



Global Conference, Paris

>Partnering for client success

❖ QUALITY TAX ADVICE, GLOBALLY

27 – 29 April 2011

Plenary I: Changing Times, Changing Tax Environment

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❖ www.taxand.com


Introduction



Less is
more



Show me
the money



Private taxes,
public morality

Introduction

- ❖ Response to global meltdown
- ❖ Cut costs
- ❖ Increase tax revenue
- ❖ Reduce debt



India Tax Policy Mantra

Financial years	Rate of tax %		Average GDP growth	Average corporate tax collections
	Domestic Co	Foreign Co	%	USD Billions
1991-92	45	65	1.4*	4 ***
1995-96 to 1997-98	40	55	6.5*	4
1998-99 to 2002-03	35	48	5.1*	8
2003-04 to 2005-06	35	40	8.5**	18
2006-07 to 2009-10	30	40	8.4**	44



India Tax Policy: Collect More

- ❖ Structural shift in tax collection
- ❖ Specific anti avoidance measures
- ❖ Technology – almost impossible to expand tax base in a country of 1.2 billion people!
- ❖ Phasing tax holidays



India Tax Holiday: Impact Analysis

Tax holiday	Intro	Expiry	Trends
Export oriented undertakings	Apr 1 1989	Mar 31 2011	Export growth 1991-92: (-) 1.5% 2010-11: 29.5%
Software and IT Industry – SEZ units	Apr 1 1981	Mar 31 2014	Sector revenues as a proportion of GDP 1997-98: 1.2% 2008-09: 5.8%
SEZ developers	Feb 10 2006	Mar 31 2012	Export turnover of INR 2,20,711,39 Mn; 130 SEZs in last 5 years Growth rate: 121.4%
Power	Apr 1 1991	Mar 31 2012	Power generation increased 191.2% in 2008-09 compared to 1990-91
Backward areas	Apr 1 2004	Mar 31 2012	Rise in state domestic product (2008-09 compared to 2004-05) Assam – 93.1% Meghalaya – 75.3% Manipur – 53.2%

US Tax Legislation Assessment: Strategic Planning



35%

Tax
Rate

25-28%

Key tax proposals

- ❖ Lower corporate and individual tax rates
- ❖ Broaden tax base
- ❖ Move to territorial tax regime
- ❖ Eliminate tax “expenditure” items
- ❖ Management and control provisions of foreign corporations
- ❖ Possible repatriation incentive
- ❖ Tax treaty limitations

