

Deloitte.

Doing business in India
Exploring the opportunities



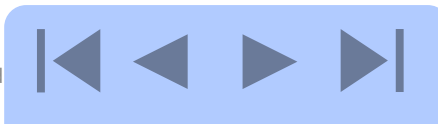
Agenda

Doing Business in India

- India at a glance
 - Investment environment and forms of business entities
 - Considerations for investing into India
 - Tax overview
-

Key Tax Issues Impacting MNCs

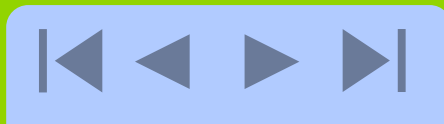
- Indirect transfer of shares
 - General Anti Avoidance Rules (GAAR)
 - Payments to non-residents
 - Cyprus notified as “Notified Jurisdictional Area”
 - Developments in Transfer Pricing
 - Companies Act, 2013
-



Doing Business In India



India at a Glance



India: Country at a glance

- India is the 3rd largest economy in the world after the U.S. and China in terms of GDP (PPP) and 10th largest economy in terms of Nominal GDP

Population, Major Cities, and Geography

- Language:** Hindi (largest spoken)
- Currency:** Indian Rupee
- Form of state:** Federal Republic
- States:** 29
- Union territories:** 6

Population of five top most populated states (Economic Survey 2013-14)

States	Population (mn)
Uttar Pradesh	199.81
Maharashtra	112.37
Bihar	104.09
West Bengal	91.27
Andhra Pradesh	84.58

Economic Overview -2014

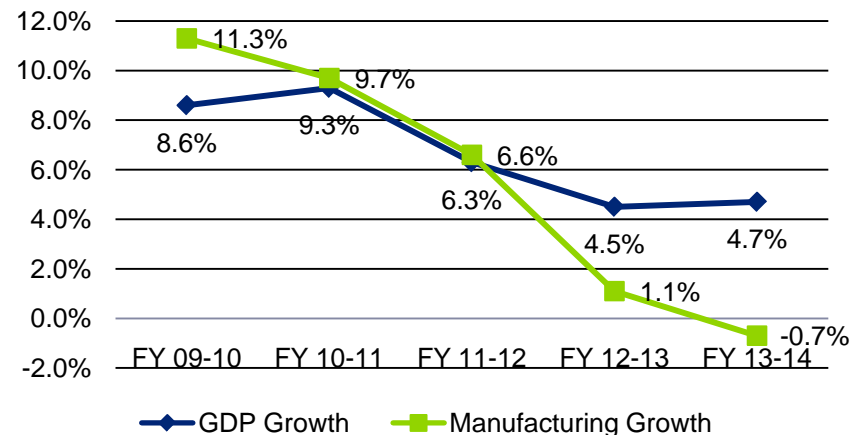
Annual data

- Population (m):** 1236.3
- GDP (US\$ bn):** 956.96

Averages (%)

- Population growth:** 1.25
- Real GDP growth:** 4.7

GDP and Manufacturing Sector Growth (Press Information Bureau –GOI and Deloitte analysis)



India Overview

Background

- The economy of India is the tenth-largest in the world by nominal GDP and the third-largest by purchasing power parity (PPP). The country is one of the G-20 major economies, a member of BRICS and a developing economy that is among the top 20 global traders according to the WTO. India was the 19th-largest merchandise and the 6th largest services exporter in the world in 2013.



Political Structure

- India is a federation with a parliamentary system governed under the Constitution of India, which serves as the country's supreme legal document.
- The President of India is the head of state and is elected indirectly by a national electoral college for a five-year term. The Prime Minister of India is the head of government and exercises most executive power.



Policy Issues

- The BJP's decisive electoral victory will reinforce the administration's ability to execute key economic reforms—such as hastening project approvals, cutting subsidies and enacting much delayed liberalizing reforms.
- In a bid to boost GDP growth, one of Prime Minister Modi's first tasks has been to revisit projects that were approved by the previous administration but have yet to start.



Taxation

- Taxes in India are levied by the Central Government and the state governments. Some minor taxes are also levied by the local authorities such as municipality, property taxes, etc. Corporate tax rates, which used to be around 50% in the early 1990s, have since progressively come down to fairly reasonable levels in keeping with the government's aim to widen the tax base and ensure greater compliance.
- Personal income tax affects only about 3.5% of India's population

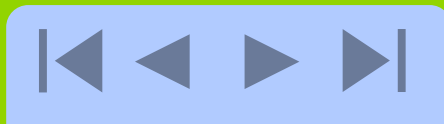


Foreign Trade

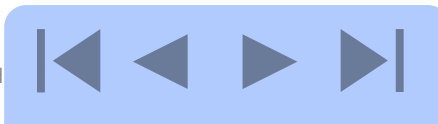
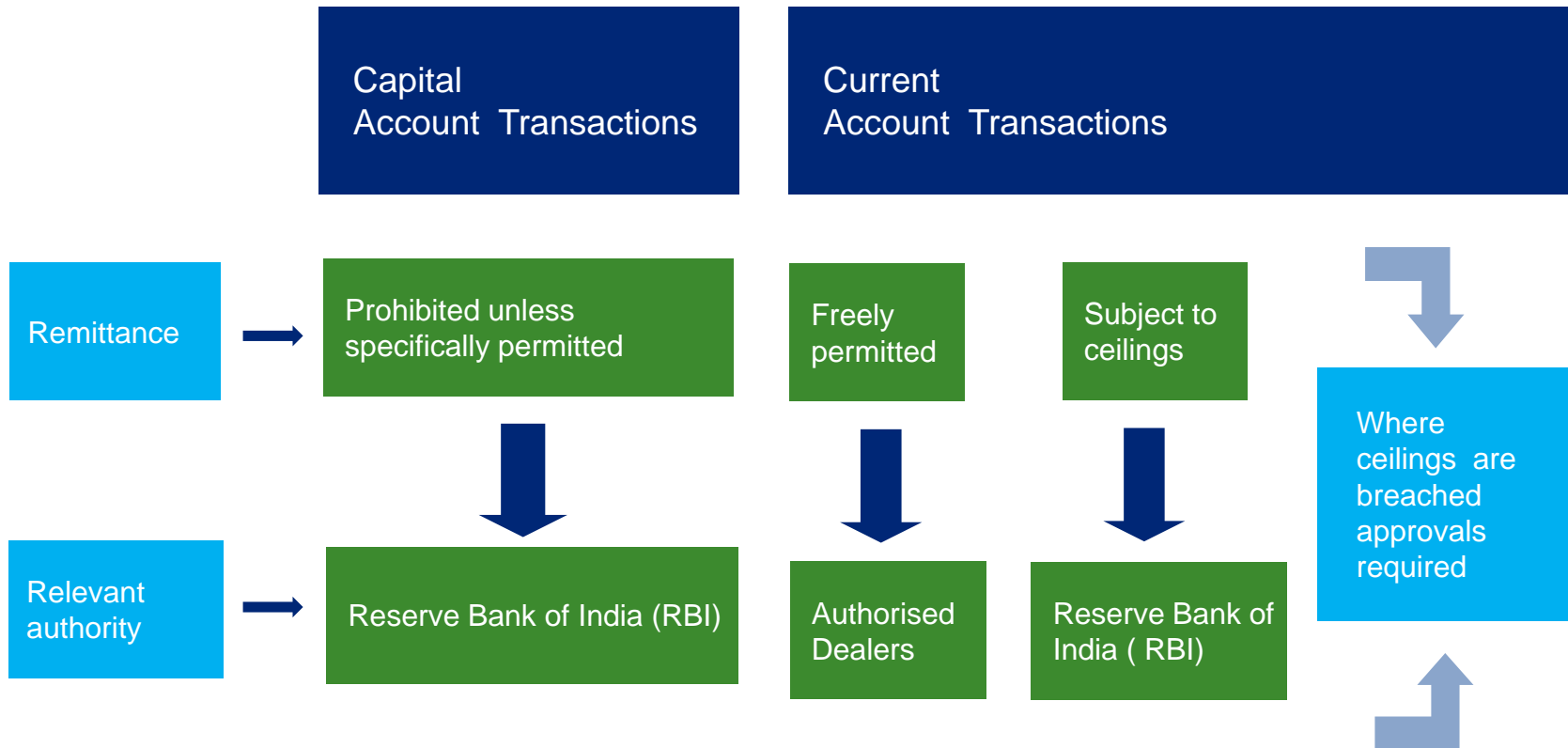
- India's current-account deficit will widen as a proportion of GDP in 2014-15, with import growth gathering momentum as restrictions on gold imports are gradually rolled back.
- India has not faced any significant difficulties in financing its current account deficit.



