

Agenda

1. The Government's Scorecard
2. Budget Highlights
 - Direct Tax Proposals
 - Changes to the Stamp Duty regime
 - What next?
3. India Entry & Exit Strategy – Key considerations
4. India-Singapore Corridor – Treaty aspects
5. Some other key international tax issues



The Government's Scorecard

The Government's Scorecard (2014-2019)

- Pathbreaking reforms in several sectors
 - Insolvency and Bankruptcy law
 - Introduction of GST
- Simplification of Direct Tax System
 - Increase in collections and number of returns filed
 - Technology intensive project to transform tax administration
 - Processing of returns and issuance of refunds within 24 hours targeted
 - Tax audits to happen electronically through an anonymized back office staffed by tax experts and officials

India poised to become a USD 5 trillion economy in the next 5 years, and a USD 10 trillion economy in the 8 years thereafter

Budget Highlights

Tax Proposals

General

- No change in tax rates for corporates or individuals
- Threshold of tax rebate for resident individuals increased from INR 0.35 Million to INR 0.5 Million
- Standard deduction (for salaried individuals) enhanced from INR 40,000 to 50,000
- Annual threshold limit for bank interest withholding enhanced from INR 10,000 to INR 40,000

Real Estate Sector

- Sunset clause for approval of affordable housing project tax holiday extended by one year to 31 March 2020
- Notional rent on unsold inventory not chargeable for two years (instead of existing one year)
- No notional rent imputed for up to two self-occupied properties (currently applicable for only one property)
- Roll over benefit of LTCG from sale of residential property extended to two residential houses in India for Individuals / HUFs where capital gains does not exceed INR 20 Million
- Annual threshold limit for WHT on rent enhanced to INR 0.24 Million

Changes to the Stamp Duty Regime

- Levy and administration of stamp duty on securities simplified and centralized
 - Unified stamp duty schedule across India not linked to specific states
 - On payment of stamp duty on issuance/ transfer no additional stamp duty payable on any other document
- All issuance and transfer of 'securities' will be subject to stamp duty
 - Exemption on transfer dematerialized securities removed
- A comparison of rates for levy of stamp duty is as under:

Instrument	Existing stamp duty rate	Revised Stamp duty rate
Issuance of debentures	Varies from State to State	0.5 bps
Transfer of debentures		0.01 bps
Issuance of securities		0.5 bps
Transfer of security (delivery basis)	25 bps (physical shares) / 1 bps to 0.2 bps (stock exchange transactions)	1.5 bps
Transfer of security (non-delivery basis)	1 bps to 0.2 bps (Varies from State to State)	0.3 bps
Equity and commodity futures	1 bps to 0.1 bps (Varies from State to State)	0.2 bps
Equity and commodity options		0.3 bps
Currency and interest rate derivatives		0.01 bps
Other derivatives		0.2 bps
Government Securities		Nil
Repo on corporate bonds	Varies from State to State	0.001 bps

