



## Quarterly India Tax updates

October – December 2019

22 January 2020

# Presenters

## Subject matter experts



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# We will discuss...

- **Regulatory and other developments**
  - The Taxation Laws (Amendment) Ordinance, 2019
  - Section 80JJAA
- **Indirect tax updates**
- **Recent judicial pronouncements**
  - Mylan Laboratories Limited.
  - Hitachi High Technologies Singapore Pte Ltd
  - Reliance Jio Infocomm Ltd
  - Maruti Suzuki India Ltd
- **Emerging trends in GST and Trade**





# Regulatory and other developments

# Regulatory and other developments



Update on the Multilateral Instrument ('MLI')



SEBI (FPI) Regulations 2019 issued on 23 September, 2019



International Financial Services Centres (IFSC) Authority Bill, 2019



Taxation Laws (Amendment) Act 2019

# The Taxation Laws (Amendment) Ordinance, 2019

# The Taxation Laws (Amendment) Act/ Ordinance 2019

## Corporate tax reset

### (A) Section 115BAA – Lower tax rate of 22%

#### **Background:**

- With effect from Financial Year (FY) 2019-20, any domestic company can avail an option to pay income-tax at the rate of 22 percent plus a flat surcharge at 10% and cess at 4%, making effective rate of 25.17%.
- No Minimum Alternative Tax (MAT) would be imposed on these companies.
- Carry forward of MAT credit would not be permitted.
- Reduced surcharge at the rate of 10% applies on tax imposed on the above companies.

#### **Key changes in the (Amendment) Act as compared to the Ordinance:**

- **No MAT credit** for entities opting for lower tax rate of 22%.
- **Adjustment in WDV** – Written down value ('WDV') as on 1 April 2019 to be increased by amount of unabsorbed additional depreciation foregone on adopting a lower rate of 22%.
- **IFSC units** will be eligible to claim deduction under Section 80LA (deduction in respect of certain incomes of Offshore Banking Units and IFSC). as well as opt for the lower tax rate of 22% on the non-IFSC profits.
- In case of an amalgamation, the amalgamated company would not be eligible to carry forward and set off any loss or unabsorbed depreciation pertaining to prohibited deductions and tax incentives.

# The Taxation Laws (Amendment) Act/ Ordinance 2019

## Corporate tax reset

### **(B) Section 115BAB – Lower tax rate of 15%**

#### **Background:**

- Any new domestic manufacturing company incorporated on or after October 1, 2019, will be have an option to pay corporation tax at the rate of 15 percent plus a flat surcharge at 10% and cess at 4%, making effective rate of 17.16% provided manufacturing or production is commenced on or before 31 March, 2023.
- The above rates may be available subject to the condition that the company does not avail tax incentives or exemptions as provided under the said sections.
- No Minimum Alternative Tax (MAT) would be imposed on these companies.
- Reduced surcharge at the rate of 10% applies on tax imposed on the above companies.

#### **Key changes in the (Amendment) Act as compared to the Ordinance:**

- Following businesses would not be considered as a business of manufacture or production of any article or thing -
  - Development of computer software in any form or in any media;
  - Mining;
  - Conversion of marble blocks or similar items into slabs;
  - Bottling of gas into cylinder;
  - Printing of books or production of cinematograph film; or
  - Any other business as may be notified by the central government in this behalf



# The Taxation Laws (Amendment) Act/ Ordinance 2019

## Corporate tax reset

### (B) Section 115BAB – Lower tax rate of 15%

- Specific guideline would be issued by CBDT with the approval of the Central Government in case of any genuine difficulty faced by the assessee in complying with the pre-requisites to qualify for lower tax rate under section 115BAB (other than the condition on 'splitting up/reconstruction).
- In case of **failure to fulfill conditions** for 15% tax rate the company would be eligible to adopt for 22% tax rate.
- Tax rates for various streams of income specified under section 115BAB are as follows:

Particulars	Tax rate
Income from activities derived from or incidental to manufacturing or production	15%
Income from activities not derived from or incidental to manufacturing and <b>no specific tax rate</b> under Chapter XII	22% (gross basis)
Income from activities not derived from or incidental to manufacturing and <b>there is a specific tax rate</b> under Chapter XII	Rate specified under Chapter XII
STCG on transfer of non-depreciable capital asset	22%
Where it appears to Assessing Officer that more than ordinary profits are arising in transactions between the assessee and a closely connected person	30%

# The Taxation Laws (Amendment) Act 2019

## Corporate tax reset

### (C) Companies that have not opted for the concessional tax regime

- There is no change in the corporate tax rate for these companies which continues to remain at 30%.
- Current rate of MAT of 18.5 percent plus surcharge and cess (effective rate 21.55) has been reduced to 15 percent plus surcharge and cess (effective rate 17.47) w.e.f assessment year 2020-21 onwards.

#### **Other changes as compared to the Ordinance:**

- In case of amalgamation, the amalgamated company would be eligible to claim lower tax rate of 15% under Section 115BAB if it satisfies all the relevant conditions.
- In case company fails to satisfy the conditions for lower tax rate of 22% under Section 115BAA or lower tax rate of 15% under section 115BAB then such option will be withdrawn forever for such company starting from the year of violation.

# **Section 80JJAA**

Deduction in relation to employment of new employees

# Deduction in relation to employment of new employees

## Introduction

### Provisions

- Benefit extended to all sectors via Finance Act 2016 i.e. from FY 2016-17 onwards
- **Deduction = 30%** of additional employee cost i.e. **emoluments** paid or payable to **additional employees** during the year for **3 years**

### Stated objective









- To incentivize employment generation

### Eligibility

- Any assessee who is liable for tax audit
- **Deduction provision i.e. only applicable if the assessee has taxable gross total income**
- Benefit of **succeeding years** will not lapse if not eligible to claim deduction in current year

# Deduction in relation to employment of new employees

## Additional employee and emoluments

Additional employee	Emoluments
 An employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed on the last of preceding year	 Any sum paid or payable to an employee in lieu of his employment by whatever name called
 Employee whose total emoluments > INR 25,000 per month	 Any contribution paid or payable to pension fund, provident fund or any other fund
 Employee who is employed for a period of < 240 days*	 Payment is not made by an account payee cheque or account payee bank draft or ECS through bank account or through such other electronic mode as may be prescribed
 Employee who does not participate in the recognized provident fund or whose entire contribution is paid by the Government under Employees Pension Scheme as notified	 Any lumpsum payment paid or payable to employee at the time of termination of his service, etc.