Investment environment and forms of business entities



Exchange control regulations



Foreign Direct Investment (FDI)

Automatic Route

- Sectors in which FDI is freely permitted and no prior approval is required from FIPB* or RBI**

Approval Route

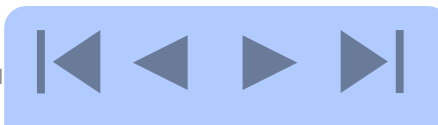
- Contains the list of sectors for which the automatic route of investment is not available and prior approval from FIPB is required
- No further clearance from RBI is required in order to receive inward remittances and issue shares to foreign investors

Prohibited activities

- There are some activities, in which foreign investment is prohibited
- Some examples: Gambling & betting, lotteries, atomic energy, business of Chit funds etc.

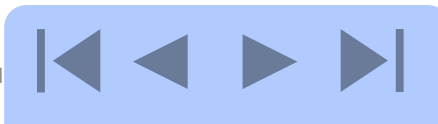
*Foreign Investment Promotion Board

** Reserve Bank of India



FDI (cont.)

- English-speaking workforce has been a significant attraction for FDI, particularly in the information technology sector.
- Many sectors are open to 100% foreign investment.
- The Government continues to liberalize FDI in telecommunications, asset-reconstruction companies and credit-information companies.
- Moving of FDI in public-sector petroleum-refining companies, courier services and commodity exchanges through the automatic route.



FDI - Sectorial Caps

Foreign Direct Investment

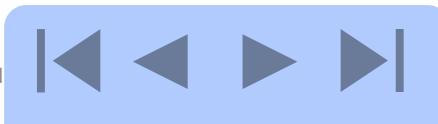
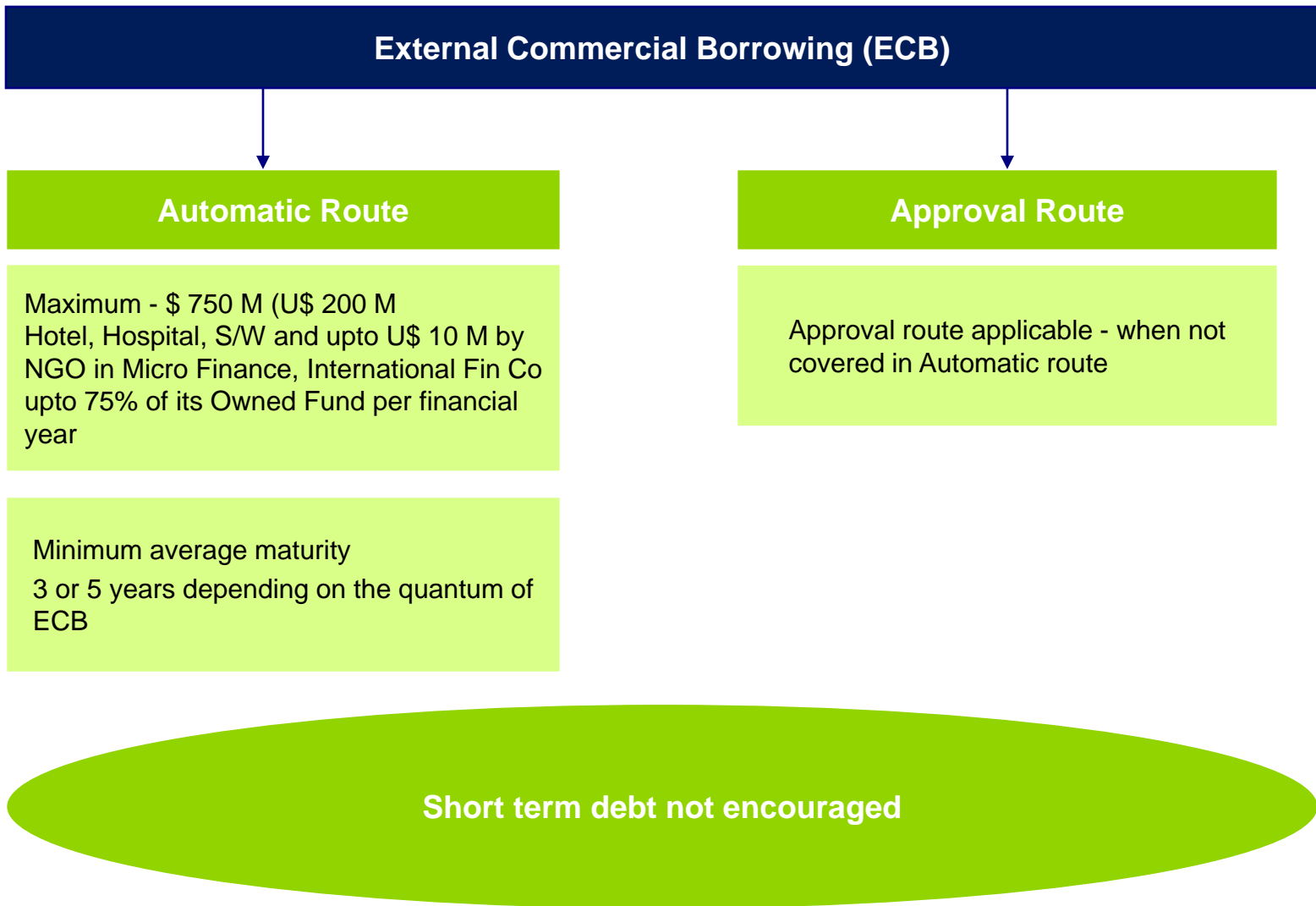
Automatic Route

Cap	Sector/ Activity
100%	<ul style="list-style-type: none"> Manufacturing (other than items reserved for MSEs) Mining (other than of titanium bearing minerals and ores) Greenfield projects in Civil Aviation Sector Drugs and pharmaceuticals Wholesale / cash & carry trading B2B e-commerce NBFC (Conditional) Special Economic Zones Setting up of industrial parks Construction Development Projects (Conditional) Courier Services Petroleum & Natural Gas exploration
74%	<ul style="list-style-type: none"> Credit Information Companies (CIC)
49%	<ul style="list-style-type: none"> Telecommunication services Private Sector Banks Cable Network Direct to Home broadcasting Mobile TV Commodity exchanges Power exchanges Single Brand product retailing Air transport services Insurance

