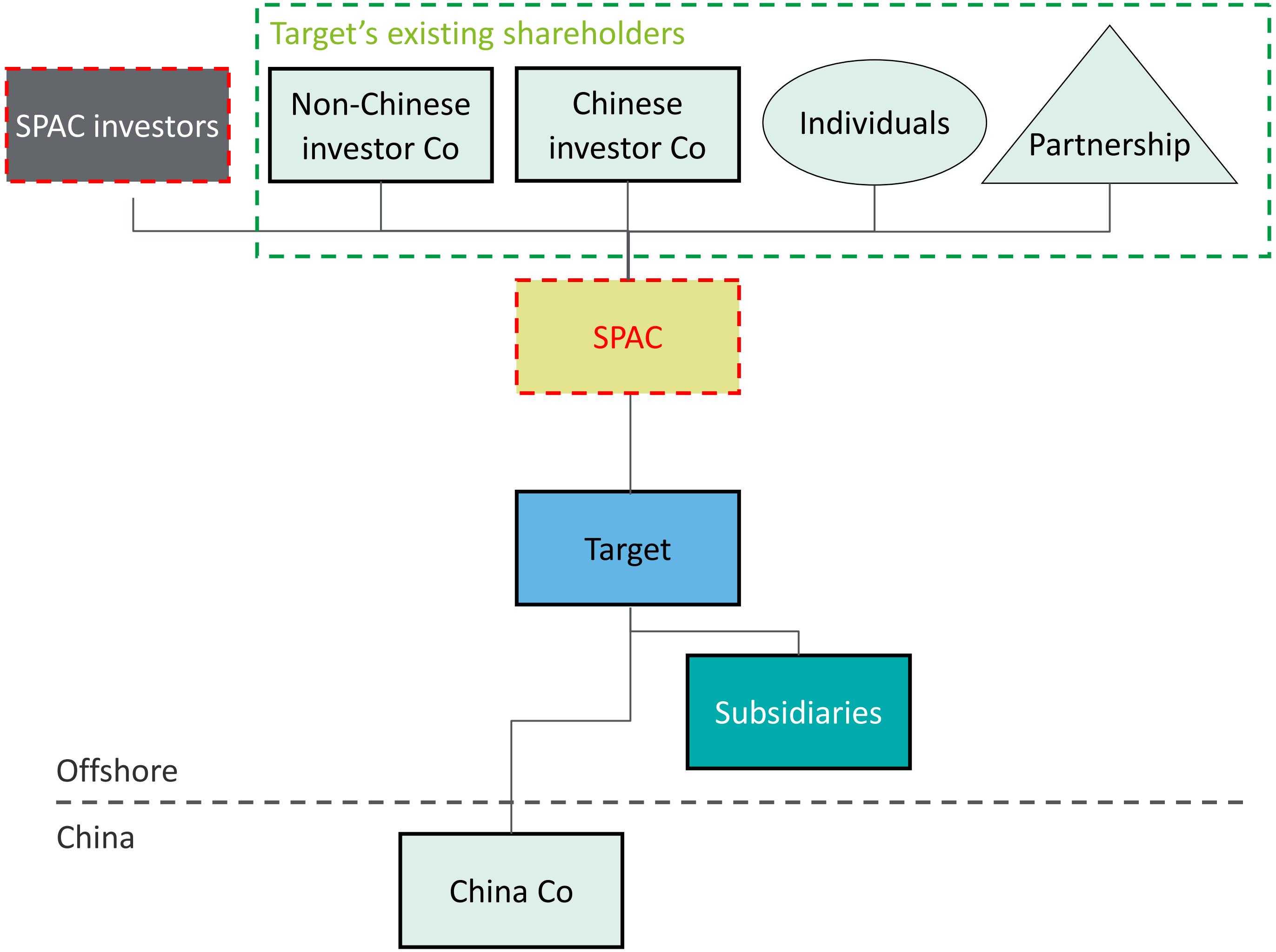
Target on top transaction (target owns 100% of shares in SPAC)



