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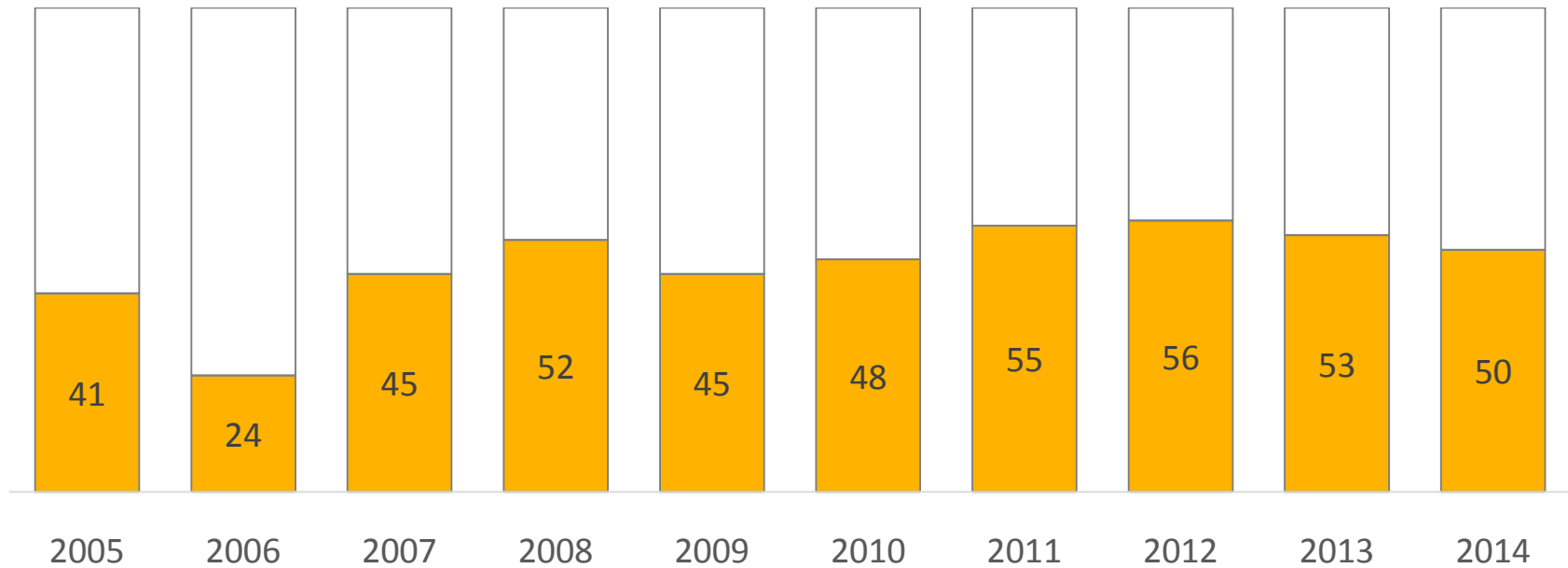
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# BEPS and Indian Tax Practice

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# India: Trade in goods and services as a percentage of GDP

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Source: World Development Indicators, World Bank

## India: FDI Inflows

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	2012	2013	2014
FDI Inflows	USD 24 billion	USD 28 billion	USD 34 billion
World Ranking	15	14	9

Source: World Investment Reports, UNCTAD

# India: Corporation Tax, Tax from International Transactions

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In 2012

- India's Corporate Tax to GDP ratio: ~ **3.5 per cent**
- OECD Average Corporate Tax to GDP ratio: ~ **2.9 per cent**

Between 2010-11 and 2014-15

- Collections from International Tax Charges as %age of Corporation Tax : ~ **8 per cent**
- Annual Increase in Transfer Pricing adjustments : ~ **40 per cent**

Source: MoF Annual Reports

- Interaction of domestic tax rules/treaties leading to double non-taxation
- Arrangements that shift profits away from the jurisdiction of the economic activity leading to no or low taxation
- MNEs - globally integrated - represent large proportion of global GDP and intra-firm trade - operate matrix management organisation structures - have integrated supply chains- can centralise functions at regional/global level - enabled by growth of service economy and digital services to relocate physical activities away from customer base – use sophisticated tax planning arrangements to leverage arbitrage opportunities which result in no or low taxation and greatly minimise their tax burden

- Tax fairness issues
- Government revenues impacted
- Other taxpayers impacted by higher tax burden
- Reputational risks to MNEs from perceptions about low effective tax rates
- Businesses operating in domestic markets put to competitive tax disadvantage

