



*What the coming year holds for the CFO on the tax front*



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## *Overview*

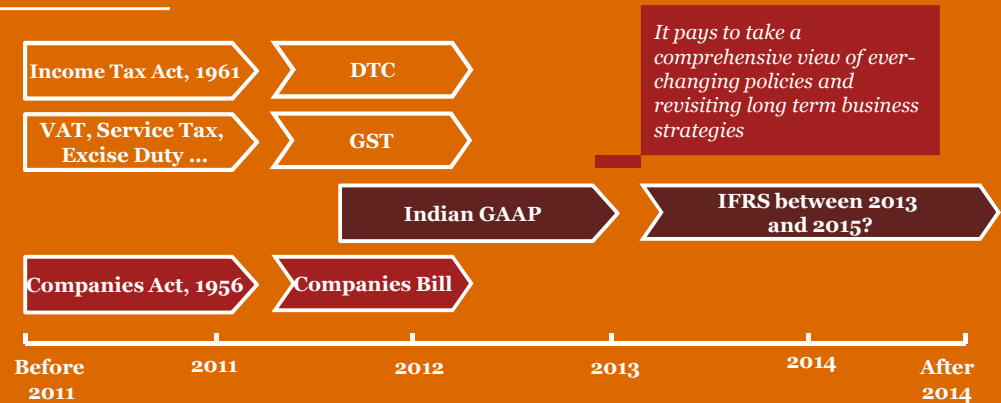
- DTC and GST outlook
- M&A
- Transfer pricing
- Litigation

## *DTC and GST Outlook*

## ***Era of Regulatory Reforms***

India Inc. – what's in store in coming times

**A Huge Leap !**



## ***DTC – The CFO perspective***

- General anti avoidance rules (GAAR) – wide sweeping powers
- CFC rules - taxation of undistributed income of foreign subs
- Shift from profit-linked to investment-linked incentives
- Differential tax treatment on capital gains to be done away with
- Onus of proof
- When is it coming?

**Need to be cognizant of potential risks and exposures**

## ***Mauritius... the big picture***

### **Current Scenario**

- LTCG exempt
- Most FIIs / Private Equity through Mauritius; hence, STCG exemption also claimed
- Constant uncertainty prevails nevertheless (incl. Capital Gains vs. Business Income)
- Vodafone controversy

### **DTC**

- Treaty supremacy vis-à-vis Anti avoidance rule?
- Substance/commercial rationale : easier in Singapore

**Huge uncertainty and deal paralysis**

## ***FDI – evolving scenario***

- FDI in LLP now permitted
- FDI in retail opened up
- FDI in following sectors imminent ?
  - Aviation (24% to 26%)
  - Insurance (increase from 26% to 49%)

## ***Companies Bill***

- Cabinet approval
  - Winter session ?
- Some key highlights
  - Class action suits
  - CSR contribution
  - Specific provisions for independent directors
  - Shares with differential voting rights

## *Outlook on GST*

## ***GST – navigating uncertainty***

*I propose that we set April 1, 2010 as the date of introducing GST*  
[P. Chibambaram – Budget speech, 2006]

*We aim to implement the Direct Tax Code and GST by April 1, 2011*  
[Pranab Mukherjee – Budget speech, 2010]

*GST should be in place by October 2012*  
[CBEC Chairman S D Mazumdar – Economic Times, October 31, 2011]

## ***GST – navigating uncertainty***

	2012	2013	→	GST introduced
<i>Pricing &amp; costs</i>				
<i>Optimize supply chain</i>		Analyse		Execute
<i>Invoicing</i>				
<i>Registration</i>				
<i>Compliances (tax deposit, returns etc)</i>				
<i>ERP system transition</i>				

→ Approximate working

→ Detailed analysis and implementation

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## *M&A – Recent Developments and Structuring Thoughts*

## *Recent Developments – M&A and Regulatory*

### New Takeover Code

- Threshold      ↑      25%      ← 15%
- Min open offer      ↑      26%      ← 20%
- Non compete fee ↓      Nil      ← 25%

### Competition Act

- All transactions above threshold limit require prior CCI approval
- Internal restructuring ??