**\*FY 2016-17 and 2017-18:** The employee has to be employed for 240 days during the year

**FY 2018-19:** Budget 2018 has provided a relaxation whereby if the criteria of employment of 240 days is not satisfied in the current year but satisfied in the next year then the deduction is available from next year onwards

# Deduction in relation to employment of new employees

## Calculation of benefit

Particulars	No. of employees
Total number of employees as on 31 March 2019	200
Total number of employees as on 31 March 2020	250
Total increase in the number of employees	50
Employees which satisfy the criteria for deduction i.e. eligible additional employees	20

Particulars	Amount in INR
Total emoluments paid or payable to additional employees (20,000*12*20) [A]	4,800,000
Eligible deduction for each year i.e. FY 2019-20, FY 2020-21, FY 2021-22 [B = A*30%]	1,440,000
<b>Total Deduction over 3 years [C=A*90%]</b>	<b>4,320,000</b>

Tax Benefit	Tax saving each year	Tax saving for three years
Entities opting for 30% corporate tax rate [B*~34%]	489,600	1,468,800
Entities opting for 25% corporate tax rate [B*~29%]	417,600	12,52,800
Entities opting for 22% corporate tax rate [B*~25%]	360,000	10,80,000
Entities opting for 15% corporate tax rate [B*~17%]	244,800	7,34,400

~10.2% tax savings on salary cost of additional employee each year basis corporate tax rate of 30%. If additional employees are hired continuously then the benefit increases to 31% third year onwards

# Deduction in relation to employment of new employees

Have you thought about these issues?

Is it mandatory for an employee to be present as on the last date of the previous year, in order to be eligible for deduction under Section 80JJAA?

Is it mandatory for an employee to be present in subsequent years in which deduction under Section 80JJAA is claimed?

Whether the amendment made by Finance Act 2018 of spillover to next year retrospective in nature?

Benefit to be restricted to effective increase (including or excluding attritions) in number of employees compared to previous year?

Whether employees covered under Pradhan Mantri Rojghar Protsahan Yojana eligible for deduction under Section 80JJAA?

In case of business reorganization, is deduction under Section 80JJAA available in respect of new employees?

Whether the words 'more than INR 25,000 per month', can be construed to mean 'more than INR 300,000 per annum'?

Suppose a company has losses in year 1, whether deduction under Section 80JJAA be claimed in year 2 and year 3 with respect to employees employed in year 1?

Is deduction under Section 80JJAA required to be claimed in three consecutive AYs?

Deduction under Section 80JJAA – a standard deduction or needs to be revisited in subsequent FYs?

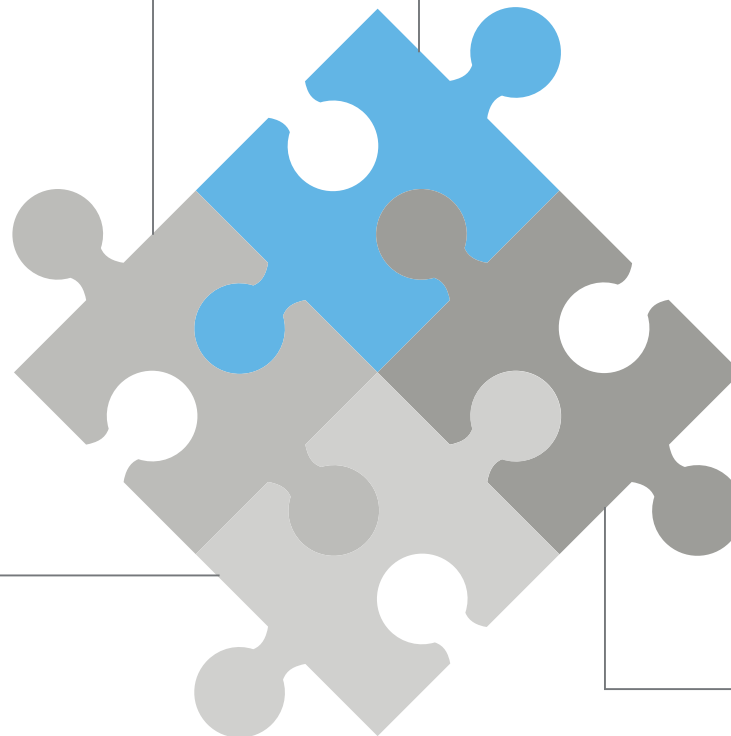
**Issues**

# Analysis and way forward

**Companies to weigh whether employment is a better opportunity vs contractual labour vs outsourcing mode, also providing greater stability to the employment scenario in the industry, and analyze in the following manner:**

To identify employees who have joined before 4 August of the Financial Year ('FY')

Identifies employees which fulfil the conditions enumerated under Section 80JJAA



Employees, who have joined after 4 August of the FY, will be eligible for deduction in subsequent FY; subject to satisfaction of other conditions

Obtain Form 10DA





# Indirect tax updates

# GST input tax credit computation

ITC restriction of 20% / 10% – Notification No. 49 & 75 and clarifications vide Circular no 123

Original restriction limit was 20% from 09 October 2019, but reduced to 10% from 26 December 2019

Assessee to comply with rule 36(4) on self assessment basis

Restrictions applicable for credits availed after 09 October 2019 – *no clarity on whether any credit availed after such date to pass the test (irrespective of period to which such credit pertains)*

Ceiling of 20% / 10% will not apply on GST paid on imports, reverse charge credits, ISD credits

Assessee to ascertain eligible credit as per GSTR-2A

20% / 10% cap will not be calculated supplier wise and credit to be availed on consolidated basis

Full credit for a period can be availed as and when balance 80% / 90% of such period's invoices are uploaded and thus requires *month-wise tracking of all credits*