FIPB Approval Route

Cap	Sector/ Activity
100%	<ul style="list-style-type: none"> Mining and separation of titanium bearing minerals and ores Tea Sector including tea plantations Single Brand product retailing > 49% Telecommunication services > 49%
74%	<ul style="list-style-type: none"> Private Sector Bank > 49% Cable Network > 49% Direct to Home broadcasting > 49% Mobile TV > 49% Non-scheduled air transport services > 49%
51%	<ul style="list-style-type: none"> Multi Brand Retail Trading
49%	<ul style="list-style-type: none"> Security agencies in private sector Defense production
26%	<ul style="list-style-type: none"> Up linking of news and current affairs TV channel FM radio

ECB Policy- An Overview



ECB Policy- At a glance

Eligible Lender

- International Banks
- International Capital Markets
- Multilateral Financial Institutions
- Export credit agencies
- Suppliers of equipment
- Foreign collaborators
- Foreign Equity Holders (min. 25%)
- For ECB > USD 5M – Debt-Equity 7:1 (approval route)

Maturity and Interest

• Minimum avg. maturity period

USD 20 M – 3 years

>USD 20 upto 750 M – 5 years

• All in Cost Ceiling

3-5 years - LIBOR + 350 b.p.

>5 years - LIBOR + 500 b.p.

Eligible Borrowers

- Corporates
- NGOs in Micro Finance
- SEZ Units (except financial intermediaries, individuals, Trusts)
- NBFC-IFC
- NBFC-AFC
- Micro Finance Institution

Prohibition

- On lending
- Investment in capital market or acquiring a company in India
- Real Estate

End Use

- Real/ Industrial sector (SME)–
 - Import of capital goods,
 - New Projects, Expansion/modernization of existing units
 - ODI in JV/ WoS abroad
- Payment of Interest During Construction (IDC)
- First stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer under GOIs disinvestment program
- Payment for obtaining License/ permit for 3G spectrum.
- For lending to self help groups or for micro credit by NGO's
- Repayment of rupee loans by companies in infrastructure sector manufacturing and hotel sector (with project cost of NR 250 or more)
- Working capital for Civil Aviation sector
- General corporate purpose (w.e.f. 4 September 2013) for ECB from foreign direct equity holder

Forms of Business Entities in India

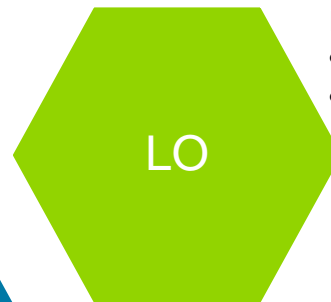
Limited Liability Partnerships

- Any activity under automatic route
- Prior Government Approval
- Income taxable @30%*
- No tax on profit repatriation



Unincorporated Joint Venture

- Any activity subject to specific approval
- Income taxable @40%* if there is a foreign partner/venture



Liaison Office

- Acts as channel of communication / no commercial activities
- Not a taxable entity but required to file limited tax return giving details of information on business conducted by head office



Branch Office

- Export / import of goods/ Professional service/Research activities / No manufacturing
- Income taxable @ 40% *
- No tax on profit repatriation



Project Office / Site Office

- Execute specific projects
- Income taxable @ 40%
- No tax on profit repatriation



Wholly Owned Subsidiary / Incorporated Joint Venture

- Any activity subject to FDI policy
- Income taxable @ 30%*
- Dividend repatriation subject to tax @ 19.665%

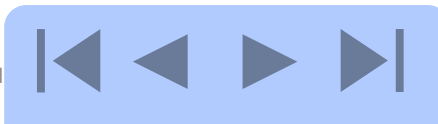
* Excluding applicable surcharge and cess

Company has been the preferred form for doing business in India, MNCs are considering setting up LLP in India for their business operations.

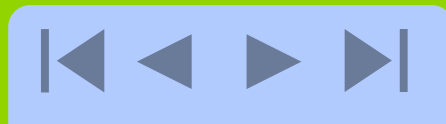
Key consideration

The selection of form of entity for investment into India should be based on the following:

- Nature of the activities
- Period of the investment
- Business model for the Indian operations
- Tax considerations

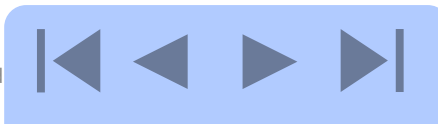
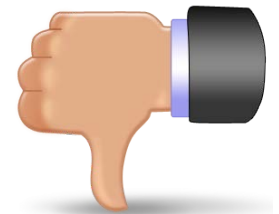


