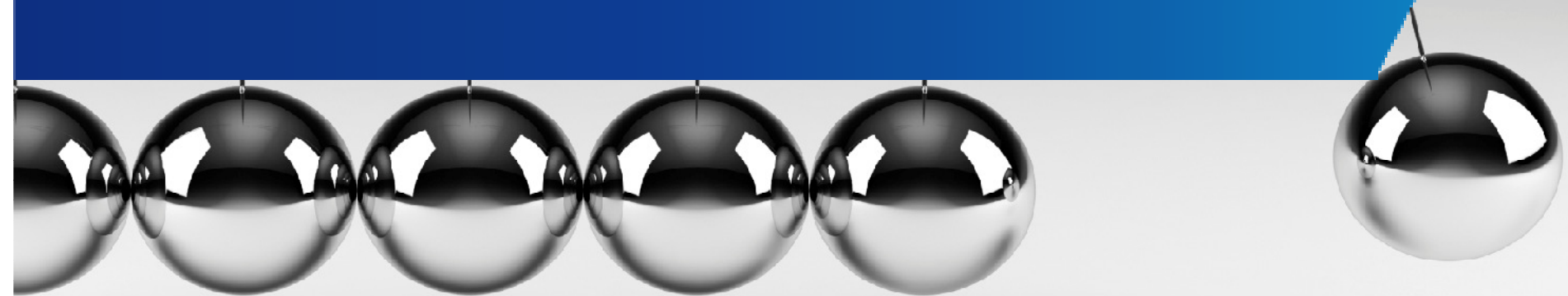


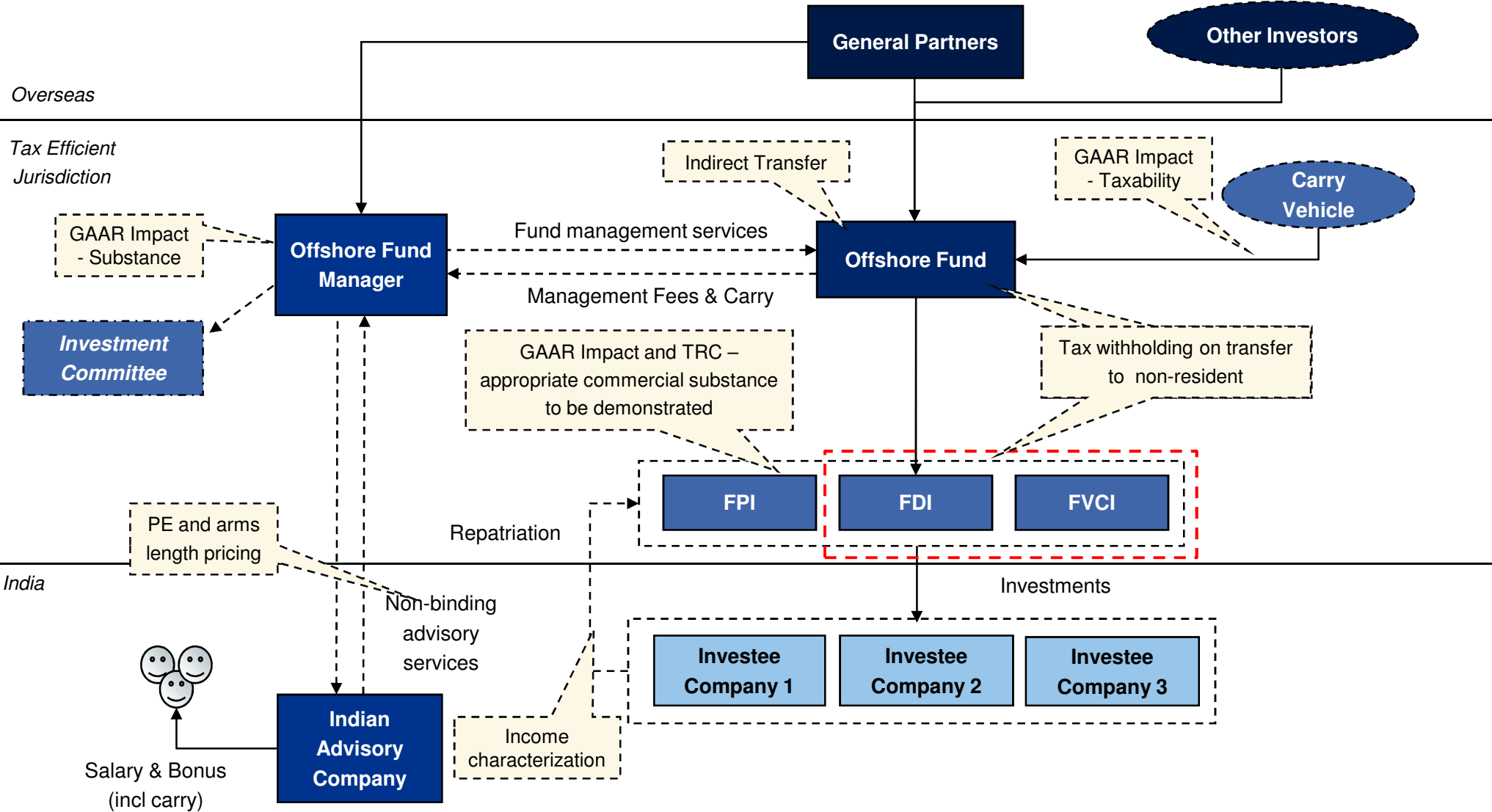
Seminar on Private Equity – Challenges and Opportunities

