

# Post Covid (Tax) Value Drivers of M&A

# Introduction

- Watched live, this webinar qualifies for 1 PE point
- The button ‘**[Ask a question]**’ allows you to ask a live question via chat
- Any other questions via your PwC advisor or fill in the form on [pwc.nl](https://pwc.nl)
- View this webcast or presentation at a later stage
- Slides will become available afterwards
- Evaluation form afterwards



# Agenda

1. The post Covid revival of SPACs (Matt Reindl)
2. SPAC characteristics (Matt Reindl)
3. De-SPAC merger aka Business Combination
  - Legal (Ronald Lantman)
  - Tax (Bart Weijers)
1. How to get SPAC ready (All)

Host: Eduard Schurink



# Poll

A SPAC is not much different from a traditional IPO?

- A) Agree
- B) Disagree
- C) Not sure, that is why I am attending this webcast

# What is a SPAC?

## Listed Spac

### Cash Held in Trust

Blind pool of cash raised by financial sponsor through IPO to acquire private company



Acquisition typically within 24 months

## Target Company

### Target Operating Company

Fully operating private company



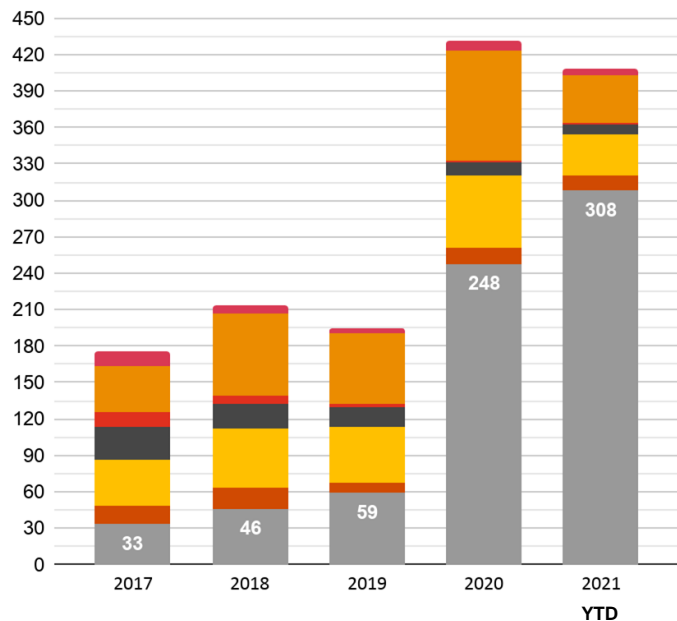
## Listed 'Successor' Company

### Publicly Listed Operating Company

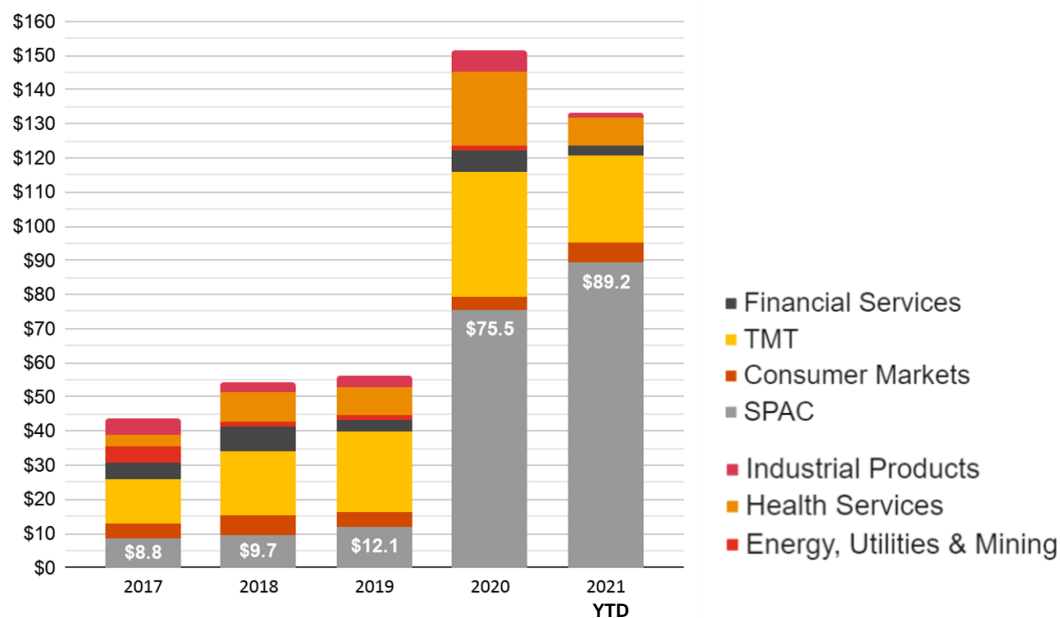
Value generation through highly incentivized management structure

