

Indian income-tax - Recent updates

October 2014

Agenda

Income-tax - Certain terminologies

TDS on immovable property

Society Redevelopment - Key tax issues

Cyprus

GAAR

Offshore Transfers

REIT

Transfer Pricing - Issue of shares

Dividend Distribution Tax - Revised mechanism

Income-tax - Certain terminologies

Income-tax - Certain terminologies

Chargeability

- Indian resident - Global income chargeable
- Foreign resident - Restricted to Indian income (Taxation subject to benefits under applicable tax treaties)

Tax withholding (TDS)

- Mechanism for collection of tax by tax authorities directly from the source of income
- Payer is required to deduct tax at applicable rates and deposit with tax authorities

GAAR

Mechanism to curb avoidance of tax in India - Applicable where the main purpose of a transaction or step of a transaction is to avoid tax in India

Transfer Pricing

Tool to ensure that international transactions and certain domestic transactions between related parties are at arms' length (i.e. at a price /value similar to a transaction between two unrelated parties)

TDS on immovable property

TDS on immovable property

Transfer of immovable property by resident – TDS at 1% (effective from 1 June 2013)

Immovable property

- Land (other than agricultural land); or
- Building or part of a building

Threshold limit

Rs. 50 lakhs

Compliances

Form 26 QB

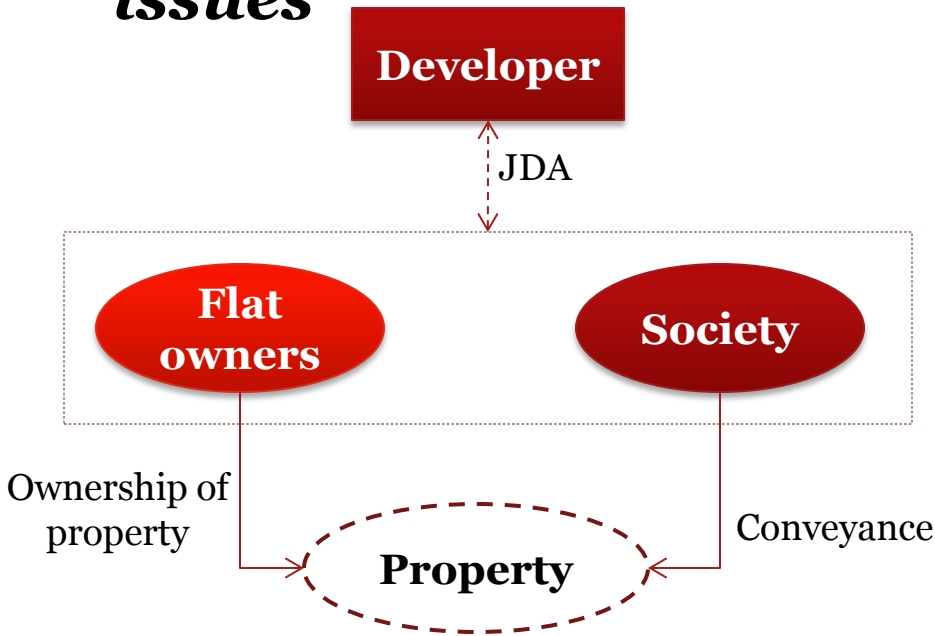
Minimum applicability on stamp duty value?

Issues for consideration

- Bank finance – staggered payment directly by bank to developer
- Cost escalations on staggered payment
- Method of accounting– mismatch of income recognition and TDS
- Transfer by other mechanisms e.g. joint development agreement
- Sales by developers – Applicability?
- Sellers claiming exemption?
- TAN not required

Society Redevelopment

Society Redevelopment- Certain key income-tax issues



Flat owners - Points to consider

- Taxability at time of granting possession of existing property to developer
- Taxation on other receipts (Rent, hardship allowance etc.) on a gross basis (no deduction for payments made)
- Long term capital gains exemption?
 - Purchase of new property necessary within 2 years / construction within 3 years
 - Possession of new property within 2 years?
 - Mandatory holding period of new asset - 3 years (else exemption availed is taxable in year of transfer)