- **Facts**
  - SPAC investors transfer shares in SPAC to target in exchange for target's shares
  - Target's existing shareholders are all non-China tax residents
- **Observations**
  - Is there a transfer in substance?
  - Changes in legal or economic ownership?
  - Changes in value of existing shareholder interest?
  - No disposal or transfer of the target by target's existing shareholders. Not subject to bulletin 7

Case study 3 – application of direct transfer rules

SPAC on top structure (SPAC owns 100% of shares in target)



- **Facts**
  - Target's existing shareholders swap shares in target to SPAC in exchange for shares in SPAC
  - Target's existing shareholders include China and non-China tax residents
- **Observations**
  - Chinese Corporations: 25% income tax rate
  - Chinese Individuals: 20% income tax rate
  - Partnerships formed in China: flow-through
  - China stamp duty implications?

Tax and regulatory – India

Key India tax and regulatory considerations

1

- **Sale consideration**
  - Determination of sale consideration for exchange transactions
  - Treatment of differential consideration for exchange vis-à-vis cash consideration

2

- **Withholding**
  - Withholding on indirect transfer (sale of shares of the hold co listed on an overseas stock exchange)

3

- **Timing of offshoring**
  - Timing of the offshoring of Indian hold Co vis-à-vis the SPAC listing

4

- **Indian shareholder considerations**
  - Restrictions on Indian promoter and resident shareholders holding shares of the SPAC entity
  - Control post listing; PoEM to be addressed

Indirect share transfer

Transfer of non-resident companies (in)directly owning shares of Indian companies

Overview

Trigger points

- Indirect transfer triggers are based on two parameters
  - Asset threshold in India – INR 100 million
  - 50% or more value of assets of NR company comprises of shares in India

Exemptions

- For shareholders of non-resident companies
  - Exemption under tax treaty can be explored
- Non-resident companies being sold or getting merged are generally exempt under domestic laws

Safe harbours

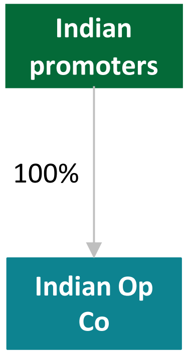
- Transfer of less than 5% shares/voting rights/interest
- Non-resident registered as FPIs in India
- Thresholds for trigger indirect transfer is not met

Key considerations

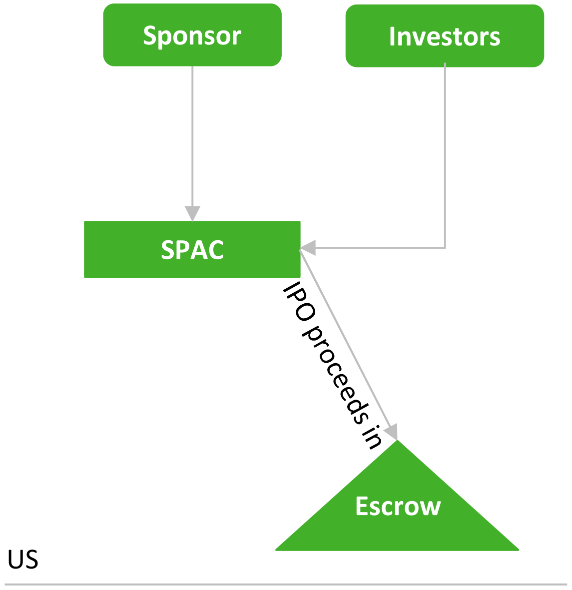
- Beneficial ownership
- Business rationale/substance
- Control and management
- Fund flow