# GST issues in consumer industry

## Discounts

### Post-supply discount

Discount given in consonance with the agreement post the supply

Discount requires **no action to be undertaken by dealer** – to be eligible to be reduced from the value of supply

Subject to parameters provided in Section 15(3) of the CGST Act, 2017

### Supply of service

Post sales discount **requiring specific action from dealer's end** shall be treated as separate transaction (like special sales drive, advertisement)

Discount deemed to be consideration for the services supplied

Dealer to issue invoice with tax for such services and ITC available to supplier

### Subsidy

Post sales discounts by supplier to a dealer **to fund special additional discount given to the end customer** shall be added to the value of final supply made to the customer

Discount deemed to be consideration flowing from supplier to dealer for such final supply

Consideration paid by supplier shall be added to arrive at the value of supply, in the hands of the dealer

- Though Circular 105 has been withdrawn *vide* Circular dated 03 October 2019, the principles enunciated *vide* the circular would be valid
- Critical for companies to evaluate the status of the discounts offered and align them to purchase side discounts

# GST job work

## Cheaper for registered principals

### Notification No. 19/2019-Integrated Tax (Rate) dated 30 September 2019 reduced rate of job work

Chapter	Description of service	Rate of tax
<b>9988 – (Manufacturing services on physical inputs (goods) owned by others)</b>	(i) Services by way of job work in relation to- (a) Printing of newspaper (b) ...	5%
	(ia) Services by way of job work in relation to- (a) Manufacture of umbrella (b) printing of all goods falling under Chapter 48 or 49, which attract CGST @ 6per cent	12%
	(ib) Services by way of job work in relation to diamonds falling under chapter 71 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)	1.5%
	(ic) Services by way of job work in relation to bus body building	18%
	<b>(id) Services by way of job work other than (i), (ia), (ib) and (ic) above</b>	<b>12%</b>
	(ii) Service by way of any treatment or process on goods belonging to another person, in relation to- (a) Printing of newspaper (b) ...	5%
	(ia) Services by way of any treatment or process on goods belonging to another person, in relation to printing of all goods falling under Chapter 48 or 49, which attract CGST @ 6per cent	12%
	(iii) Tailoring services	5%
	<b>(iv) Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ib), (ic), (id), (ii), (ia) and (iii) above.</b>	<b>18%</b>

#### Circular no 126 dated 22 November 2019 clarifies that:

- Services by way of treatment or processing undertaken by a Registered Job worker on goods belonging to Registered Principal attracts GST at 12%
- Services by way of treatment or processing undertaken by a Registered Person on goods belonging to another Unregistered person (Principal) – attracts GST at 18%

# CBIC follows CBDT

## Document Identification Number

- From 08 November 2019, any Communication issued by officer of CBIC to have DIN (Document Identification Number)
- Any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in para 3 above, shall be treated as invalid and **shall be deemed to have never been issued**

Compulsory DIN for	Communication can be made without DIN only
Any Search Authorization	
Summons	<ul style="list-style-type: none"><li>• when there are technical difficulties in generating the electronic DIN, or</li></ul>
Arrest Memo	<ul style="list-style-type: none"><li>• when communication regarding investigation/enquiry, verification etc. is required to issued at short notice or in urgent situations and the authorized officer is outside the office in the discharge of his official duties.</li></ul>
Inspection Notices	
Letters issued in the ordinary course of inquiry	

**Communications made without DIN** in situations mentioned above should be regularized within 15 working days of its issuance, by:

- obtaining the post facto approval of the immediate superior officer as regards the justification of issuing the communication without the electronically generated DIN;
- mandatorily electronically generating the DIN after post facto approval; and
- printing the electronically generated pro-forma bearing the DIN and filing it in the concerned file.

**Check DIN on** - <https://www.cbicddm.gov.in/MIS/Home/DINSearch>

# GST relief for pharma

## Export status to R&D services

R&D services performed by clinical research organizations and pharma companies used to attract GST

- Place of supply linked to location of performance where goods are provided by the recipient
- Though R&D services, other than clinical trials, merit to be treated as export as drugs/ molecules supplied are only ancillary to the services – continuing dispute on taxation
- Addition 18% cost to overseas customers

Effective October 1, 2019, notification no 4/2019 grants export status to R&D services by notifying place of supply as location of recipient

- Place of supply of Specified R&D services relating to pharmaceutical sector provided as per contract between Indian Service Provider and Recipient located abroad would be location of the recipient of services

Extremely beneficial for Indian CROs as it would provide a competitive edge to them by bringing the Indian R&D services at par with global players

# GST export of ITeS

Withdrawal of circular no. 107 dated 18 July 2019

## Circular 107 clarified as follows on whether supply of ITeS to overseas entities is subject to GST

Scenario	Nature of supply	Clarification
<b>I</b>	Where the supplier provides services <b>on his own account</b> to the client/customer of the client on clients' behalf	Such services would <b>not be</b> treated as intermediary services
<b>II</b>	Where the supplier of <b>backend services</b> only <b>arranges or facilitates</b> supply of goods/services or both by the client located outside India to the customers of the client	Such arranging/facilitation between the client and its customer <b>would qualify</b> as intermediary services
<b>III</b>	Where the supplier supplies ITeS services on his <b>own account and arranges or facilitates</b> the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located outside India	Tax treatment of such supply would be dependent on the determination of <b>principal supply</b>

- Owing to representations by the IT/ ITeS industry, in line with the GST Council's announcement in the 37th meeting, the above circular stands withdrawn vide Circular no 127 dated 4 December 2019
- Another Circular is expected to be issued soon on this aspect

# GST relief to exporters

## Automated refund process



### Circular 125 dated 18 November 2019

- Multiple circulars issued in past clarifying and streamlining various refund related processes
- Refund process was semi automatic but now fully online
- **No refund application unless compliance is upto date**
- Online process should reduce interaction with officers and in particular request for additional information even where the mandated documents have been filed
- Timeline for processing refunds should reduce over time (target date being 60 days from date of filing of application)



### Key process changes

- No physical submission
- Approval required by only single tax authority
- Comprehensive list of documents to submitted online prescribed
- Deficiency Memo in online form
- Facility to transfer application if transmitted to wrong proper officer
- Refund application can be combined (across many months but within a financial year)
- Frequency of RFD-01 to coincide with filing frequency of GSTR-1