Flat owners - Sample Computation

Particulars	Amount (INR)
Sale consideration (Fair value of new property)	XXX
Less: Indexed cost of acquisition of old property	(XXX)
Less: Expenses on such transfer	(XXX)
Long term capital gains	XXX
Less: Exemption under section 54	(XXX)
Net long term capital gains (if any)	XXX

Cyprus - Recent income-tax issues

Cyprus - Key jurisdiction for Investment in India

Notification of Cyprus as a non-cooperative jurisdiction on 1 November 2013

Key implications:

- **Transfer pricing** - Applicable to all transactions with Cypriot residents
- **Deductibility of expenses** subject to:
 - Authorising CBDT to seek information from Cypriot financial institutions
 - Maintenance and furnishing of prescribed information
- **Source of funds** - explanation for any sum received / credited
- Minimum withholding tax rate - **30%**

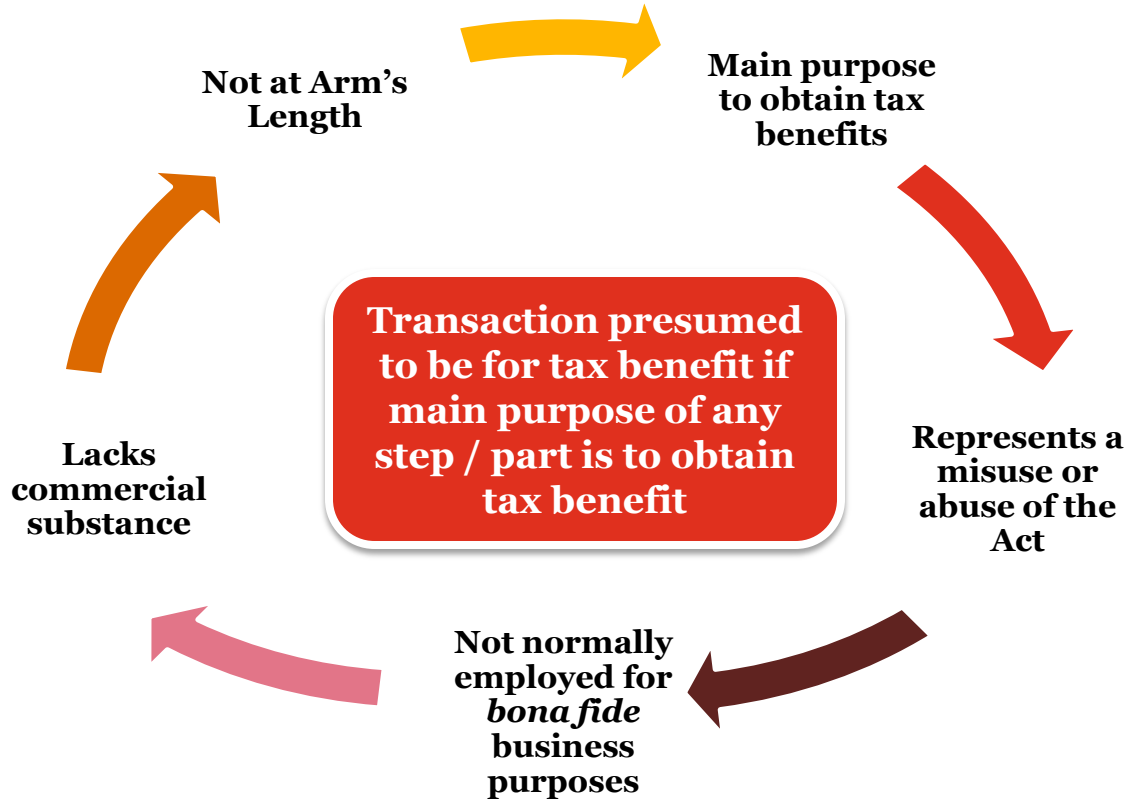
Current status

- Cyprus Government is in direct contact with the Indian Government at the highest levels to address issues
- **Proposed re-negotiation of the Tax Treaty** - Deadlock on inclusion of a clause intended to ensure certain beneficial provisions of the Tax Treaty are available only to genuine investors from Cyprus

GAAR

GAAR

GAAR - Applicability to transactions



In any such case, Indian tax authorities may reallocate income, recharacterise or disregard arrangements

GAAR - Introduction of GAAR rules

Will it be deferred ?