# SPACs: No longer shunned on Wall Street

## US IPO volume by sector

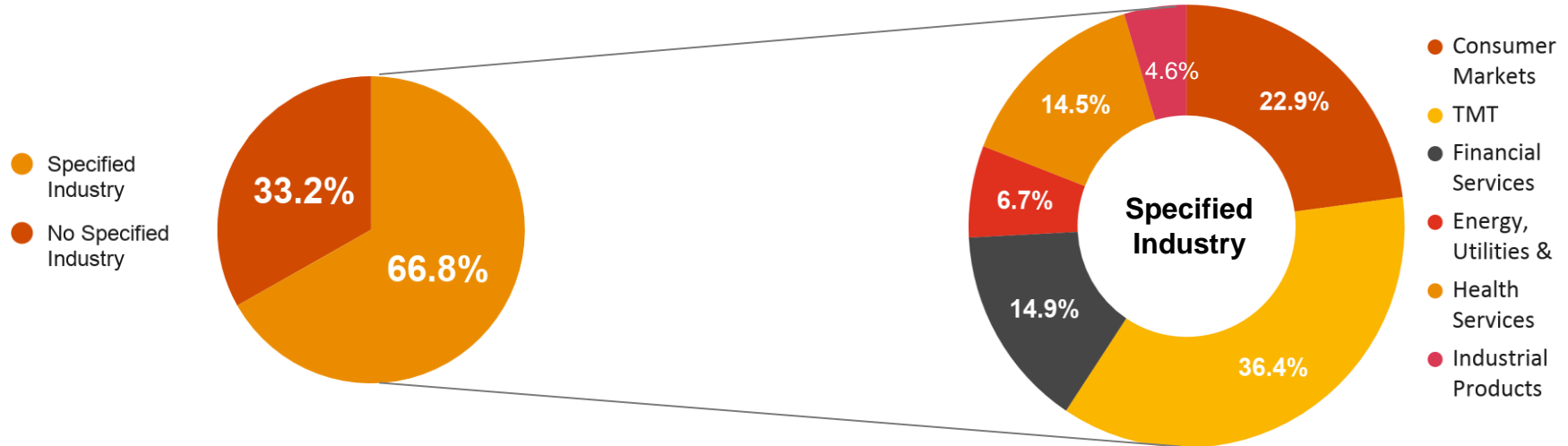


## US IPO \$-proceeds by sector (in billions)



# SPAC Investment Thesis

## SPAC IPOs from 2012 to April 2021 YTD



# What is the relevance in NL market

**430+**

US SPACs seeking acquisition

**250+**

US SPACs in the pipeline



**25+**

European SPACs in the pipeline



