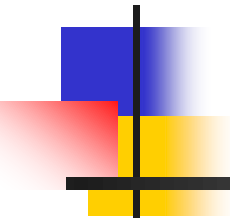


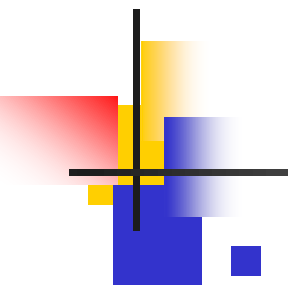
Certificate Course on International Taxation by the Committee on International Taxation of ICAI, Baroda



INTRODUCTION TO TAX HAVENS

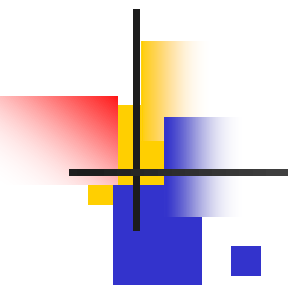
**Presented by:
Mr. Paresh P. Shah**

**P.P. Shah & Associates
Chartered Accountants
Email: ppshahandassociates@gmail.com**



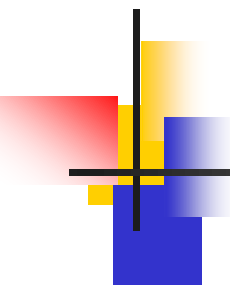
OVERVIEW

- What is a Tax Haven
 - OECD Criteria for a Tax Haven
 - OECD Commentary on Tax Havens
 - Uses of a Tax Haven
 - Legal entities in a Tax Haven
 - Characteristics of a Tax Haven
 - Major Tax Havens around the world
 - Types of Tax Havens
 - Examples: Types of Tax Havens



OVERVIEW (con't)

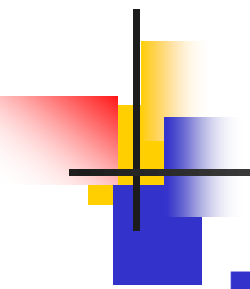
- Effects of Tax Havens
 - Broader policy implications
 - The response of Governments
 - OECD objectives
 - OECD's approach
 - India's regulatory approach
- Is there a future for Tax Havens?



WHAT IS A TAX HAVEN

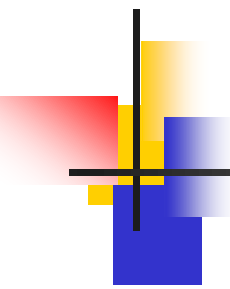
A tax haven is a state or a country or territory where certain taxes are levied at a low rate or not at all while offering due process, good governance and a low corruption rate

-- *wikipedia.org*



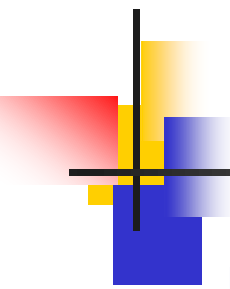
WHAT IS A TAX HAVEN (con't)

- "What ... identifies an area as a tax haven is the existence of a composite tax structure established deliberately to take advantage of, and exploit, a worldwide demand for opportunities to engage in tax avoidance."
-- *The Economist*
- The central feature of a haven is that its laws and other measures can be used to evade or avoid the tax laws or regulations of other jurisdictions



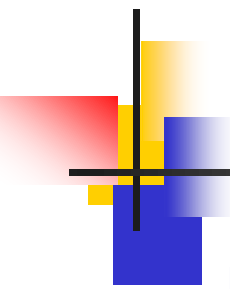
OECD CRITERIA

- Four key factors:
 - Does the jurisdiction impose no or only nominal taxes
 - Whether there is a lack of transparency
 - Whether there are laws or administrative practices that prevent the effective exchange of information for tax purposes with other governments on taxpayers benefiting from the no or nominal taxation.
 - Whether there is an absence of a requirement that the activity be substantial



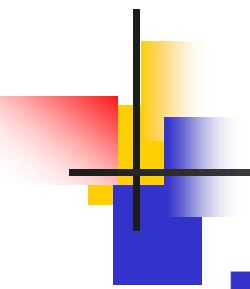
OECD CRITERIA – Important aspects

- The 'no or nominal tax' criterion is not sufficient, by itself, to result in characterization as a tax haven
- The 'no substantial activities' criterion was included in the 1998 Report as a criterion for identifying tax havens because the lack of such activities suggests that a jurisdiction may be attempting to attract investment and transactions that are purely tax driven.
- In 2001, the OECD's Committee on Fiscal Affairs agreed that this criterion would not be used to determine whether a tax haven was co-operative or un-cooperative



