

Destination India

Regulatory & Tax Overview



Agenda

- 1. Investment climate in India*
- 2. Regulatory regime overview*
- 3. Corporate tax*
- 4. Indirect tax considerations*
- 5. Tax incentives*

Unity in diversity



29

states



1.2

billion people

24

languages each spoken by a million or more people; numerous other languages and dialects, for the most part mutually unintelligible



7

union territories



3,287,590

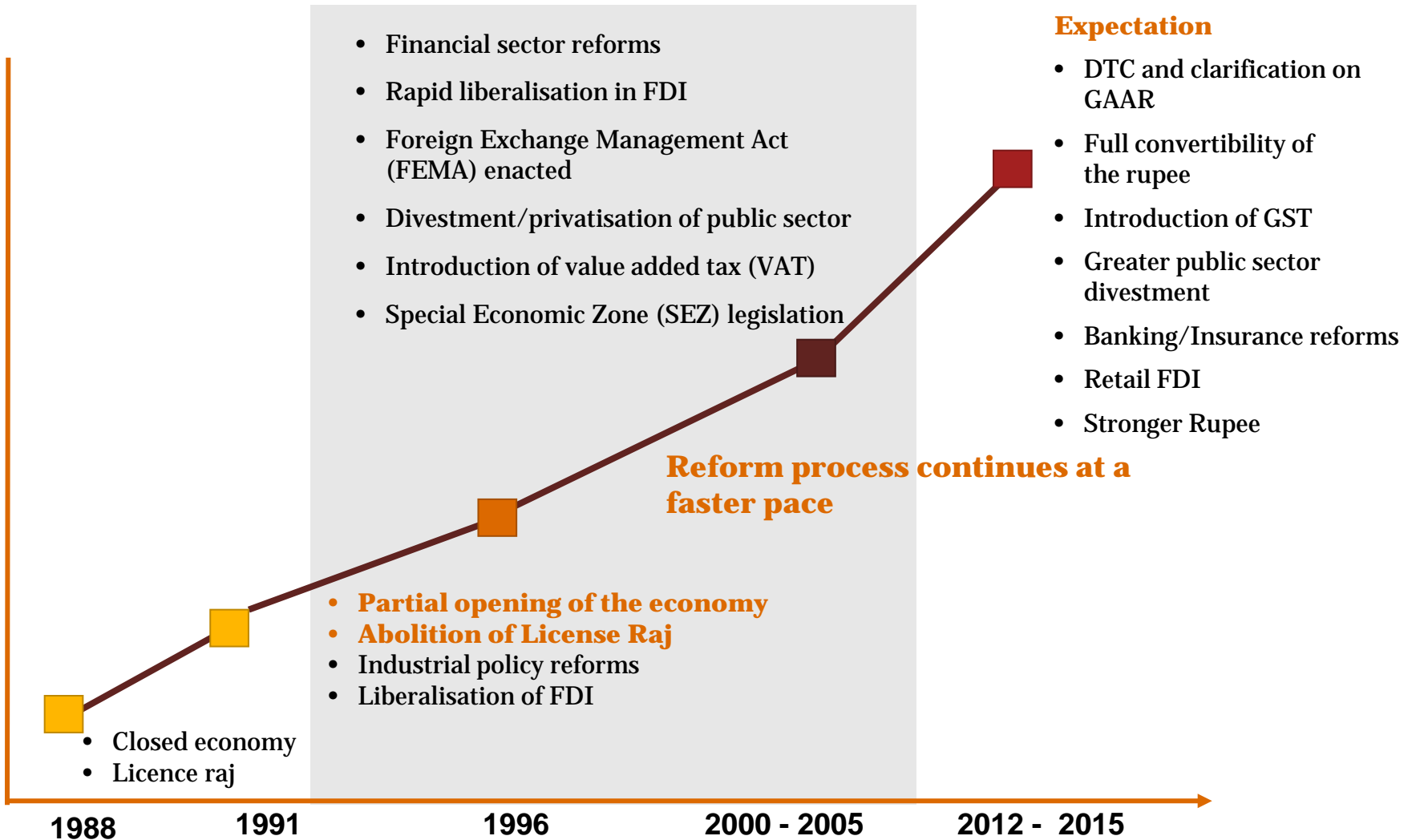
sq km

Investment climate

1



Road to reforms



The transformation in the Indian business environment...

