

Deloitte Haskins & Sells LLP

Indian Taxes Recent Developments and Opportunities

April 2015



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Indian Economy & Investment Climate



India in a sweet spot

- **GDP** growth prospects improve

GDP growth at 7.4% in 2014-15



- **CAD** contained within the comfort zone

Contained at 1.3% of GDP for 2014-15



- **SENSEX** has hit an all time high

Recently crossed the 29,000 mark



- **Foreign fund** inflows have experienced a surge

Net FII inflow of US\$ 38.4 billion in 2014-15 (Apr-Dec)



- **Fiscal Deficit**, a new consolidation path

Fiscal deficit meets FY'15 target of 4.1% of GDP



- **Inflation** clearly on a downtrend

CPI at 5.1% in January expected to remain ranged



- **Monetary policy** turns accommodative

Repo rate cut by 0.25% to 7.75%, more cuts on the horizon



- **Rupee** has been stable

Likely to hover around INR 61 - 63 per US\$



Ease of doing business in India

Signing more treaties

Single window clearance

Drafting a legislation for quick clearance

E-biz portal

Done away with distinction between FII and FDI

Visa on arrival for tourist from 150 countries

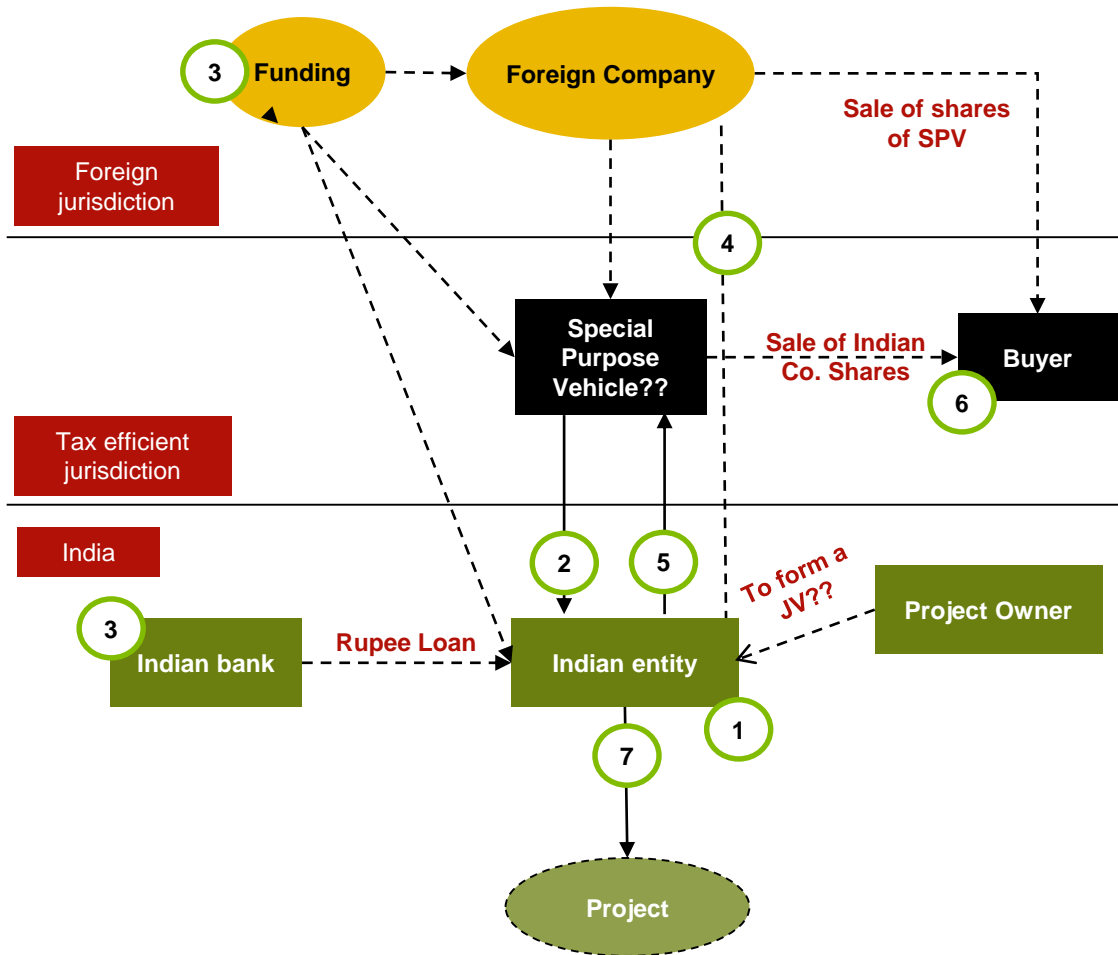
FDI is liberalized and more sectors are bought under automatic route