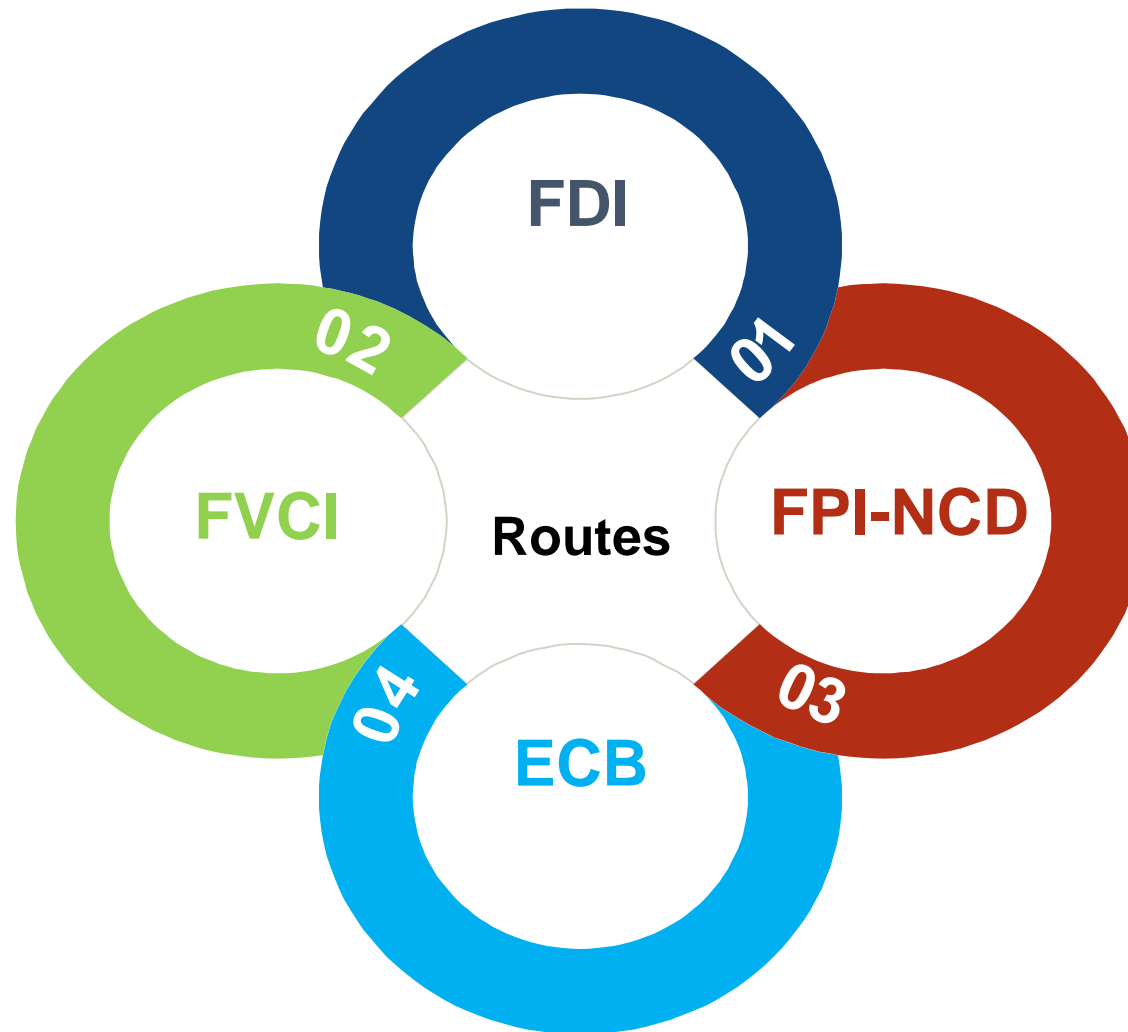
What next?

- Direct Taxes Code Bill expected shortly
- Wishlist of India Inc.
 - 25% tax rate for all companies and firms
 - Rationalise MAT and DDT levies
 - Grandfathering of 31 January 2018 price for listed shares – applicability to shares received on corporate restructurings
 - Repeal of 'Angel' Tax
 - Shareholder level exemption for overseas restructuring triggering indirect transfers

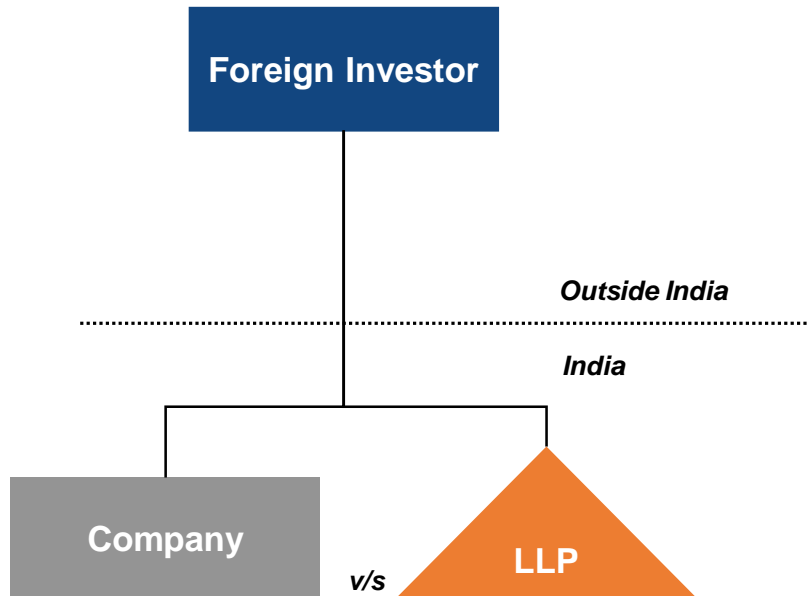
Full Budget expected in June / July by the new Government after general elections