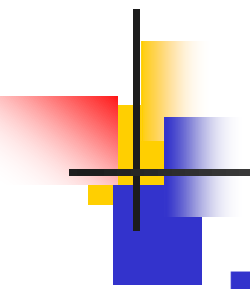
OECD COMMENTARY ON TAX HAVENS

- OECD permits bilateral treaties to deal with Conduit companies and similar tax-exempt (or nearly tax-exempt) companies and situations commonly referred to as 'treaty shopping'
- OECD Commentary Paras 13 to 19 on Article 1 deals with Conduit companies, Para 20 deals with treaty shopping and Paras 21 to 21.2 deals with entities benefiting from preferential tax regimes
- Above Paras suggest methods for 'look-through' approach for disallowing treaty benefits to a company not owned, directly or indirectly, by residents of the State of which the company is a resident



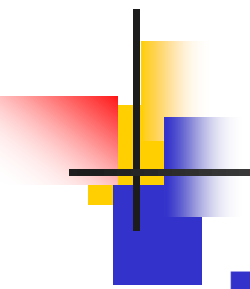
USES OF A TAX HAVEN

- Offshore havens guarantee confidentiality of business & investment activities
- Minimize tax liability by having assets and business dealings away from home jurisdiction in a safe offshore haven
- Offers asset protection against possible litigation
- Inheritance Planning can be done more efficiently through a tax haven
- The transfer of estate to heirs is cheaper, faster and away from public eyes



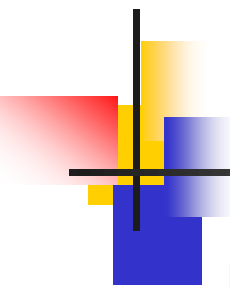
USE OF A TAX HAVEN: AN EXAMPLE

- An MNC may set-up subsidiaries in Tax havens that can meet the following requirements:
 - A low tax on foreign investment or sales income earned by resident corporations and a low dividend withholding tax on dividends paid to the parent firm
 - A stable currency to permit easy conversion of funds into and out of the local currency
 - The facilities to support financial services activity
 - A stable government that encourages the establishment of foreign-owned financial and service facilities within its borders



LEGAL ENTITIES IN A TAX HAVEN

- Offshore International Business Corporation
- Offshore Limited Liability Company
- Offshore Trusts & Foundations
 - Offers asset protection as legal ownership no longer vests with settler
 - But settler continues to enjoy control / benefits
 - Foundations are legal entities unlike Trusts
 - All types of assets (tangible & intangible) can be held including shares in a corporation which in turn may undertake commercial activities