Consideration for Investing Into India

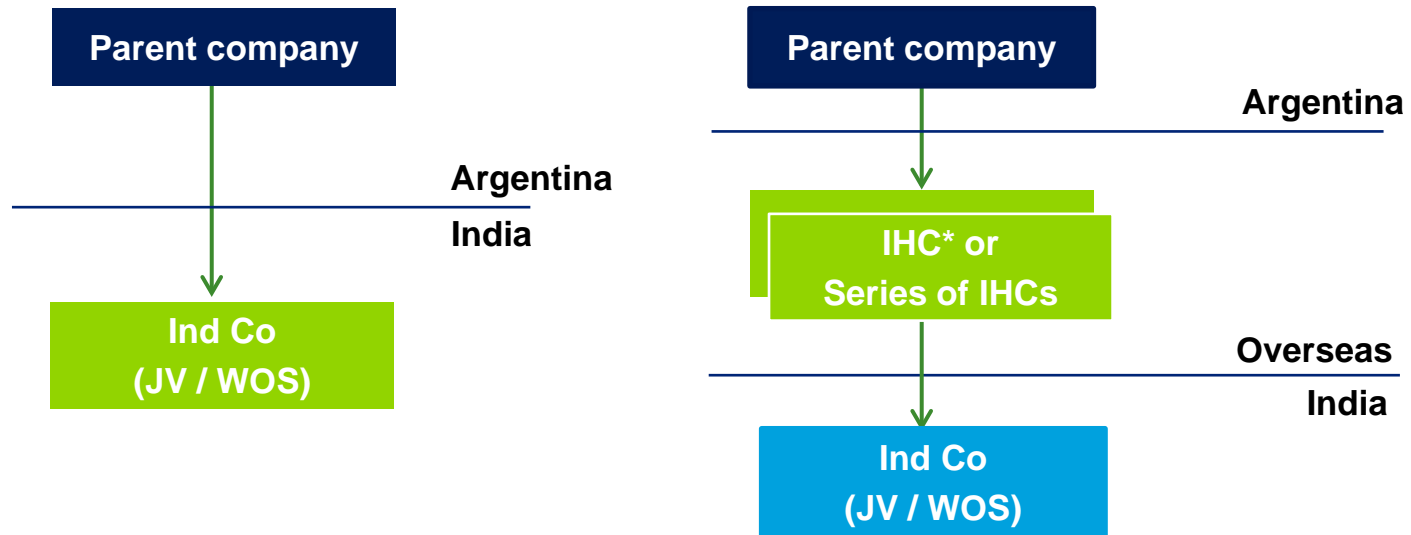


Overview of considerations

- Possible capital gains exemption
- Tax holidays for setting up of business in Special Economic Zones (SEZs) and specified backward areas, doing specified activities
- Tailored incentives to manufacturing concerns such as enhanced deduction for R&D activities, accelerated depreciation
- Under domestic law, specified borrowings are subject to a lower withholding tax of 5% on interest payments – lower than treaty rates
- Transfer pricing – APA and safe harbor provisions have been introduced
- GAAR applicable from financial year beginning on April 1, 2015
- Indirect transfer of shares subject to tax in India, provided Intermediate Holding Company derives substantial value from India
- Regulatory restrictions on lending of money by a foreign company; it is necessary to be a shareholder
- Buyback of shares by unlisted companies is subject to a distribution tax of 22.66% in the hands of Ind Co. (Amount taxable = Amount paid less amount received by company)
- Withholding tax on royalties and fees for technical services increased from 10% to 25%; treaty rate to apply where applicable
- Tax residence certificate to obtain treaty benefits



Inbound Structures

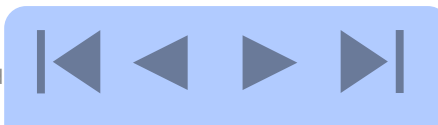


Tax Considerations -

- Capital gains exemption under the treaty with the country where IHC is resident
- Applicability of Indirect transfer law – treaty protection available
- Generally used IHC jurisdictions: Mauritius, Netherlands, Singapore
- Substance requirements introduced in Mauritius domestic law

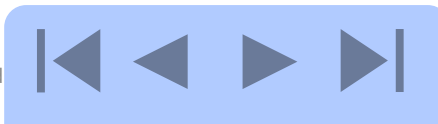
Cash repatriation through share redemption (used until May 2013) is no longer available: now taxable in India

* IHC – Intermediate Holding Company **Surcharge and cess applicable based on income level



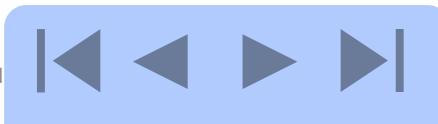
Cash Repatriation

- Dividends
 - Subject to a dividend distribution tax (DDT) of 19.655%
- Buy back of shares
 - Prior to June 1, 2013 - Alternative for tax efficient cash repatriation through the Singapore/Mauritius route
 - Effective from June 1, 2013 – Distribution tax of 22.66%
on buy back of unlisted shares introduced, payable by the Indian company. Similar to DDT applicable to dividends
 - Tax payable on Consideration paid by Company on buy back minus amount received on issue of shares
- Alternatives for Repatriating Cash
 - Limited and complex - Involves restructuring the Indian entity including migrating to a LLP structure etc.

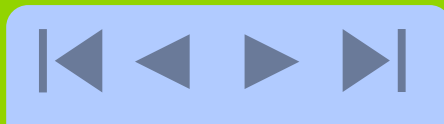


Key consideration

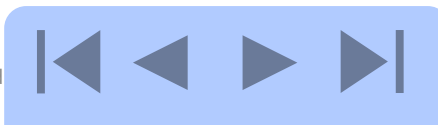
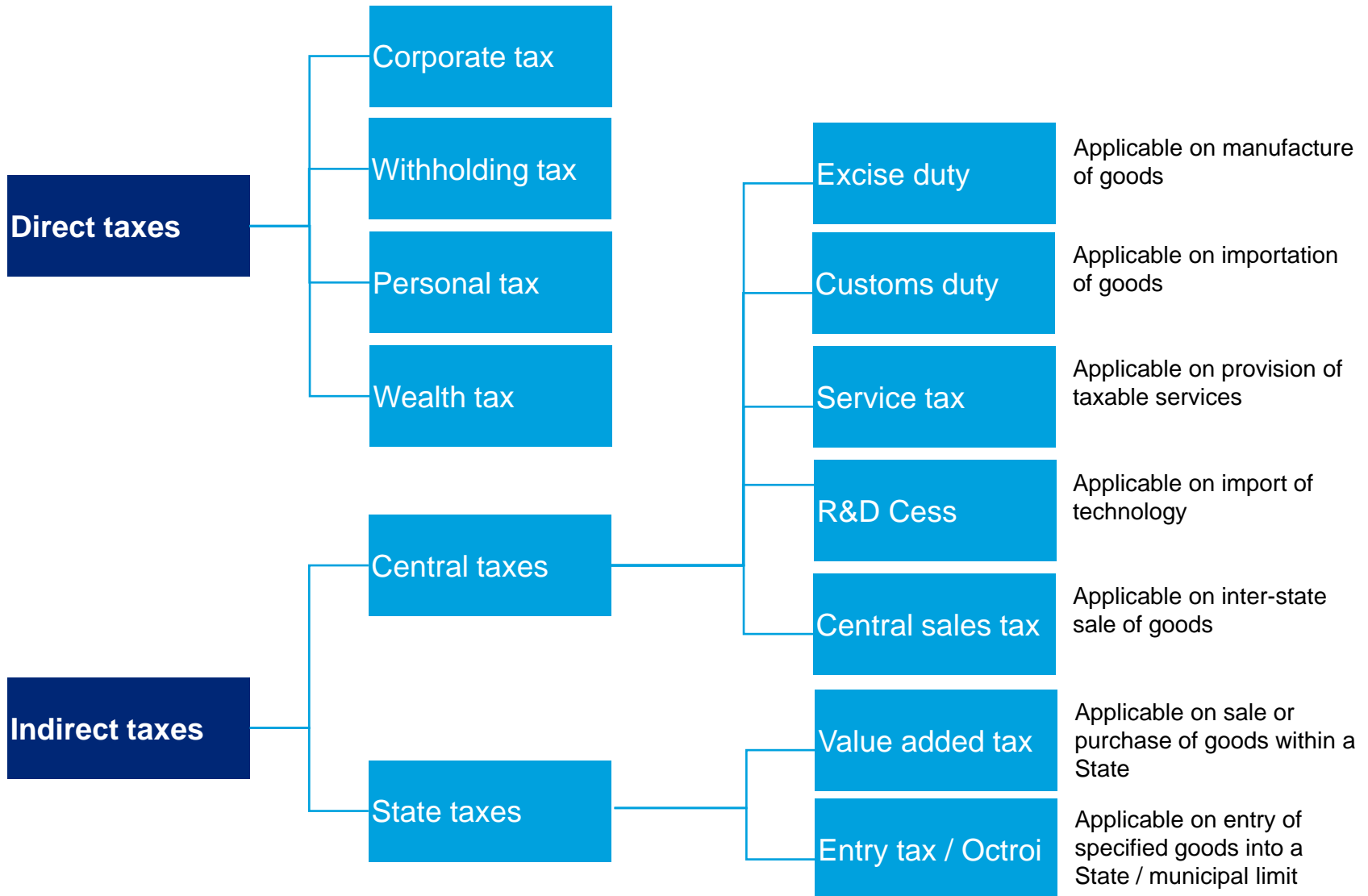
- Payment of dividend by an Indian company is subject to dividend distribution tax of 19.665 %
- Buy back of shares by an unlisted Indian company is subject to a distribution tax of 22.66%