Case study 1

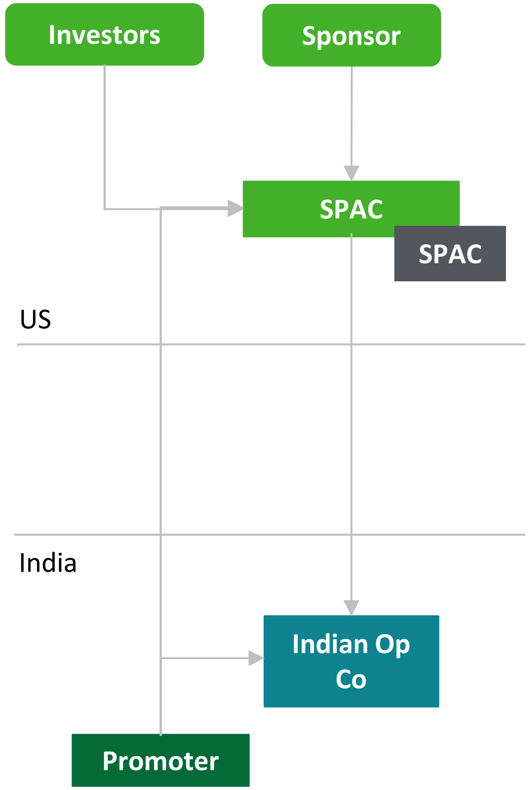
- **Pre-SPAC structure | Indian entity**