August 2014



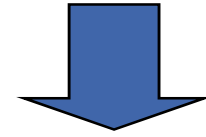
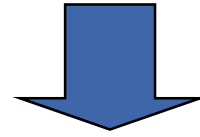
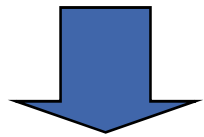
Offshore Fund Structuring - Key Aspects

Typical Offshore Fund Structure



Key Aspects for Consideration in an Offshore Fund Structure

Offshore Fund Structuring – Key Tax and Regulatory Aspects



Jurisdiction for establishing Fund / AMC

Exit strategies

Regulatory arbitrage and efficiency

Co-investment vs. Unified

Tax Residency / PE

'Carry' / 'Management Fee' Sharing Reward planning for Deal team

Tax efficiency on profit repatriation

Ownership of India Advisory Company and entities

Need for India Advisory Company / LLP

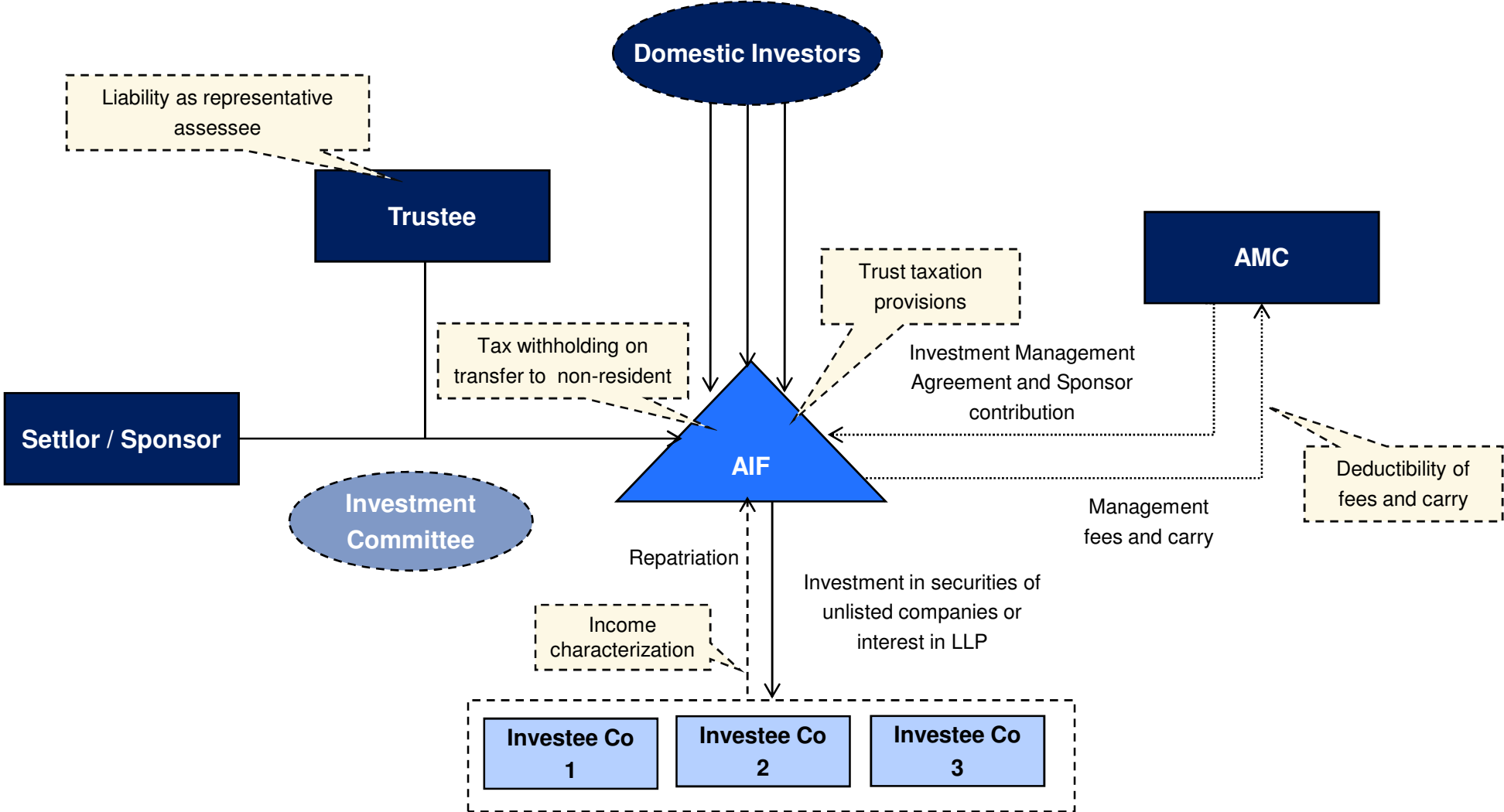
Regulatory approvals

Revenue authorities approach

Interplay between various entities

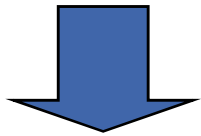
Domestic Fund Structuring - Key Aspects

Typical Domestic Fund Structure



Key Aspects for Consideration in a Domestic Fund Structure

Domestic Fund Structuring – Key Tax and Regulatory Aspects

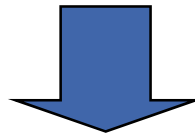