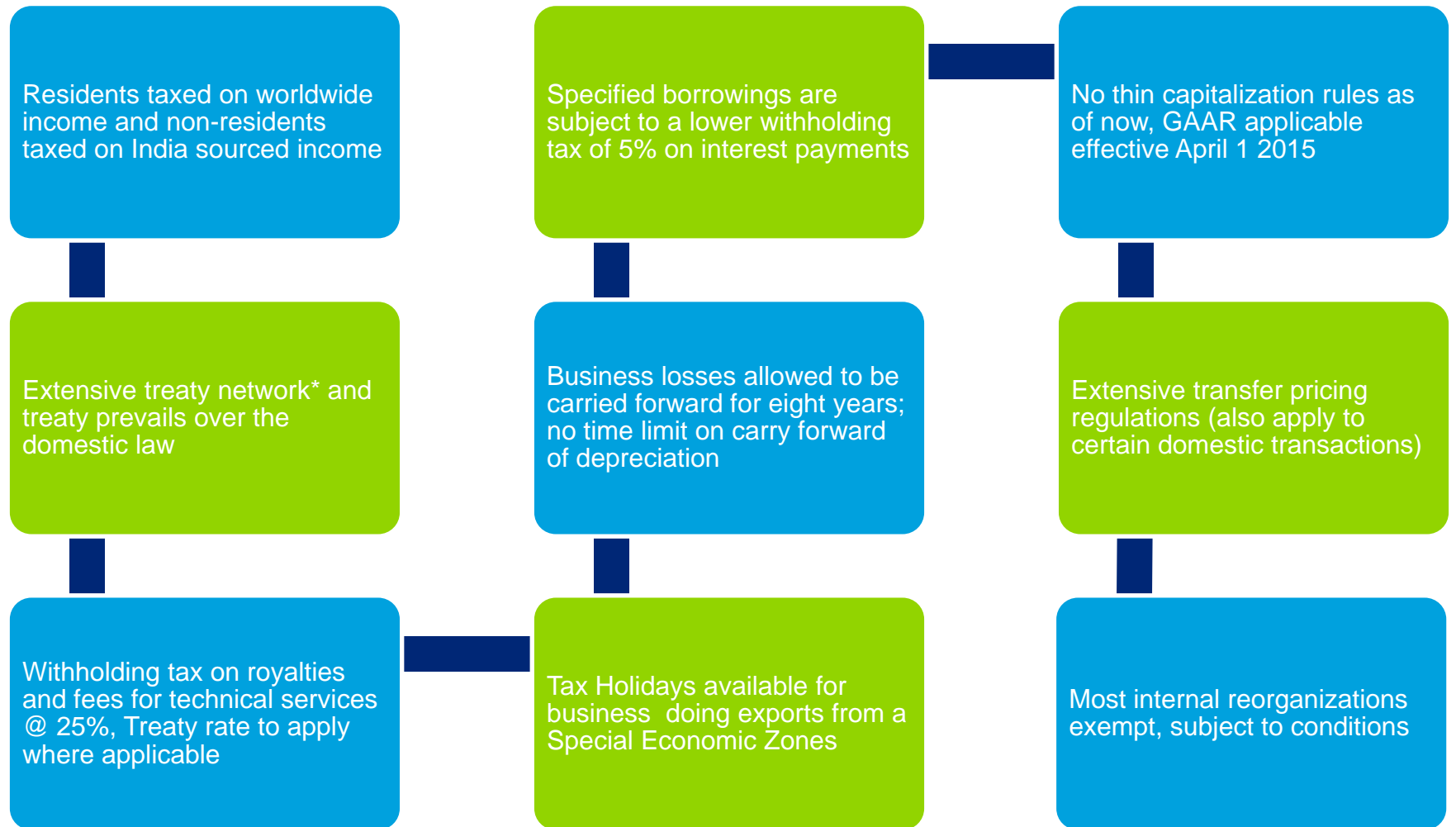
Tax Overview



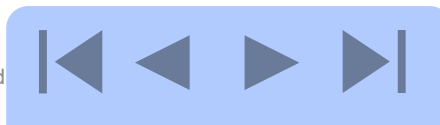
Tax legislation in India



Direct Tax Overview

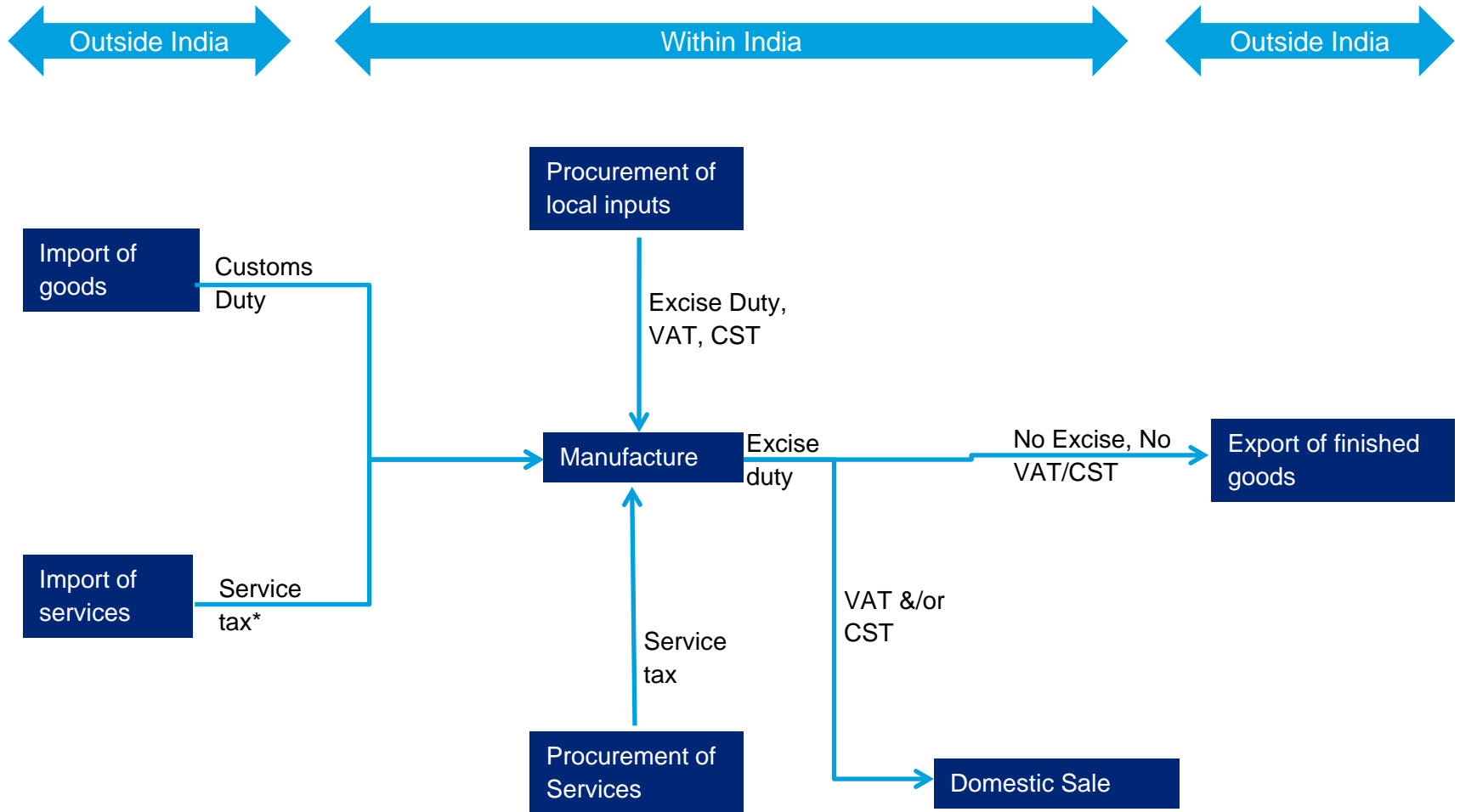


*India has tax treaties with over 80 countries

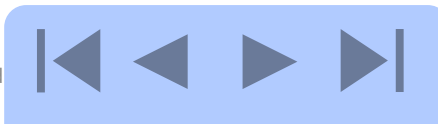


Indirect Tax Overview

Across the supply chain (for a manufacturer)



