



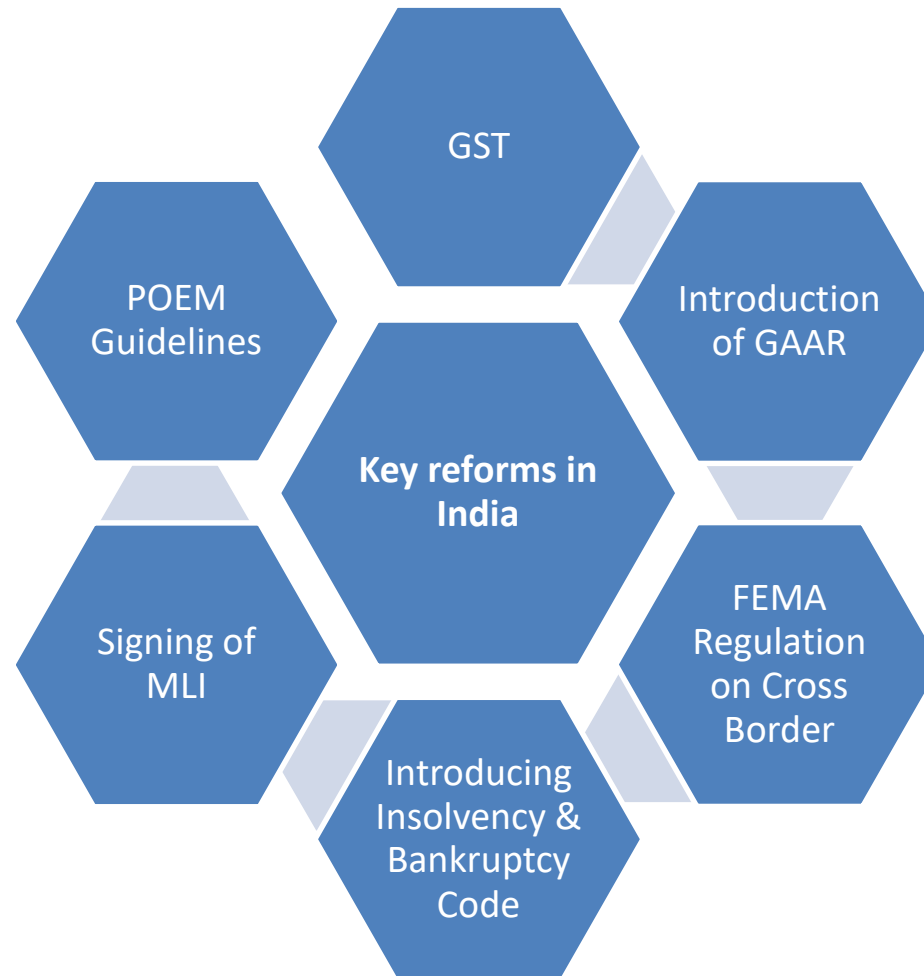
TRANSACTION  
SQUARE



# Tax Trends in Mergers & Acquisitions

*December 07, 2018*

# Reforms in India



Progressive Reforms and Alignment to Global Best Practices

# The Deal Street

Walmart completes acquisition of majority stake in Flipkart for \$16 bn

**Jet Airways may cede reins to Eithad, puts Tatas' proposal on back burner**

Ajanta Pharma set to amalgamate with Gabs Investment

Arcelor Mittal, Numetal must clear dues in two weeks to be eligible to bid for Essar Steel: Supreme Court

Government okays plan to halve Air India's Rs 55,000 Cr debt

With \$3.4B cash bid, Unilever may bag GSK's nutrition business

# Emerging Issues & Trends

Walmart – Flipkart Deal

IT Department issues income tax notice to Overseas sellers following notices sent to Mr. Sachin and Binny Bansal

Ajanta Pharma & Gabs Investment Deal

NCLT smell tests GAAR ! Rejects Ajanta Pharma's scheme on grounds of tax avoidance

Essar Steel – Arcelor Mittal, Numetal

No back door entry for Promoters under section 29A of IBC, 2016

Air India

Revival plan of Government by transfer of working capital debt of Air India into another SPV

GSK - Unilever

Purchase of Horlicks and other GSK healthcare assets in an all cash deal for 72% stake which will trigger open offer under SEBI, which may be followed by merger