“India is moving towards an investor friendly regime”

Investing into India



Entry Strategy



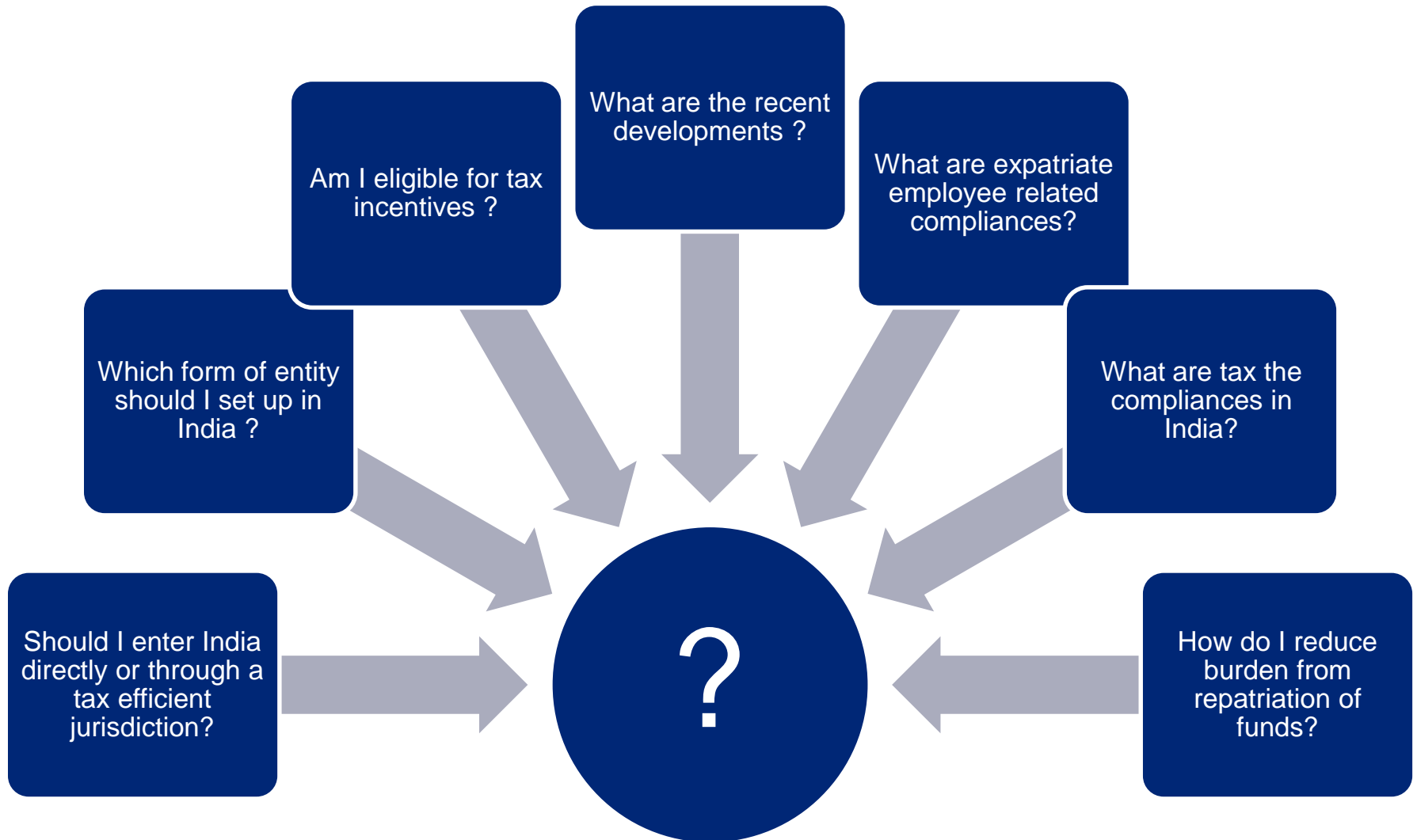
1. **Form of entity and JV structuring**
 - Company / LLP* / Other form
2. **Investment route**
 - Foreign Direct Investment Norms
 - Entry through tax-efficient jurisdiction
3. **Funding**
 - Which country?– Home country/ Tax efficient jurisdiction/ India
 - Indian Exchange Control Regulations
 - Withholding tax on Interest
4. **Secondment / deputation of personnel**
 - PE* exposure
 - Taxation of Personnel
5. **Tax-efficient Repatriation**
 - Various forms of repatriation to be analysed
6. **Exit strategy**
 - Capital Gains Tax in India
7. **Contract Structuring**
 - Association of Persons & PE related exposure

