File No- CEA-EC-11-18(12)/1/2023-FCA Division / 1895

भारत सरकार

विद्युत मंत्रालय

केन्द्रीय विद्युत प्राधिकरण

वित्तीय एवं वाणिज्यिक मूल्यांकन प्रभाग

*****

Sewa Bhawan, New Delhi-66

दिनांक: 31.10.2025

To

1. Chief Secretary of all State/UTs as per list
2. CMD/MD of TRANSCOs of all State/UTs as per list

विषय: एओएमटी दिशानिर्देशों का उपयोग करके ट्रांसमिशन परिसंपत्तियों के मुद्रीकरण के लिए कर निहितार्थ पर अवधारणा नोट -रेग। (Concept Note on Tax implications for monetization of transmission assets using AOMT guidelines - Reg.)

Sir,

I am directed to state that Ministry of Power issued Guiding Principles for Monetization of Transmission Assets in the Public Sector through Acquire, Operate, Maintain and Transfer (AOMT) based Public Private Partnership model in October, 2022.

2 The model envisages limited period transfer of assets. The Guiding Principles cover various steps in monetisation process including identification of assets, demerger of assets in a separate SPV (for RTM assets), obtaining license from SERC for the SPV, appointment of technical consultant for carrying out technical due diligence, appointment of independent valuer for carrying out financial valuation, appointment of Bid Process Co-ordinators for carrying out bidding process, preparation of transfer agreement with buyer, preparation of transmission service agreement, tenure of transfer agreement, tariff of the monetised assets, bidding and evaluation, need for Payment Security Mechanism etc.

3. Central Electricity Authority, in collaboration with National Investment and Infrastructure Fund (NIIF), PFC Consulting Limited (PFCCL), and Power Grid InvIT (PGInvIT) organized a workshop on monetisation of transmission assets on 6th December 2024, at New Delhi. The workshop was attended by representatives of 24 States/UTs. Three major issues flagged by the States in monetisation of its transmission assets include i) revenue certainty for monetised RTM assets, ii) clarity on tax incidence in monetisation process, and iii) payment security mechanism for intra-state transmission charges. Based on stakeholders' consultation, approach paper on these challenges have been chalked as under:

4. **Predictable future cash flow for monetised assets:** Intra-state transmission projects mostly cover Regulated Tariff Mechanism (RTM) assets, and Electricity Regulator fixes tariff for these assets for each control block (about 5 years) based on norms. As norms changes for each control block, significant challenges will be faced by prospective investors/bidder in predicting the cash flow of monetised assets over concession agreement period. In case there is no clarity on predicable cash flow, investors/bidders may quote less value for the monetised assets. Based on discussions and examination of tariff setting processes followed in case of other representative monetisation & private participation programs (including in case of private participation in power distribution sector), assets transfer and tariff setting approach has been envisaged for monetisation of state transmission RTM assets. This envisaged approach is expected to facilitate determination of tariffs for monetised transmission assets such that investors have reasonable certainty of revenues at the time of bidding. Accordingly, a note on tariff determination framework for monetised transmission assets has been prepared and shared with Forum of Regulator (FoR) with a request to bring a model tariff determination framework / approach for monetised transmission assets in consultation with stakeholders, so that State Regulators can adopt the same for promoting monetisation of transmission assets in their States. The analytical resource support in preparation of this note was provided by the International Finance Corporation (IFC), in conjunction with NIIF. The copy of the same is enclosed at **Annexure-I**.

5. **Tax incidence for monetised transmission assets**: It is crucial to develop a clear view of any incidents of taxes through the monetisation process (at the time of demerger/at the time of concession award / return of asset). The issue was discussed with National Investment and Infrastructure Fund (NIIF)/Deloitte/International Finance Corporation/PowerGrid Infrastructure Investment Trust (PGInvIT), and Rajasthan Vidyut Prasaran Nigam Ltd. IFC provided analytical resource support in preparation of the tax implication note, Based on these discussions, a note on tax implications for monetised transmission assets has been prepared and the same is enclosed as **Annexure-II.** The note evaluates available options for transfer of assets to Investor Entity like slump sale model, demerger model and direct asset transfer model and compares tax implications/ considerations associated with each stage of the proposed monetization process. Based on analysis, it has been observed that De-merger model is the most tax efficient model of monetisation of transmission assets. The tax implications may however vary based on the specifics of each action and local rules/ regulations of the State. Accordingly, State Transmission Utility may consider engaging transaction adviser for assisting them in monetisation of their transmission assets including evaluation of implication of taxes.

The Annexure-II may be treated as a broad guideline outlining the approach to tax implications. Each specific transaction may require case-by-case detailed analysis that may be undertaken at the transaction stage.

6. **Payment Security Mechanism**: Electricity (Late Payment Surcharge and Related Matter) Rules 2022 was issued by Ministry of Power to ensure timely payments from distribution companies (DISCOMs) to power generators and inter-state transmission companies. In case of default in payment of outstanding dues after cut-off date, access

of DISCOMs to power market get restricted. After introduction of the above Rules, outstanding dues of DISCOMs towards generating companies and inter-state transmission companies have considerably reduced. Ministry of Power has issued Electricity (Late Payment Surcharge and Related Matter) (Amendment) Rules 2025.on 2nd May 2025, wherein intra-state transmission companies have also been brought under the Electricity (Late Payment Surcharge and Related Matter) Rules and thus, institutional framework has been put in place to ensure timely payment of dues of intra-state transmission companies by distribution companies.

7. This issues with the approval of Chairperson, CEA.

Encl: as above

Yours faithfully,

Ankit 31/10/2025

(Ankit Goyal)

Assistant Director, CEA

Copy to:

1. Joint secretary (Trans), MoP
2. CEO, Power Grid Infrastructure Investment Trust
3. Director, National Investment and Infrastructure Fund
4. Principal Investment Officer, International Finance Corporation
5. Sr. AO, Rajasthan Vidyut Prasaran Nigam Ltd.

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भारत सरकार
विद्युत मंत्रालय
केन्द्रीय विद्युत प्राधिकरण
वित्तीय एवं वाणिज्यिक मूल्यांकन प्रभाग
*****

Sewa Bhawan, New Delhi-66
दिनांक: 24.09.2025

To

The Secretary,
Forum of Regulators
World Trade Centre
Nauroji Nagar, Safdarjung Enclave, New Delhi 110029

विषय: एओएमटी दिशानिर्देशों का उपयोग करते हुए ट्रांसमिशन परिसंपत्तियों के मुद्रीकरण के लिए टैरिफ संबंधी विचारों पर अवधारणा नोट -रेग। (Concept Note on Tariff Considerations for monetization of transmission assets using AOMT guidelines - Reg.)

Sir,

I am directed to state that Ministry of Power issued Guiding Principles for Monetization of Transmission Assets in the Public Sector through Acquire, Operate, Maintain and Transfer (AOMT) based Public Private Partnership model in October, 2022.

