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Taxation in India

Taxation Conditions related to Foreign Direct Investments in India

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Agenda

1. Making most of it… Considerations related to Foreign Direct Investments (FDI) in India
2. Taxation in India
   - Entry Options
   - Computation of taxable Income
   - Tax Rates
   - Indirect Taxes
   - Tax Incentives
3. India's 2012 Budget Proposals

Making most of it… Considerations related to Foreign Direct Investments (FDI) in India

Making most of it... Considerations related to Foreign Direct Investments (FDI) in India

Economic growth

India has emerged as Asia's largest buying economy

Annual growth rate of 6.9% in GDP in FY 2011/12 (8.4% in FY 2010/11)

Analysts predict that by 2025 – with current growth rates – India will become the fifth largest consumer goods market in the world

Demographic advantage

The median age of the country's population is 25

The United Nations predict that India's working age population (15 to 64 years) will increase by 135 million in one decade, that is, by 2020

Making most of it... Considerations related to Foreign Direct Investments (FDI) in India

Governing laws

India has an exhaustive legal framework governing all aspects of business (e.g. Income Tax Act)

India has significant exchange control regulations according to the Foreign Exchange Management Act

Other considerations

India is not a “low-tax country”

Taxes as comprehensive cost factor may determine success or failure of a business

Continuous significant developments related to business conditions in India

Taxation in India

Taxation in India

Entry Options

Operation as an Indian Company

- Wholly-Owned Subsidiary Company
- Joint Venture with an Indian Partner (Equity Participation)
- Limited Liability Partnership (LLP)

Operation as a foreign Company

- Liaison Office
- Project Office
- Branch Office

Taxation in India

Corporate Tax Rates

For a company	Where taxable income exceeds INR 10 million	Other cases
Domestic company	32.45%	30.9%
	(30% plus surcharge of 5% plus education cess of 3%)	(30% plus education cess of 3%)
Foreign company	42.02%	41.2%
	(40% plus surcharge of 2% and education cess of 3%)	(40% plus education cess of 3%)

Taxation in India
Minimum alternate Tax (MAT)

Object of bringing zero tax companies under the tax net

Company	Where taxable income exceeds INR 10 million	Other cases
Domestic company	20.01%	19.05%
Foreign company	19.44%	19.05%

A credit of MAT is allowed against the normal tax liability arising in subsequent ten years

Taxation in India

Capital Gains Tax

Specific tax rates are applicable for capital gains related to investment assets categorized in

- Short term investment assets which have been charged to security transaction tax (STT)
- Other short term investment assets
- Long term investment assets which have been charged to STT
- Long term investment assets – listed securities not subject to STT
- Other long term investment assets

Rates are varying between 0% and normal corporate income tax rates

Taxation in India
Dividend Distribution Tax (DDT)

Dividend income is exempt in the hands of the shareholders

DDT is levied on companies declaring dividends at an effective rate of 16.22%

Mitigation process to avoid the cascading effect of DDT under certain circumstances

Repatriation of branch income and income of LLP is not subject to DDT

Taxation in India

Other Considerations

Transfer pricing

Transfer pricing is the process of adjusting the prices of cross-border transactions between related or associated parties

The transfer pricing provisions generally follow OECD guidelines

The burden of proof lies with the taxpayer

Significant information and documentation obligations are in place

Security transaction tax (STT)

Advance Rulings for non-residents

Wealth tax charged on net wealth as on 31 March every year

Taxation in India
Indirect Taxes

Customs Duty

Basic Customer Duty (BCD)

Countervailing Duty (CVD)

Addition Duty of Customs (ADC)

Central Value Added Tax (CENVAT - Excise Duty)

Service Tax

Sales Tax

VAT – Tax on goods sold within a state

CST – Tax on goods sold in the course of interstate trade

Octroi Duty / Entry Tax

Taxation in India

Incentives

100% Export Oriented Units

Duty free imports e.g. of raw material and consumables

These units are permitted to be set up for business activities including manufacture, services, etc. but not for trading activities

Special Economic Zone (SEZ) Scheme

SEZs are considered to be outside the customs territory of India for the purposes of carrying out their authorised activities

SEZ developers are entitled to 100% tax holidays for ten consecutive years out of 15 years

A unit set up in an approved SEZ enjoys a 100% tax holiday for five years and 50% for the next ten years (under specific conditions) out of profits derived from actual exports of goods and services

Taxation in India

Incentives

Electronic Hardware Technology Park (EHTP) Scheme and Software Technology Parks of India (STPI) Scheme

Package of incentives and facilities, e.g.