“Imperative to build an appropriate entry strategy”

*LLP – Limited Liability Partnership, PE – Permanent Establishment

Factors to be considered

Certain factors which need to be evaluated while entering into India to conducting business operations



Scheme of corporate taxation - Budget 2015



1. Corporate tax rate reduction on the anvil



Staggered removal of tax exemptions and incentives for corporate taxpayers



Additional surcharge of 2% for domestic companies (including subsidiaries of foreign companies) for FY 15-16 whose income exceeds INR 10 million



Staggered reduction of corporate tax rate from 30% to 25% over next 4 years



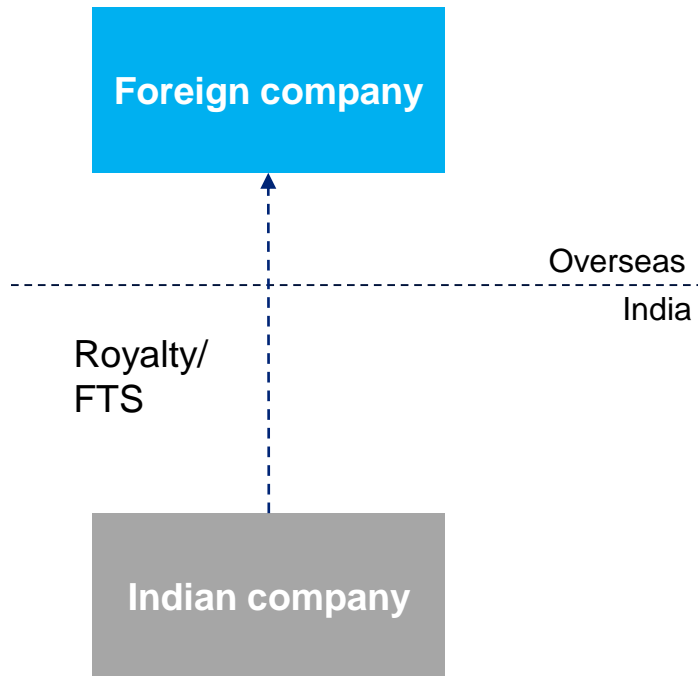
Tax rate of royalty / fees for technical services reduced from 25% to 10%

Type of company	Normal provisions		Effective DDT	
	Earlier	Proposed	Earlier	Proposed
Domestic (additional 2% surcharge)	33.99%	34.61% ↑	19.99%	20.36% ↑
Foreign (no change on tax rates)	43.26%	43.26% =	N.A.	N.A.

Notes:

- Surcharge of 10% /12% in case of domestic companies and 5% in case of foreign companies has been considered. Education cess of 3% has been considered for determining the tax rates above
- The tax rates are for income above INR 100 million