India Entry & Exit Strategy – Key considerations

Key Offshore routes for investment into India – A snapshot



Use of LLPs for investments



LLP v. Company

- LLP legislation introduced in 2008 – foreign investments now permitted subject to conditions
- LLPs offer significant benefits over a company structure:
 - a) No distribution tax on profits (unlike companies which face DDT)
 - b) No MAT on book profits
 - c) Arguably, no capital gains tax on exit by a Singapore tax resident
 - d) Relatively lower reporting / compliance/ administrative requirements
 - e) Thin capitalisation rules not applicable
- LLPs can borrow funds from overseas under ECB route. Further, it can pay interest on partner's capital contribution
 - However, borrowing under NCD route not permissible

Taxability of notional income on acquisitions

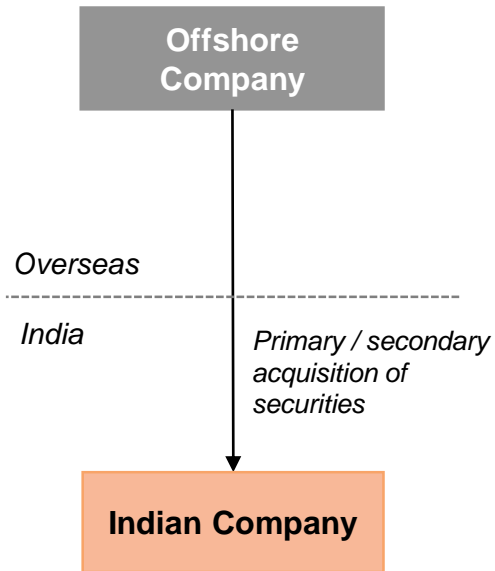


Illustration	
Acquisition price	100
Prescribed FMV	150
Notional income subject to tax	50
Increase in cost of acquisition	50

**Representation –
Impossibility of compliance?**

Notional income taxable in hands of investor where acquisition price is lower than prescribed FMV

Prescribed FMV

Listed equity:
Lowest Traded Price

Unlisted equity:
Modified Book value

Unlisted CCPS/CCD etc:
open market value

Notional income

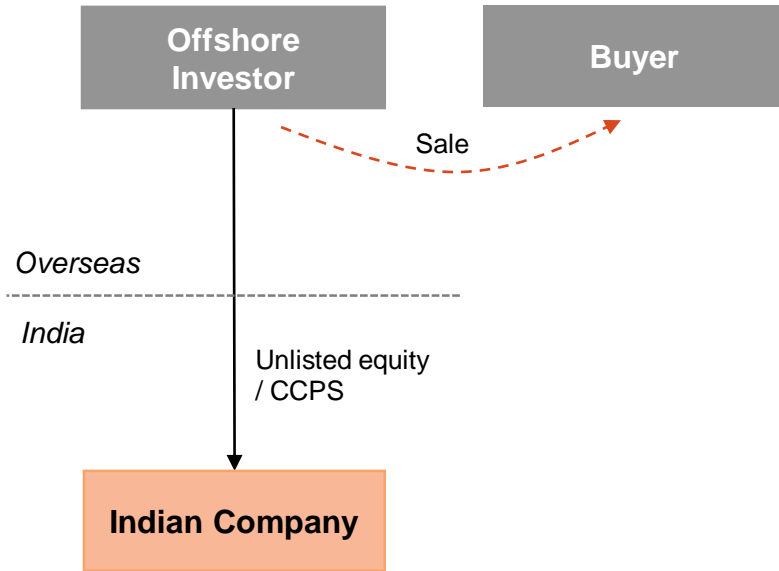
Prescribed FMV

Acquisition price

Taxed as 'other sources' @ 40% subject to treaty benefits, if any

Available as cost of acquisition against future exit

Taxability of notional income – Seller



Notional income to be taxed in the hands of Seller where transfer of unlisted shares is for a value lower than prescribed FMV