CHARACTERISTICS OF A TAX HAVEN

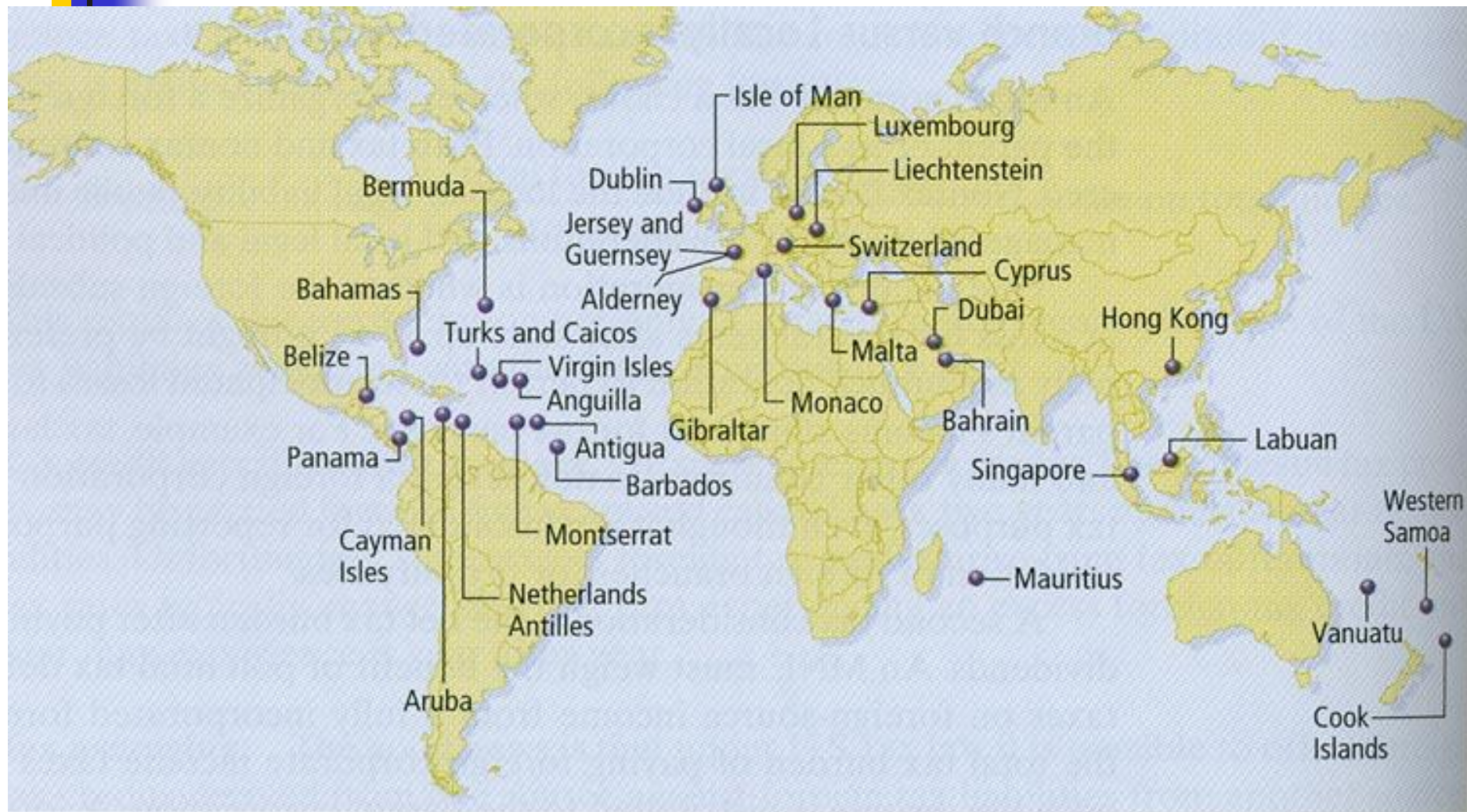
- Tax factors

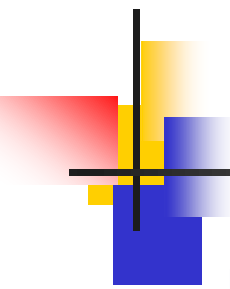
- Level of taxes
- Treaty network
- Tax incentives
- Stability of tax laws

- Non-tax factors

- Political and economic stability
- Availability of professional services
- Access to capital markets and other sources of finance
- Exchange control and currency restrictions
- Initial formation and recurring costs

MAJOR TAX HAVENS



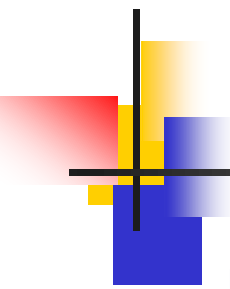


TYPES OF TAX HAVENS

■ Base Havens:

- Traditional offshore centers with nil or very low tax on corporate or business income
- Few or no treaties
- Charges fees in lieu of taxes
- No Exchange Control
- High Level of Banking and Commercial Secrecy
- Less Chances of Exchange of Information
- Scant regulatory norms

Primary Use – to collect and accumulate income in tax free / low tax environment; safe haven for undeclared funds

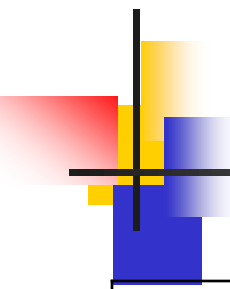


TYPES OF TAX HAVENS

■ Treaty Havens:

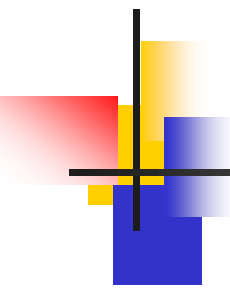
- Traditional offshore centers with reasonable domestic tax rates
- Special tax regimes that allow the use of their treaty network for offshore activities
- NIL withholding taxes on inbound and outbound income