2. Royalty / Technical Fees withholding tax rates reduced

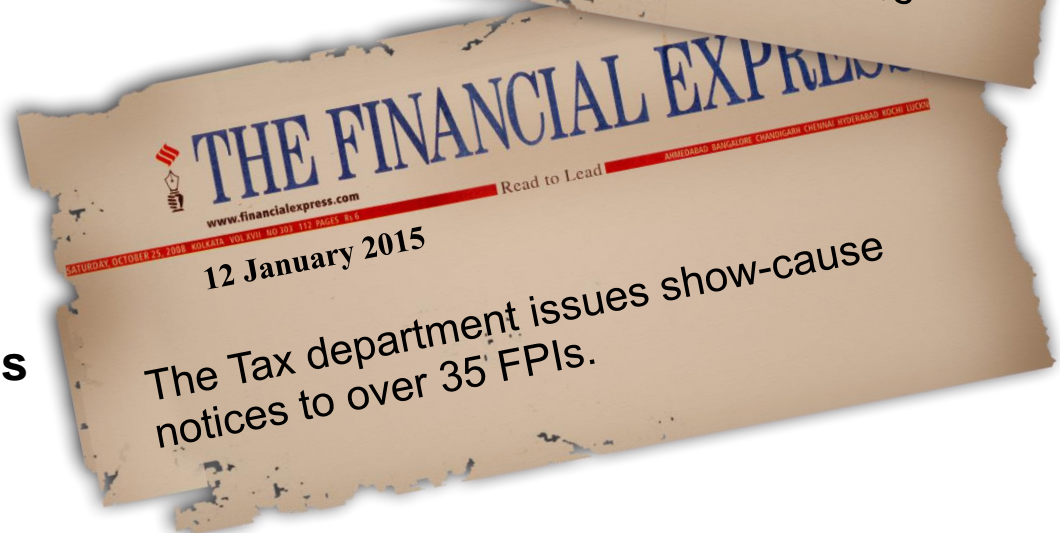
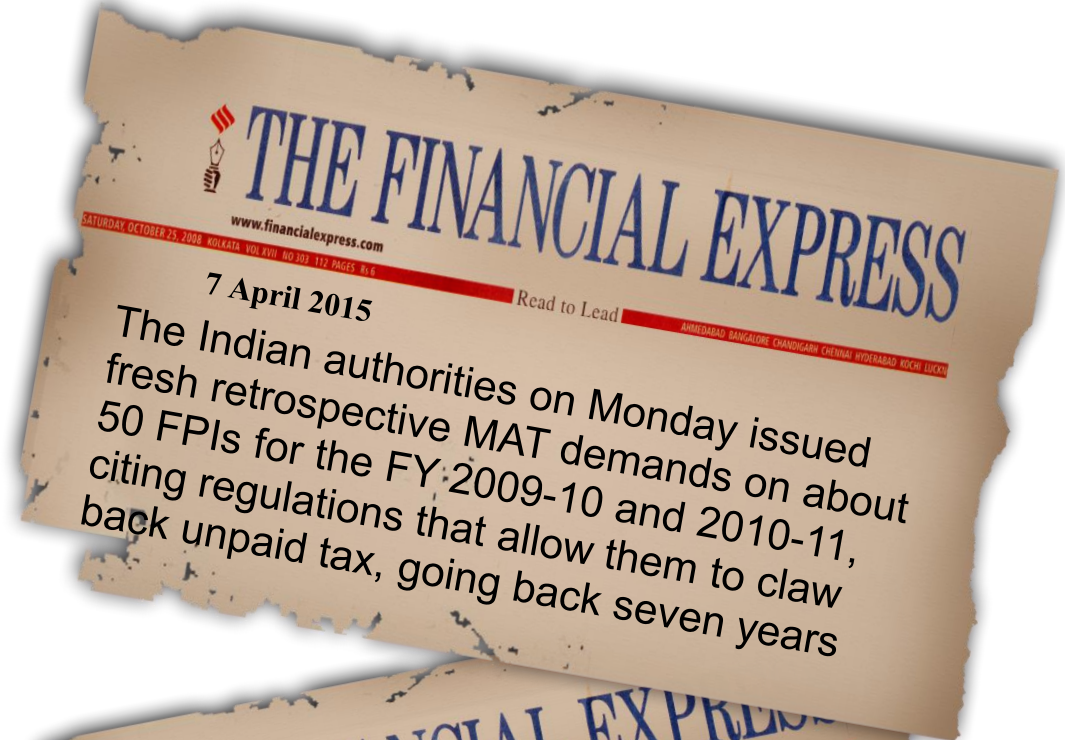


- Royalty / technical fees can be charged on branding, software licensing, rendition of global support services such as marketing/ consultancy/ IT/ HR support, etc.
- Payments can be an efficient means of repatriation – tax deductible in India and strong commercial rationale
- Withholding tax rate on royalty reduced from 25% to 10%
- This rate can be further reduced as per treaty provisions eg India-UK, India-France, etc.
- Transfer pricing analysis for benchmarking

“Royalty / Technical fees as repatriation mode can be evaluated”

3. Minimum Alternate Tax

- MAT rate has increased from 20.96% to 21.34%
- Controversial issue of applicability of MAT to foreign companies
- Current budget clarified non-applicability of MAT to the capital gains realized by Foreign Portfolio Investors (FPIs)
- **The amendment raises ambiguity on applicability of MAT to other foreign companies with Indian sourced income**



Recent Direct Tax & Regulatory Developments



4. General Anti Avoidance Rule (GAAR)

GAAR provisions deferred by 2 years, would apply prospectively from 1 April 2017

All Investments till 1 April 2017 will be **grandfathered**

GAAR to incorporate provisions of **BEPS**

**“Review transactions and organization structure
Need to ensure house is in order”**

5. Withholding taxes

Budget

- Foreign remittances-reporting broadened i.e. any sum, whether chargeable to tax or not, to a non-resident to be reported
- Evidence to be obtained in support of employee declarations while withholding taxes

Others

- Directors/ MD liable to prosecution if TDS deducted but not paid to Government
- Companies can approach tax authorities for lowers/ Nil withholding certificates