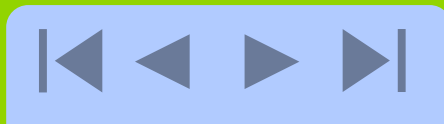
* Import of service is subject to service tax under reverse charge mechanism subject to fulfillment of prescribed conditions



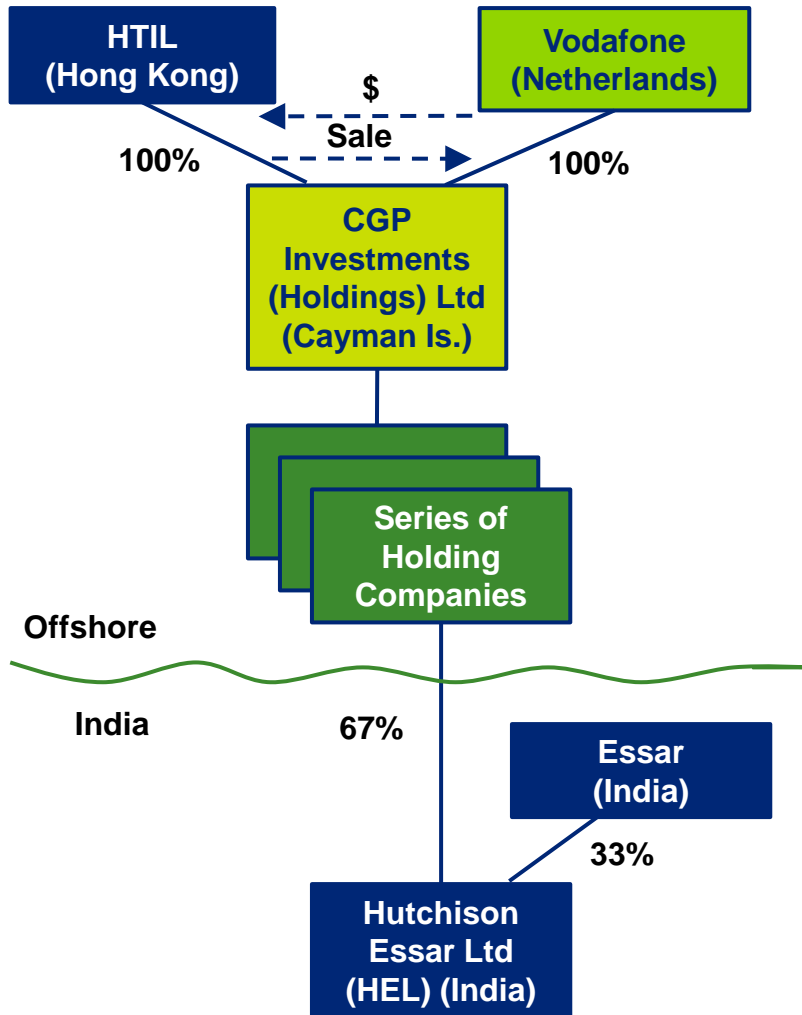
Key Tax Issues Impacting MNCs



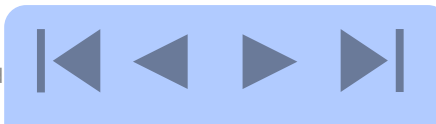
Indirect transfer of shares



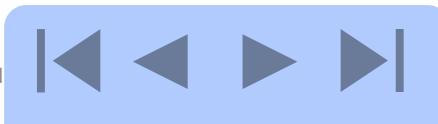
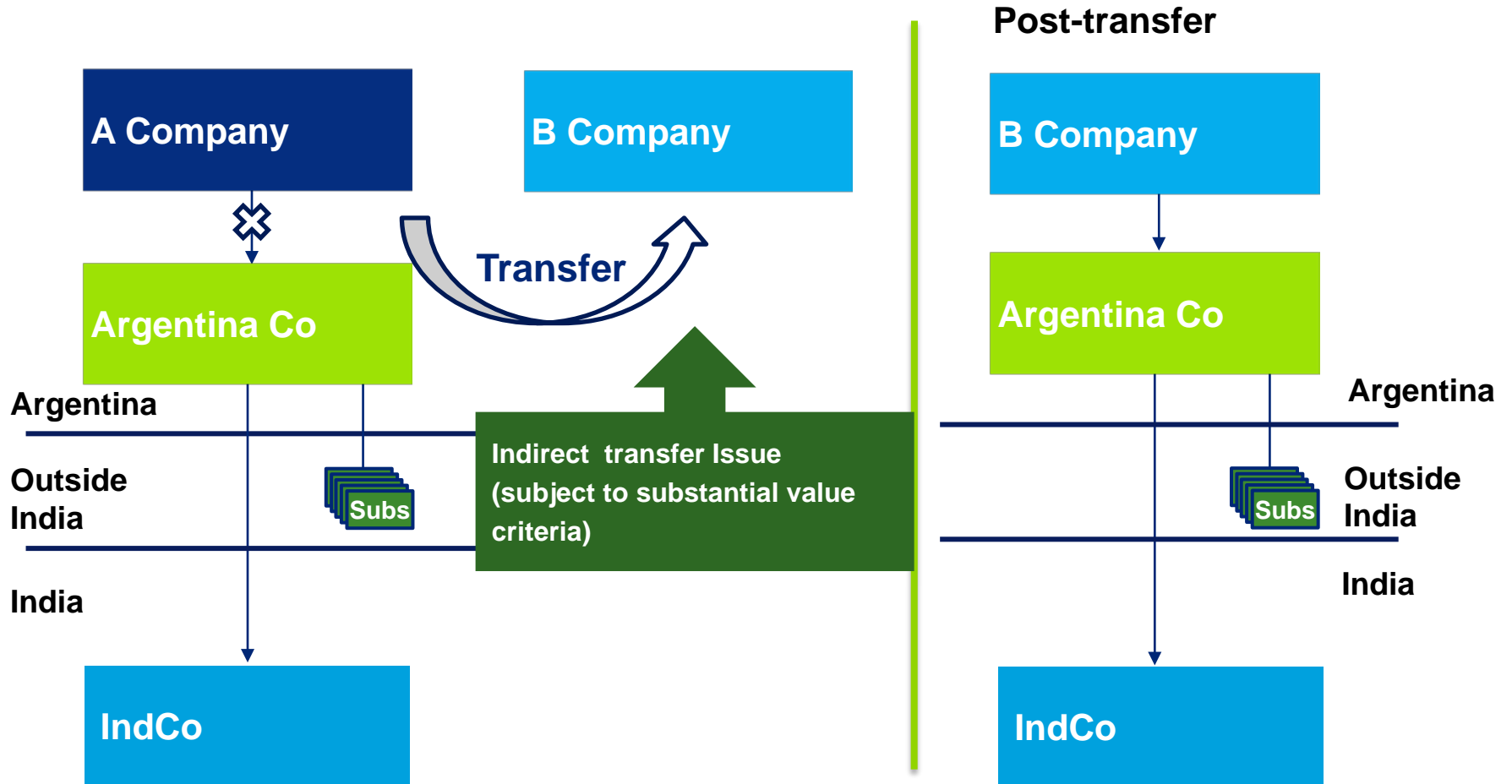
Indirect Transfer of Shares