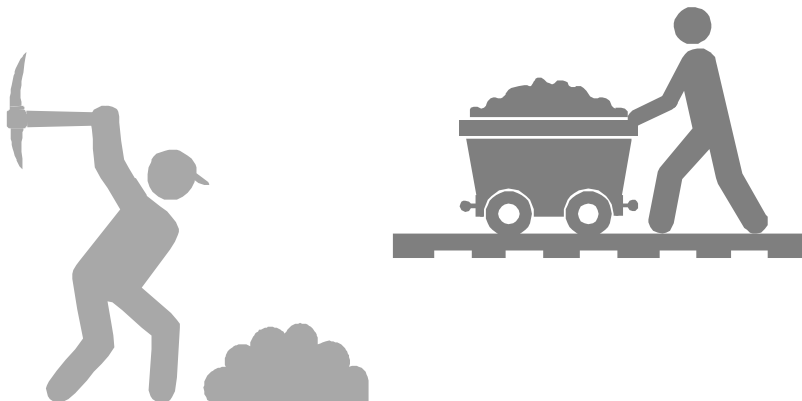
...Yesterday

- Slow rate of growth
- Bureaucratic
- India – protected economy and restricted FDI
- Price controls
- Weak infrastructure



...Today

- Amongst world's fastest growing economies
- 2nd largest English speaking country
- More than 50% population under 25 years
- Presence of large global brands
- Increased per capita income



INDIA - A New Govt...and high expectations!

+
“No red tape, only red carpet, is my policy towards investors”

Narendra Modi

India votes a clear majority in lower house after 30 years for a Government led by Narendra Modi

Minimum Government, Maximum Governance

- Pro People Proactive Good Governance
- Greater accountability, transparency, empowerment, time-bound implementation

Revived business and investment sentiment

- Stock markets touch a all time high
- India Inc. hopeful of growth
- India back on the radar of global giants

Neighbours first policy

- Heads of all SAARC countries invited
- Cooperation agreement on issues of national interests

+
“What we need are not more new Acts – we need action”

Narendra Modi

Clear skies emerging....measures taken by the government and the Central Bank seem to be in the right direction

Economic confidence revived by the new government formed without a coalition

A more open economy through FDI

GDP growth recuperating - from 4.7% in FY14 to 5.7% in Q1FY15 .
Project at 5.8% for FY15

Inflation cooled to 7.96% in July14 from averaged 9.49 % from 2012 until 2014

Reduction of subsidies and higher duties on imports would help in reducing CAD



Changing environment of the Indian Economy

Prioritization of expenditure key ingredient in fiscal consolidation

Proposed implementation of GST, Direct Tax Code and GAAR to simplify tax framework and rationalization of tax rates

Proactive central bank working to fight inflation and stabilize the Rupee

New Manufacturing Policy expected to improve industrial growth

New Companies Act introduced with greater focus on governance

The Macros – changes in Q1FY15 clearly indicates the direction in which the Country is moving

| | FY13 | FY 14 | Q1FY15 | |
|---------------------------------------|--------------|--------------|---------------|--|
| <i>GDP Growth</i> | 4.5% | 4.7% | 5.7% | Aiming for 5.8% - 6% for FY15 |
| <i>Inflation</i> | 10.4% | 9.7% | 7.9*% | Aim to further reduce |
| <i>Fiscal Deficit</i> | 4.9% | 4.5% | N.A. | 4.1% by FY 15, 3% by FY 17 |
| <i>Current Account Deficit</i> | 4.7% | 1.7% | 1.7% | Seems sustainable with “Make in India” campaign |
| <i>Industrial Growth</i> | 1.1% | -0.1% | 3.9% | Signs of significant increase |

* July 2014

Source : Economic Survey 2013-14 / DIPP website

Driven by India's economic stakeholders....



- Guess who he is talking to?
- His next customer?
- His stock broker?