Needing to complete a business combination by

**2022-2023**



# Examples of Dutch SPAC IPOs & De-SPAC Mergers

## Dutch SPAC IPOs



## Dutch De-SPAC Mergers

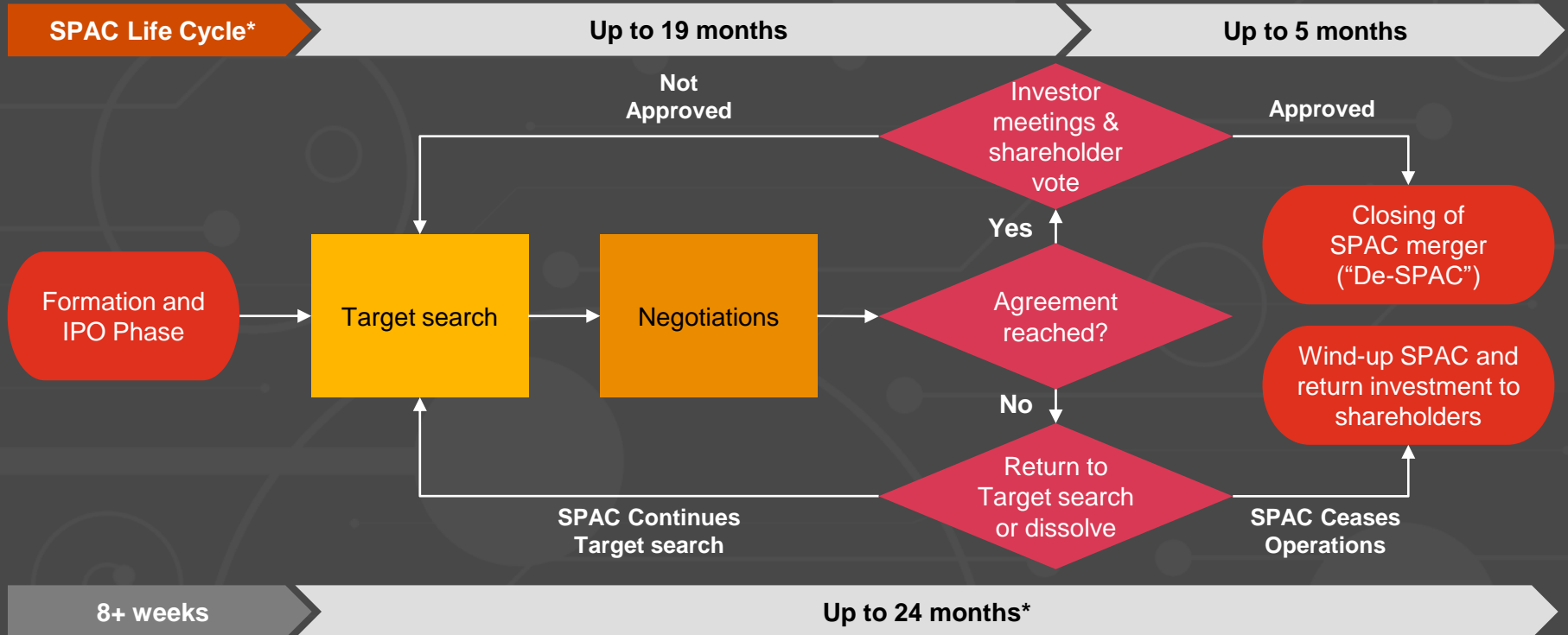


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# SPAC Lifecycle

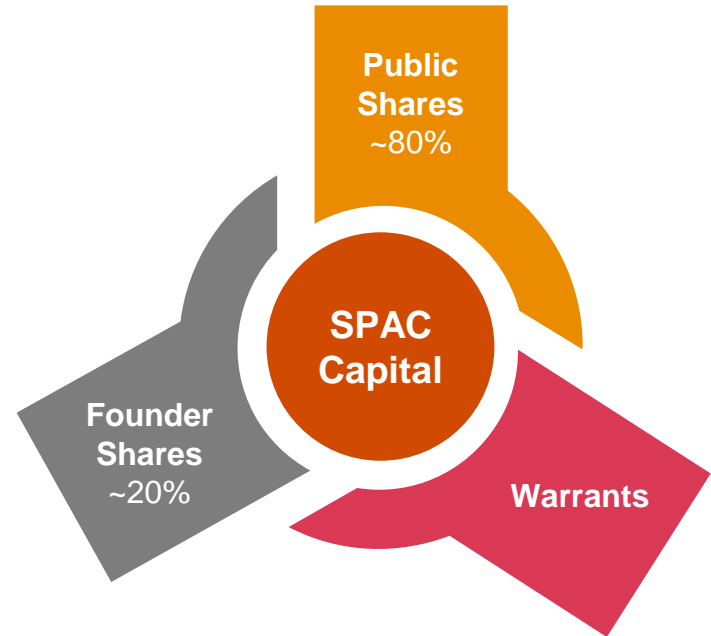


\* For illustrative purposes, the SPAC life cycle presented is based on a 24 month timeline to complete a merger.