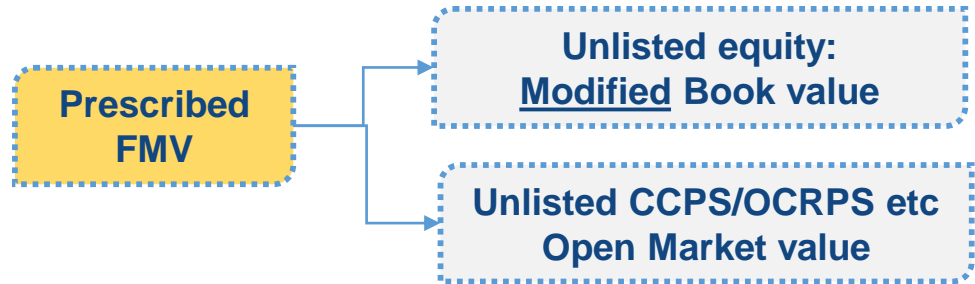
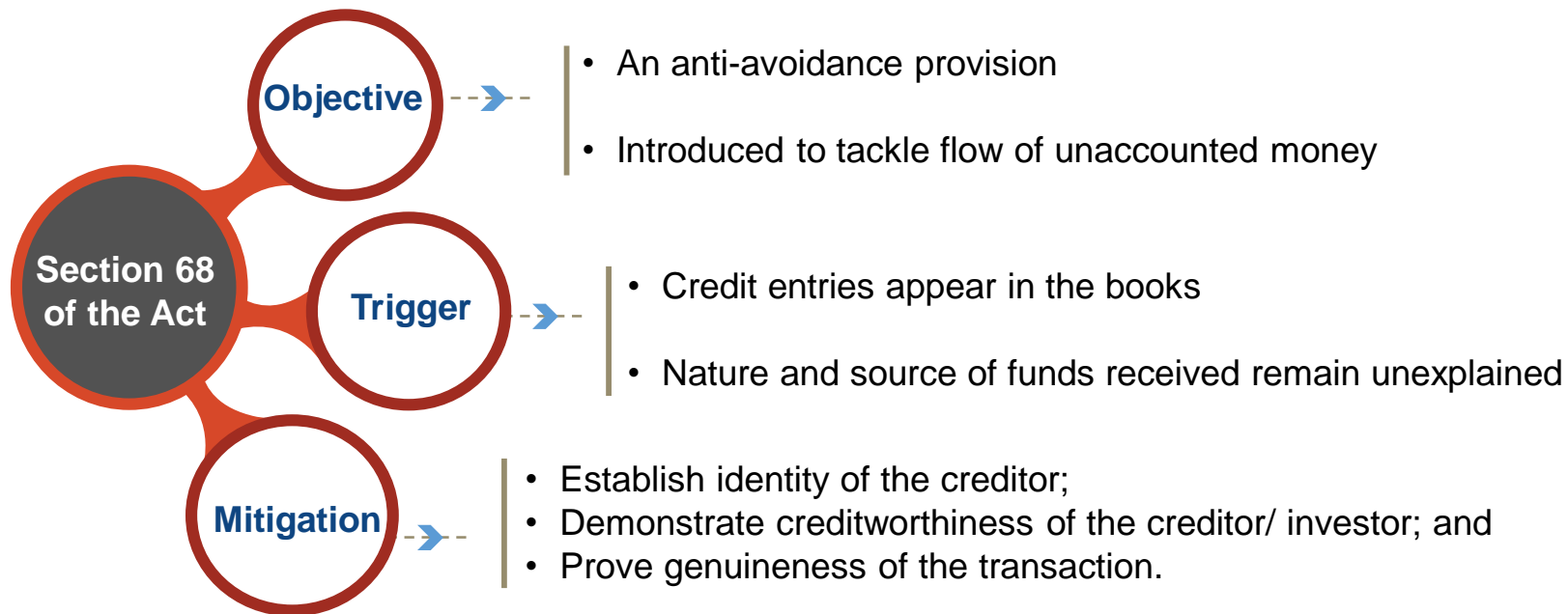


Illustration		
Actual consideration	100	
Prescribed FMV	125	
Computation of capital gains	Actual transaction	Deemed computation
Consideration	100	125
Less: Cost of Acquisition	50	50
Capital gains subject to tax in India	50	75

Taxation of share premium - Section 68 of the Act

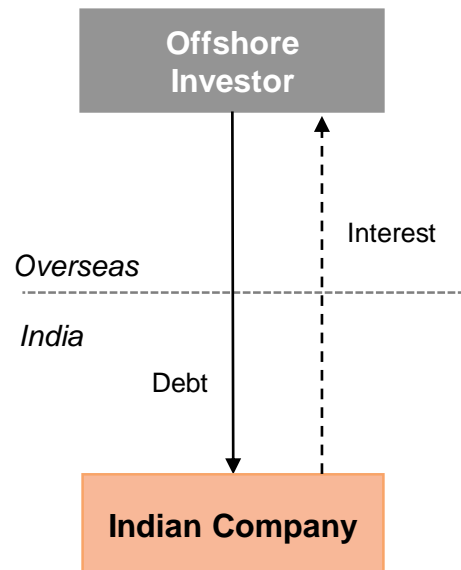


Recently, Indian Revenue authorities have sought to tax share premium received by Indian SPVs under section 68

Tax aspects of debt funding – Tax rate on Interest income [1/2]