2 The model envisages limited period transfer of assets. The Guiding Principles cover various steps in monetisation process including identification of assets, demerger of assets in a separate SPV (for RTM assets), obtaining license from SERC for the SPV, appointment of technical consultant for carrying out technical due diligence, appointment of independent valuer for carrying out financial valuation, appointment of Bid Process Co-ordinators for carrying out bidding process, preparation of transfer agreement with buyer, preparation of transmission service agreement, tenure of transfer agreement, tariff of the monetised assets, bidding and evaluation, need for Payment Security Mechanism etc.

3. Central Electricity Authority, in collaboration with National Investment and Infrastructure Fund (NIIF), PFC Consulting Limited (PFCCL), and PGInvIT organized a workshop on monetisation of transmission assets on 6th December 2024, at New Delhi. The workshop was attended by representatives of 24 States/UTs. An outcome document

with recommendations was prepared based on the discussions in the workshop (copy enclosed). Some of the issues flagged by the states in monetisation of its transmission assets include revenue certainty for monetisation of RTM assets, clarity on tax incidence in monetisation process, and payment security mechanism for intra-state transmission charges.

4. One of key challenges posed by State Transmission Utilities/Investors is related to predictable cash flow for monetised transmission assets. Intra-state transmission projects mostly cover RTM assets, and Electricity Regulator fixes tariff for these assets for each control block (about 5 years) based on norms. As norms changes for each control block, significant challenges will be faced by prospective investors in predicting the cash flow over concession agreement period. In case there is no clarity on predicable cash flow, investors may quote less value for the monetised assets.

5. The issue was discussed with National Infrastructure and Investment (NIIF), POWERGRID Infrastructure Investment Trust (PGInvIT), and representative of Rajasthan Vidyut Prasaran Nigam Ltd.

6. Based on these discussions and examination of tariff setting processes followed in case of other representative monetisation & private participation programs (including in case of private participation in power distribution sector), an assets transfer and tariff setting approach has been envisaged for monetisation of state transmission RTM assets. This envisaged approach is expected to facilitate determination of tariffs for monetised transmission assets such that investors have reasonable certainty of revenues and project commercials at the time of bidding. Accordingly, a note on tariff determination framework for monetised transmission assets has been prepared, and the same is enclosed.

7. It is requested that Forum of Regulators may bring a model tariff determination framework / approach for monetised transmission assets in consultation with stakeholders, so that State Regulators can adopt the same for promoting monetisation of transmission assets in their States

8. This issues with the approval of Chairperson, CEA.

Encl; as above

Yours faithfully,

Mrityunjay 24/09/25

(Mrityunjay Varshney)

Deputy Director & SA to Member(E&C),CEA

Copy to:

1. Joint secretary (Trans), MoP
2. CEO, Power Grid Infrastructure Investment Trust
3. Director, National Infrastructure and Investment Fund
4. Sr. AO, Rajasthan Vidyut Prasaran Nigam Ltd.

Annexure

Monetization of Intra-State Transmission Assets using AOMT: Regulatory framework for monetised transmission assets

A. Background

Asset monetization through a public-private partnership (PPP) is a model that involves a private entity operating and maintaining an asset for a set period of time. In exchange, the private entity receives a fee or other compensation. Asset monetization is an important financing option for creation of infrastructure, serving two critical objectives i.e., unlocking value from public investment in infrastructure and utilising the efficiencies of the private sector. Asset recycling will help release the capital invested in operational assets.

B. Need for Monetization of transmission assets

The evolving demand and energy mix necessitate additional investment to strengthen and enhance the country's transmission system. CEA has published National Electricity Plan (Transmission) 2032 in October 2024, wherein investment required in power transmission infrastructure space till 2032 has been assessed as INR 9.16 lakh crore, to ensure a robust and efficient power transmission network across India. The Plan estimates addition of 1.91 lakh circuit kilometres of transmission lines, addition of 13.1 lakh Mega Volt Amperes of transformation capacity and boosting the inter-regional transmission capacity from the current 119 GW to 168 GW by 2031-32.

Transmission assets, with their established track record of service agreements and stable cash flow generation, are seen as a low-risk and familiar asset class globally. This makes transmission assets attractive to global and domestic institutional investors. A well-planned assets monetization program could be one of the systematic sources of resource mobilisation for capital expenditure in the power transmission space. Monetization of assets may also release some operational bandwidth for state governments, allowing them to channel resources towards newer projects.

Asset monetization offers twin benefits to governments: providing short-term liquidity through upfront payments and enabling private sector-led operations and maintenance (O&M), thus reducing public sector scope while leveraging private expertise.

The National Electricity Plan recognizes that more than 50% of the transmission capacity addition needs to be done at State levels. As states undertake heavy lifting, asset monetization will be essential to meet these significant investment needs. States have significant potential for monetizing their transmission assets by leveraging brownfield assets. This can mobilize proceeds for new infrastructure investments, creating a multiplier effect on state economies. It also enables the finite public funds to be deployed towards new projects, thus fast-tracking infrastructure creation. Given the competing demands on state government finances, most states will need to make balanced choices relating to use of fiscal space, including capital expenditure.

C. Salient features of Asset Monetisation

1. Unlocking Public Investment Value:

Asset monetization allows the government to unlock the value embedded in existing transmission assets that were originally funded by public investment. This enables governments to release capital tied up in operational or mature assets, which can then be reinvested into other developmental projects, ensuring sustainable infrastructure growth.

2. Mobilizing Private Capital for Infrastructure:

The model brings in private sector capital to finance infrastructure projects. In exchange for taking over the operations and maintenance (O&M) of the transmission assets, private investors pay the government an upfront payment or a share of revenues.

This enables the government to raise funds without taking on additional debt or relying on tax increases, providing an alternative financing mechanism to support public infrastructure needs.

3. Private Sector Expertise and Operational and Financial Efficiency:

Private entities bring in specialized expertise and advanced technologies to the management and operation of transmission networks. This often leads to improved operational efficiency, reduced transmission losses, better maintenance, and reliable service delivery.

The private sector's involvement often results in cost savings and optimization of the transmission infrastructure, which enhances the overall quality and sustainability of the service. Further, the Investor Entity may leverage its balance sheet to get lower interest loans which would bring in financial efficiency.

4. Release of Operational Bandwidth for State Governments:

Through asset monetization, states can free up operational bandwidth and focus on more urgent or high-priority projects. State transmission companies (Transcos) can redirect their resources from managing mature assets to undertaking newer infrastructure projects or improving existing ones.

This enables states to fast-track infrastructure creation, addressing growing energy demands, urbanization, and industrialization.

5. Facilitation of Large-Scale Investments:

Asset monetization can help attract large institutional investors, both domestic and international. Transmission assets, with their predictable revenue streams and low-risk profiles, make them attractive to long-term investors like pension funds, insurance companies, and infrastructure investment trusts (InvITs).

The scale of the investment generated through successful monetization models can have a significant multiplier effect on the broader economy, stimulating growth, job creation, and economic development.

6. Focus on State-Level Transmission Capacity Expansion:

A significant portion of the transmission capacity addition (over 50%) needs to be managed at the state level. Asset monetization offers states the opportunity to leverage their existing brownfield transmission assets to raise capital for expanding the transmission network and improving grid infrastructure.