Applicability - From 1 April 2016

Coverage – Only impermissible part of the arrangement

Grandfathering - Investments prior to 30 Aug 2010

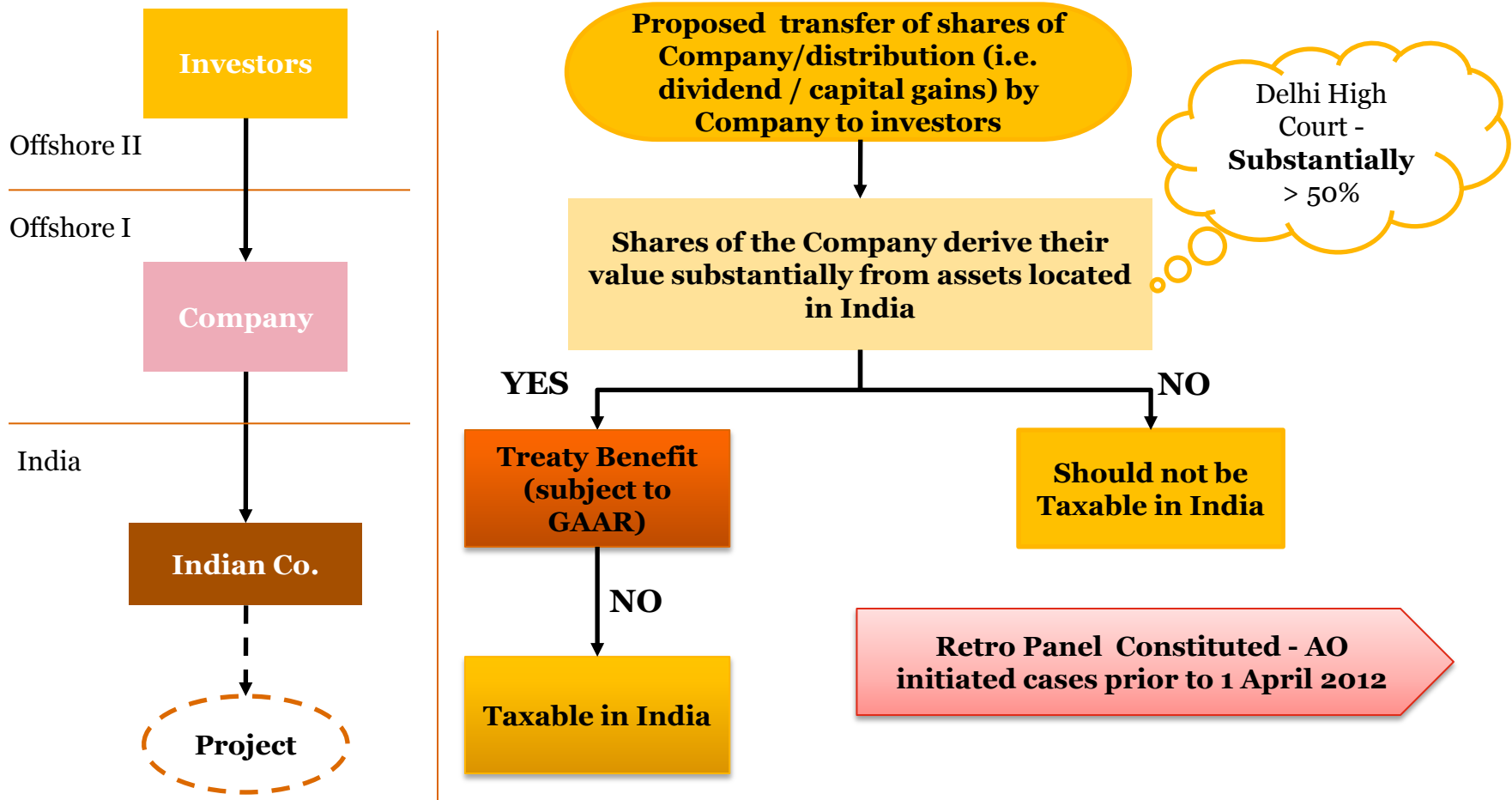
Exempt - Certain specified investments*

Threshold - INR 3 crores

* (A) Non-resident investments in offshore derivative instruments / through FIIs
(B) FIIs not availing treaty benefits