“In case of loss making companies – explore alternative of NIL withholding tax certificate”

6. Increased Compliances

Obtaining PAN

- Higher withholding tax @ 20% if Permanent Account Number ('PAN') not provided to payer

Filing Return of Income

- Notices issued to 245,000 PAN holders who have not filed their income-tax return
- A Foreign company earning income in India is mandatorily required to file an annual corporate income-tax return in India, even if claiming exemption under DTAA

Representative Office

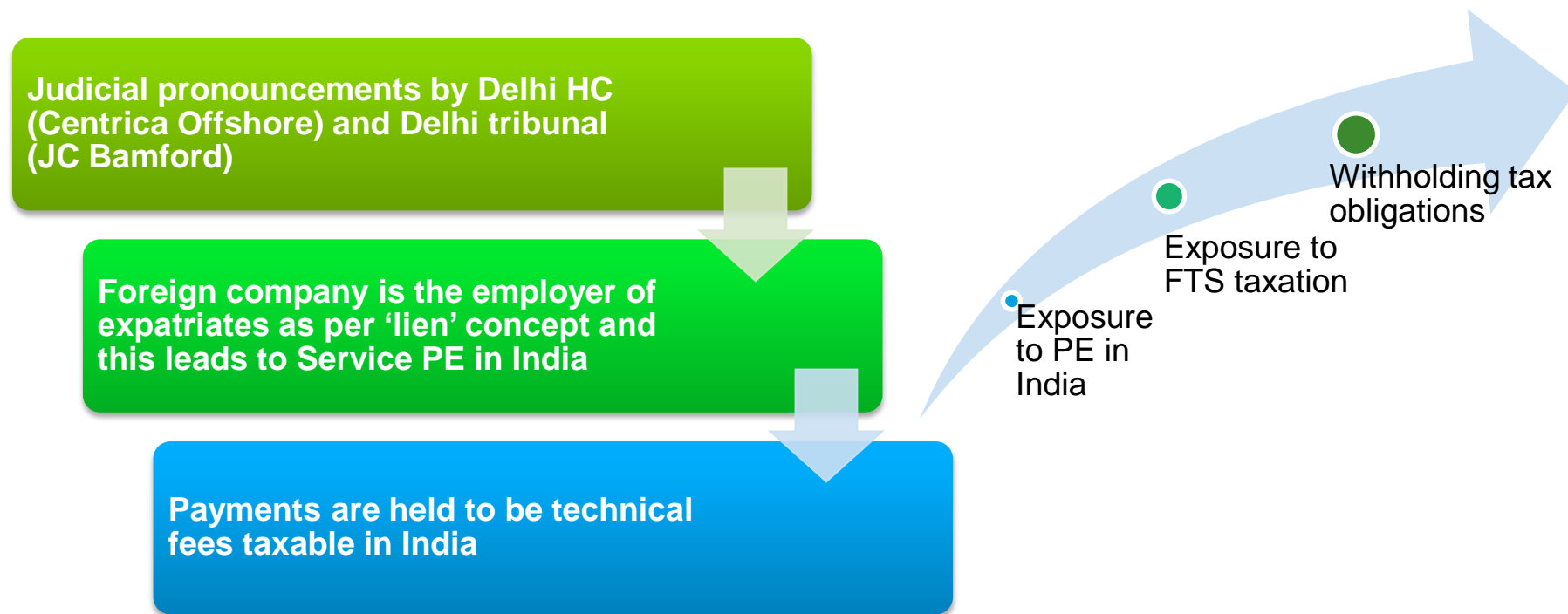
- Liaison Office/ Branch Office / Project Office now required to file various information with Director General of Police and Director General of Income tax (International taxation)

Disclosure of TP transaction

- Penalty of 2% of transaction value is levied on unreported transactions under TP provisions