Interest under Section 194LC

- **Payee:** Any Non-resident
- **Payer:** Any Indian Company
- **Nature of Interest:**
 - Interest on foreign currency loan borrowed before 1 July 2020
 - Interest on rupee denominated bonds (masala bonds) issued before 1 July 2020
- **WHT rate:** 5%
 - No WHT on interest for rupee denominated bonds issued between 17 September 2018 to 31 March 2019
- **Interest rate cap:** to be in compliance with ECB regulations

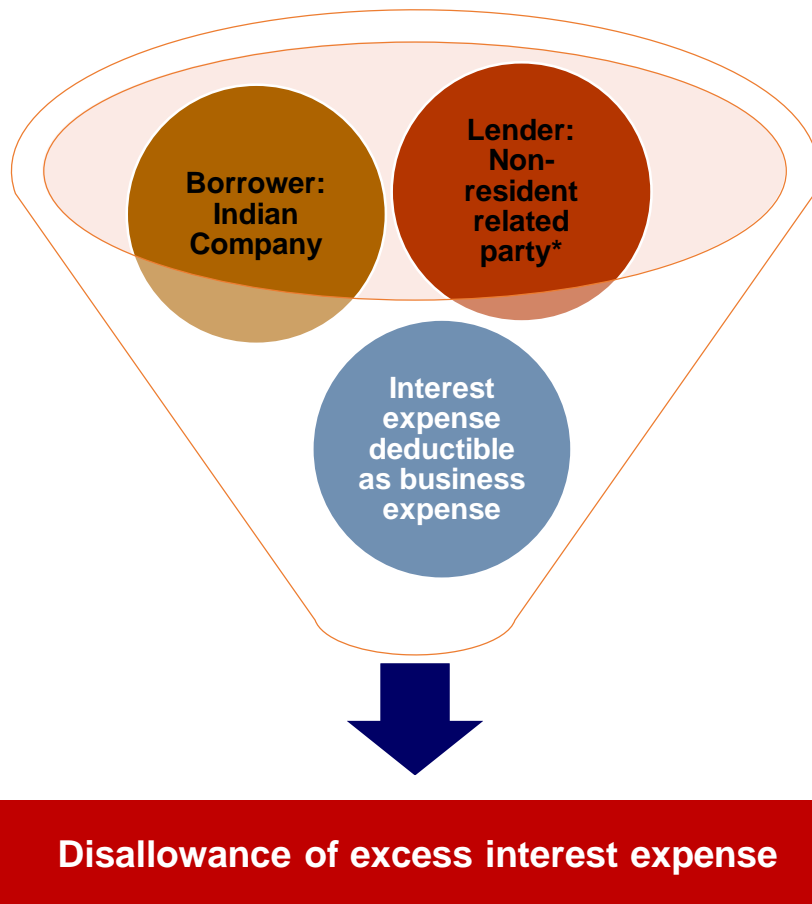


Bonds = NCDs?

Interest under Section 194LD

- **Payee:** FPI
- **Payer:** Any Indian Company
- **Nature of Interest:**
 - Interest on rupee denominated bond of Indian company pertaining to period before 1 July 2020
- **WHT rate:** 5%
- **Interest rate cap:** SBI Base Rate + 5% (current SBI Base Rate is 8.95%)

Tax aspects of debt funding – Thin capitalization provisions [2/2]



Disallowance to be **lower** of (A) or (B) below:

- (A) Amount of total interest paid or payable in excess of 30% of EBITDA
- (B) Interest paid or payable to non-resident related party

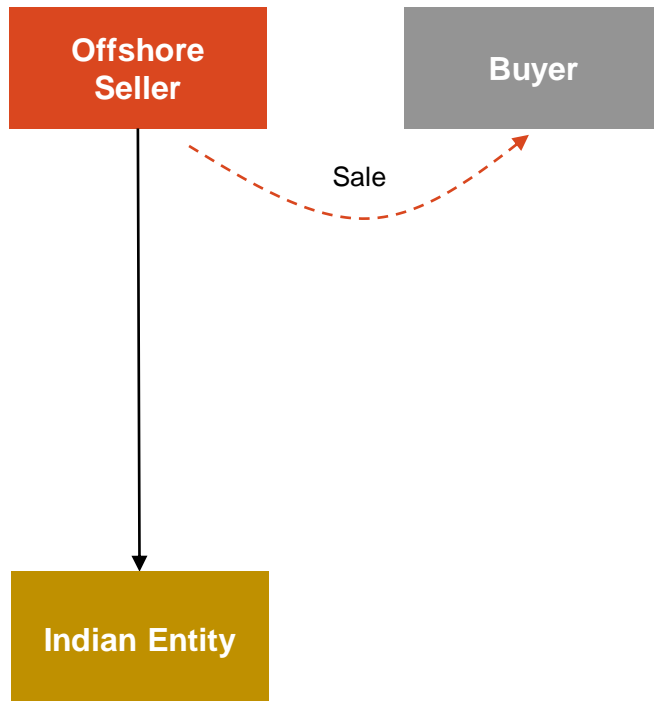
Carry forward of disallowed interest allowed for 8 Assessment Years