PwC

World's fastest growing cell-phone market 6 million subscribers per month 200,000 connections per day

Regulatory Regime overview

2



Partial Capital A/c Convertibility

Current Account

Negative list principle

- Prohibited list
- Requiring Govt approval
- Requiring RBI approval

freely permitted

Capital Account

- Investments
- Loans
- Immovable Property

regulated

Foreign Direct Investment policy – Snapshot

100% FDI permitted without approvals (except, a small -ve list)

Prohibited Sectors

- Agriculture (some exceptions)
- Gambling & Lottery
- Real Estate (except certain construction development projects)
- Manufacture of cigarettes

Conditionalities in sensitive Sectors

- Telecom, News Media, FM Radio, TV Channels, Insurance, Civil Aviation, Trading

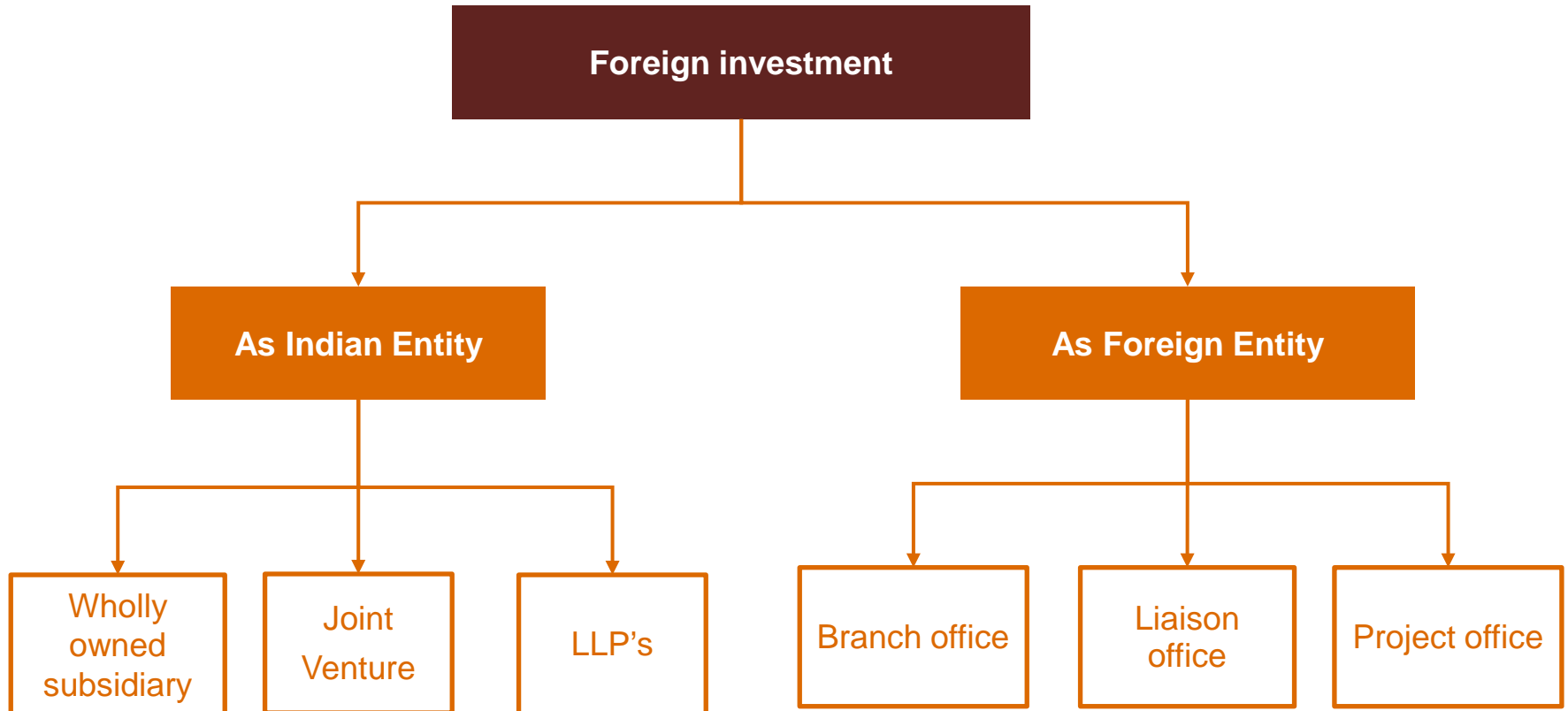
Government Sector only

- Atomic Energy, Railways (operations)

| Sector | FDI Cap |
|-------------------|------------|
| • Private Banking | 74% |
| • Telecom | 100% |
| • Civil Aviation | 49% |
| • Insurance | 26% |
| • Retail Trading | 51% - 100% |
| • Print Media | 26-100% |
| • FM Radio | 26% |
| • Defense | 49% |
| • Railway infra | 100% |