# Recent judicial pronouncements

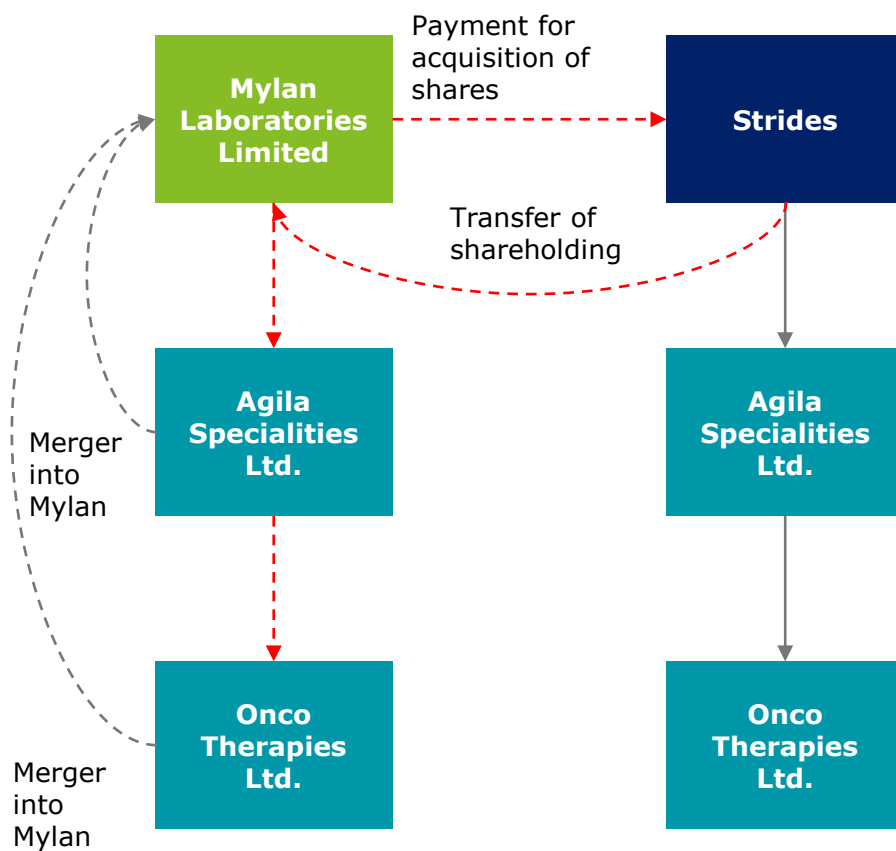
**Mylan Laboratories Limited.**

Hyderabad Tribunal

(ITA No. 2335/Hyd./2018)

# Mylan Laboratories Limited. (ITA No 2335/Hyd./2018)

## Depreciation on goodwill arising on amalgamation

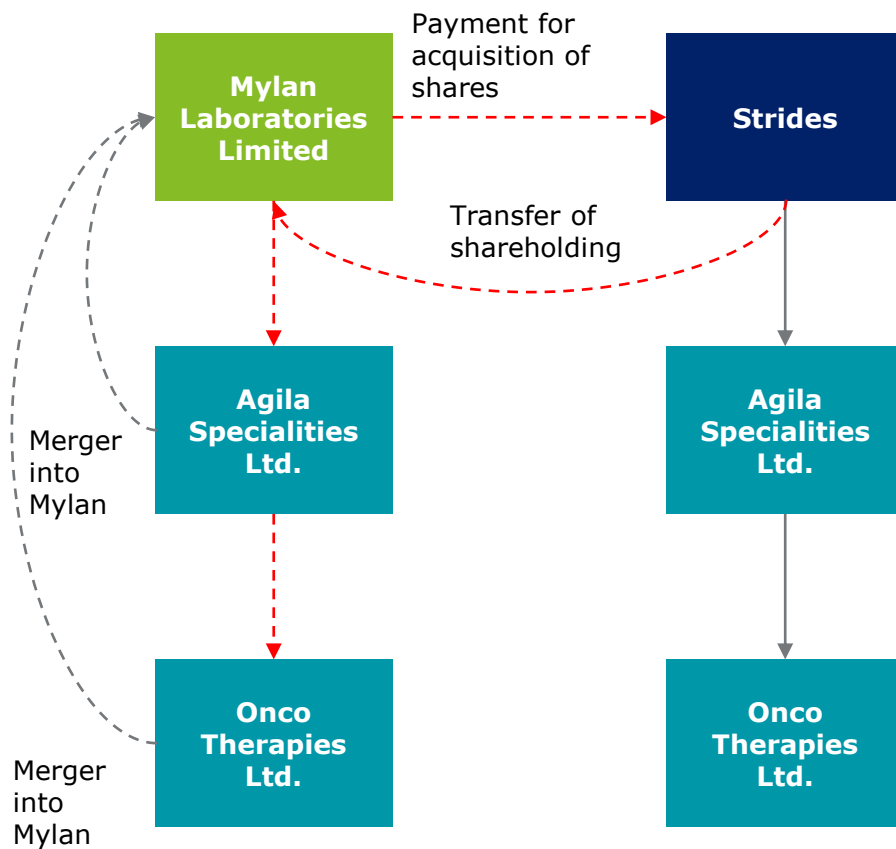


### Facts:

- Mylan Laboratories Limited (Mylan) had acquired shares in Agila Specialities Ltd (ASPL) along with its wholly owned subsidiary Onco Therapies Ltd. (OTL) from Strides
- Immediately after acquisition, ASPL and OTL merged with the Assessee
- Excess of investment over net assets acquired was treated as goodwill and depreciation was claimed by Mylan
- The AO & the CIT(A) rejected the claim of depreciation and Mylan filed an appeal before the ITAT
- The contentions of the revenue for denying depreciation on goodwill are as under:
  - Goodwill did not exist in the books of ASPL and OTL before amalgamation
  - Introduced only under the scheme of amalgamation
  - 6th proviso to Sec. 32(1)
  - Making profit out of oneself
  - Reliance on Bangalore ITAT ruling in United Breweries
  - No Goodwill as net assets were negative

# Mylan Laboratories Limited. (ITA No 2335/Hyd./2018)

## Depreciation on goodwill arising on amalgamation



### Issue:

- Whether depreciation under the Act is allowable on the amount of Goodwill arising out of the scheme of Amalgamation?