### FDI / FEMA

- Multitier overseas structures – RBI ?
- FDI in LLP
- CCPS / CCDs – upfront conversion formula
- Put / Call option ?
- Capitalisation of payables allowed

## *The issues*

*Interest deduction  
for share  
acquisition  
funding*

*Cash trap*

*Overseas  
holding  
structure and  
migration*

*Promoter family  
holding  
structure*

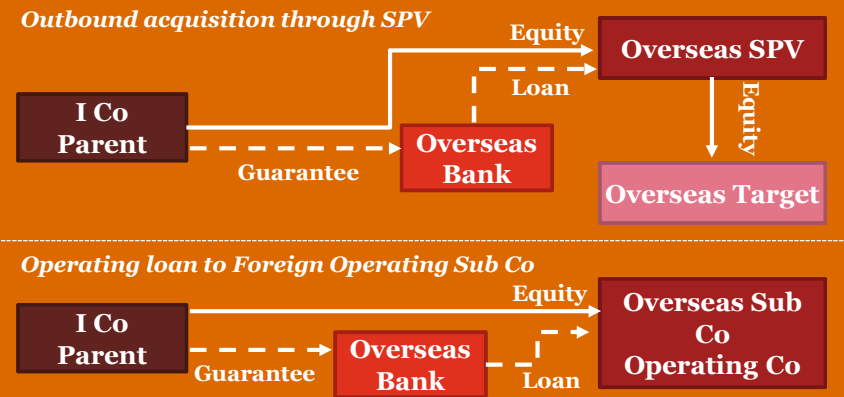
# *Transfer Pricing*

## *Transfer pricing in India – snapshot*

- Largest source of **tax disputes** for MNCs
- **Adjustments** in excess of INR 45,000 crore in **latest audit cycle** (October 2011 for FY 2007-08)
- **Adjustments for first 6 audit cycles** (2005 to 2010) appx INR 45,000 crore
- India generates > **70% to 80% global litigation** at levels of Tribunals or above
- **Initial focus** of Revenue on service industries (IT/ BPOs) -- dispute relating to higher mark-up
- **Recent focus** on complex issues -- marketing intangibles, procurement functions, financial transactions (loans, corporate guarantees, etc)
- Government keen to introduce **bilateral APAs** effective April 2012, *sans DTC*

## Corporate guarantee

Should I Co charge guarantee fees from Foreign SPV/  
Sub Co ?



## *VCT – Points to consider*

- Substance is key
- Cost benefit analysis
- Benefits -- operational efficiencies; economies of scale, additional system profits + tax arbitrage
- Costs -- exit cost, increased expenses on relocation, etc
- VCT only for tax advantage often fails
- Can we address CFC issues ?

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## ***Litigation – recent developments***

- *Tax dispute environment*
- *Dispute triggers*
- *Alternative dispute mitigation mechanism*
- *Handling tax demands*

## ***Tax dispute environment***

- Uncertainty
- Long pending disputes
- Multiplicity of proceedings
- Demand and impact on cash flow
- Tax havens/low tax jurisdictions

## ***Dispute triggers***

### **Facts**

- Documentation

### **Legal**

- Form vs. Substance
- Treaty shopping
- Interpretation of law
- Powers of the Tax Officers

### **4 Pillars**

- Assessee
- Legislature
- Judiciary
- Tax administration

## *Alternative dispute mitigation mechanism*

- Authority for Advance Rulings ('AAR')
- Settlement Commission
- Writs

## ***AAR***

- Certainty
- Covers proposed transaction also
- In case of negative ruling, appeal to HC (faster route)
- No proceedings against the applicant pending disposal of AAR
- Binding on lower authorities
- Mitigates multiple procedural aspects such as stay, penalty, assessment, further appeals etc.
- Reduces cost of litigation

**Ardex Investments – favorable ruling on Mauritius**

## ***What we heard today***

- Fiscal and regulatory landscape is changing – be aware and prepare
- Foresee tax disputes and strategies , active on-ground involvement
- Investment structures – ‘have’ rather than ‘create’ commercial substance
- Ensure robust transfer pricing strategy and documentation
- Anticipate and enhance tax management system



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