# Capital structure

**Public** and **Founder** shares vote together as a single class, but are **seperated** in the financials as:

- Class A - Public shares
- Class B - Founder shares



# A closer look at a SPAC's public and private placement warrants

## Warrants

- Issued “**out-of-money**” with a strike price, usually **115%** of the **unit price**
- Generally, exercisable at later of (i) **30 days** post SPAC Merger and (ii) 12 months post SPAC IPO
- Two types of warrants: **public** and **private placement**

### Public Warrants

**Separated** from the **public shares** and are **fractional** ( $\frac{1}{3}$  or  $\frac{1}{2}$ )

Only **whole warrants** are exercisable

Public warrants are typically designed to be **cash settled**

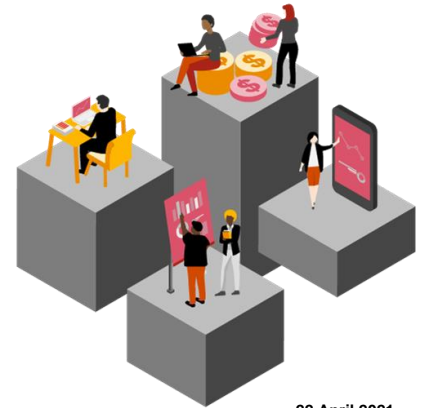
The Company can **redeem the public warrants** if the stock price trades **above the strike price** for a period of time after the merger

### Private Placement Warrants

Typically, **SPAC sponsors** purchase whole warrants for a **nominal amount** from the SPAC

Proceeds are placed in the **trust account** with a **portion set aside** for the SPAC's **working capital**

Private placement warrants are **similar** to public warrants except they **cannot be redeemed** and holders can exercise on a **cashless** basis



# Public investors and common shares

## Public Shares

- Public investors include **private equity funds, hedge funds, and mutual fund managers** and the **general public**
- Public units are **commonly sold in \$10 units**, consisting of one common share and an **out of the money warrant** or fraction thereof

**Price per share of the SPAC's public shares prior to the SPAC merger trades in a tight range as:**

SPAC's **do not have many assets** other than proceeds raised in the IPO

**85% to 100%** of the SPAC's **IPO proceeds** are held in a trust for the **shareholder-approved SPAC merger** or shareholder redemption (NYSE and Nasdaq require 90%)

**NYSE and Nasdaq** require the Target company to have a fair value at least **80% of the SPAC's IPO proceeds** at the time of SPAC merger

A SPAC's stock price typically becomes **more volatile after** the SPAC merger **announcement**. Focus is placed on the **stock price vs. redemption value** as an indicator for **investor's enthusiasm of the SPAC merger**



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# Key players in De-SPAC merger



Those who initiated the SPAC and typically includes individuals who together have records of success in identifying, acquiring and operating growing businesses and have experience in public companies



**Private investment in public equity (PIPE)** deals, usually based on **forward purchase commitments** (i.e., those agreed upon in advance) by affiliates of the sponsor or institutional investors to **purchase common stock if additional funds are needed** to complete the merger