Modes of establishing operations in India



Comparative Analysis

| Particulars | Liaison Office | Project Office | Branch Office | Wholly Owned Subsidiary / Joint Venture Company | LLPs |
|-----------------------------|-------------------------------|--|--|---|--|
| Activities | Non income earning activities | Execution of specific project | Only specified activities (Manufacturing is not possible unless its in a SEZ) | Any activities | Any activities where 100% FDI is allowed |
| Restrictions | Number of restrictions | Relaxation in case of project for which approval has been sought | Number of restrictions | Only those imposed by the ("FIPB"), if any | FIPB approval required |
| Approval Timing | 6-8 weeks | 6-8 weeks | 6-8 weeks | 4-8 weeks, subsequent to FIPB approval, if required | Around 4 to 6 months |
| Regulatory Authority | RBI | RBI | RBI | RBI / FIPB | FIPB |

Funding options

Option 1

Representative office, Branch office, Project office:

Inward remittances from head office

- Expenses to be met by the proceeds from Project and branch
- Representative office- has a legal presence but cannot earn income
 - Increased reporting requirements introduced last year

Option 2

Wholly-owned subsidiary/Joint venture:

- Equity shares
- Preference shares
- Debt / External Commercial borrowings (“ECB”)
- GDRs/ADRs in the case of listed companies
- Foreign Currency Exchangeable bonds (FCEB)

Companies Act, 2013 – Key regulations

Every Company shall have at least one resident Director in the Board from April 1, 2014

- Resident director – who has stayed in India for a period not less than 182 days in the previous calendar year

CSR requirements apply to companies with:

- Net-worth of INR 500 crore; or
- Turnover of INR 1000 crore; or
- Net Profit of INR 5 crore
- 2% of average profits to be incurred on CSR activities

Appointment of Internal Auditors where:

- Turnover \geq INR 200 crore; or
- Borrowings from banks/ public financial institutions \geq INR 100 Crore

Companies Act, 2013 – Key regulations

Mandatory auditor rotation for certain Private Companies

- Share Capital > INR 20 crore; or
- Public deposits/ borrowings from banks/ public financial institutions > INR 50 Crore

Powers of the Board with respect to the following to be exercised only with the approval of the Company through a special resolution

- To sell, lease or otherwise dispose of the whole or substantially the whole of the company's undertaking
- To borrow money in excess of the aggregate of its paid-up share capital and free reserves
- To invest, otherwise in trust securities, the amount of compensation received by it as a result of any merger/amalgamation
- To remit, or give time for the re-payment of, any debt due from a director

Companies Act, 2013 – Key regulations

Inter corporate loans and investments

- Prohibition from making investments through more than 2 layers of investment companies
- Loan can be granted only to wholly owned subsidiary at an interest rate not lower than prevailing rate of interest on government securities
- Ceiling on quantum of inter corporate loans and investments

Mergers, restructuring and capital raising

- Application to be made to Tribunal
- Approval of Tribunal is not required for merger of WOS into holding company or merger of small companies
- Approval of tax authorities would be required to complete the transactions
- Provisions are yet to be notified

Direct Tax Considerations - Corporate Tax

3



Overview of Direct Taxes

Fundamentals

- Central subject
- No Group taxation system
- Uniform tax year (April to March)
- Dividend Distribution Tax
- Minimum Alternate Tax
- Royalty/fee for technical services- gross basis taxation
- PE - net basis taxation

| S. No. | Particulars | Rates * (%) |
|--------|---|-------------|
| 1 | Domestic company | 34.608 |
| 2 | Foreign company-branch, project /other PE | 43.26 |
| 3 | Minimum Alternate Tax (MAT) | 21.34 |
| 4 | Dividend Distribution tax (DDT)** | 20.36 |
| 5 | Buy Back tax (BBT) | 23.07 |