- Duty free imports (in line with 100% EOU Scheme)
- Tax holidays

Industrial Park Scheme

100% income tax rebate for ten consecutive assessment years out of 15 years for industrial park developers if various conditions are met

Income tax holidays and exemptions from CENVAT are available for units set up in industrial parks in specific states (e.g. Uttranchal)

Taxation in India

Incentives

Tax Holiday in Respect of Infrastructure / Power / Natural Gas Network

100% tax holiday for ten consecutive years in a block of 20 years for undertakings related to e.g. roads, bridges or rail systems

100% tax holiday for ten years in a block of 15 years for undertakings related to e.g. port, airports, and generation and distribution of power

Food Processing Units

A 100% tax holiday for the first five years and a deduction of 30% of profits for the next five years

Scientific Research and Development

200% deduction is available of scientific research expenditure

200% deduction payments made to a National Laboratory or university

India's 2012 Budget Proposals

India's 2012 Budget Proposals

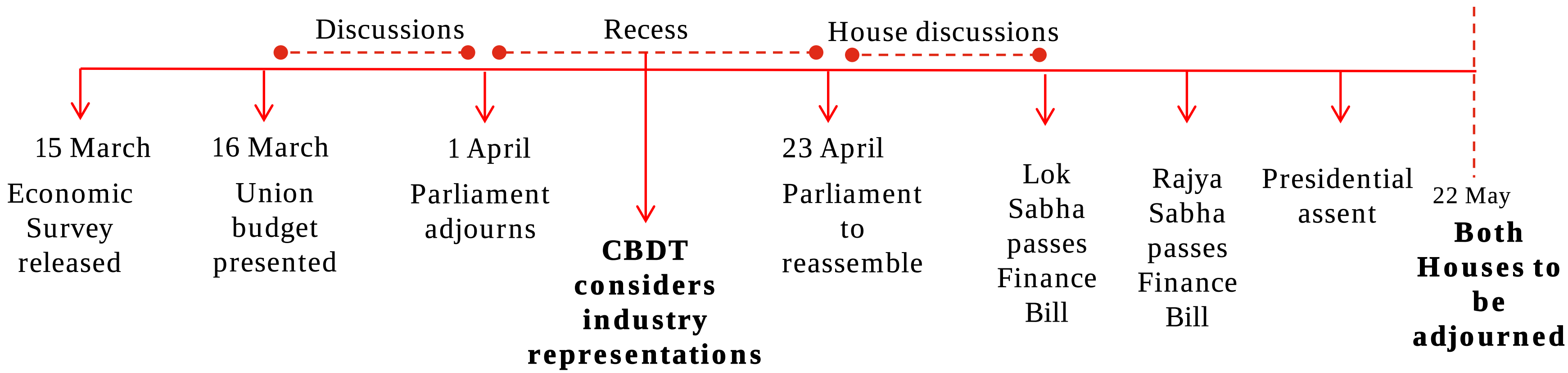
Pranab Mukherjee, *Minister of Finance*

March 16, 2012

"I rise to present the Union Budget for 2012/13"

India's 2012 Budget Proposals

2012 Finance Bill enactment



India’s 2012 Budget Proposals
Vodafone

Background

The Supreme Court of India has rendered its judgement in the much awaited verdict in the USD 2 billion Vodafone tax case