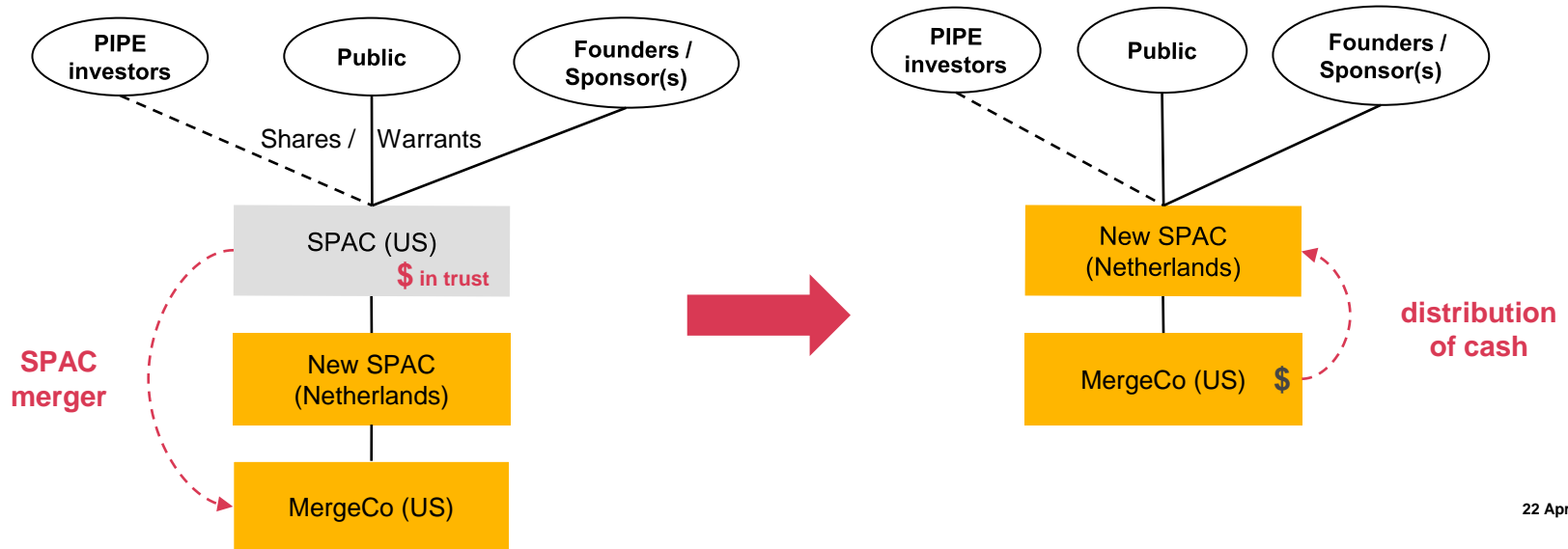


SPACs plus SPVs to facilitate cross border De-SPAC merger



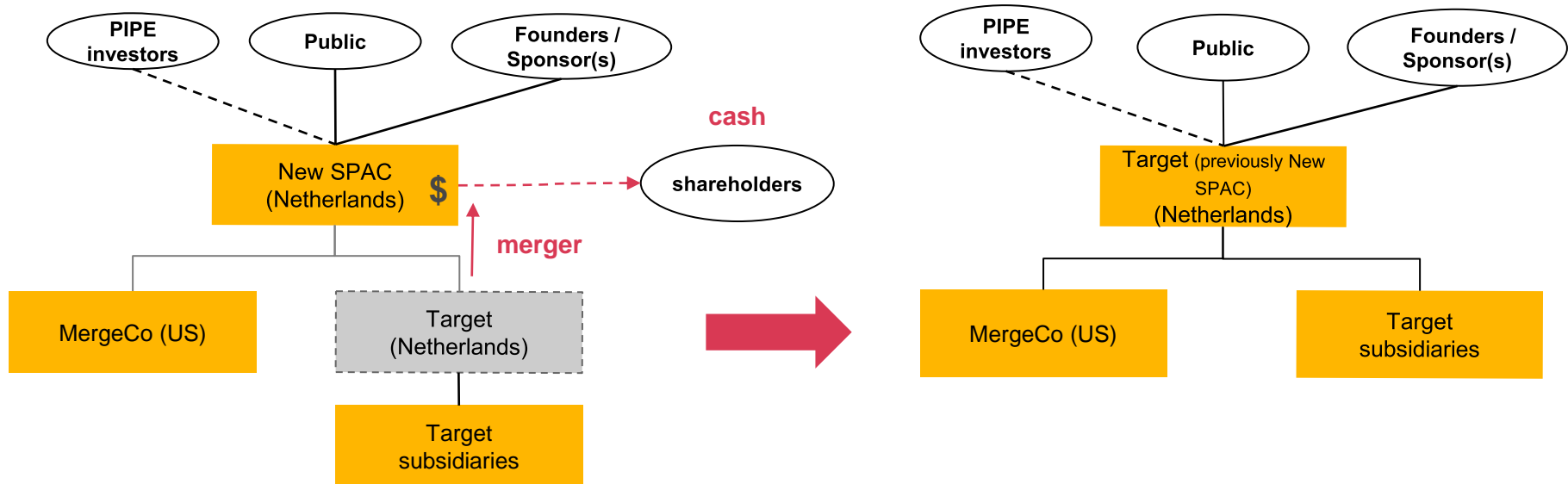
# Example of US De-SPAC merger

- SPAC incorporates New SPAC, which incorporates MergeCo
- SPAC merges into MergeCo in order to 'migrate' listed entity to jurisdiction of target company
- Under the SPAC Merger, shares and warrants of SPAC are 'converted' into shares and warrants of New SPAC
- New SPAC takes over listing of SPAC



# Example of US De-SPAC merger

- Business combination:
  - (i) New SPAC acquires (portion of) shares in Target for cash
  - (ii) Target merges into New SPAC
  - (iii) SPAC changes its name into Target name



# Poll

“An Amsterdam listed SPAC must prepare a new prospectus for the business combination”

- A) Yes, but only if the Target has more than 150 shareholders and SPAC shares are issued under the business combination
- B) Yes, but only if the Target is a non-Dutch entity