* Including all surcharges and cesses; highest slab rates

** DDT to be calculated on grossed up amount

Buyback Tax

- Shareholders are exempt (tax borne by company buying back shares)
- Not linked to availability of accumulated profits
- Distributed income = consideration paid less amount received on issue
- Credit of BBT in home country may not be available

Tax environment – the big picture

MNCs high on radar

- Higher visibility and scrutiny of cross border transactions
- Withholding tax defaults closely audited; prosecution proceedings
- Notices to MNCs on India compliance
- Use of surveys to collate information

Yet, several moves towards a responsive and less adversarial tax regime

- Tax Administrative Reforms Commission set up
- Safe harbour rules introduced
- APAs : pragmatic approach, initial response encouraging
- Lower 15% tax on dividends from foreign companies
- Retrospective amendments not to be made ordinarily
- AAR: Scope for application enhanced and moves for speedy disposals
- Introduction of investment based incentive

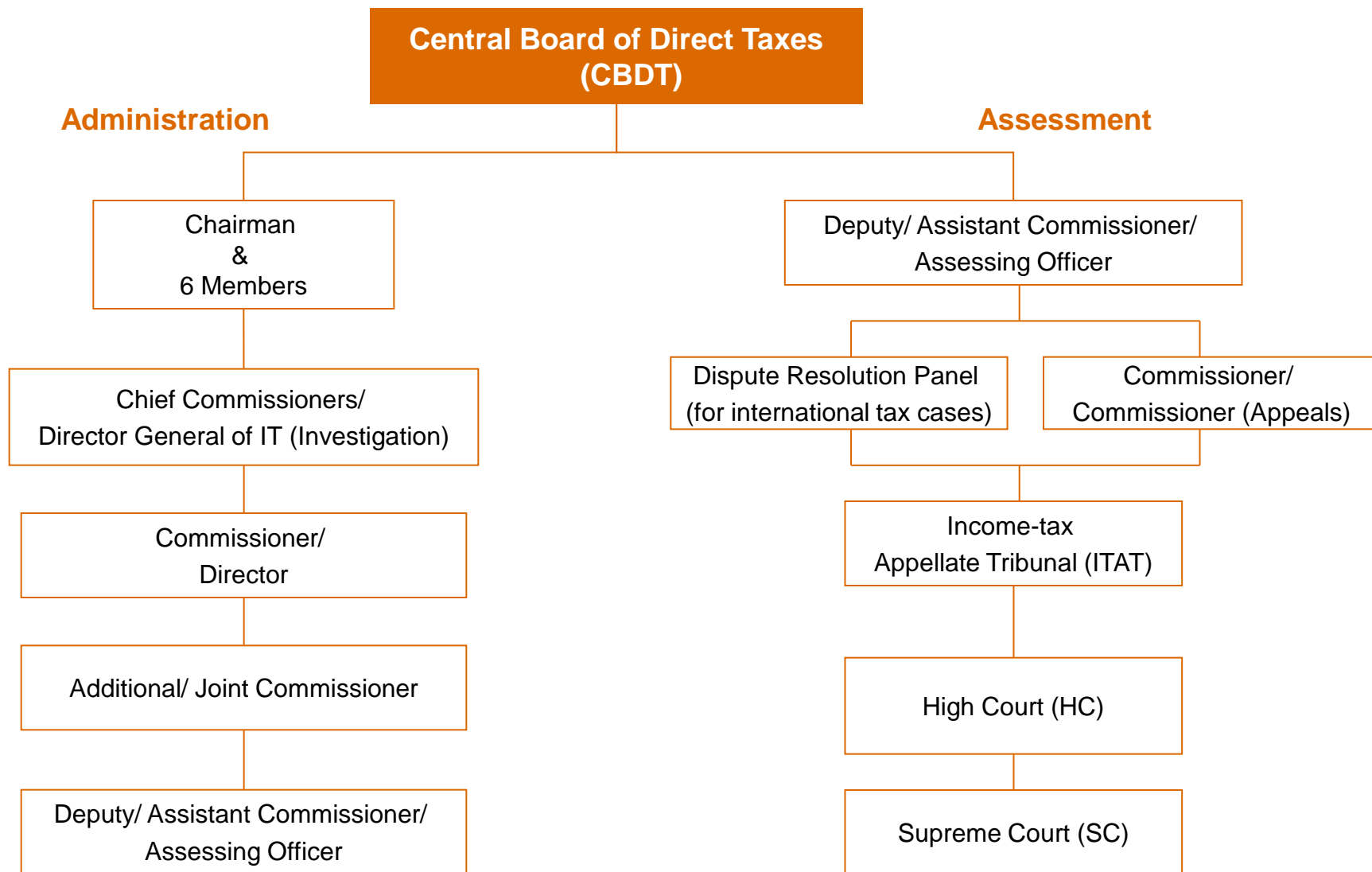
Compliance

- **Permanent Account Number (PAN):** All taxpayers to obtain PAN. Mandatory to furnish PAN where the payments attracts WHT in India. If recipient fails to furnish PAN, tax would be required to be deducted at the rates prescribed or 20 percent whichever is higher.
- **Tax Collection:** Taxes collected through WHT mechanism, advance tax and self assessment tax
- **Due dates:** Due date for furnishing income tax returns
 - Companies and other tax auditees not having any international transactions: 30 September
 - Companies having international transactions: 30 November
 - Others: 31 July
- Tax audit report to be furnished with the return if business receipts exceed INR 10 million
- Accountant's report in respect of international transactions

Transfer pricing environment in India

- TP adjustments in excess of US\$ 38 billion over 9 audit cycles
- More than 3,400 cases audited annually → adjustments in over 50% of cases
- More than 650 cases decided by Tax Tribunals in last 7 years
- Safe harbor rules effective FY 12-13
- Greater focus on intercompany payments/ service arrangement
- High on agenda - royalty payments, management charges closely audited
- Intangibles is a key area of focus:
 - Profits from intangibles should not be divorced from value creation
 - Special measures for transfer of hard-to-value intangibles
- Robust documentation is a necessity