Broaden Tax Base

Eliminate Oil &
Gas Preferences

Repeal LIFO

Changes to R&D
and Section 199

Limitations on FTC

IP Transfer
Provisions

Eliminate Other
Tax Expenditure
Items

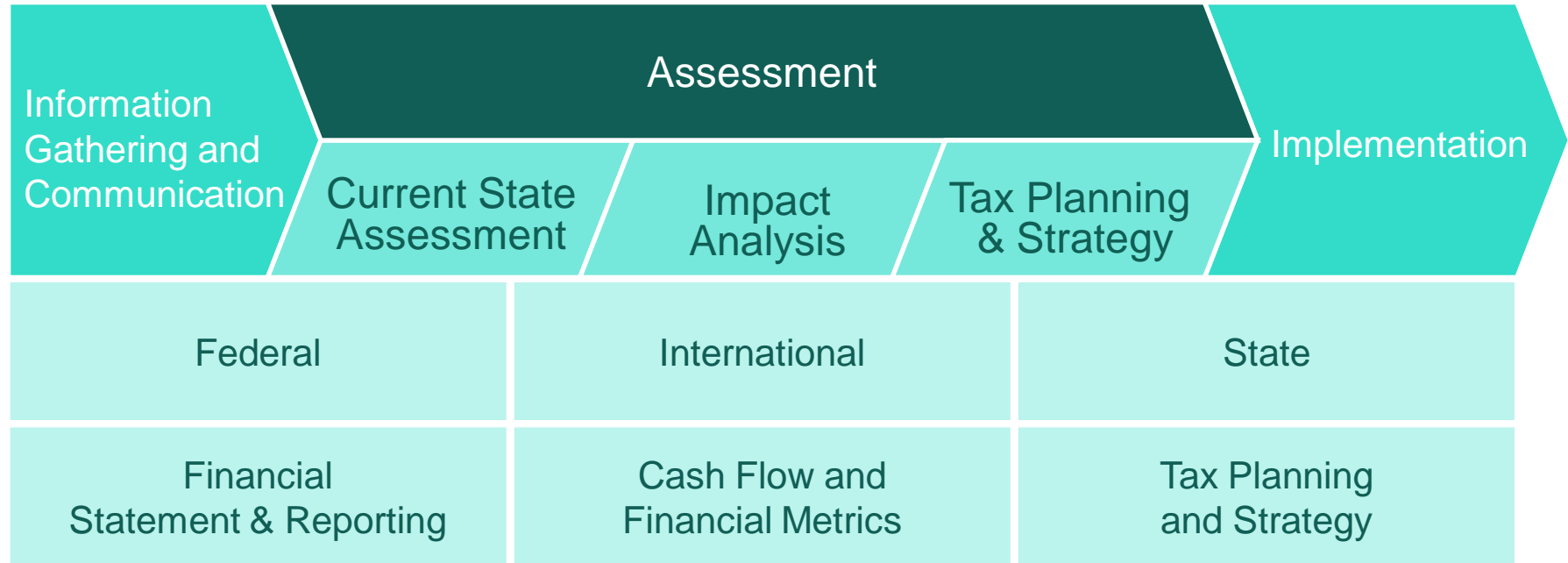
Interest
Expense
Elimination

VAT?



US Tax Legislation Assessment: Strategic Planning

Multi-Disciplinary Approach



EU Stock Incentive Plans: Changes

- ❖ Lowering corporate rates
- ❖ Increasing personal tax rates

France
40% to 41%

Spain
43% to 45%

UK
40% to 50%

- ❖ Rate increases for share schemes

France
8% for employer and
14% for employee

EU Stock Incentive Plans: What You Can Do

Shift from stock options schemes to performance shares, restricted units, to comply with new deferral obligations

- ❖ What is your peer group doing?
- ❖ Energy
- ❖ Financial
- ❖ Use of key performance indicators