Offshore Transfers

Offshore transfers



Possible Indian withholding tax implications for Company on income distribution to investors

REIT

Why REITs

Transformation of business from asset heavy to asset light model

Business can focus on core expertise – Segregation of operations and infrastructure

New source of equity growth capital, without losing control

Mechanism to recycle assets and realize market value of assets

Perpetual growth capital raised

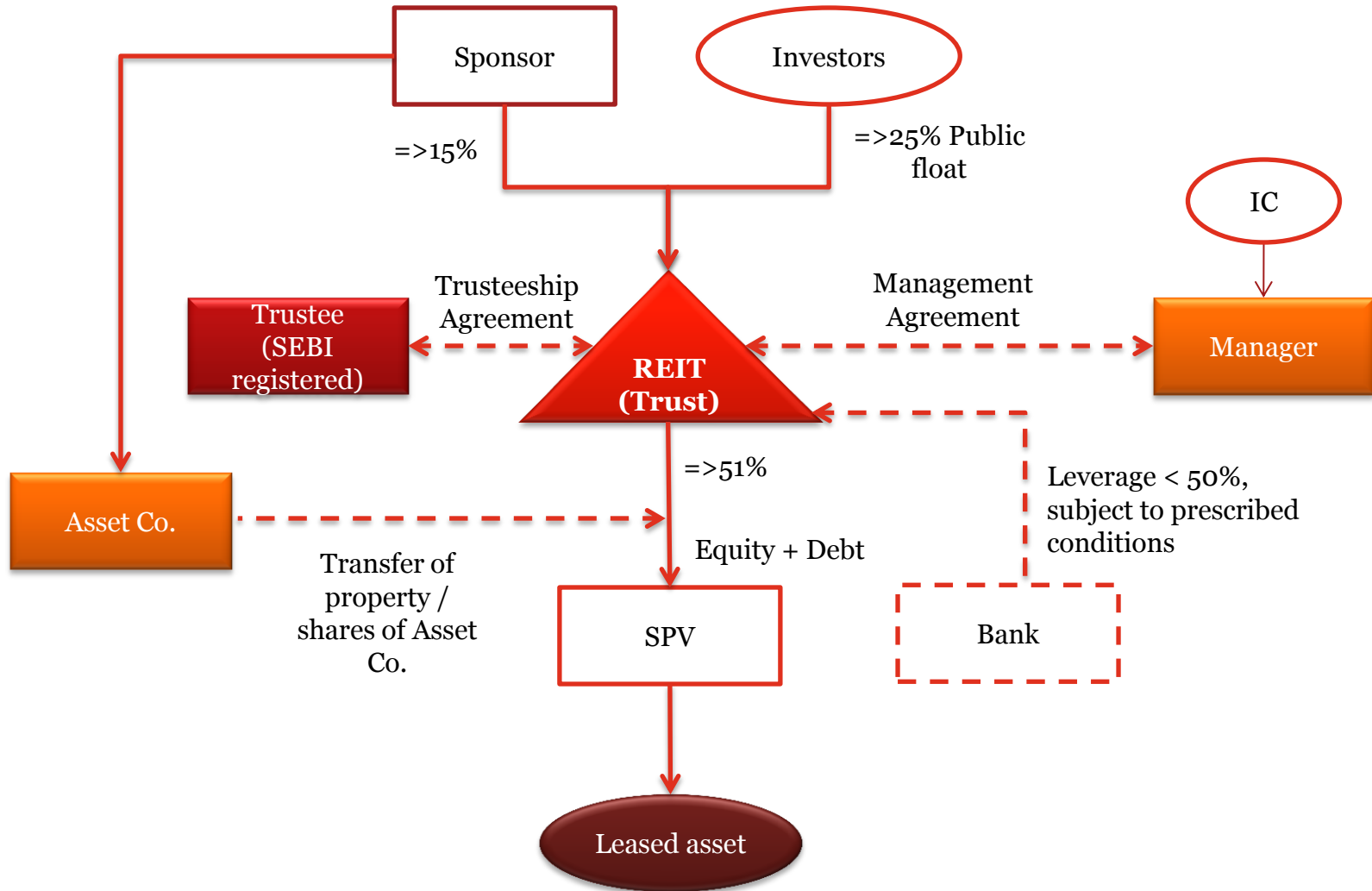
Equity fund raising at low cost

Business continues to control assets

Fund raising vehicle for future exit

Exit option for Foreign Investors

REIT - Typical structure



REIT - Tax Regime

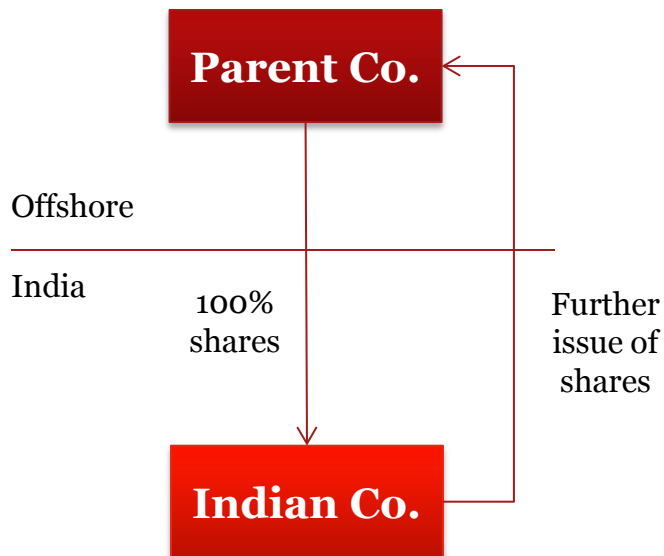
	REIT lifecycle		
	Setup	Income recognition & distribution	Exit
Sponsor	Capital Gains deferral MAT	Dividend – exempt Interest – taxable (Domestic @ 33%, Foreign @ 5%)	Exit of Swap units - taxable
Investor			LTCG exempt STCG taxable
REIT		Tax exempt WHT on Interest	Gains on sale of securities - taxable
Asset SPV		Income Tax / MAT / AMT DDT*	Gains on sale of assets - taxable

*Not applicable to LLPs

Tax efficient foreign investment in levered assets ...

Applicability of transfer pricing - Issue of shares

Applicability of Transfer Pricing - Issue of Shares



- Face value of shares of INR 100 * - Issued at a premium of INR 20 by Indian Co. to Parent Co.
- Based on valuation of Indian Co. by Transfer pricing officer shares were valued at INR 150 per share