### Findings:

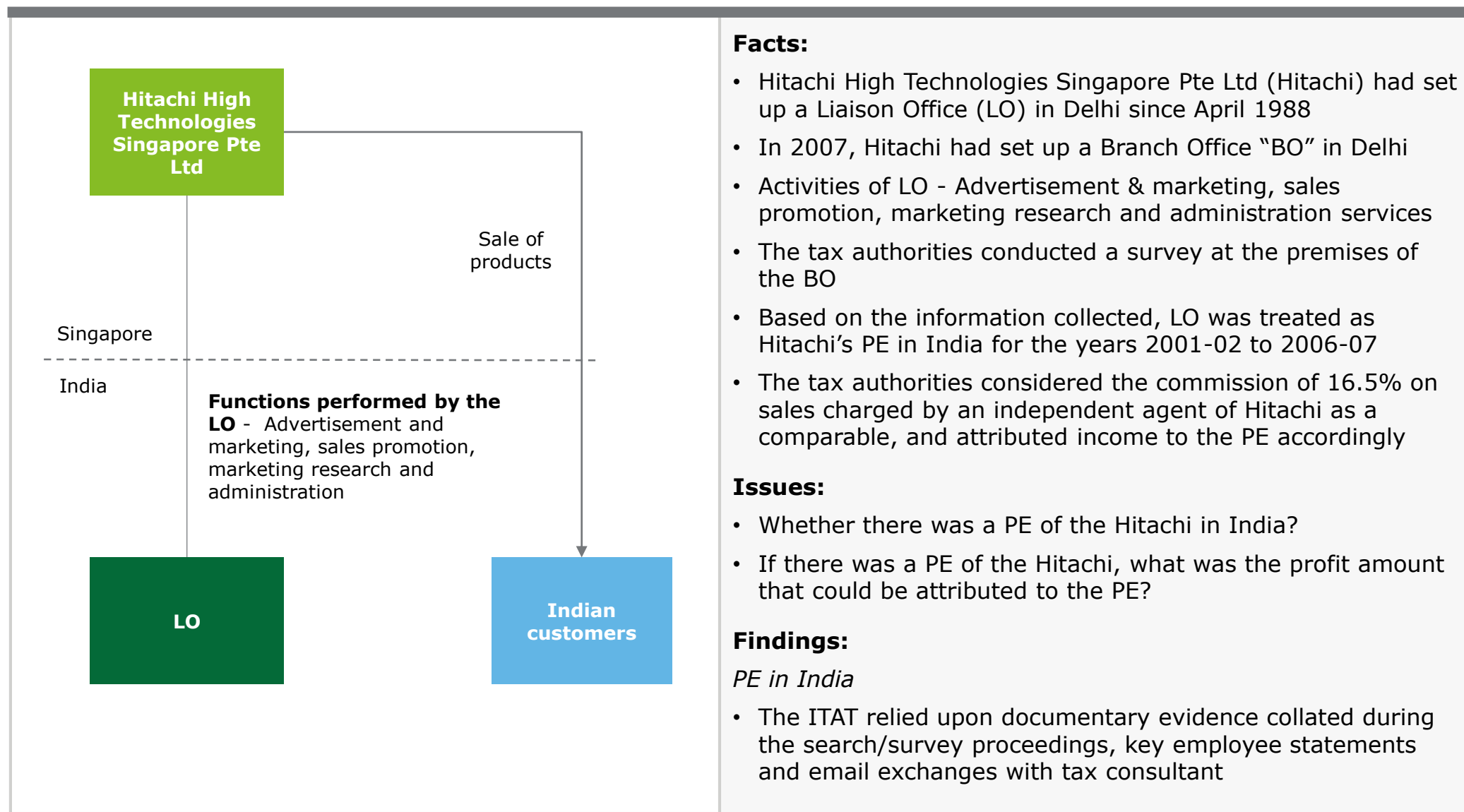
- The Tribunal allowed the claim of depreciation on the basis of the following:
  - Strides is not a related party to the assessee
  - Goodwill is arising out of amalgamation scheme and is not solely self-generated
  - Since, United Breweries involved a merger with Wholly owned Subsidiary, AO's reliance on Bangalore ITAT is distinguished
  - Reliance on the ruling of the Supreme Court in the case of Smiffs Securities Ltd.

# **Hitachi High Technologies Singapore Pte Ltd**

**Delhi Tribunal  
(ITA Nos. 2683 to 2688/Del/2015)**

# Hitachi High Technologies Singapore Pte Ltd (ITA Nos. 2683 to 2688/Del/2015)

## Permanent establishment exposure on account of liaison office in India



### Facts:

- Hitachi High Technologies Singapore Pte Ltd (Hitachi) had set up a Liaison Office (LO) in Delhi since April 1988
- In 2007, Hitachi had set up a Branch Office "BO" in Delhi
- Activities of LO - Advertisement & marketing, sales promotion, marketing research and administration services
- The tax authorities conducted a survey at the premises of the BO
- Based on the information collected, LO was treated as Hitachi's PE in India for the years 2001-02 to 2006-07
- The tax authorities considered the commission of 16.5% on sales charged by an independent agent of Hitachi as a comparable, and attributed income to the PE accordingly

### Issues:

- Whether there was a PE of the Hitachi in India?
- If there was a PE of the Hitachi, what was the profit amount that could be attributed to the PE?