This helps state governments mobilize proceeds for new investments, creating a multiplier effect on local economies and enhancing the quality and stability of transmission networks.

7. Government Retains Asset Ownership:

Under the monetization models, particularly the AOMT (Acquire, Operate, Maintain, and Transfer) model, the government retains ownership of the transmission assets, while transferring the responsibility for operation and maintenance to a private entity for a defined period.

At the end of the transfer period, the asset is returned to the government at a nominal cost (e.g., INR 1), ensuring that the government retains full ownership while benefiting from private sector management expertise.

D. Success stories of monetization of transmission assets

India has successfully attracted institutional investments in infrastructure using innovative structures like InvITs and Public-Private Partnership (PPP) models such as Toll Operate Transfer (TOT) and Operation, Management, and Development Agreements (OMDA). These structures have been used to monetize toll roads, airports, transmission assets etc.

Power Grid Corporation of India Limited (PGCIL) raised over INR 77 billion in 2021-22 by monetizing five of its transmission assets through the Infrastructure Investment Trust (InvIT) route. The learnings from this experience can be leveraged by state transmission companies (Transcos) to unlock their potential and utilize existing assets for future asset creation.

Operating transmission assets have demonstrated significant investor appetite due to their characteristics and availability-based business models, evidenced by successful InvIT monetization in the public and private sectors.

E. AOMT model for monetization of transmission assets

Ministry of Power issued Guiding Principles for Transmission Asset Monetisation through Acquire, Operate, Maintain and Transfer (AOMT) model in 2022. The model prescribes limited period of transfer of the monetized assets to the private entity on payment of upfront payment and at expiry of Transfer Agreement, assets would be mandatorily transferred back to sponsoring entity at a nominal cost of Rs. 1 only. The Asset Ownership and Management Transfer (AOMT) model recommended by the Centre offers upfront payments, reduces holding costs, and reallocates public funds to new projects, thus fast-tracking new infrastructure creation.

Under the AOMT framework, selected private investors acquire the right to operate and maintain transmission assets for a fixed concession period. Select Intra-State Transmission (InSTS) assets are transferred by State TRANSCO to a SPV, through a Transfer Scheme. The envisaged process is as follows:

1. The State TRANSCO (along with the SPV as a co-petitioner) will file an application under sections 17(3) and 18 of the Electricity Act seeking approval of the SERC for transfer of the selected assets and grant of transmission license to the SPV to own and operate the said assets. As part of this process:

a. the State TRANSCO may also set out the purposes behind the proposed monetization and the qualification criteria for selecting investors;
b. the SERC may stipulate any terms and conditions pertaining to the transfer, as it deems fit as a part of the approval process; and
c. the SERC may determine a provisional transmission tariff payable to the SPV upon completion of the transfer process, pending a final determination of the transmission tariff by the SERC, so as to ensure continuity of recovery of tariff;

2. The final transmission tariff shall thereafter be separately determined by the SERC on a cost-plus basis, as per the applicable tariff regulations, based on application by the SPV; and

3. Following the determination of the tariff, the ownership of the SPV shall be transferred for a finite period to a private investor, which shall be selected through competitive bidding. Private investor shall operate and maintain the asset, based on terms of the contract as well as applicable regulations as a transmission licensee. At end of transaction period, the SPV holding shall be transferred back to State TRANSCO.

Majority of Intra-State Transmission (InSTS) assets have been historically developed by State TRANSCOs under Regulated Tariff Mechanism (RTM) under Section 62 of the Electricity Act 2003. For such RTM assets forming part of TRANSCO's balance sheet, the overwhelming investor requirement is to ensure long-term certainty on regulatory parameters.

F. Tariff Determination for Assets monetized

Even post transfer of the SPV to private investor, the tariffs for RTM assets monetized shall be required to be determined by Regulatory Commissions on cost-plus basis in accordance with the applicable tariff regulations in the state. The proposed tariff determination framework for monetised transmission assets is presented in this section.

The SPV/ private investor holding assets monetized shall file a separate tariff petition with appropriate Regulatory Commission for determination of tariffs.

The Regulatory Commission shall adopt the opening balance sheet of the SPV as per Transfer Scheme finalized by the State Government, for the purpose of tariff determination.

The Regulatory Commissions may consider issuance of a standardised approach for tariff determination of assets monetized under the AOMT or similar model with respect to the following aspects:

(1). Return on Equity (ROE)

ROE may be allowed on normative equity of 30% of the capital base or actual equity, whichever is lower.

To ensure continuity of stable ROE rates in future, the Regulatory Commission may:

a. Allow adoption of a fixed ROE rate through the concession period (preferred approach), OR

b. Allow for formula based ROE rate, calculated as G-Sec rates plus an appropriate margin[1] determined by the Regulatory Commission. Under this approach, the ROE rate may be fixed by Regulatory Commissions for 5-year periods.

Further, it is suggested that the applicable ROE for monetised assets are broadly kept in parity with the rates applicable to the respective state Transco. This shall be significant in ensuring that there is no erosion in value of assets on account of monetisation initiatives.

(2). O&M Expenses

The Regulatory Commission shall stipulate a trajectory of norms for O&M expenses, separately for the assets to be monetized. Separate O&M norms are required, as an SPV holding such monetized assets shall not have the scale and mix of asset classes comparable to a State TRANSCO.

Prior to the asset monetization transaction, a study shall be conducted by a Technical Advisor, appointed by State TRANSCO in consultation with SERC, to propose the O&M norms. The Technical Advisor shall propose O&M Norms for different asset classes at various voltage levels.

Based on the technical study, the SERC shall fix the O&M norms in terms of INR per ckm, INR per MVA and INR per bay, with suitable provision for inflation linked escalation.

For an SPV with assets monetized, the norms defined shall remain constant for the entire duration of its transaction period.

(3). Interest on Loans

Interest on Loans may be allowed on the actual liabilities transferred to the SPV under the Transfer Scheme for assets monetized or on normative loan figure (70%[2] of the capital base at the time of commissioning of asset), whichever is higher[3].

The rate of interest on loans may be allowed as weighted average of actual loans of the SPV (new loans taken by the Private Investor[4] or loans transferred to the SPV). Provided that if the actual long-term loan is less than 70% of the capital base, the SERC may consider a normative rate of interest – say one-year Marginal Cost of Funds-based Lending Rate ('MCLR') as declared by the State Bank of India from time to time at the beginning of the respective year, plus a margin decided by the Regulator.

SPV/ Private investor shall make every effort to re-finance the loan, as long as it results in net savings on interest and in that event, the costs associated with such re-financing shall be borne by the Beneficiaries of the transmission assets of SPV. The net savings shall be shared between the Beneficiaries and the SPV in a ratio of say 2:1, subject to prudence check by the Regulatory Commission.