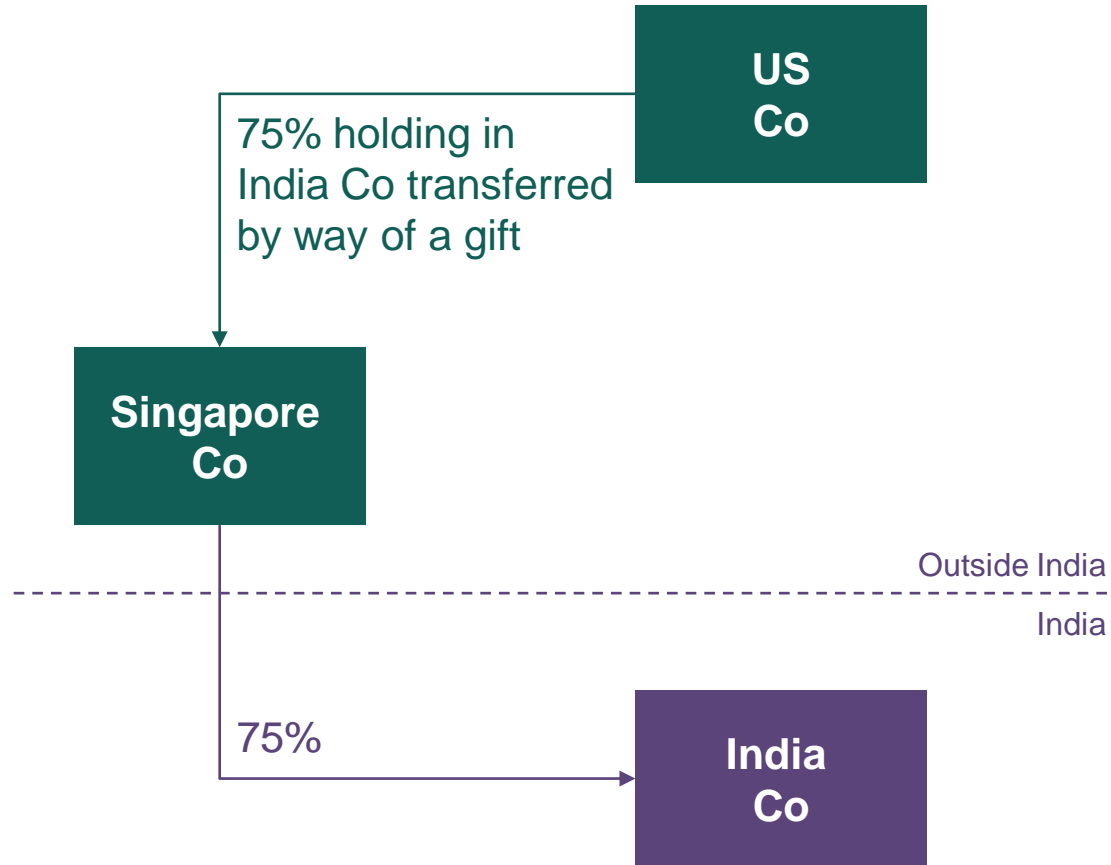
•• Show me
the money

Dealing With Increased Tax Risk

Tax risks minimised by

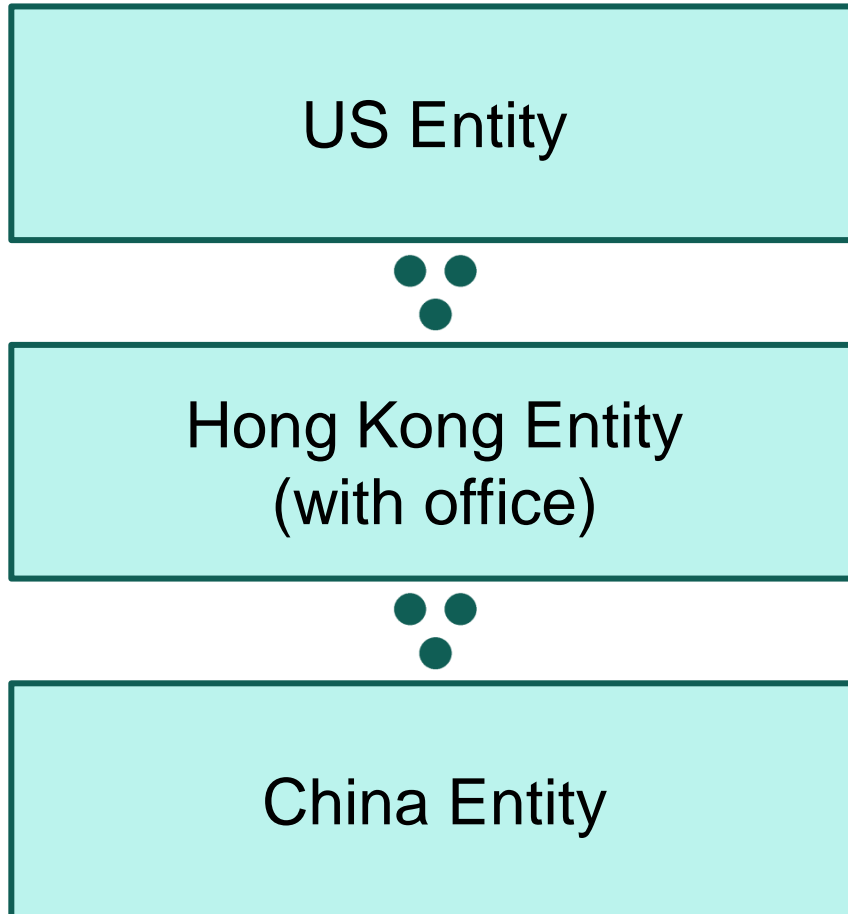
- ❖ Advance Rulings (AAR)
- ❖ Legal opinions to avoid penalty
- ❖ Indemnity bonds / tax insurance during transactions
- ❖ Tax orders upfront from tax authorities
- ❖ Detailed documentation
- ❖ Robust change in law clause

Example



Whether gift of shares of an Indian company, outside India, liable to capital gains tax in India has been a matter of recent tax controversy

China Holding Structure: Examples



- Substance
- Beneficial ownership
- Goldman Sachs Shuanghui case

FATCA Compliance: How To Prepare

“Foreign Account Tax Compliance Act” became law on March 18, 2010

- ❖ **Goal:** increase transparency for US taxpayers investing abroad
- ❖ **Objective:** identify US taxpayers evading US tax on payments originating from US
- ❖ **Withholding:** achieve goal through new 30% withholding tax
- ❖ **Risk of collateral damage:** potential impact to non-financial multinational companies