**Constitution of the Fund –
Trust / LLP**

**Business Income v Capital
gains**

**In case of Trust – Determinate
Status**

**Deferral of taxability /
withholding**

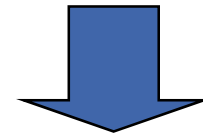


**Constitution of the Manager –
Company / LLP**

Deductibility of expenses

**In case of Trust –
Permissibility to do
downstream LLPs**

Reporting to investors



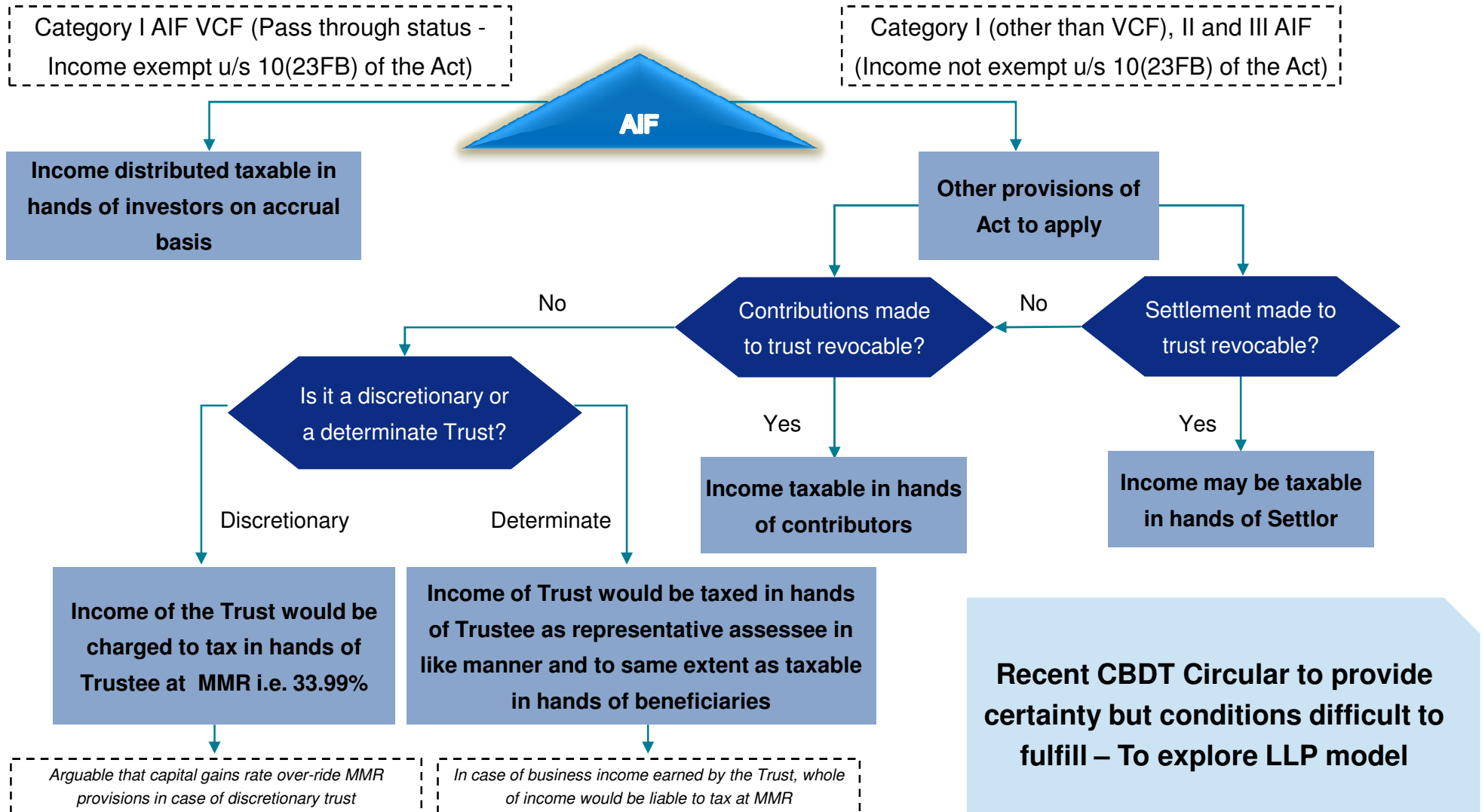
**Carry structure for Manager
employees**

**Differential fee / carry
structures**

**Companies Act – Deposit
regulations**

**Investment in ‘Associates’ –
Prior investor approval**

AIF Tax Considerations – Trust Structure



Key Tax Developments impacting Private Equity

Key Tax Developments impacting Private Equity

Finance Act (No. 2), 2014

- Period of holding to qualify as LTCA increased from 12 to 36 months for unlisted securities
- Income of FIIs / FPIs from transfer of securities to be characterized as capital gains
- DDT to be calculated with reference to the gross amount of distributable dividends
- Advanced Pricing Mechanism introduced to bring certainty on transfer pricing matters
- No roll-back of provisions on taxation of indirect transfers
 - Fresh cases on indirect transfers to be scrutinized by a High Level Committee to be constituted by the CBDT before any action to be taken

Transfer Pricing

- Shell / Vodafone controversy – Issue of shares at discount
- Issue of shares at huge premium subject to intense scrutiny
- Advanced Pricing Mechanism introduced to bring certainty on transfer pricing matters
- Finance Act (No.2), 2014 - Roll back mechanism provided in APA - terms of APA can be applied for future five years as well as preceding four years

Others

- Zaheer Mauritius – Gains arising on sale of equity shares and CCDs not taxable as interest income
- Recent CBDT Circular clarifying tax treatment in case of AIFs
- Domestic Funds are being treated as 'Association of Persons' by Tax Authorities
- Several notices served for non filing of Return by Foreign Companies holding PAN
- Disallowance of interest on Inter Company Loans under 14A of the Act

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