Illustration

EBITDA	1,000
Interest to Non-AE	100
Interest to AE	350
Total Interest	450
<i>Disallowance under thin cap rules</i>	
i) Total interest	450
Less: 30% EBITDA	300
Difference (A)	150
ii) Interest to AE (B)	350
Interest disallowed and carried forward [Lower of (A) and (B)]	150

* Loans given by third parties but guaranteed by non-resident related party also covered

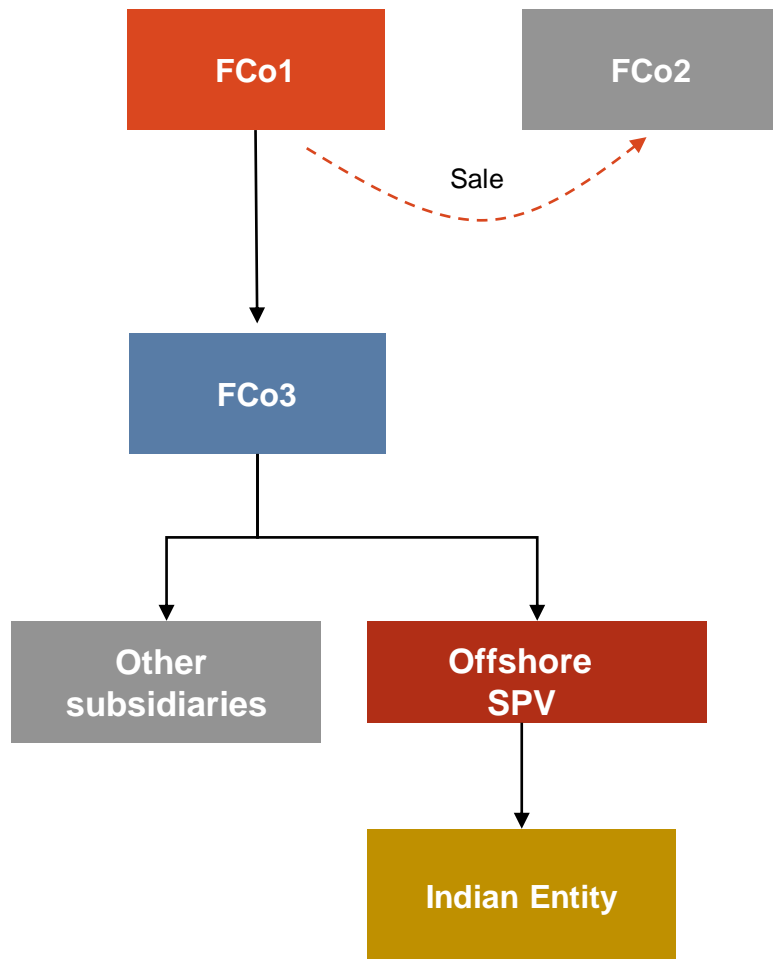
Exits from India – Direct transfer



Typical Indian Tax Issues

- Taxability and availability of treaty benefits
 - GAAR, MLI and POEM considerations
 - Taxability of notional income
- Withholding obligations and other tax risks on the Buyer
 - Taxability of notional income
 - Exposure mitigation through Indemnity, escrow, insurance and withholding tax orders