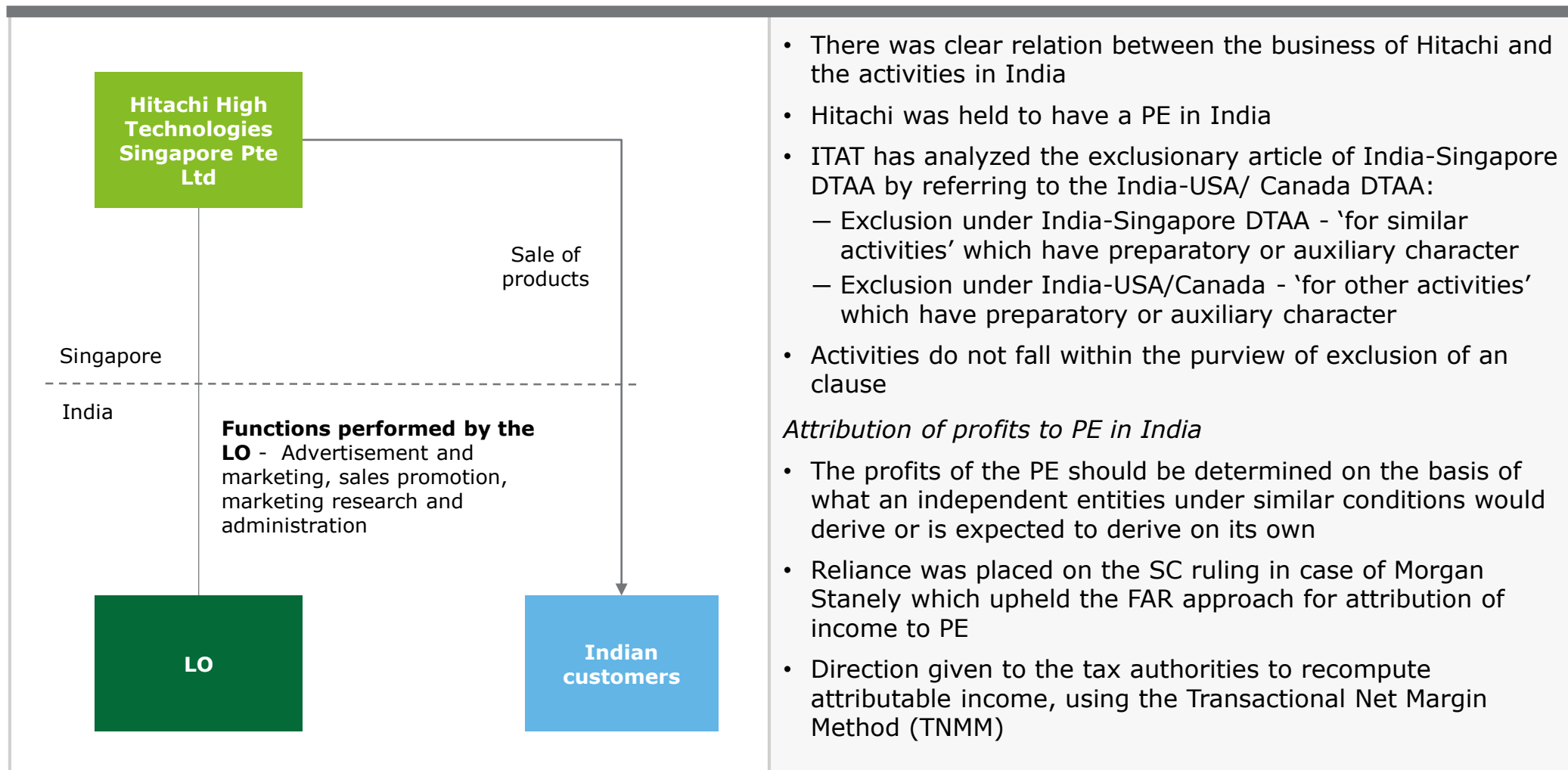
### Findings:

#### *PE in India*

- The ITAT relied upon documentary evidence collated during the search/survey proceedings, key employee statements and email exchanges with tax consultant

# Hitachi High Technologies Singapore Pte Ltd (ITA Nos. 2683 to 2688/Del/2015)

## Permanent establishment exposure on account of liaison office in India



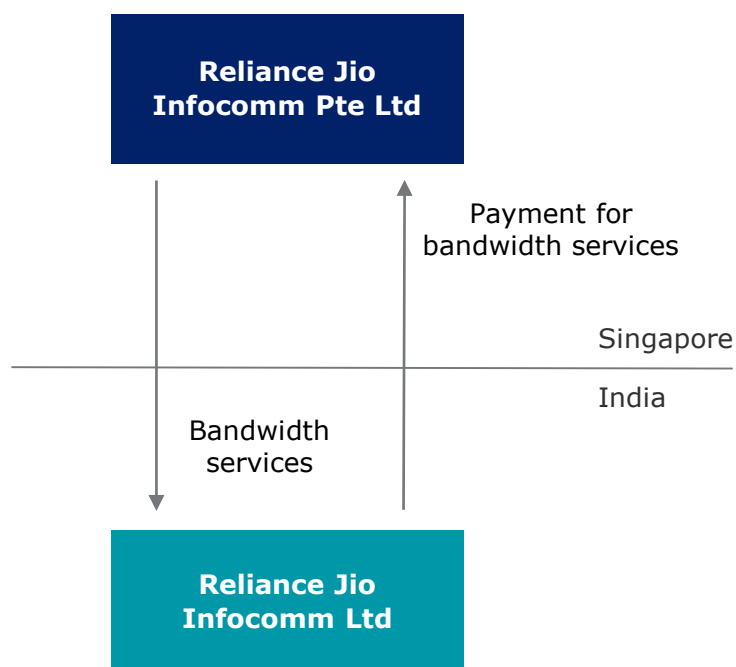
Proposed draft rules on attribution of profits to PE rejects FAR analysis suggests the fractional apportionment method i.e. based on the demand factor (i.e. sales in India)