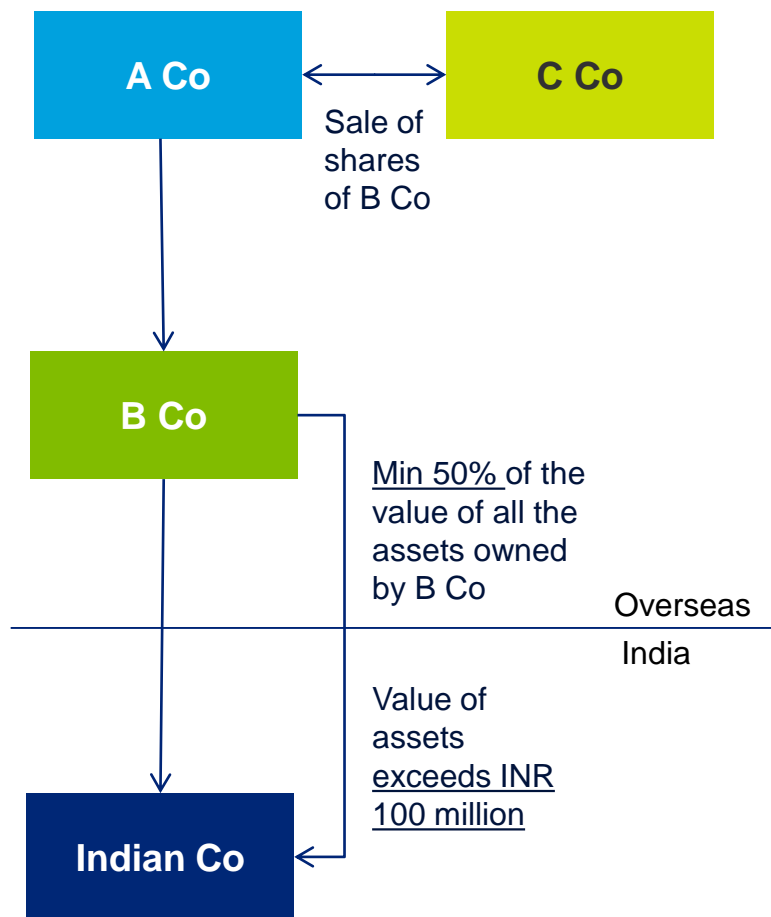
“Increased burden of compliance for foreign companies receiving income from India”

7. Secondment of expatriates



“In case of secondment, to evaluate alternative arrangements such as shifting of payroll, strengthening economic employment, etc. – More relevant in case of treaties where Service PE clause exist”

8. Indirect transfers explained



- Capital gains taxable in India if share / interest in a foreign company is deemed to derive its value substantially from assets located in India
- Taxation of gains to be on proportional basis

Exemptions

- Right of control or management and holding does not exceed 5% of total voting power / share capital / interest
- Amalgamation / demerger

Reporting and penalty

- Indian entity shall be obligated to furnish information relating to the off-shore transaction having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity
- Penalty could extend to 2% of the value of transaction

There are certain tax treaties, as per the provisions of which even if there is an indirect transfer, the same will not be taxable in India

“Analysing impact of potential transfers – especially global transfers”

10. ICDS & IndAS

ICDS

- The Income Computation and Disclosure Standards (ICDS) are applicable for **computation of taxable income under the heads 'Income from Business or Profession' and 'Income from Other Sources'**
- ICDS not for the purpose of maintenance of books of accounts
- In case of conflict between the provisions of the Income Tax Act (Act) and ICDS, the **provisions of the Act shall prevail**