(4). Depreciation

Depreciation shall be computed on the capital cost transferred to the SPV. The Regulatory Commission shall define the rate of depreciation for each of the components of the fixed assets based on the useful life of the assets. The rate of depreciation should be based on Straight Line Method (SLM) over the useful life of the assets, after factoring the salvage value (10% of capital base) of the assets. Regulatory Commission may ensure parity in depreciation rates and methodology, between State TRANSCO and SPV holding assets monetized.

(5). Interest on Working Capital

SPV holding assets monetized shall be allowed interest on estimated level of working capital for the financial year, calculated as per norms defined in the Regulations. The interest rate shall be applied on normative basis – say bank lending rate plus a margin. Regulatory Commission may ensure parity in norms for Interest on Working Capital, between State TRANSCO and SPV holding assets monetized.

Based on the above aspects, the Regulatory methodology to be set by Regulatory Commission, shall be specified clearly in transaction document for monetization of assets.

Proceeds received by State TRANSCO on account of asset monetization, should not be adjusted against its ARR by the Regulatory Commission.

Tariff may be determined by the SERC for entire transaction period of the SPV, with true-up for changes, if any.

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[1] *As per data published by CCIL India (as on 10-Jul-2025), the Yield to Maturity of Government Securities with tenor 13-15 years is 6.65%. For a post-tax ROE rate of say 14%, this allows for a margin of 7.35%. This is close to Equity Risk Premium for India (7.26%), as published by Professor Aswath Damodaran (as on Jan-2025).*

[2] *The normative debt to equity ratio of 70:30 to be applied at the time of commissioning of asset. Thereafter, the outstanding debt to be reduced year on year, as per normative repayment defined in tariff regulations.*

[3] *If the equity actually deployed is more than 30 % of the capital cost, equity in excess of 30% shall be treated as normative loan.*

[4] In cases where lenders (like JICA) do not wish to transfer the loans to private entity, the sponsoring State TRANSCO may use the monetization proceed to repay such debt and private entity may take fresh loans on the assets or SERC may allow interest on normative loan amount.

Annexure-II

Monetization of Intra-State Transmission Assets using AOMT: Note on Tax Implications

A. AOMT model for monetization of transmission assets

Ministry of Power issued Guiding Principles for Transmission Asset Monetisation through Acquire, Operate, Maintain and Transfer (AOMT) model in 2022. The model prescribes limited period of transfer of the monetized assets to the private entity on payment of upfront payment and at expiry of Transfer Agreement, assets would be mandatorily transferred back to sponsoring entity at a nominal cost of Rs. 1 only. The Asset Ownership and Management Transfer (AOMT) model recommended by the Centre offers upfront payments, reduces holding costs, and reallocates public funds to new projects, thus fast-tracking new infrastructure creation.

Under the AOMT framework, selected private players acquire the right to operate and maintain transmission assets for a fixed concession period (typically 10–15 years based on the remaining useful life of the assets). The key features of the AOMT model are:

- Creation of a Special Purpose Vehicle ('SPV') for identified transmission assets owned by State TRANSCO; the assets could be developed under Regulated Tariff Mechanism ('RTM') or Tariff Based Competitive Bidding ('TBCB')
- Wholly owned subsidiary SPV becomes Transmission Service Provider
- Selection of private investor through a competitive bidding process; Transaction period to be coterminous with remaining economic life of the assets, in case of RTM assets
- Limited period transfer of 100% ownership of a transmission service provider SPV; Transfer of such rights defined by a well-defined contractual framework.
- Investor Entity taking over asset to operate and maintain asset based on terms of the contract.
- Mandatory buy-back at end of transaction period (at nominal price of Re 1.00) by State Transmission Utility ('TRANSCO')
- Suitable for de-risked brown-field assets with stable and ring-fenced revenue generation profile
- Funds received by government entity to be reinvested in new infrastructure or deployed for other public purposes.

B. Transaction steps and options for transfer of assets

The transaction for monetization of assets, is proposed to be undertaken in following three steps:

1. **Step 1: Hive-off of assets from TRANSCO to an SPV**

Sponsoring TRANSCO to hive off operational transmission assets ('Identified Assets') into a new Special Purpose Vehicle ('SPV') via an efficient scheme.

Further there are three options for hiving off of assets to SPV, as follows:

I. **Option I: Slump Sale**
II. **Option II: De-Merger**
III. **Option III: Direct Asset Transfer**

2. **Step 2: Transfer of 100% shareholding in SPV to Investor Entity**

   100% shareholding of SPV is transferred to an Investor Entity through a competitive bidding process ('Proposed Buyer'),

3. **Step 3: SPV shareholding bought back by TRANSCO**

   At the end of concession, SPV shareholding is bought back by TRANSCO at a nominal value of INR 1 or at remaining undepreciated asset value (as determined as per rule 11UA of Income Tax rules)

Assessment has been done on potential tax and stamp duty[1] implications that may arise corresponding to the aforesaid steps.

B. Key Tax Implications/considerations

We understand that hive-off of the Identified Assets along with liabilities having direct nexus to the Identified Assets would be qualified as "Undertaking" for Income Tax purposes. We have outlined the various Key tax implications/considerations under each step of proposed transaction as below *(summary of the step-wise tax implications across the proposed transaction is provided in Para C: Summary of Tax Implications / Considerations)*

Step 1: Sponsoring TRANSCO to hive off operational transmission assets ('Identified Assets') into a new SPV via scheme of Slump Sale/Demerger/Direct Asset transfer.

Key Direct tax implications/consideration on transfer of Identified assets:

Option 1. Transfer of assets from TRANSCO to SPV via Slump sale

[1] We understand that any stamp duty revenue proceed will be collected by the respective state government, which is also the beneficiary of this monetization process. Therefore, any stamp duty tax implication would be neutral at state level

- Section 50B Income Tax Act, 1961('IT Act') provides transfer of the undertaking for lump sum consideration shall be taxable as capital gains in the year in which transfer took place. The capital gains shall be treated as short term capital gains ('STCG') if the undertaking is held for not more than 36 months immediately preceding the date of its transfer else the capital gains shall be considered long term capital gains ('LTCG').
- Further, transfer of assets from TRANSCO to the SPV by way of a slump sale will be taxable transaction.
- The transaction value/price at which Slump sale would take place needs to be evaluated which can be either the book value or Fair Market Value ('FMV') as determined under rule 11UAE of the Income Tax rules.
- If Assets transferred at Fair Market Value ('FMV') as determined under rule 11UAE of the Income Tax rules (equivalent to net-worth as per annexure 1), it will result in nominal capital gains considering that cost base will be equal to the full value of consideration.
- The said evaluation needs to be undertaken in light of the General Anti Avoidance Regulations ('GAAR') under the IT Act which empowers the tax department to disregard any transaction which has been entered into with the main purpose to obtain tax benefit, which lacks commercial substance, creates rights and obligations which are not at arm's length principle or results in misuse of tax law provisions or is carried out by means or in a manner which are not ordinarily employed for bona fide purposes.
- Thus, commercial substance should be available to substantiate that the transaction has not been entered with any of the objective to obtain any tax benefit by TRANSCO or its SPV on initial transfer of Identified assets through slump sale and subsequent transfer of control via 100% share transfer of SPV to successful bidder/buyer.
- If the initial transfer of Identified assets through slump sale is undertaken at book value and subsequent transfer of control via 100% share transfer of SPV to successful bidder/buyer takes place at FMV or higher value as determined, tax authorities can invoke GAAR in such scenario.
- However, if the initial transfer of Identified assets through slump sale is undertaken at FMV, then risk of GAAR can be mitigated.
- Mode of discharge of consideration by SPV to TRANSCO can be in form by issuing its own shares or cash and should be at a value to avoid GAAR provisions.
- Stamp duty[1] @ 5% on the value of consideration of slump sale, shall apply. However, a view may be taken that nominal stamp duty could arise in cases where movable property is transferred by way of a delivery note. In contrast, stamp duty on the transfer of immovable property will be applicable at the rate of 5%. This needs to be vetted by Stamp Duty Experts.
- Further, Nominal stamp duty will arise on issuance of shares @0.005% in case consideration for slump sale is discharged by SPV by issuing shares.