**Reliance Jio Infocomm Ltd**  
Mumbai Tribunal  
(ITA Nos. 6331 to 6334/Mum/2018)



# Reliance Jio Infocomm Ltd (ITA Nos. 6331 to 6334/Mum/2018)

## Interplay between unilateral amendment under domestic law and tax treaty



### Facts:

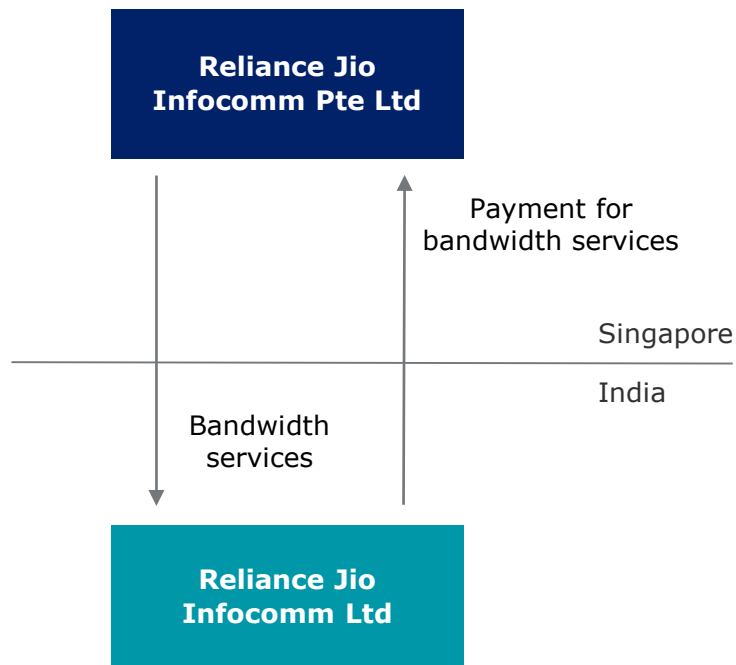
- Reliance Jio Infocomm Ltd (Assessee) entered into bandwidth service agreement with Reliance Jio Infocomm Pte Ltd (Reliance Singapore), a Singapore based entity to avail standard bandwidth services
- Assessee deducted taxes @ 10% on the payments made on a gross up basis
- Subsequently, the Assessee filed an appeal to the CIT(A) u/s 248 of the Act for a declaration that no tax was required to be deducted
- The CIT(A) held that the payment is not Royalty/ FTS and hence not liable to tax in the absence of a PE of the said entity in India
- Revenue appealed to the ITAT with the following contentions:
  - Explanations 5 & 6 to section 9(1)(vi) of the Act must apply to India Singapore DTAA
  - Domestic law meaning of the term “process” must prevail as per Article 3(2) of the India Singapore DTAA

### Issues:

- Whether Explanation 5 and 6 to section 9(1)(vi) of the Act apply in the interpretation of Article 12 of the India-Singapore DTAA in view of the specific provisions of Article 3(2) of the DTAA

# Reliance Jio Infocomm Ltd (ITA Nos. 6331 to 6334/Mum/2018)

## Interplay between unilateral amendment under domestic law and tax treaty



### Facts:

- Domestic law meaning under article 3(2) is relevant only when the treaty term itself is undefined
- Though ambulatory interpretation has judicial sanction, the same cannot be adopted in the instant case, for the following reasons:
  - Different language is employed in Article 3(2) of the India-Singapore DTAA
  - Article 26 of Vienna Convention of Law of Treaties requires the parties to give effect to the provision in good faith
  - Explanation 6 to section 9(1)(vi) of the Act was introduced to nullify the judicial rulings, which gave an interpretation, unfavourable to revenue
  - Reading explanation 6 into the tax treaty would patronize and legitimize a unilateral treaty override and such interpretation should be discarded