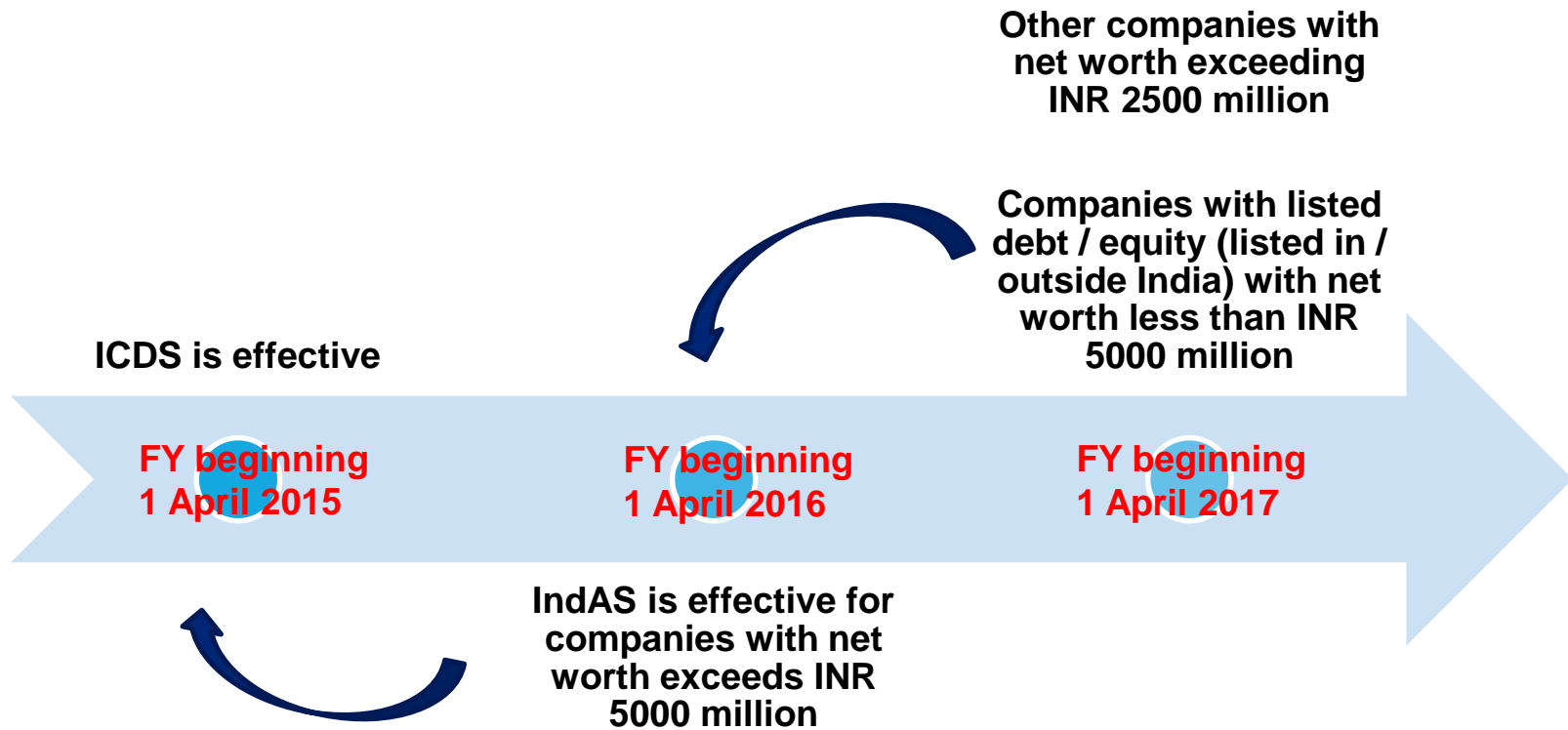


IndAS

- The new Indian Accounting standards (IndAS) will be mandatorily applicable in phases for specified companies (including their holding, subsidiary, joint venture or associate companies)

**“Impending changes in accounting as well as taxation –
Relevant to understand the combined impact”**

10. It's here!



“Critical to understand and implement ICDS and IndAS harmoniously”

11. Mitigating Tax Controversy

**Tax controversies involve time and cost
Essential to mitigate / manage tax controversy**

Advance Ruling

- Taxability of Non-residents in India,
- Constitution of PE in India in case of power, logistic and oil & gas sector
- Now, extended to residents – eligibility to claim tax exemptions / deductions

Advance Pricing Arrangement

- Determine transfer price of transactions between related parties – Relevant for all sectors for cross-border transactions
- Roll back provisions inserted i.e. for 4 previous years

Mutual Agreement Procedure

- Alternate resolution Mechanism for cross border transactions
- Competent authorities of two Countries would determine taxability
- Relevant for high value cross-border transactions