- **SPAC structure**



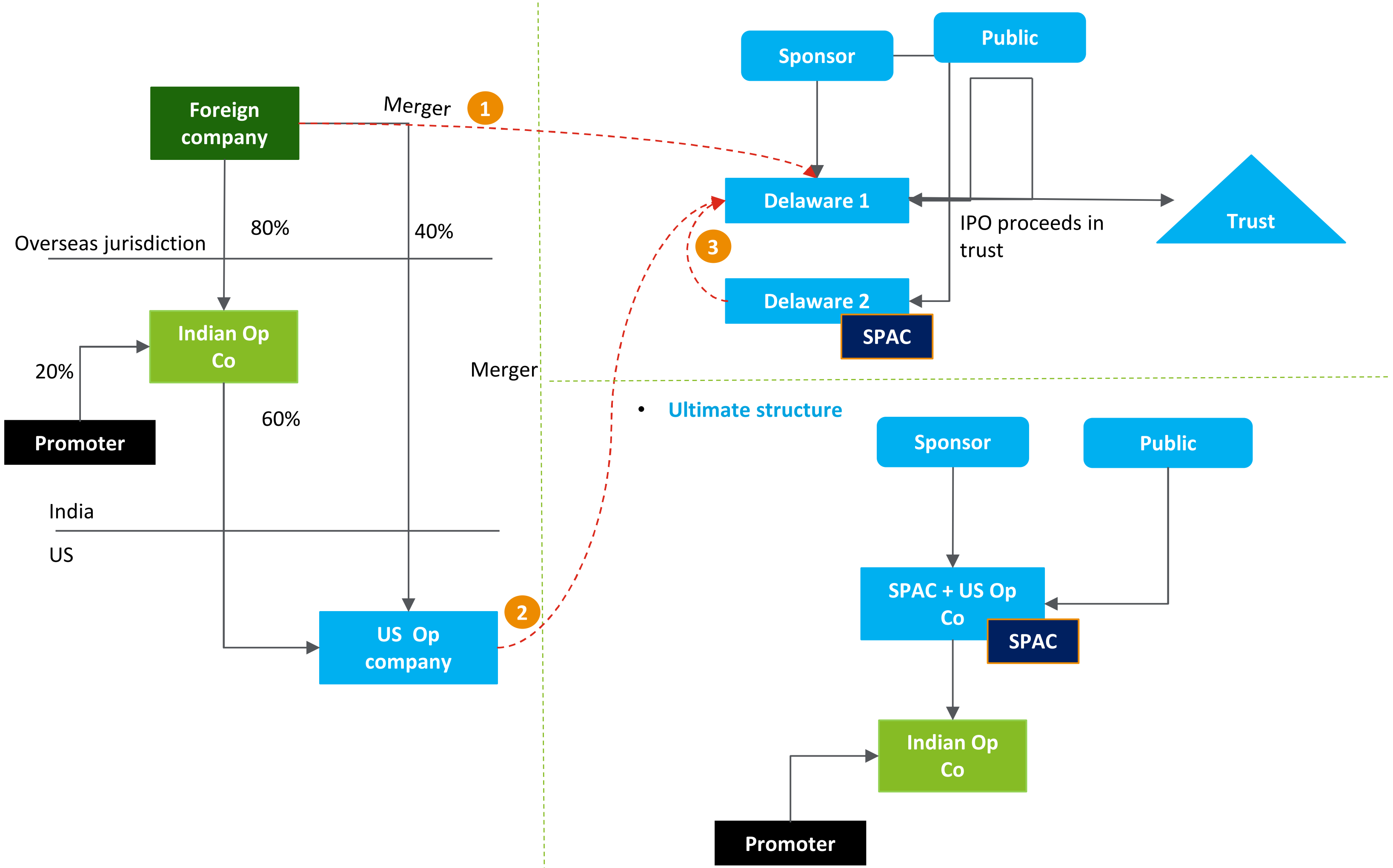
- **Ultimate structure**



- **Key consideration**
  - **Regulatory**
    - Non-resident shareholders of Indian Op Co can acquire shares of SPAC under automatic route
    - For Indian resident shareholders, the exit may be provided by way of cash buyout, deferred buyout (through put/call option) or through swap of shares can be explored
    - Approvals: swap of shares may require approval from RBI for resident shareholders
  - **Tax**
    - Taxability of transfer of shares of Indian Op Co to SPAC by Indian and non-resident promoters to be evaluated

Case study 2

- Pre-SPAC structure
- SPAC structure
- Ultimate structure



- **Key considerations**
  - **Regulatory**
    - Regulatory approvals for swap of shares
    - Overseas mergers should not require any regulatory approvals
- **Tax**
  - Capital gains on swap of shares by Indian promoters
  - Implication on indirect transfer of shares of Indian company
  - Shareholders of foreign Co can explore exemption from indirect transfer tax provisions under the respective DTAA

Service offerings

Service offerings

How Deloitte can advise on the de-SPAC process

Financial statement support services

- Deloitte can assist your company with the following
  - Help with preparation of annual and interim financial statements for the required periods
  - Quarterisation of financial information for interim reviews
  - Uplift historical financial statements for compliance with GAAP and S-X rules (EPS, segment, related parties, and etc.)
  - Prepare MD&A and market risk disclosures
  - Prepare Form S-4/proxy information
  - Update Form S-4/preformat as necessary including minimum and maximum redemption, PIPE, and rights etc.
  - Assist with close procedures for 10-Q/10-K
  - Assist with development of close calendar and checklist
  - Peer company analysis for non-GAAP measures and metrics
  - Audit readiness

SEC reporting services and technical accounting

- Deloitte can assist your company with the following
  - Determine historical periods for which target company financial statements are needed
  - Determine applicability of new accounting standards and layer in the impact in financial statements
  - Determine staleness dates to determine critical path and gain alignment with partners
  - Determine impact of historical acquisitions and use of waivers
  - Respond to SEC comments
  - Analyze accounting treatment to determine accounting acquirer and prepare the related accounting memo
  - Determine accounting for PIPE/rights/warrants
  - Review technical accounting matters impacting historical financial statements
  - Draft technical accounting memos
  - Share peer group leading practices on accounting policies
  - Review Forms 10-Q and 10-K post close

Tax strategy and provision support services

- Deloitte can assist your company with the following
  - Tax scenario planning analysis for IPO and management's forecast period to determine preferred tax structure and consequences to all stakeholders; including shareholders, founders, and employees
  - Public company readiness to identify areas of exposure and remediation including above-the-line liabilities for indirect taxes such as VAT and sales tax
  - Deferred tax validation studies
  - Up-C structuring and review for LLC or partnership agreements, and related tax receivable agreement
  - Tax basis balance sheet analysis and maintenance
  - Legal entity mergers and rationalization
  - Structuring considerations for IP and supply chain
  - Address expanded tax disclosures and compliance once public
  - Maintain on-going tax compliance

Question and answers

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