Option 2. Transfer of assets from TRANSCO to SPV via Demerger

- Section 2(19AA) of the IT Act provides for the definition of 'demerger' and it includes any transfer of an undertaking subject to fulfilment of certain conditions ***(Refer annexures 1)***.
- Further, Explanation 6 to section 2(19AA) provides reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resulting company and the resulting company—

    i. is a public sector company on the appointed day indicated in such scheme, as may be approved by the Central Government or any other body authorised under the provisions of the Companies Act, 2013 or any other law for the time being in force governing such public sector companies in this behalf; and
    ii. fulfils such other conditions as may be notified by the Central Government in the Official Gazette in this behalf.
        - At the outset, it is important to note that the SPV will be incorporated by TRANSCO, a public sector company/government company[2]. Consequently, the SPV would also be classified as a public sector company/ government company.

In case where benefit of Explanation 6 can be availed

- By the virtue of above of Explanation 6, if both the conditions therein are satisfied, hiving off of Identified Assets into SPV will be deemed as demerger under the IT Act and all the provisions/benefits (tax neutrality) applicable in case of demerger may be applicable to such transaction.

In case where benefit of Explanation 6 cannot be availed

- In a scenario where the benefit of Explanation 6 is not available, the hiving off of Identified Assets from TRANSCO to the SPV can still be undertaken as a tax-neutral demerger, provided all conditions prescribed under Section 2(19AA) of the Income Tax Act are duly fulfilled.
- Stamp duty[3] may apply as higher of

✓ 2% of market Value of immovable property; or
✓ 0.6% of market value of shares issued as consideration of demerger.

Transaction may be exempt from Stamp Duty, as per Section 8G in India Stamp Act 1899 (inserted by Finance Act 2021, w.e.f. 28-03-2021); However impact of individual state specific rules may need to be explored further.

Additional stamp duty on immovable property will be applicable @5% if situated in any state other than Tamil Nadu. This needs to be vetted by Stamp Duty Experts.

Nominal stamp duty will arise on issuance of shares @0.005%

Option 3. Transfer of assets from TRANSCO to SPV (Direct assets transfer)

- Section 47 of the IT Act provides the lists certain transactions that are not treated as a transfer, thereby excluding them from the scope of capital gains taxation.
- Clause (viiaf) of section 47 provides that any transfer of capital asset, under a plan approved by the Central Government, by a public sector company to another public sector company notified by the Central Government for the purposes of this clause or to the Central Government or to a State Government.
- TRANSCO would be able to avail the above exemption on transfer of the identified assets to SPV if:

✓ Such transfer of Identified capital assets has been approved by Central Government under a plan and
✓ SPV has been notified by the Central Government

- Requirement of valuation report may be explored subject to the satisfaction of above conditions.
- Requirement of No objection Certificate from Tax authorities before transfer of assets may be required if following conditions are satisfied:

✓ There has been pending litigation/outstanding demands for TRANSCO and
✓ Identified assets are covered under the definition of "Assets" under section 281 of IT Act.

- In case asset transfer is not excluded from capital gain tax, under Section 47 of the IT Act, then Short Term Capital Gains ('STCG') shall apply (assuming liabilities are not transferred).
- GST to be applicable on transfer of assets and rate varies on nature of assets.
- Nominal stamp duty @ 0.005% will be leviable on issuance of shares.

Valuation requirement:

- Requirement of valuation report from IT Act and Companies Act to be explored.

Step 2: 100% shareholding of SPV is transferred to an Investor Entity through a competitive bidding process ('Proposed Buyer'):

Direct tax implications on transfer of shareholding to Investor entity:

- We understand that post transfer of assets by TRANSCO to SPV, it is contemplated that 100% of equity shares of SPV would be transferred to proposed buyer/successful bidder.
- The new management of successful bidder/buyer will be responsible for the operation and overall management of the SPV throughout the concession period.
- Furthermore, 100% ownership of the SPV, along with all associated rights and entitlements, shall be transferred to the successful buyer on the date of transfer, in exchange for an upfront lump-sum consideration. This ownership transfer may include the right to subsequently transfer the SPV's shares to a third party, provided that the original agreement with TRANSCO remains intact, thereby ensuring uninterrupted electricity service. Upon conclusion of the concession period, TRANSCO will reacquire ownership of the SPV from the original buyer, bidder, or any third party, as the case maybe.
- In light of the above, it may be concluded that the transaction could fall within the scope of the definition of 'transfer' under Section 2(47) of the Income Tax Act, subject to the test of ownership transfer as interpreted by tax jurisprudence *(based on review of transaction documents contemplated for the step 2)*. If the transaction is regarded as a transfer, capital gains would be computed on the transfer of shares of the SPV to the successful buyer for the lump sum consideration.
- Section 48 of the IT Act provides the mode for computation of the capital gains which is as follows:

Full value of consideration	XXX
Less: expenditure incurred wholly and exclusively in connection with such transfer	(XXX)
Less: cost of acquisition of the asset and the cost of any improvement thereto	(XXX)
Capital gains	XXX

- Further, section 50CA of the IT Act provides where consideration received for transfer of shares of unlisted company is less than the FMV of the shares, the

FMV shall be considered as full value of consideration for the purposes of section 48.

- Basis the above, SPV being an unlisted company, full value of consideration shall be lump sum consideration received from the proposed buyer or FMV of the shares of SPV, whichever is higher.
- It is assumed that transfer of shares to the buyer at a value higher than FMV
- The cost of acquisition can be divided in two parts:

    - ✓ The initial investment in company by TRANSCO at the time of incorporation of SPV
    - ✓ Additional shares issued by the SPV to State Government at FMV of the identified assets, as consideration for the transfer.

- The resultant shall be LTCG or STCG in hands of TRANSCO depending upon the period of holding of shares.