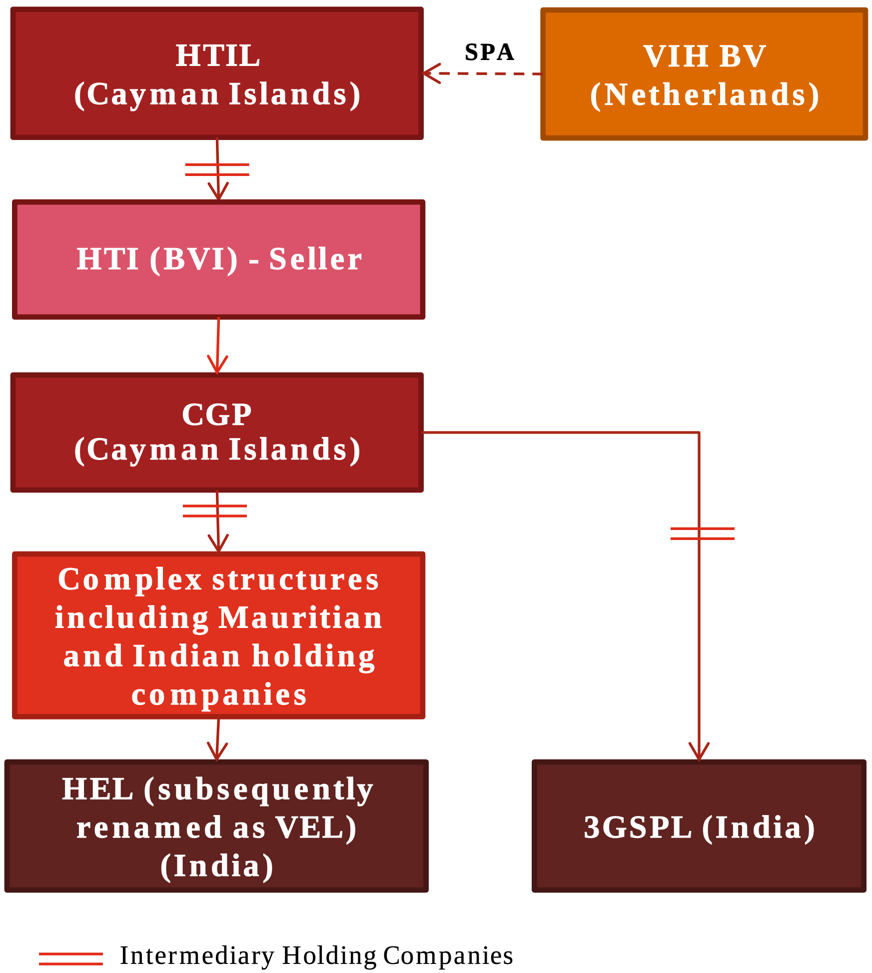
Cross border tax litigation involving taxability of a transaction between two non-resident companies (having no presence in India)

The Supreme Court has rendered a decision in favour of Vodafone to hold that the transaction is not taxable in India

2012 Budget proposes an amendment with retrospective effect from April 1, 1962.

India's 2012 Budget Proposals

Vodafone - Facts



- SPA executed between VIH BV and HTIL to procure sale of CGP share together with all rights attaching or accruing to them at completion
- Certain debts were also assigned
- Certain option rights held by 3GSPL (on credit support from HTIL) continued with 3GSPL upon renegotiating of the underlying agreements
- Certain framework agreements / term sheets/SHAs were renegotiated for continuity in management of the company
- FIPB Approval for direct acquisition of 52% in HEL was taken

India's 2012 Budget Proposals

Vodafone - Supreme Court Observations

- Gains arising on sale of CGP not taxable in India
  - The shares of CGP were situated outside India (i.e., in Cayman Islands)
  - The transaction did not result in the transfer of any asset in India
- The words 'underlying assets' do not find place in section 9 of the Act
  - Mere ownership, parental control, management rights, etc. of a subsidiary not sufficient to pierce relationship
  - Controlling interest – not a distinct capital asset independent of shares
- VIH BV was not liable to deduct any tax at source on payment of sale consideration for acquisition of CGP

India’s 2012 Budget Proposals

Vodafone – Indirect Transfers in proposed Direct Tax Code

- Transfer of shares or interest in a foreign company not taxable unless
  - at any time in 12 months preceding the transfer, the fair market value of the assets in India, owned, directly or indirectly, represent at least fifty per cent of the fair market value of all assets owned by the company
- Recommendation of Parliamentary Standing Committee
  - Exemption to transfer of small shareholdings
  - Exemption to transfer of listed shares outside India
  - Exemption in respect of internal reorganizations