- C) No, SPACs are only required to prepare a prospectus at the IPO

# Legal considerations

## Business combination

- Cash out optionality
- Shareholders of Target to join business combination
- Acquired stake in Target by SPAC



# Timing aspects of merger

## Implementation timeline

- Convocation term shareholders meeting SPAC
- Creditor opposition period for legal merger
- Opt-out right for EU cross-border merger



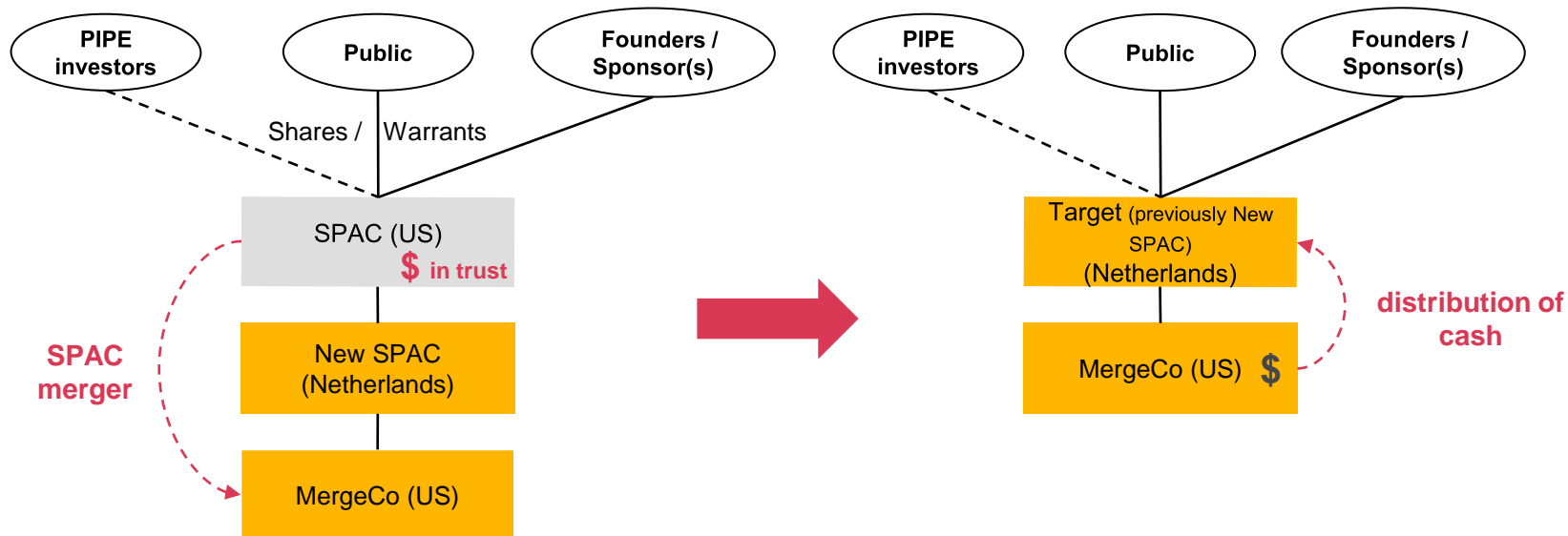
# Regulatory landscape to watch out for

- **Mandatory bid** in case a single shareholder of Target (or multiple shareholders acting in concert) acquires >30% stake in Dutch SPAC through BC (not yet applicable for BV SPACs)
- **Declaration of no objection** if SPAC acquires a financial institution, for example: FinTech Target
- **Foreign direct investment screening**: legislative proposal on screening of investments with national security risks