Scenario 1. In case of Transfer of assets from TRANSCO to SPV via Slump sale

- We understand that the transfer of Identified Assets to the SPV, followed by the subsequent transfer of SPV shares to the successful bidder/buyer, is expected to be completed within 24 months[4]. Accordingly, the transfer of SPV shares will likely result in STCG.
- STCG arising from transfer of unlisted shares are taxable at normal tax rate applicable to the taxpayer. In our case, since TRANSCO is a company, the STCG on the transfer of the aforesaid shares shall be taxed at applicable corporate tax rate, plus applicable surcharge and cess.
- Will result in STCG and be taxable @ 34.94% including applicable surcharge and cess.
- Additional repatriation tax (dividend tax) may arise for transfer of funds from TRANSCO to State Government through dividend. To be further evaluated.
- Nominal stamp duty @ 0.015% will be leviable on transfer of shares.

Scenario 2. In case of Transfer of assets from TRANSCO to SPV via Demerger

- We have assumed that if the initial transfer takes place via demerger, long term capital gains tax will arise in hands of State Government and the applicable tax rate will be 14.56% (i.e. 12.5% plus applicable surcharge and cess). As per the provisions of the ITA, the period of holding in case of demerger will include the period for which shares are held by State Government in Transco as well. We have assumed that such shares are held for more than 24 months and hence long term capital gains tax will arise.
- In case TRANSCO also has any nominal shareholding in SPV, STCG shall apply on gains from transfer of such shareholding

- Nominal stamp duty @ 0.015% will be leviable on transfer of shares.

Scenario 3. In case of Transfer of assets from TRANSCO to SPV (Direct assets transfer)

- STCG tax will arise in hands of TRANSCO (assuming shares of SPV have been held for less than 24 months).
- It may result in nil to nominal capital gains as the cost base of equity shares proposed to be transfer would be approximately equal to full value of consideration taken in Step 1. Any value higher then FMV considered step 1 will be taxable @ 34.94% including applicable surcharge and cess.
- Additional repatriation tax (dividend tax) may arise
- Nominal stamp duty will arise on transfer of shares @0.015%

<u>Valuation requirement:</u>

- Valuation of shares of SPV for determination of its FMV as per section 50CA of the IT Act needs to be carried out under rule 11UAA read with rule 11UA of the Income Tax rules.

<u>Stamp duty Implications (to be vetted by stamp duty experts):</u>

- Stamp duty at the rate of 0.015% is required to paid on transfer of shares of SPV by TRANSCO to successful bidder/buyer. The same shall be payable by the seller i.e., TRANSCO.

Step 3: At the end of concession, SPV shareholding is bought back by TRANSCO at a nominal value

<u>Direct tax implications on bought back of shares by TRANSCO at a nominal value:</u>

- We understand that after the transfer period as agreed, TRANSCO will buy back the 100% shares in SPV from the successful bidder/Proposed at say nominal value of INR 1 or the remaining undepreciated value of assets as determined under rule 11UA of the Income Tax rules).

<u>Anti abuse implications in hands of buyer i.e., TRANSCO</u>

- Section 56(2)(x) of the IT Act *interalia* provides if any property (other than immovable property) is sold for less than its fair market value by more than INR 50,000, then the difference between the FMV and the sale price will be taxed as income from other sources.

- We further understand that equity shares under consideration is covered under the definition of Property.
- In such case, if the TRANSCO will receive shares of the SPV back for a consideration of INR 1 and if the FMV of the shares is higher and the difference between the FMV and the consideration exceeds INR 50,000, such difference may be taxable in the hands of TRANSCO as 'Income from Other Sources' under the IT Act.
- Furthermore, options to be explored to minimise the tax implications in the hands of TRANSCO such as transfer at a nominal value but higher than INR 1 (say, the remaining undepreciated value of assets as determined under rule 11UA of the Income Tax rules)

Valuation requirement

- Valuation of shares of SPV for determination of its FMV as per section 56(2)(x) of the IT Act needs to be carried out under rule 11UA of the Income Tax rules.

C. Summary of Tax Implications/considerations

The table below provides a summary of tax indices on each step for various options proposed for the transaction:

	Option 1: Slump Sale	Option 2: De-Merger	Option 3: Direct Asset Transfer
Step 1: Hive-off of assets from TRANSCO to an SPV	• Nominal gains assuming asset transferred at cost base equal to Fair Market Value (FMV) • Stamp duty[5] @ 5% on the value of consideration of slump sale.	• Tax Neutral subject to satisfaction of conditions of Section 2(19AA) of the ITA • Stamp duty[6] @ higher of 2% of market Value of immovable property; or 0.6% of market value of shares issued as consideration of demerger	• STCG on difference between sale consideration and FMV • Benefit of section 47(viiaf) can be availed provided that conditions therein are satisfied. • GST to be applicable on transfer of assets and rate varies on nature of assets.
Step 2: Transfer of 100% shareholding in SPV to Investor Entity	• STCG Tax on difference between sale consideration and FMV • Uncertainty due to GAAR risk • Additional repatriation tax	• LTCG Tax on difference between sale consideration and cost of acquisition of shares	• Taxable as STCG, if consideration more than cost base (unlikely) • Additional repatriation tax (dividend tax) may arise.

	(dividend tax) may arise.		
Step 3: SPV shareholding bought back by TRANSCO	• If transferred back at nominal value of Re 1, will trigger anti abuse taxation in the hands of TRANSCO under section 56(2)(x) of IT Act. • Else, TRANSCO to buy back the shares of SPV at FMV at end of concession period (10% of the asset value)		
Tax Implication[7] Assuming sale consideration of INR 500 Crores for Share Capital of INR 315 Crores in SPV	• STCG Tax: INR 65 Crores • Uncertainty due to GAAR risk and repatriation (dividend) tax	• LTCG Tax: INR 29 Crores	• STCG Tax: INR 82 Crores • Higher additional tax incidence due to GST implications in Step 1

- Hiving-off of assets to SPV can be done through either Slump sale, De-merger or Direct asset transfer. The Electricity Act 2003 offers added protection under the statutory transfer scheme based de-merger. High level assessment of tax implications suggests that De-merger mode under section 2(19AA) of the IT Act, may result in lower taxes on any capital gains (taxed as LTCG) arising due to difference between the monetization consideration (received upon share transfer) and the cost of acquisition of shares. The tax implications may however vary based on the specifics of each transaction and local rules/ regulations of the State.

<u>Alternative Model Analysis Toll- Operate- Transfer ('ToT') Model</u>

- Under the Toll, Operate, Transfer (TOT) model, the construction of the road assets (such as highways, bridges, etc.) have already been financed by NHAI or an existing concessionaire. NHAI monetizes these developed assets by granting toll collection rights to the successful bidder for a specified concession period (typically for 20 years or 30 years), in exchange for an upfront lump sum fee made by the successful bidder to NHAI.
- Under TOT Model, successful bidder forms an SPV and enters into a tripartite agreement under which right to collect toll from the identified infrastructure facility is provided to SPV. The operations and management of the identified infrastructure facility is carried out by the SPV as per the terms and conditions of the concession agreement entered with NHAI.
- As per the concession agreement and the National Highway Authorities Act, 1988, ownership of the infrastructure continues to remain with the NHAI, while the Company has acquired the right to collect toll from the vehicle owners utilizing the infrastructural facility during the designated concession period.