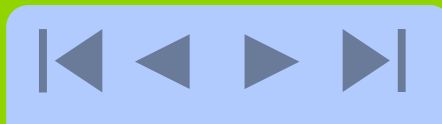
- Supreme Court held that India does not have the right to tax indirect transfers; no look-through provision in current law
- Amendment in Budget 2012: Indirect transfers will be subject to tax in India if the target derives value substantially from assets located in India (directly or indirectly)
- Retroactive amendment from 1961 (Indian statute of limitations is seven years)
- Reverses Supreme Court decision



Indirect Transfer



GAAR

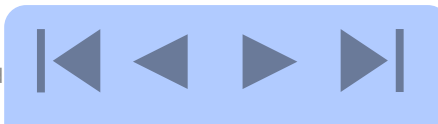


General Anti Avoidance Rules (GAAR)

- GAAR applicable from April 1, 2015
- An arrangement where the “main purpose” is to obtain a tax benefit, would be considered as an impermissible avoidance arrangement
- The GAAR orders would be subject to review by an Approving Panel whose decision would be binding on the taxpayer and tax authorities
- GAAR provisions may apply incase of arrangements such as involving payment of interest, royalty etc. after 1 April 2015
- A threshold of INR 30 million (USD 0.5 million approx)* of tax benefit in “an arrangement” required for invoking GAAR
- Grandfathering of investments made before 30 August 2010

Investment made	Benefit obtained	GAAR applicability
Before August 30, 2010	Before 1 April 2015	No
	On or after 1 April 2015	No
On or after 30 August 2010	Before 1 April 2015	No
	On or after 1 April 2015	Yes

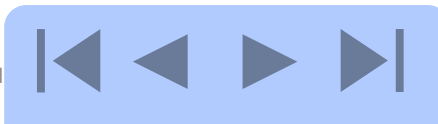
*1USD = 60 INR



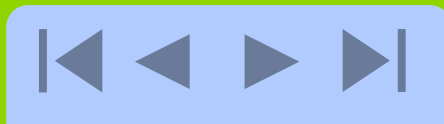
GAAR (cont.)

- Substance requirements for holding companies ?
 - Government Circular* for Mauritius companies that TRC is sufficient for grant of India Mauritius treaty benefit may not apply post April 1, 2015

* CBDT circular no 789 dated April 13, 2000



Payment to Non-residents



Payments to Non-Residents

Tax Residency Certificate (TRC)

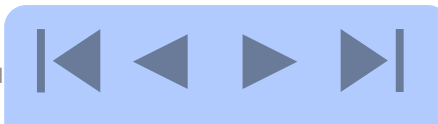
- Tax treaty benefits are available to a non-resident only if a TRC is available.
 - In addition to TRC, a taxpayer claiming tax treaty benefit is required to submit form 10F

Permanent Account Number (PAN) requirement

- Failure to furnish a PAN could result in imposition of WHT at a higher rate of 20%
 - The tax rate under the tax treaties for royalties and Fee for technical services is generally 10% / 15%

'No PE' declaration

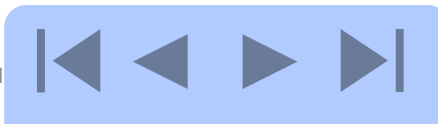
- While making foreign payments, Indian payers often ask for such declaration from foreign recipient, If declaration not given
 - The Indian payer may take a conservative view and withhold tax @ 40% (excluding surcharge and cess), arguably for incomes taxable on gross basis still not applicable
 - Approach tax officer for determining applicable rate of tax



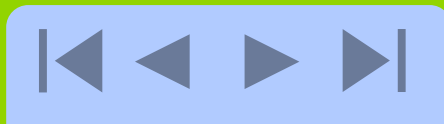
Payments to Non-Residents (cont.)

Issue of WHT on payments for:

- **Use of software** – Copyright vs. Copyrighted Article
- **Telecom bandwidth**
- **Management fees** – in context of India-US tax treaty
 - Services do not make available any skill, knowledge or involve of any technology
- **Payments for online advertising**
- **Reimbursement of expenses**
- **Reimbursement of salaries under Secondment arrangement**
 - No mark up charged on salaries cross charged
 - Seconded employee work under the supervision, control and direction of Indian entity

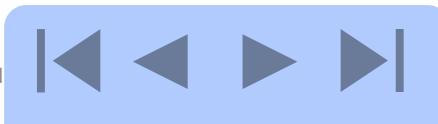


Cyprus notified as
“Notified Jurisdictional
Area”



Cyprus Notified as “Notified Jurisdictional Area”

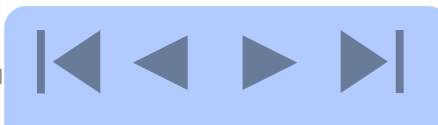
- In November 2013, the Government has notified Cyprus as the first country as a “Notified Jurisdictional Area”
- **Notified Jurisdictional Area:** Having regard to the lack of effective exchange of information with any territory outside India, the Indian Government may notify countries or territories as ‘notified jurisdictional areas’
- Transactions of Indian taxpayers with parties in these jurisdictions are subject to special rules:
 - High withholding tax of 30% on payment to these jurisdictions
 - Applicability of transfer pricing provisions
 - No tax deduction for payment to Cypriot residents unless prescribed information is maintained
 - No tax deduction for payment made to financial institutions (FI) in Cyprus unless authorization from FI for seeking relevant information
 - Onus on Indian tax payer to prove source of any money received from a resident in Cyprus, else deemed as income
 - **India-Cyprus Tax Treaty is expected to be revised in some time, post which the differences which led to blacklisting of Cyprus shall be amicably solved.**