- Preventing Treaty Abuse [Action 6]
- Strengthening Permanent Establishment (PE) Rules [ Action 7]
- Strengthening the Transfer Pricing Regime [ Actions 8-10,13]
- Making Dispute Resolution more effective [Action 14]
- CFC , Thin Capitalisation and Taxing the Digital Economy [ Actions 3,4,1]
- Others [ Actions 2,5,11,12,15]



- A statement in tax treaties that these intend to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance or treaty shopping
- Specific anti-abuse ( Limitation on Benefits-LoB ) Rule in tax treaties
- Principal Purpose of Transaction ( PPT ) Rule
- GAAR in India's domestic law is applicable from 2017

***Need to re-calibrate the evaluation of situations/arrangements involving the non-taxation of incomes across jurisdictions***

## Strengthening Permanent Establishment Rules [ Action 7 ]

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- Review business models in light of restrictions in the exceptions to PE status
  - Scope of Preparatory or Auxiliary activities narrowed
  - Rule to counter fragmentation of integrated business into several smaller operations
  - Scope of ‘independent agent’ and ‘commissionaire’ arrangements narrowed
- Attribution of Profits to PEs – further guidance awaited

***More instances of double taxation owing to characterization as PE and attribution of profits to the PE***

## Strengthening the Transfer Pricing Regime [Actions 8-10]

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- Intangibles - Legal ownership not an entitlement for allocating return from that intangible
- Capital funding - “Cash Box” entity to be allocated profit based on the risks it takes up
- Allocation of Profit to the most important economic activities in the value chain and not on contractual arrangements

## Strengthening the Transfer Pricing Regime [Action 13 ]

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- Country by Country report to be filed by large MNEs
- Master File with high level information regarding global business operations and TP policies to be filed with tax administration
- Local file with detailed transaction/ transfer pricing documentation to be filed with individual tax administrations

***More detailed and holistic analysis of the MNEs “Value Chain” required***

***More instances of double taxation owing to transfer pricing adjustments***

## Making Dispute Resolution more effective [Action 14]

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- Mutual Agreement Procedure ( MAP) under tax treaties for eliminating double taxation to be strengthened by
  - implementing **minimum standards** on dispute resolution under MAP
  - establishing a **monitoring mechanism** to ensure that these standards are effectively met
- Comprehensive MAP process to be included in tax treaties - MAP access for transfer pricing cases
- MAP access to disputes regarding treaty anti-abuse provisions/ conflict between domestic anti-abuse provisions and treaty
- Commit to resolve MAP cases within 24 months
- Become members of the Forum on Tax Administration (FTA) MAP Forum

## Making Dispute Resolution more effective [Action 14]

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- Timely and complete reporting of MAP statistics
- Peer review of compliance with the minimum standard through the MAP Forum-first reviews by end 2017
- Transparency regarding country positions vis-à-vis MAP arbitration
- Publish and disseminate rules/guidelines/procedures regarding MAP
- Country MAP profiles on a shared public platform in a common template
- MAP related staff to have sufficient authority to resolve MAP cases
- Performance of MAP functions not to be measured on the basis of quantum of audit adjustment/tax revenue

## Making Dispute Resolution more effective [Action 14]

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- Adequate personnel, funding and training for MAP staff
- Audit settlements to not preclude access to MAP
- Bilateral APAs to have 'roll back' provisions
- Tax payer allowed to request for MAP assistance to competent authority of either country
- Guidance on the specific information and documentation required to be submitted for MAP assistance - MAP access not to be limited on the ground that taxpayer has provided insufficient information

## Making Dispute Resolution more effective [Action 14]

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- MAP agreement should be implemented by a country irrespective of domestic law time limits - (in the absence of this) by agree to limit the time period in which makes an Article 7 ( PE )attribution or Article 9 ( TP) adjustment is made

***Better access and timely outcomes from Mutual Agreement Procedure to eliminate the double taxation of incomes***



# CFC, Thin Capitalisation and Taxing the Digital Economy [ Actions 3,4,1] & Others [ Actions 2,5,11,12,15]

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- CFC Rules, Thin Capitalisation Rules and Taxing the Digital Economy- Pointers to the Future
- Other Action Points- Multilateral Instrument to Modify Bilateral Tax Treaties in 2016

***The basis of the current international tax treaty regime is to avoid double taxation - the focus should remain on this while ironing out the flaws and eliminating the gaps***

# THANK YOU

Contact Details:

Ashutosh Dikshit

Email: [ashutosh.dikshit@bmradvisors.com](mailto:ashutosh.dikshit@bmradvisors.com)