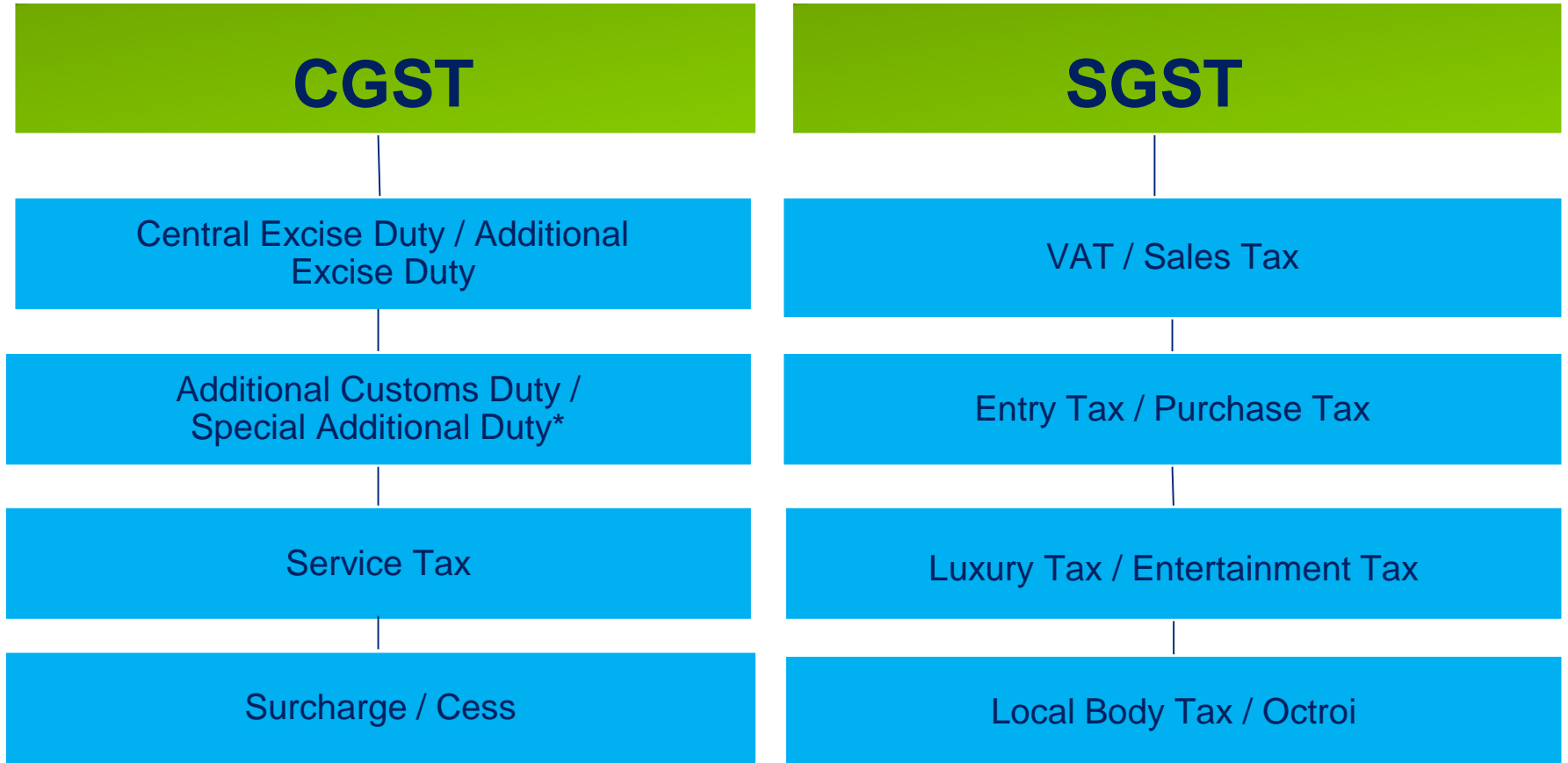
Withholding tax orders

- Obtaining lower / Nil withholding tax order upfront to avoid cash crunch and future litigation (eg. applicability of withholding tax on capital payments, etc.)
- Reduce tax losses in case of voluminous payers (eg. courier business)

GST in India



Proposed GST Model



*Imports are subject to IGST which would be addition of CGST and SGST

Birds eye view of GST

- GST – a destination based consumption tax on goods and services
- Both, Centre and State to levy taxes on goods and services
- GST expected to replace the existing tax structure which is plagued with multiplicity of Central and State taxes
- There will be shift of focus from manufacture / sale / service to supply
- GST considered a progressive system of taxation; will bring Indian taxation system in parity with the system existent in the developed countries
- Seamless credit across entire supply chain and across all the States / Union Territories

“GST is a progressive step in the direction of tax reforms”

Potential Implications

Suppliers

End of old system (e.g. VAT/sales tax) exemption

Preferential GST Vendors-maximise ITC

Mandatory registration number of supplier for availing ITC

Re-validation of the existing vendor contracts

Customers

Review of the Pricing Policies

Re-validation of the existing customer contracts

Structure of offers/financing to be re-visited

Requirement of registration number of the customer

Finance & Administration

Impact on cash flow

Identification of transaction and GST liability

Maximisation of GST input tax credit on purchases

Registration & compliance

Internal

Developing GST awareness

Other key developments

- Indirect Taxes



Other Key Developments – Indirect Taxes



Effective rate of service tax to be increased from 12% to 14%



Proposal to levy Swacch Bharat cess of 2% in addition to 14% service tax



Manpower & security services covered under 100% reverse charge mechanism

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Annexure – DDT Calculation

- No change in DDT rates
- Surcharge increased from 10% to 12%

Particulars	Companies
Dividend Distributed	100
DDT applicable	15%
Effective DDT (after grossing up)	17.65%
Surcharge @ 12%	2.12
Cess @ 3%	0.59
Total proposed effective tax rate	20.36%
Existing effective tax rate	19.99%
Increase	0.37%