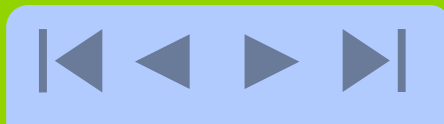
Key consideration

The following documents are required for payments from an Indian company

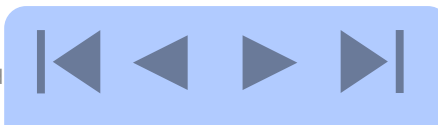
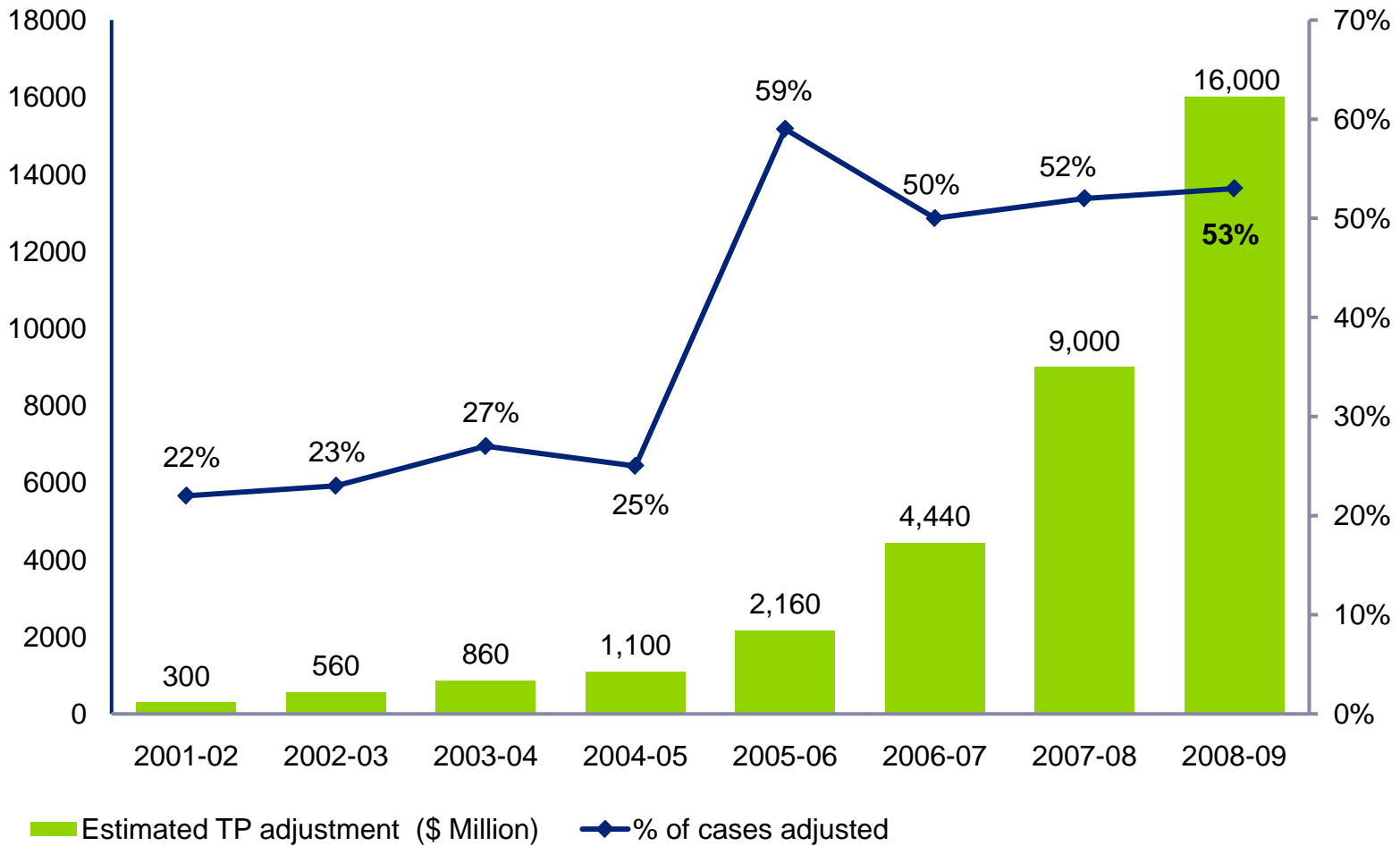
- Tax Residency certificate and Form 10F
- Permanent Account Number issued by Indian Revenue
- No PE Declaration



Transfer Pricing

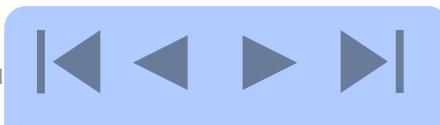


Transfer Pricing Dispute Intensity in India

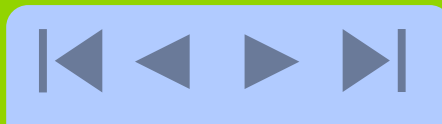


Transfer Pricing Regulation in India

- Formal international TP regulations since 2001
- TP provisions introduced for **specified domestic transactions** (SDT) from April 1, 2012 (FY 2012-13 onwards)
- No priority of methods provided to determine Arm's length price (ALP). ALP to be determined applying the most appropriate method
- **Mandatory annual TP documentation compliance** where
 - the value of international transactions exceeds INR 10 Million (USD 0.15 Million approx) or
 - Specified domestic transactions are undertaken by the taxpayer (total value exceeding INR 50 Million or USD 0.8 Million approx)
- **Severe penalties** prescribed for not complying with TP provisions
- **Current threshold for TP Audits** - aggregate annual value of international transactions with related parties > INR 150 Million (or US\$ 2.3 Million approx)
- **APA mechanism** introduced in 2012 - Not available for specified domestic transactions at present
- **Safe Harbor Rules** announced on September 18, 2013

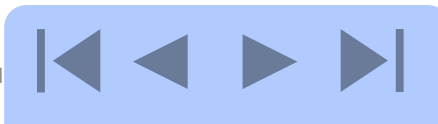


Companies Act, 2013



Companies Act, 2013

- The Companies Act, 2013 was enacted on August 29, 2013 to replace the Companies Act, 1956
- Some of the key changes are:
 - Introduction of the concept of a one-person company;
 - Certain companies required to spend atleast 2% of the average net profits of the last 3 years on corporate social responsibility (CSR);
 - Requiring that at least one director of a company stay in India for more than 182 days;
 - All companies have to follow a uniform Financial Year i.e. from 1st April to 31st March;
 - All existing directors must have Directors Identification Number (DIN) allotted by central government;
 - Numbers of permissible members in private company has been raised to 200 as against existing limit of 50 members



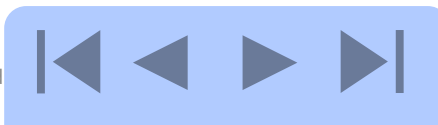


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Annexure I – List of Indian DTAA

Armenia	Cyprus	Hashemite Kingdom of Jordan	Kuwait	Morocco	Portuguese Republic	Sudan	UAR (Egypt)
Australia	Czech Republic	Hungary	Kyrgyz Republic	Mozambique	Qatar	Sweden	UGANDA
Austria	Denmark	Iceland	Latvia	Myanmar	Romania	Swiss Confederation	UK
Bangladesh	Egypt	Indonesia	Libya	Namibia	Russia	Syrian Arab Republic	Ukraine
Belarus	Estonia	Ireland	Lithuania	Nepal	Saudi Arabia	Tajikistan	United Mexican States
Belgium	Ethiopia	Israel	Luxembourg	Netherlands	Serbia	Tanzania	USA
Botswana	Finland	Italy	Malaysia	New Zealand	Singapore	Thailand	Uzbekistan
Brazil	France	Japan	Malta	Norway	Slovenia	Trinidad and Tobago	Vietnam
Bulgaria	Georgia	Kazakstan	Mauritius	Oman	South Africa	Turkey	Zambia
Canada	Germany	Kenya	Mongolia	Philippines	Spain	Turkmenistan	
China	Greece	Korea	Montenegro	Poland	Sri Lanka	UAE	