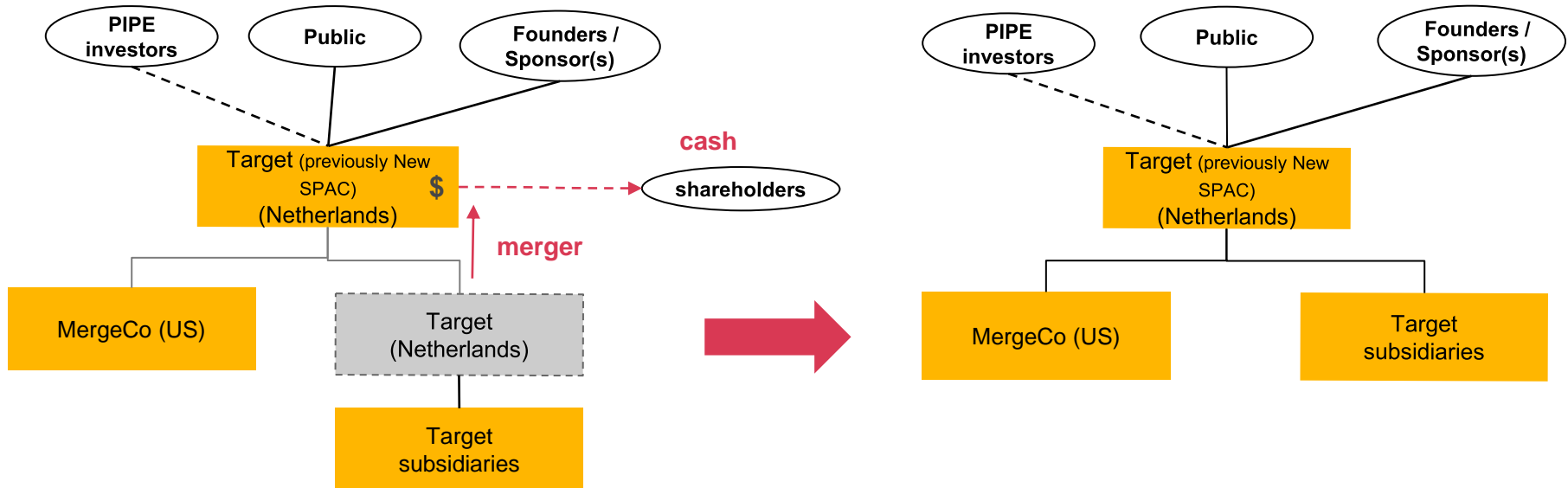
# Tax consideration on pre merger steps

- 'Migration' via US Tax Free Reorganisation (roll-over)
- Cash utilisation: repayment capital, onlending etc.
- Qualification (equity/debt) warrants
- Tax Residency SPAC/Sponsor/MergeCo