Direct Tax implications on upfront lumpsum fee

- In this regard, it can be said that right to collect toll may qualify as capital assets within the meaning of section 2(14) of the IT Act.
- The assignment of toll collection rights for concession period may result in extinguishment of rights in capital assets and will constitute "transfer" within the under section 2(47) of the IT Act.
- Capital gains will be computed as per the methodology enunciated under section 48 as discussed above.
- The full value of consideration will be the upfront lumpsum fee received from the successful bidder and cost of acquisition shall be deemed Nil in accordance with Section 55(2)(a) of the IT Act, as the right to collect toll will be classified as a self-generated intangible asset.
- Therefore, the entire lumpsum fee will be liable to capital gain tax.
- Notwithstanding anything said above, it can be said that as the ownership of the underlying infrastructure asset remains vested with NHAI and only the toll collection rights are assigned to the private participant for a certain period, this transaction may not constitute "transfer" of a capital asset within the meaning of Section 2(47) of the IT Act. Consequently, such assignment of toll rights is unlikely to trigger capital gains tax.
- However, the upfront concession fees received by NHAI may constitute income from business and profession within the meaning of section 28 of the IT Act.
- Further, as per the judicial precedents[8] on the Build-Operate-Transfer ('BOT') model, the entire amount of upfront concession fees received by taxpayer is chargeable to tax in the year of receipt or accrual, depending upon the method of accounting consistently employed by the taxpayer, as per section 145 of the IT Act. Furthermore, the tax shall be levied at the applicable tax rate applicable on the taxpayer.
- After the end of concession period, right to collect toll ceases in hands of private player, the right to collect toll reverts backs to NHAI. There are no tax implications of the same.
- Thus, based on the foregoing discussion, whether or not, the right to collect toll is treated as a capital asset, the TOT model is likely to result in higher tax leakage compared to the AOMT model.

Indirect Tax implications on upfront lumpsum fee

- The upfront lumpsum fee payable by successful bidder to NHAI against the toll collection rights will constitute supply within the meaning of section 7 of the Central Goods & Services Tax Act, 2017 ('CGST Act').
- Further, in the absence of any specific exemption, GST may be applicable on the transaction in accordance with the applicable rate prescribed under the Central Tax Rate ('CTR') notification.

- Furthermore, it should be noted that toll collection is an exempt transaction as per notification 12/2017- CTR dated 28th June 2017, as amended ('Exemption notification').
- Accordingly, the entire GST paid by the successful bidder on the upfront lump sum fee may be treated as blocked credit under Section 17 of the CGST Act, 2017, thereby rendering it ineligible for input tax credit and resulting in an additional cost to the bidder.

Taxability of any amenities provided by successful bidder to third parties.

- If the successful bidder provides any amenities to third parties, such as spaces for shops, hotels, etc., with the consent of NHAI, any consideration received by the successful bidder or NHAI from such third parties shall be taxable under both the IT Act and the CGST Act.
- Some illustrations of toll collection right assigned by NHAI to private participants under the TOT model are tabulated below:

Highway Stretch	Awarded to	Concession Period	Upfront Fees	Year of Award
9 stretches across Andhra Pradesh, Gujarat, Rajasthan	Macquarie Group	30 years	9,681	2018
8 stretches (UP, Bihar, Jharkhand, Tamil Nadu, Telangana, Madhya Pradesh)	Cube Highways	30 years	5,011	2019
Lucknow-Sultanpur	Cube Highways	30 years	1,011	2019
7 stretches (Rajasthan, Gujarat, West Bengal, Bihar)	Cube Highways	30 years	1,511	2020
Allahabad Bypass	Cube Highways	20 years	2,156	2023

Annexures

I. Indicative Balance sheet

Indicative Balance sheet as on 31st March 2025

Particulars	As on 31 March 2025
EQUITY AND LIABILITIES	INR in Crore (Book value)
Shareholder's Fund	
Share capital	300
Reserves and surplus	15
Non-Current Liabilities	
Long-term borrowings	700
Current Liabilities	
Short-term borrowings	10
Trade payables	25
Total	1,050
ASSETS	
Non-Current Assets	
Property, Plant & Equipment	
(i) Tangible assets	1,000
(ii) Capital Work in Progress	30
Current Assets	
Inventories	20
Total	1,050

II. Illustration of Tax Computations

Tax computation under Option 1 – Slump Sale (in the hands of TRANSCO)

Step 1: Hive-off of assets from TRANSCO to an SPV

- Nil or nominal capital gains considering that cost base will be equal to the full value of consideration
- Stamp duty[9] @ ~5% on the value of consideration of slump sale.

Step 2: Transfer of 100% shareholding in SPV to Investor Entity

Particulars	INR Crores
Sales Consideration (A) (Assumed)	500
Fair value of business undertaking as per 11UAE (B)	315
Full Value of Consideration (Higher of A & B)	500
(-) Expenses in relation to transfer	-
NET CONSIDERATION	500
(-) Net Worth (Cost of Acquisition) *(Refer Annexure 5)*	315
STCG	185
Capital Gains	185
Capital Gains Tax @34.94%	65
Nature of Gain	STCG

Notes:

1. The transaction value/price at which Slump sale would take place needs to be evaluated which can be either the book value or Fair Market Value ('FMV') as determined under rule 11UAE of the Income Tax rules. However, the transfer of assets via slump sale is to take place at minimum of Rule 11UAE Value. Considering, if the initial transfer of Identified assets

through slump sale is undertaken at book value and subsequent transfer of control via 100% share transfer of SPV to successful bidder/buyer takes place at FMV or higher value as determined, tax authorities can invoke GAAR in such scenario. To avoid such a scenario, we have assumed that transfer will take place at FMV.

2. We understand that such transfer of assets from TRANSCO to the SPV by way of a slump sale will be taxable transaction.
3. LTCG which will be taxable at 14.56% (including surcharge and cess) when such shares are held for 24 months or more than 24 months.
4. STCG will be taxable at 34.94% (including surcharge and cess) when such shares are held for less than 24 months.
5. We have assumed that Transco has opted for old tax regime.

Step 3: SPV shareholding bought back by TRANSCO

If transferred back at nominal value of Re 1, will trigger anti abuse taxation in the hands of TRANSCO under section 56(2)(x) of IT Act. Else, TRANSCO to buy back the shares of SPV at FMV at end of concession period (10% of the asset value)

TAX Computation under Option 2 – De-merger (in the hands of State Govt.)