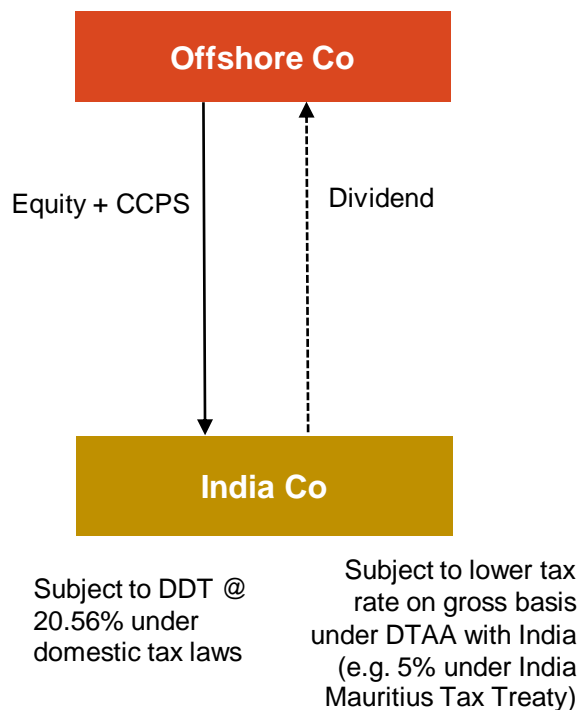
Exits from India – Indirect transfers



Liability to tax in India

- Applicable if:
 - Value of assets in India exceeds INR 100 million; and
 - Value of assets in India represents => 50% of value of all assets owned by Offshore Fund
- Exemption provided for certain transactions (e.g. transfer by small shareholders, transfer of investment directly or indirectly in Category I or Category II FPI, buy-back/redemption at offshore level post sale of India assets by Cat I and II AIF etc.)
- Could be exempt from tax in India under certain tax treaties
- Withholding tax considerations to be addressed

Dividend from portfolio companies



Dividend subject to DDT or DTAA rate?

- DDT is a tax on dividends which is payable by the Indian company – supported by judicial precedents
- Given that DTAA provisions prevail over domestic law provisions, possible to contend DTAA rate to apply in case of NR
- View has also been confirmed by Senior Counsels

Owing to litigation involved, paying DDT and claiming refund of excess over DTAA rate could be explored

India-Singapore Corridor – Treaty aspects

India-Singapore tax treaty

- Taxation of capital gains
 - Complete/ partial exemption for shares acquired upto 31 March 2019 subject to meeting LOB
 - Computation of S\$ 200,000 limit
 - What qualifies as “annual expenditure on operations”
 - No exemption for shares acquired on/ after 1 April 2019
 - *However, capital gains on other securities still exempt*
- Anti-treaty abuse provisions in MLI
- Single tier v Double tier structure
- Taxation of passive income
 - Interest @15%
 - Royalties/ FTS @10%
- Service PE
 - 90 days threshold, however, 30 days in case of related parties