Primary Use: Flow through income with low or NIL taxes



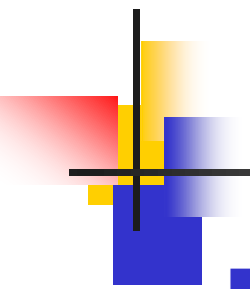
EXAMPLES: TYPES OF TAX HAVENS

S.N.	Particular	Example of Countries
1	No corporate tax	Bermuda, Cayman Island
2	low-taxed countries	Hong Kong, Ireland, Jersey
3	Jurisdictions with no (or very few) tax treaties that offer nil (or very low) or negotiated tax regimes for offshore entities	British Virgin Islands, Cook Islands, US Virgin Islands
4	No or nil tax regimes for offshore companies with the benefit of tax treaties	Cyprus, Malaysia, Mauritius
5	Fiscally beneficial regimes for intermediary holding finance or licensing companies with full benefits of treaty network	Austria, Belgium, Denmark, France, Germany
6	Special tax concessions for entities engaged solely in management services and coordination activities for multinational activities	Belgium, Denmark, France, Germany, Malaysia



EXAMPLES: TYPES OF TAX HAVENS

S.N.	Particular	Example of Countries
7	Jurisdictions with fiscal incentive for new residents	Ireland, Israel
8	Retirement havens for high net worth individuals	Cyprus, Sri Lanka
9	Offshore jurisdictions for estate planning or asset protection trusts	Bahamas, Cayman Island
10	Special incentives for shipping operations	Singapore, Cyprus
11	Encourage captive insurance activities	Ireland, Mauritius



EFFECTS OF TAX HAVENS

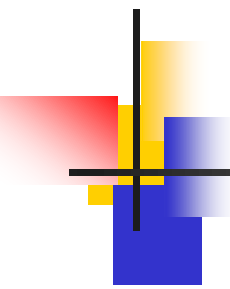
- Integrated financial markets pose new global challenges
- Opportunities for illicit activities:
 - Money laundering
 - Misuse of corporate vehicles
 - Terrorist financing
 - Tax abuse
 - Threats to stability of financial system

All activities which thrive in climate of secrecy, non-transparency and non-cooperation



EFFECTS OF TAX HAVENS

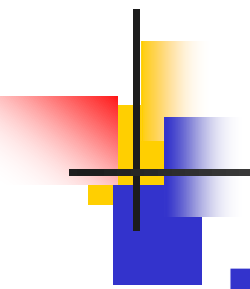
- Treaty shopping: Routing of income arising in one country to a person in another country through an intermediary country to obtain the tax advantage of tax treaties
- Round Tripping: Flow back of money into the country sent out through hawala
- Escaping the regulatory regime of home country
- Revenue implications of the illegitimate use of tax havens can be serious; it is estimated that developing countries loose as much as US \$50 billion per year in tax revenue
- MNCs can defer their taxes indefinitely using transfer pricing



EFFECTS OF TAX HAVENS

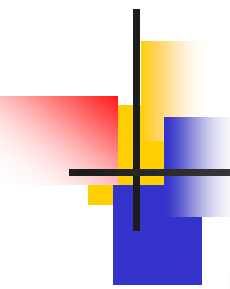
But Tax Havens have following positive aspects:

- Offers legitimate tax planning opportunities
- Provides a neutral regulatory environment for residents of other countries to do business e.g. collective investment funds; captive insurance
- Can be used for non-commercial reasons
- Offers tax competition which is a healthy disciplining force. It is the only competition governments of different jurisdictions have



BROADER POLICY IMPLICATIONS OF TAX HAVENS

- It undermines the fairness and the integrity of the tax system
- It either:
 - Restricts the ability of government to reduce tax rates for all
 - Requires government to increase tax rates on labor or consumption with negative impact on labor markets
 - Or forces expenditure cuts
 - Or raises deficit
- As a matter of public policy, condoning tax abuse is bad politics



RESPONSE OF GOVERNMENTS TO TAX HAVENS

- Launching the FATF
- Creating the FSF
- Creating the OECD Forum on Harmful Tax Practices
- Parallel tracks but common goals:
 - To improve transparency
 - To raise governance standards in financial centers
 - To encourage cooperation to counter abuse

RESPONSE OF GOVERNMENTS TO TAX HAVENS (con't)

■ Limitation of Benefits clause in DTAA's

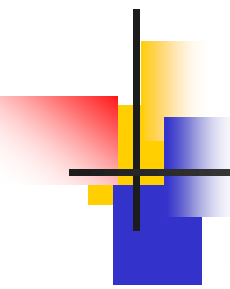
- Eg. Capital Gains exemption in India Singapore DTAA shall be available only if:
 - Annual expenditure on operations is more than S\$ 200,000/- during the preceding 2 years prior to the date of transfer of shares
 - Expenditure to be incurred in bonafide business activities which are real and continuous

■ Treaty override

- In case of a contradiction between the domestic tax laws and the DTAA, the domestic tax laws shall prevail
- (Eg. USA, proposed GAAR in India)