FATCA Compliance: How To Prepare

Potential multinational company structures impacted

- ❖ Royalty / licensing IP
- ❖ Finance centers: payments to / payments out
- ❖ Holding companies
- ❖ Related party payments
- ❖ Treasury payments
- ❖ Payments to foreign persons



FATCA Compliance: How To Prepare

Impacted areas

• Tax Department

• IT

• Operations

Prepare by

- Educating senior management
- Identify impacted group companies
- Identify impacted business divisions
- Identify impacted payment flows
- Determine whether IT can handle FATCA requirements
- Identify legal issues by jurisdiction
- Monitor IRS guidance



•• Private taxes,
public morality

Private Taxes, Public Morality

- ❖ Tax planning and reputational risk

- ❖ Bank bonuses



The Media Effect

**ExxonMobil uses Spain as a tax shelter,
pays zero Multinational giant has just
one employee in the country**

The money is really net surplus; the company did not pay a single euro of taxes on the gains.

**Citi to be fined over transactions
amid US offshore tax crackdown**

**Action Aid report
slams companies
for avoiding tax**

A report from a UK development charity says that the billions of dollars 14 US and UK companies failed to pay in tax over the last five years could have been used to further the UN's Millennium Development Goals (MDG)

Companies face the people's fury over taxes



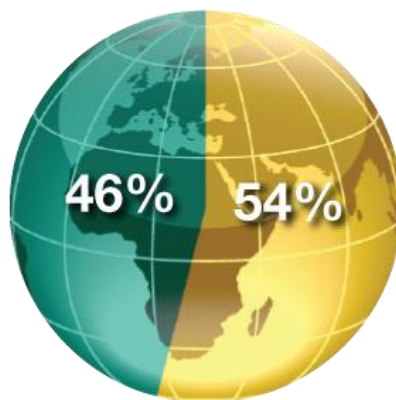
Planning & Reputation: Regional Variations

- ❖ Asia more concerned that tax planning activity has detrimental impact on company reputation

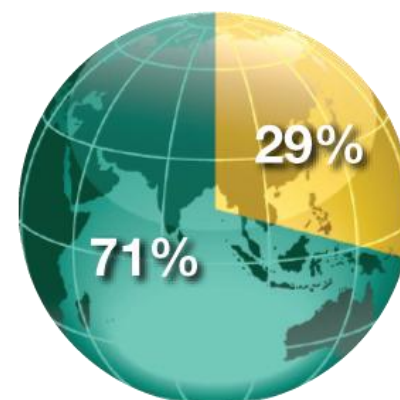
Americas



Europe



Asia



● Yes ● No

Taxand Global Survey 2011 – Taxand The CFO

PR Strategies for Tax

Denial

Key questions

- ❖ Who's the fire fighter?
- ❖ Who do we fire?

Reactive

- ❖ Articulate tax policy
- ❖ Inventory of tax contributions
- ❖ Identify spokesperson
- ❖ Identify scenarios
- ❖ Agree message and channels