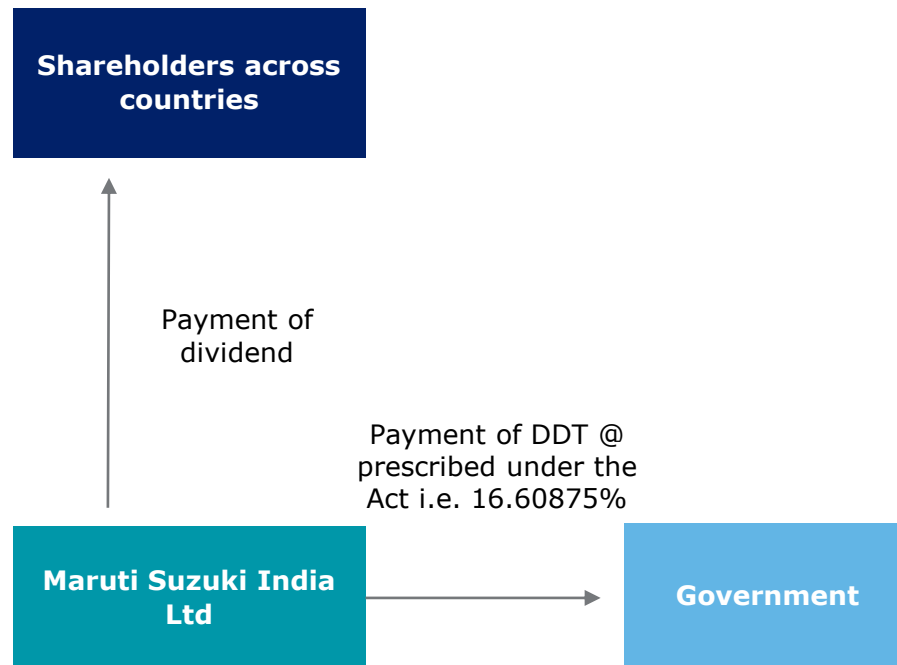
# **Maruti Suzuki India Ltd**

## **Delhi Tribunal**

### **(ITA No. 961/Del/2015)**

# Maruti Suzuki India Ltd (ITA No 961/Del/2015)

## Beneficial rate of DDT under the tax treaty

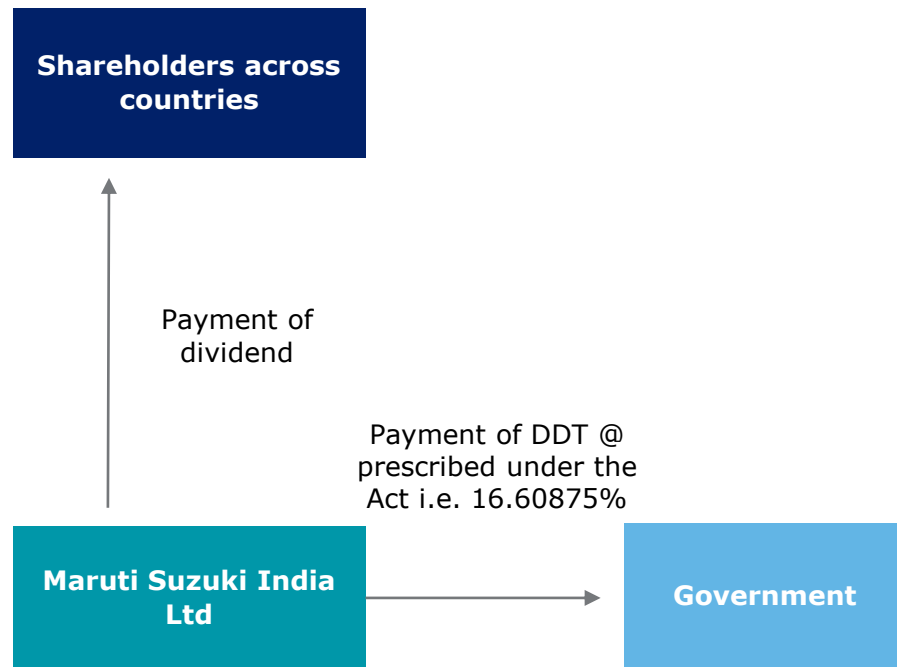


### Facts:

- In the AY 2010-11, Maruti Suzuki India Limited (Maruti) paid dividends to its shareholders after paying dividend distribution tax (DDT) @ 16.60875% under section 115-O of the Act
- For AY 2010-11, the appeal before the Tribunal on issues arising from the order of the lower authorities was heard in detail and was subsequently released as "part-heard"
- At that stage, Maruti filed an additional ground of appeal before the Tribunal claiming lower rate of DDT as per the tax treaties in respect of dividend declared to its foreign shareholders
- The revenue objected to the admission of the additional ground, inter alia, on the following reasons:
  - The additional ground does not relate to assessing the tax liability of the taxpayer
  - DDT is an additional tax payable over and above the tax on assessed income
  - The entire process of levy and collection of DDT is distinct from that of tax on assessed income
  - DDT liability under section 115-O of the Act does not flow from charging section 4 of the Act

# Maruti Suzuki India Ltd (ITA No 961/Del/2015)

## Beneficial rate of DDT under the tax treaty



### Issue:

- Whether DDT is a tax other than "tax on income", and does the Tribunal have the power to determine the rate of DDT?

### Findings:

- The tribunal admitted the additional ground on the principle that mere procedural lapse or omission on the part of the taxpayer cannot lead to denial of substantive benefit/ eligible claim in the hands of the taxpayer
- In the context of the nature of DDT liability, the Tribunal observed as under:
  - DDT levied under section 115-O of the Act, though is levied as an additional income-tax, is a tax on income
  - Further, DDT is a part of tax as defined u/s 2(43) of the Act

Also, the High Court has dismissed revenue's writ challenging ITAT's additional ground admission. Further, similar issue came up for consideration before the Mumbai Tribunal in the case of SGS India, wherein the Tribunal remanded the matter back to the files of the CIT(A) for fresh consideration



# Emerging trends in GST and Trade

# Proposed e-invoicing mechanism

## Relevant announcements

**Implementation timeline – APIs released on <https://einv-apisandbox.nic.in/>**

Criteria	Voluntary E-Invoicing	Mandatory E-Invoicing
Turnover $\geq$ Rs 500 cr	1 January 2020	1 April 2020
Turnover $\geq$ Rs 100 cr $<$ 500 cr	1 February 2020	1 April 2020

- In December 2019, CBIC has issued notifications for implementation of e-invoicing
- From 1 April 2020 – person with aggregate turnover exceeding Rs. 100 crores is required to issue e-invoices in FORM GST INV-1 through the Common GST Electronic Portal
- Any invoice issued by such person without compliance with GST INV-1 and IRN would be invalid
- 10 different websites notified the Common GST Electronic Portal for generation of the e-invoices
- E-invoicing only for B2B supplies
- Form INV-01 replaced with the updated schema issued by GSTN
- In addition, from 1 April 2020, QR code made mandatory on B2C invoices for supplies by persons with aggregate turnover exceeding Rs. 500 crores

# Future of India's export promotion schemes

## WTO's report – Findings and discussions

### Issue – India cannot offer export linked subsidies



- The following schemes have come under the radar from major economies
  - DFIS
  - EPCG
  - EOU / EHTP/ BTP scheme
  - MEIS
  - SEZ schemes
- No apparent dispute for services from the WTO's report

### Panel's finding on non compliance of schemes with SCM



- Benefits under DFIS, EPCG, EOU/ EHTP/ BTP scheme, MEIS and SEZ schemes are contingent upon export performance (either past or future)
- Existence of a financial contribution through which a benefit was conferred on the recipient

### Outcome recommendation to Withdraw



- Benefits under DFIS - within 90 days from adoption of the Report
- Benefits under the EOU/EHTP/BTP, EPCG and MEIS scheme- within 120 days from adoption of the Report
- Benefits under SEZ Scheme -within 180 days from adoption of the Report

### India's Appeal against WTO Report



- India has filed an appeal against the WTO's report before appellate body of WTO dispute settlement mechanism
- India argues that the panel erred in its ruling to find these schemes as export subsidies
- India is expected to issue FTP 2020-25, early next year



# Future of India's export promotion schemes

## WTO's report – What lies ahead?

### MEIS to go

- Remission of Duties or Taxes on Export Product (RoDTEP) to replace MEIS (*MEIS likely to be extended to 31 March 2020*)
- DGFT has started outreach program to get industry inputs on the embedded taxes

### What happens to EOU/ EPCG/ DFIS/ AA/ DDB

- No announcement yet on EOU, DFIS, EPCG
- Can duty exemptions be withdrawn?
- Advance Authorization and Duty Drawback likely to continue as it concerns with inputs used in exported goods

### What lies ahead?

- Report does not consider service exports
- SEIS likely to continue
- Need to watch the space of FTP review

### Service exports

- SEZs are to be expected to be converted into employment and economic enclaves
- Impact over
  - FTWZ
  - Bonded warehouses
  - In bond manufacturing facilities

### FTWZ, Customs bonded areas

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