Some other key international tax issues

Contract Structuring – Broad tax aspects



Association of Persons



Offshore Supply



Offshore Services



Onshore Supply

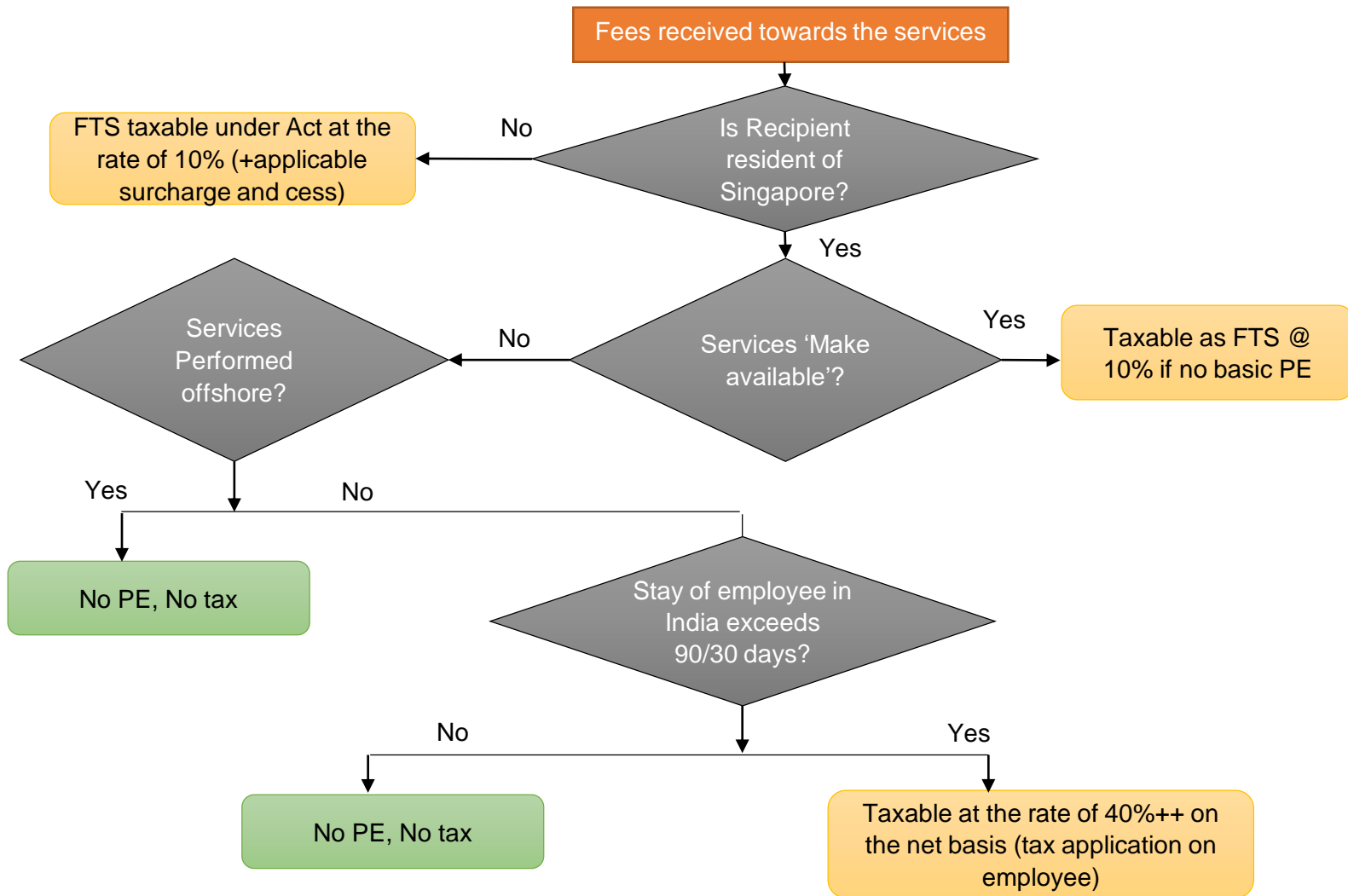


Onshore Services

- A single consolidated contract for the entire work and lumpsum price leads to significant tax inefficiencies
- It exposes the entire contract consideration to single taxability
- *Thus, advocating the need for efficient contract structuring**

*** Impact of General Anti-Avoidance Rule
and BEPS (especially Action Plan 7) on the Contracting
Model to be evaluated**

How to determine Service PE/ WHT



Key Risk Management Issues & Transfer Pricing

Key Risk Management aspects

- Proper documentation such as employee travel register with scanned copies of passports, air tickets, etc.
- Allocation of revenue to onshore & offshore services;
- Do's and Don'ts such as
 - Not to conclude any commercial contracts;
 - Aspects such as the business cards, designation, letter heads, website content, LinkedIn/FB profiles of employees should be state the entity that they work for.

Transfer Pricing

- Appropriate method to determine contract price where one project with one lump sum consideration involves
 - Multiple associated entities; or
 - Onshore/offshore elements
- Whether TP applies where contract price is allocated by customer
 - Between different associated entities?
 - Between onshore and offshore supplies & services?

Reimbursement of expenses / payment of technical fees / service fees

Reimbursement of expenses / payment of service fees/ technical fees typically not taxable and hence no India withholding required in the following cases:

- If the expenses are reimbursed on a cost to cost basis (without any markup) and there is no income component
- If the test of 'make available' is not met
 - However, it is essential that TRC and no-PE declaration of the recipient is in place
- Imperative to substantiate that the service fees/ technical fees are not 'effectively connected' to the PE, if any, in India



Glossary

Glossary

Abbreviation	Meaning
Act	Income-tax Act, 1961
AE	Associated Enterprises
AIF	Alternative Investment Fund
BEPS	Base erosion and profit shifting
bps	Basis Points (1% = 100 basis points)
CCDs	Compulsory Convertible Debentures
CCPS	Compulsory Convertible Preference Shares
DDT	Dividend Distribution Tax
DTAA	Double Taxation Avoidance Agreement
EBITDA	Earnings before interest, tax, depreciation and amortization
ECB	External Commercial Borrowings
FDI	Foreign Direct Investment
FMV	Fair Market Value
FPI	Foreign Portfolio Investors
FTS	Fees for Technical Services
FVCI	Foreign Venture Capital Investor
GAAR	General Anti-Avoidance Rules
GST	Goods and Services Tax
INR	Indian Rupees
LLP	Limited Liability Partnership
LOB	Limitation of Benefits

Glossary

Abbreviation	Meaning
LTCG	Long term capital gains
MAT	Minimum Alternate Tax
MLI	Multi Lateral Instrument
Non-AE	Non Associated Enterprises
NCDs	Non-convertible Debentures
NR	Non-resident
OCRPS	Optionally Convertible Redeemable Preference Shares
PE	Permanent Establishment
POEM	Place of Effective Management
SPV	Special Purpose Vehicle
SBI	State Bank of India
TP	Transfer Pricing
WHT	Withholding tax

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