India's 2012 Budget Proposals
General Anti Avoidance Rule (GAAR)

- Applicable with effect from April 1, 2012 – pending assessments?
- Taxation of an "Impermissible Avoidance Arrangement" (IAA) based on GAAR
- Definition IAA: Main purpose should be to obtain a tax benefit. In addition, one of four supplementary tests to be satisfied
- Obtaining tax benefit as main purpose, unless rebutted by the taxpayer
- Treaty override where GAAR invoked

India's 2012 Budget Proposals

General Anti Avoidance Rule (GAAR)

- Assessment officer refers to the Commissioner of Income-Tax (CIT) for invoking GAAR. CIT shall hear the taxpayer and if GAAR are invoked CIT shall refer the matter to an approving panel
- Review by GAAR "Approving Panel" of three Commissioners within six months declaring whether arrangement is impermissible or not
- Assessing Officer would determine consequences of a positive declaration
- The final order passed by the Assessment Officer has to be approved by the Commissioner of Income Tax
- GAAR order directly appealable before Appellate Tribunal

India's 2012 Budget Proposals

General Anti Avoidance Rule

Major concerns

- Provisions highly subjective – genuine transactions could be covered
- Impact on past transactions
- Onus of proof
- Treaty override

India's 2012 Budget Proposals

Transfer Pricing

- Introduction of APAs
- ALP range
  - 5% range ("tolerance band") in past years, not a "standard deduction", if difference is more than 5%
  - Up to 3% range to be notified for FY 2013/14
- Dispute resolution panel (DRP) proceedings
  - Taxpayer can approach Income Tax Appellate Tribunal
  - The order is binding on Revenue if it is pursuant to directions of the DRP. However, if a question in law is involved a right to appeal rests with Revenue
- 2% penalty for failing to report transactions or filing certification
- Select domestic transactions covered

India's 2012 Budget Proposals
Security Transaction Tax (STT)

- Security transaction tax (STT) at the rate of 0.125% is applicable to transactions involving the purchase or sale of equity shares
- Rate reduced by 20 per cent from 0.125% to 0.1% on cash delivery transactions

India's 2012 Budget Proposals
Service Tax

- Comprehensive approach to tax services introduced
  - 'Service' defined as an activity undertaken for consideration
  - Negative list of services to include 17 specified categories
- Service tax rate enhanced from 10 to 12 percent
- Time limit to raise invoice enhanced to 30 days
- New reverse charge mechanism for three specified services - both service provider and recipient liable to pay tax in case of
  - Hiring of motor vehicle
  - Supply of manpower
  - Works contract

India's 2012 Budget Proposals
Incentives

Incentives for the power sector

- Additional depreciation at the rate of 20% on new plant and machinery to companies engaged in the generation or generation and distribution of power

- Claim profit-linked incentive for a further period of one year, i.e. the sunset clause for Specified Power Sector Companies has been extended to 31 March 2013

Shipping Sector

- Enhancement of deemed tonnage income for shipping companies

India's 2012 Budget Proposals
Incentives

Extension of weighted deduction for inhouse R&D till 31 March 2017

Various incentives to specific infrastructure businesses that commence operations on or after 1 April 2012:

- Weighted deduction of 150% of capital expenditure for businesses in e.g. cold chain facility
- 100% of capital expenditure for businesses in e.g. warehousing for sugar
- 150% weighted deduction of any expenditure for businesses in specified agricultural extension projects and specified skill development projects

India’s 2012 Budget Proposals
Customs

- Peak rate of customs duty maintained at 10%
- Exemption from education cess and SHE cess on countervailing duty
- Enhancement in the limit of duty free baggage allowance
- Exemption from basic customs duty:
  - Coal and coal mining projects
  - LNG and natural gas when imported for power generation
  - Parts of aircraft and testing equipments for maintenance and repair of aircraft by MRO
- Basic customs duty on gold bars increased from 2% to 4%

Thank you

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