Proactive

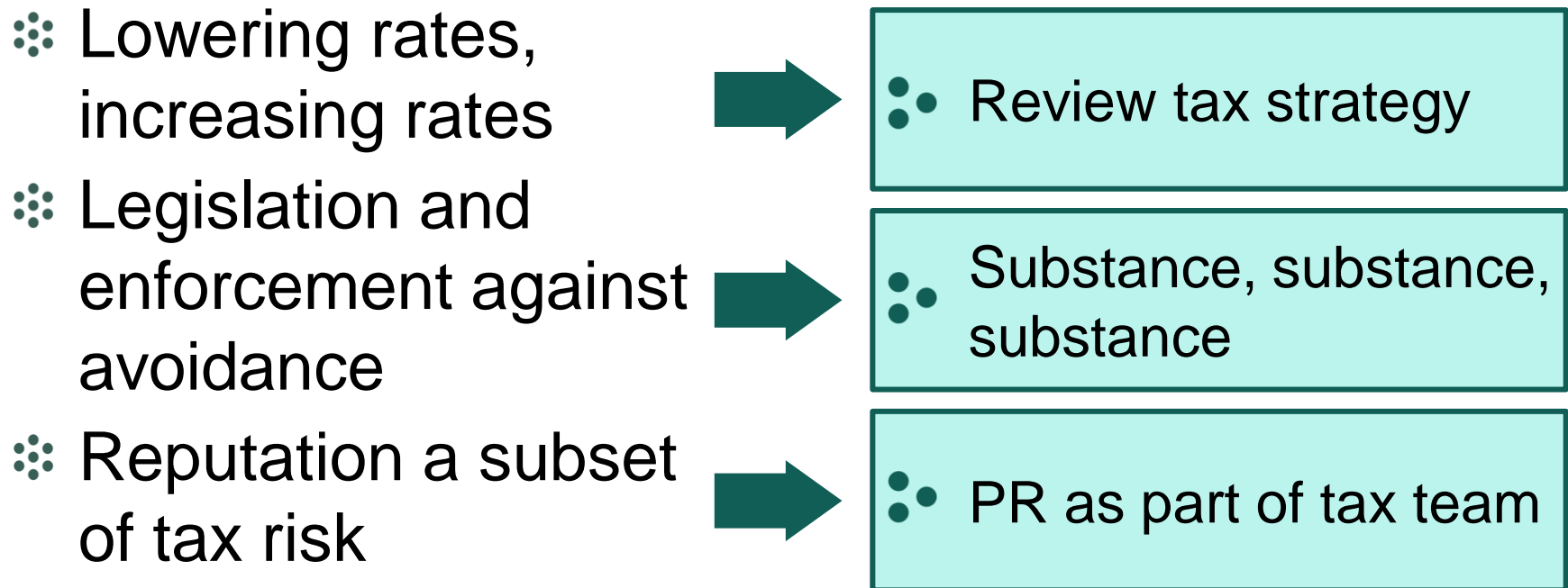
- ❖ Articulate tax policy
- ❖ Inventory of tax contributions
- ❖ Integrate positive communication in overall PR strategy
- ❖ Prepare reactive tactics



“Politicised” Taxation of Individual Compensation

- ❖ Special focus on bank bonuses – penalty taxes up to 100%
- ❖ “Clawback of bonuses for subsequent bad performance”

Environment where taxation is increased and « moralised »



Speaker Details

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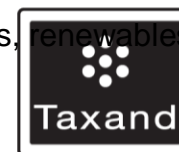
Keith leads Taxand's global real estate tax team. A tax specialist for 20 years, Keith is based in Taxand Luxembourg where he is Managing Partner of Atoz. Keith has advised many global groups on the design and implementation of tax strategies and has been instrumental in shaping legislative change in coordination with industry groups. Previously Keith has held senior positions within Ernst & Young and Andersen. As a partner of Ernst & Young, he was head of the real estate industry for Continental Western Europe, as well as the tax leader for the European asset management team. Within Andersen, he was responsible for the asset management practice in Europe. He sits on a number of key international bodies including the OECD's collective investment vehicle ICG.



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Ernesto R. ("Ernie") Perez is based in Taxand US where he is a Managing Director with Alvarez & Marsal Taxand, LLC. He serves as National Practice Leader of the firm's Transaction Tax Practice. With more than 14 years of experience, Ernie has specialized in advising financial and strategic buyers and sellers on tax aspects of mergers and acquisitions, including reorganizations, spin-offs, financings, repatriations and bankruptcies. Ernie has advised clients on domestic and cross-border transactions across a wide range of industries such as consumer markets, telecommunications, financial services, real estate, industrial products, leisure and distribution.



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Jamie is the global leader of Taxand's compensation, equity and employment tax team. Jamie is Taxand Spain and is in charge of the Compensation and Benefits practice area at Garrigues Human Capital Services. He has advised numerous Spanish and international companies from a range of industries on the design and implementation of compensation schemes for executives, managers, and employees. Jamie has a master's degree in Taxation and Human Resources and is a lecturer at Centro de Estudios Financieros. He is also the co-author of the book, Factbook – Compensation and a contributor to The Reform of the Personal Income Tax Law.



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Kevin Wang is the key Chinese member of Taxand's global compensation, equity and employment tax team. Kevin is based in Taxand China where he is a corporate tax partner of Hendersen Consulting, China's leading independent firm of tax advisors. Kevin has 14 years' experience in local and international tax. Prior to joining China's Taxand practice, Hendersen Consulting, as partner in 2005, Kevin worked for a Big 4 firm in Shanghai. He has become an expert in all stages of doing business in China: planning; setting up various business vehicles; advising clients on PRC corporate tax, transfer pricing, customs, labour, foreign exchange and regulatory issues; assisting in M&A transactions; and advising on the disposal of China investment.



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