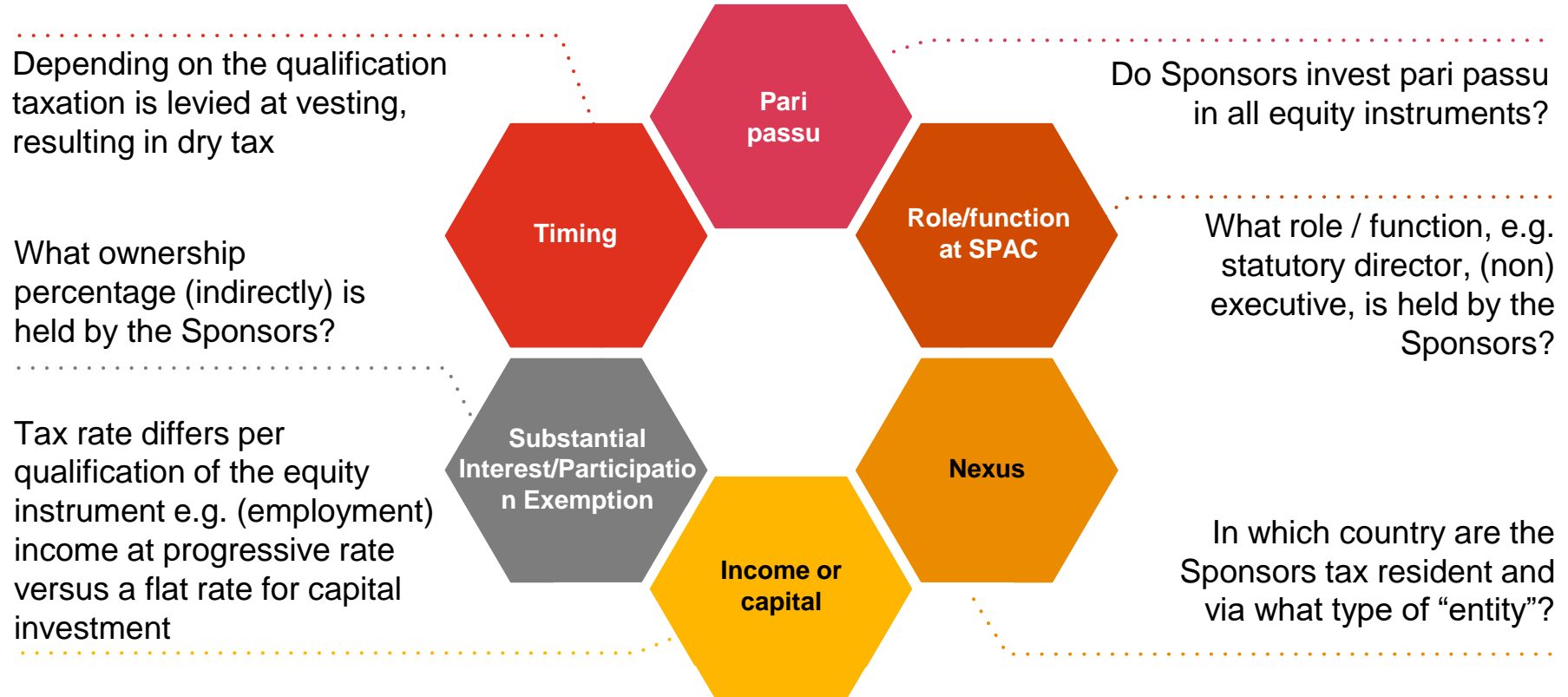
# Roll over on merger?

- Tax neutral merger
- Carve Out Aspects e.g. tax loss allocation





# Sponsors/Founders Position



# Other Tax Considerations



**Business Combination via merger under EU Merger Directive**



**Carve Out Consequences resulting from Business Combination including capturing tax losses and interest cf**



**Repatriation of cash from SPAC/MergeCo to New SPAC**



**(Equity) qualification warrant**



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# How to get SPAC ready



## Public Company Readiness

Assess and upscale existing people, processes and technology that will be required to be a public listed entity.



## De-SPAC merger

Whilst similarities to standard Private Equity transactions may be drawn, it is important to understand differences in deal economics, legal mechanics, interests and implications to SPAC and its stakeholders.



## Tax attributes

Consider structuring alternatives ahead of time to secure rollover and continuous availability of existing tax attributes post SPAC merger.



## SPAC diligence

Current SPAC attack feeds a seller's market. Diligence SPACs on compliance with domestic and international regulatory requirements.

# Questions & Answers



# Closing

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- Please fill in the evaluation form

# Evaluation

- How would you rate this webinar on a scale from 1 to 10?
- The content was relevant. (Totally Agree / Agree / Neutral / Disagree / Totally Disagree)
- Do you have any suggestions and / or comments?
- Do you have specific questions and would you like us to contact you?



# Thank you

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