Step 1: Hive-off of assets from TRANSCO to an SPV

- Tax Neutral subject to satisfaction of conditions of Section 2(19AA) of the ITA
- Stamp duty[10] @ higher of 2% of market Value of immovable property; or 0.6% of market value of shares issued as consideration of demerger

Step 2: Transfer of 100% shareholding in SPV to Investor Entity

Particulars	INR Crores
Full Value of Consideration (Assumed)	500
Less: expenditure incurred wholly and exclusively in connection with such transfer	0
Less: cost of acquisition of the shares	300
LTCG	200
LTCG @14.56%	29.12
Nature of Gain	LTCG

Notes:

1. We have assumed that if the initial transfer takes place via demerger, long term capital gains tax will arise in hands of State Government and the applicable tax rate will be 14.56% (i.e. 12.5% plus applicable surcharge and cess). As per the provisions of the ITA, the period of holding in case of demerger will include the period for which shares are held by State Government in Transco as well.We have assumed that such shares are held for more than 24 months and hence long term capital gains tax will arise.
2. We have assumed cost of acquisition of shares at INR 300 Crore in hands of State Government.
3. Cost of Acquisition ('COA') of shares in SPV issued on demerger is calculated as:

Original COA of shares of Transco x [Net book value of the assets transferred/ Net worth of Transco pre –demerger]

4. In the instant case, COA of shares in SPV = 300 Crore (assumed) x [315 Crore/ 315 Crore]
5. Further, we understand that maximum shareholding will be held by State Government and nominal shareholding may be held by Transco, pursuant to demerger. Nominal STCG capital gains tax may arise in hands of Transco.

6. We have assumed that STU and Transco has opted for old tax regime.

Step 3: SPV shareholding bought back by TRANSCO

If transferred back at nominal value of Re 1, will trigger anti abuse taxation in the hands of TRANSCO under section 56(2)(x) of IT Act. Else, TRANSCO to buy back the shares of SPV at FMV at end of concession period (10% of the asset value).

Tax computation under Option 3 – Direct Asset Transfer (in the hand of TRANSCO)

Step 1: Hive-off of assets from TRANSCO to an SPV

Particulars	INR Crores
Full Value of Consideration (Assumed)	1235
Less : Cost of Acquisition of assets (WDV of Depreciable assets)	1000
Capital Gains	235
STCG Tax @ 34.94%	82
Nature of Gain	STCG

Notes:

1. We have assumed FMV of assets transferred at INR 1235 Crore. Valuation report need to be obtained for transfer of capital assets under Income Tax Act and Companies Act.
2. As per Section 50 of IT, Any consideration received for transfer of a depreciable asset is reduced from the block of asset and depreciation is allowed only on the remaining block; consequently, no capital gains should arise in this case. Capital gains arise in case any of the following two conditions are met:

(a) Where full value of consideration received for an asset or group of assets exceeds the WDV of block of assets, or

(b) Where the block of assets ceases to exist.

3. As per provisions of ITA, transfer of depreciable capital assets would always be short term capital gains tax. Hence applicable corporate tax rate to the Transco would be applicable.
4. We have assumed that only capital assets are transferred such as transmission lines, towers etc and liabilities are not transferred.
5. In absence of Section 47(viiaf) exemption, short term capital gains tax will arise in hands of Transco.
6. We have assumed tax written down value of assets as INR 1000 crore for our calculation purposes.
7. We have assumed that applicable corporate tax rate for Transco is 30% plus applicable surcharge and cess. Hence the effective tax rate is 34.94%.We have assumed that Transco has opted for old tax regime.

Step 2: Transfer of 100% shareholding in SPV to Investor Entity

- Taxable as STCG, if consideration more than cost base (unlikely)
- Additional repatriation tax (dividend tax) may arise in hands of Transco.

Step 3: SPV shareholding bought back by TRANSCO

If transferred back at nominal value of Re 1, will trigger anti abuse taxation in the hands of TRANSCO under section 56(2)(x) of IT Act. Else, TRANSCO to buy back the shares of SPV at FMV at end of concession period (10% of the asset value).

III. Income Tax Act Provisions

Section 2(19AA) means "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that—

(i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger.

(ii) all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger.

(iii)the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger:

Provided that the provisions of this sub-clause shall not apply where the resulting company records the value of the property and the liabilities of the undertaking or undertakings at a value different from the value appearing in the books of account of the demerged company, immediately before the demerger, in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015.

(iv) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis except where the resulting company itself a shareholder of is the demerged company.

(v) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger,

otherwise, then as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

(vi) the transfer of the undertaking is on a going concern basis.

(vii) the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

Explanation 1. —For the purposes of this clause, "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Explanation 2. —For the purposes of this clause, the liabilities referred to in sub-clause (ii), shall include—

(a)the liabilities which arise out of the activities or operations of the undertaking.

(b)the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and

(c)in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.

Explanation 3. —For determining the value of the property referred to in sub-clause (iii), any change in the value of assets consequent to their revaluation shall be ignored.

Explanation 4.—For the purposes of this clause, the splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils such conditions as may be notified in the Official Gazette, by the Central Government.

Explanation 5.—For the purposes of this clause, the reconstruction or splitting up of a company, which ceased to be a public sector company as a result of transfer of its shares by the Central Government, into separate companies, shall be deemed to be a demerger, if such reconstruction or splitting up has been made to give effect to any condition attached to the said transfer of shares and also fulfils such other conditions as may be notified by the Central Government in the Official Gazette.

Explanation 6. —For the purposes of this clause, the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resulting company and the resulting company—

(i) is a public sector company on the appointed day indicated in such scheme, as may be approved by the Central Government or any other body authorised under the provisions of the Companies Act, 2013 (18 of 2013) or any other law for the time being in force governing such public sector companies in this behalf; and

(ii) fulfils such other conditions as may be notified by the Central Government in the Official Gazette in this behalf.

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[1] Stamp duty implications to be vetted by stamp duty experts.

[2] Public sector company/government company as per section 2(45) of Companies Act, 2013 means any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and <u>includes a company which is a subsidiary company of such a government company.</u>

[3] Stamp duty implications to be vetted by stamp duty experts

[4] Please note that the timelines for applicability of LTCG is 36 months in case of slump sale (Step 1, Option 1) and 24 months in case of share transfer (applicable in all other options/ steps)

[5] However, a view may be taken that nominal stamp duty could arise in cases where movable property is transferred by way of a delivery note. In contrast, stamp duty on the transfer of immovable property will be applicable at the rate of 5%. It need to be vetted by Stamp Duty Experts.

[6] May be exempt from Stamp Duty, as per Section 8G in India Stamp Act 1899 (inserted by Finance Act 2021, w.e.f. 28-03-2021); impact of individual state specific rules may be explored further. Additional stamp duty on immovable property will be applicable @5% if situated in state other than Tamil Nadu. It need to be vetted by Stamp Duty Experts.

[6] Additional stamp duty on issuance of shares @ 0.005% and transfer of shares @ 0.015% to be levied.

[7] Detailed calculations provided in annexures

[8] TS-674-ITAT-2015(Bang)

[9] However, a view may be taken that nominal stamp duty could arise in cases where movable property is transferred by way of a delivery note. In contrast, stamp duty on the transfer of immovable property will be applicable at the rate of 5%. It need to be vetted by Stamp Duty Experts.
[10] May be exempt from Stamp Duty, as per Section 8G in India Stamp Act 1899 (inserted by Finance Act 2021, w.e.f. 28-03-2021); impact of individual state specific rules may be explored further. Additional stamp duty on immovable property will be applicable @5% if situated in state other than Tamil Nadu. It need to be vetted by Stamp Duty Experts.