- Tax officer sought to tax the shortfall in premium of INR 30 per share (INR 50- INR 20) as income in hands of Indian Co.
- Shortfall in premium was also deemed to be loan granted by Indian Co. to Parent Co.
- Interest at 13.5% p.a on deemed loan was held to be taxable as income in hands of Indian Co.

*All numbers are indicative

Applicability of Transfer Pricing - Issue of Shares

Bombay High Court decision

Writ petition filed by Indian Co.

Key issue

Issue of shares - Shortfall in premium. Can transfer pricing provisions apply?

HC Decision - Key points

- Nature of receipt on issue of shares - **Capital receipt**
- Capital receipt **cannot be regarded as “income”** - Unless specifically provided for
- Transfer pricing - Not applicable to capital receipt where no income arises

Since shortfall in share premium cannot be treated as income - The same cannot be brought to tax under Transfer pricing provisions

Dividend distribution tax - Revised mechanism

Dividend Distribution Tax - Revised mechanism

Previous computation mechanism

Particulars	Amount
Dividend distributed [INR]	100
Dividend distribution tax at 16.995% on dividend distributed [INR]	16.995
Effective rate of dividend distribution tax	16.995%

Revised computation mechanism

Particulars	Amount
Dividend distributed [INR]	100
Grossed up for DDT at 15% (B) $(100 * 100 / 85)$ [INR]	117.65
Dividend distribution tax at 16.995% of (B) [INR]	19.99
Effective rate of dividend distribution tax	19.99%

Net increase in effective rate of DDT ~3%

Thank You

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