Tax Authorities

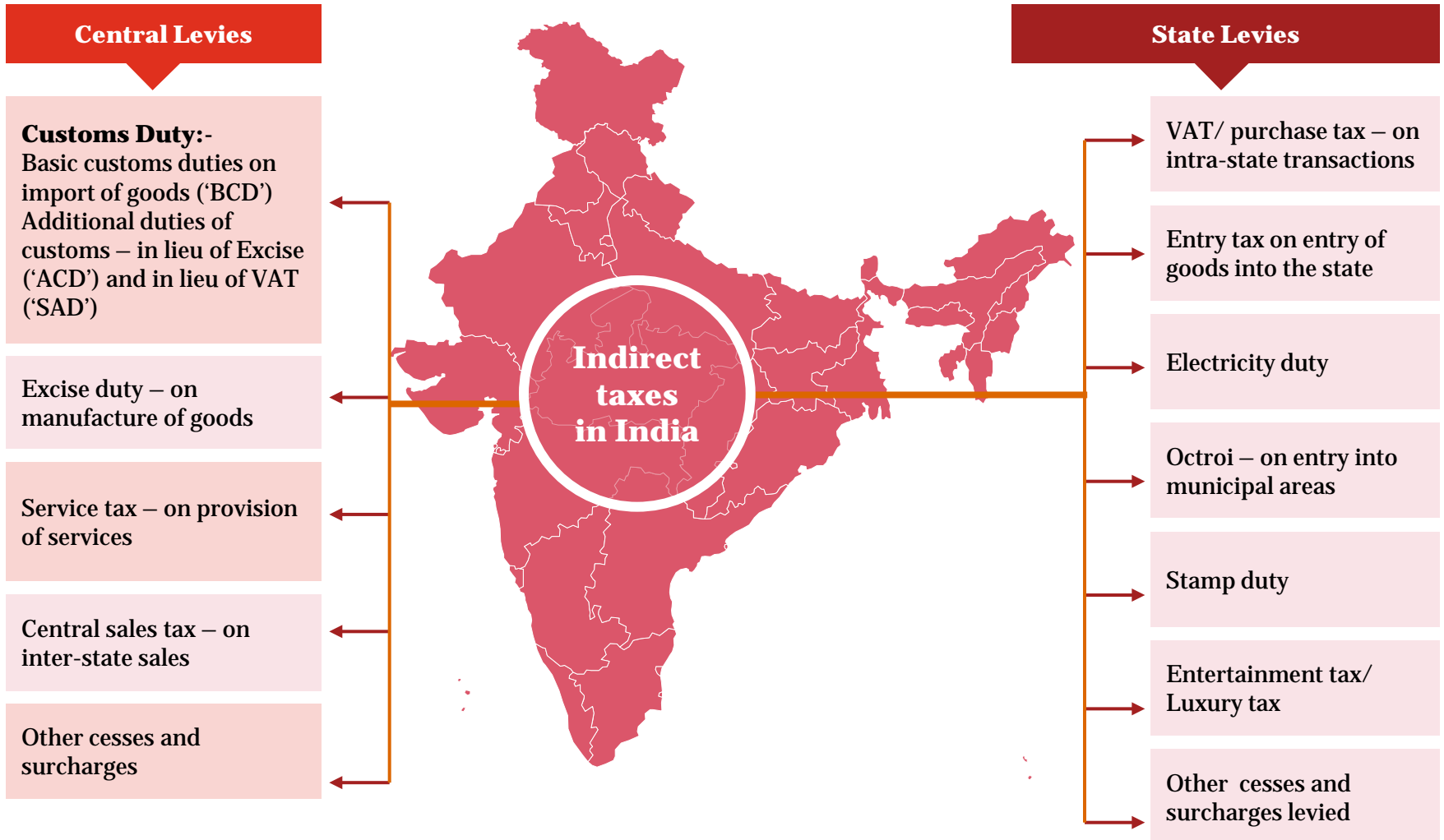


Indirect Tax considerations

4



Overview of Indirect taxes



Goods and Service Tax (GST) proposed

Dual GST

Central Taxes CGST

- Central Excise
- Additional duty of customs
- Service Tax

State Taxes SGST

- VAT
- Purchase tax
- Entertainment tax
- Luxury tax
- Lottery taxes
- State cesses and surcharges
- Entry tax not in lieu of Octroi

Significant delays in introducing GST

Tax Incentives

5



Special Economic Zones

“Area designated by the Government as Customs Territory outside India – duty free enclaves treated as deemed foreign territory for trade operations, duties and tariffs.

Type of entities

- Developer
- Co-developer
- Unit

Type of SEZ's

- Multi-product – 500 Hec
- Multi-Services – 100 Hec
- Sector Specific – 50 Hec
- IT/ITES – Nil (1 mn sq ft)
- Others (food processing, gems & jewelry) – 10 Hec

Unique features

- FDI permitted (as per sectoral caps)
- No Licensing requirements
- Single Window Clearance
- Sub-contracting possible
- No cap on domestic sales
- No export obligations

Benefits

- Developer – 10 years income tax holiday
- Units – 15 year graded income tax holiday for export
- Exemption from Customs duty , excise duty, on import/ procurement on capital goods/ raw materials/ consumables/ etc
- Exemption from CST, local taxes – VAT, entry tax, octroi, electricity duty, cess, stamp duty

Free Trade Agreements

| Country | Import | FTA |
|--------------|---------------------|-----|
| Saudi Arabia | Finished goods | No |
| Singapore | Finished goods | Yes |
| | Raw material/spares | Yes |
| Switzerland | Finished goods | No |
| | Raw material/spares | No |
| Turkey | Finished goods | No |
| USA | Raw material/spares | No |
| | Finished goods | No |
| China | Raw material/spares | Yes |
| Japan | Raw material/spares | Yes |
| Thailand | Finished goods | Yes |
| UK | Finished goods | No |

***Australia-India
FTA to be
finalised soon***

Concessional customs duty rates shall apply for imports from countries with whom India has signed an FTA

Thank You

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