Jet Airways - Ethiad

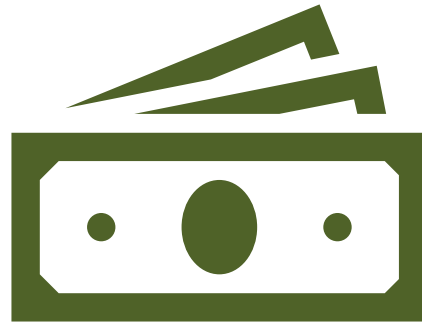
CCI approval shall be required to avoid abuse of dominant position





## **Surgical Strike on NCLT Schemes : Challenging the economic substance and presupposition of tax avoidance?**

Future benefits (realization of which is uncertain) being targeted



## **Reorganizations involving strategic partnerships, Asset / Business Transfers (e.g., Slump Sale, Itemized Sale): Internal as well as Third Party**

Genuine third party transactions in jeopardy due to existing anti-abuse provisions

Time to extend tax exemptions to internal reorganizations to reduce disputes?



## **Structure migration in sync with global business environment (e.g., conversion of Company into LLP etc.)**

Lower threshold limits for providing exemption is like 'to give and not to give'

Reorganization with an intent to reap benefits of a new structure - a case for GAAR even when it is an internal reorganization?

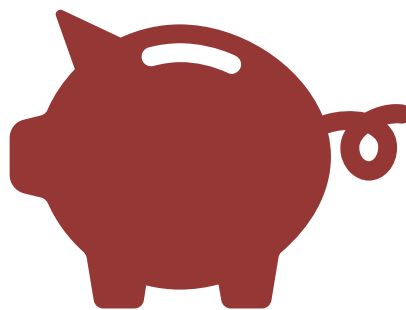


## Employee Compensation Structuring

Car lease, reimbursements  
(fuel, books and periodicals,  
drivers salary)

Careful analysis is required  
to add substance (like  
eligible band, CTC bracket  
etc.)





## Fund repatriation options weaved into restructuring transactions

Multiple options available (like buy-back, capital reduction, dividends etc.) with varying tax rates. Is opting for most tax optimal route an issue?

Proportionate Vs Selective – Pricing



**SAAR not enough, LOB not enough and also specific situations/ examples on which GAAR would be invoked is missing – Subjectivity will lead to discretion and litigation would follow!**

TRC no longer sufficient; Treaty amendments already building towards substance (PPT); BEPS and MLI adoption underway



## **Tax Incentives – *Taxing* Incentives**

Investment incentivization – Lower tax rates, rebates, etc. to go counter-productive by GAAR invocation



## Sanctity of accounting treatment under scanner

Enough checks through changing accounting norms (IndAS) and ICDS for tax standards?

Goodwill, capitalization to reserves, MAT etc.



## **Family Settlement and Succession Planning – Warranting transfers / restructuring etc.**

No explicit exemption under the  
IT Act dealing with such  
situations

Bonafide / Primary Purpose Test  
of Settlement / Succession  
should continue to be the  
dominant purpose under GAAR



## Funding through hybrid instruments open to recharacterization risk

Taxation in the hands of the recipient as well as deduction in the hands of payer questionable despite...

...Thin Capitalization Rules introduced and TP provisions being applicable



## Acquisitions under IBC

Not all requests of the Acquirer adhered to by the Government for loss making companies leaving the need to restructure the IBC

Tax impact on any balance sheet rightsizing of a Company under IBC? Clarity under tax laws can help address these concerns

# The Unfinished Agenda

- Cross Border merger – Regulatory and Tax clarification needed
- Insolvency and Bankruptcy Code – Tax clarification needed
- GAAR impact – no clarity on mechanism
- M&A post Direct Tax Code
- Multilateral Instrument – Principal purpose test in M&A
- Merger of Company into LLP – Regulatory and tax clarification needed
- Ind AS impact on M&A





# Transaction Square LLP

Tax | Regulatory | Business Advisory

## About Transaction Square LLP

Transaction Square is a Tax, Regulatory and Business Advisory firm

With a PAN India presence, we cater to the needs of Indian entrepreneurs – start-ups to established conglomerates, Family houses, MNCs, and advise Investors, both financial and strategic. We are centered on partnering with clients, solving business issues, blending knowledge with experiential insights and more importantly handholding our clients through the entire process from planning to execution.

## THANK YOU

This presentation contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Transaction Square cannot accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.



TRANSACTION  
SQUARE