■ Anti – avoidance measures

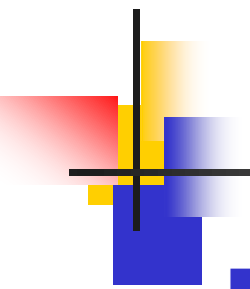
- CFC Rules
- Thin Capitalization
- Beneficial Ownership
- Transfer Pricing Rules



OECD's OBJECTIVES REGARDING TAX HAVENS

- What does the OECD seek?
 - improved transparency
 - improved exchange of information
 - a co-operative approach

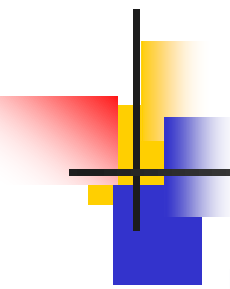
- What is not sought?
 - harmonization or setting minimum tax rates
 - impinging on national fiscal sovereignty
 - an unfair competitive advantage for OECD financial centers



OECD's APPROACH TO TAX HAVENS

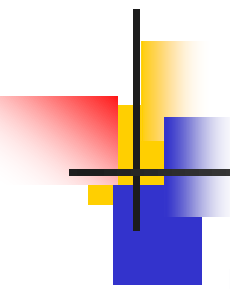
- Recognizes:

- Interest of government in protecting integrity of tax system and confidentiality of taxpayer information
- Interest of business community in avoiding excessive burden
- Countries' right to tailor their own tax systems to their own needs
- The need to move towards a level playing field and mutual benefits



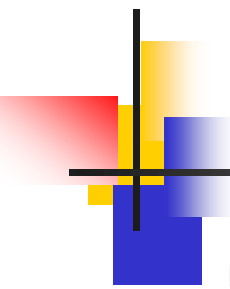
OECD's APPROACH: TRANSPARENCY

- Standard developed with co-operative offshore financial centers
- Key elements
 - reliable books and records
 - beneficial ownership information
 - access to bank information
- Transparency unlikely to be a significant concern for bona fide business



OECD's APPROACH: INFORMATION EXCHANGE

- Key principles in model agreement on exchange of information
 - On request only
 - Covers civil and criminal tax matters
 - Requests cannot be rejected on grounds of dual criminality requirement or absence of domestic tax interest
 - Parties must have power to obtain bank and ownership information
 - Information must be 'foreseeably relevant'
 - No fishing expeditions
 - Protection of taxpayer confidentiality

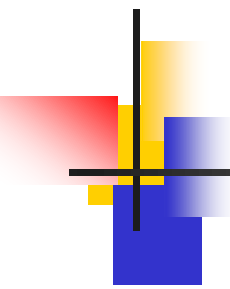


OECD's APPROACH: INFORMATION EXCHANGE (con't)

■ Un-Cooperative Tax Havens:

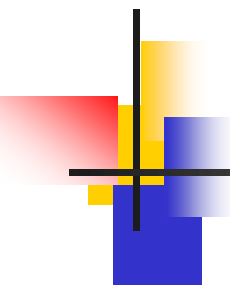
- In 2000, OECD identified a number of jurisdictions as Tax havens according to criteria it had established
- Between 2000 and April 2002, 31 jurisdictions made formal commitments to implement the OECD's standards of transparency and exchange of information
- Seven jurisdictions (Andorra, Liechtenstein, Liberia, Monaco, Marshall Islands, Nauru & Vanuatu) that did not make such commitments were identified as un-cooperative in April 2002
- By May 2009, all the above seven un-cooperative tax havens made commitments to implement the OECD's standards of transparency and exchange of information

As a result, no jurisdiction is currently listed as an un-cooperative tax haven by the Committee on Fiscal Affairs



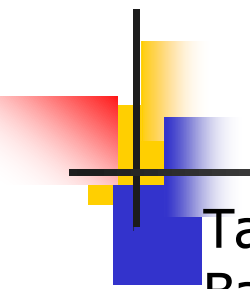
INDIA'S REGULATORY APPROACH

- India is renegotiating its existing DTAA's, with special focus on having clauses for exchange of banking information either by way of protocols to existing DTAA's or new DTAA's
- In the beginning of 2009, 78 DTAA's
- In 3 DTAA's Article 26 was as per International Standards
- Renegotiation started in other 75 DTAA's
 - Negotiation finalized in 26 cases
 - 7 signed, 4 entered into force
- Negotiation of 19 new DTAA's
 - New DTAA's – Article 26 as per International Standards
 - 9 signed, 4 entered into force



INDIA'S REGULATORY APPROACH (con't)

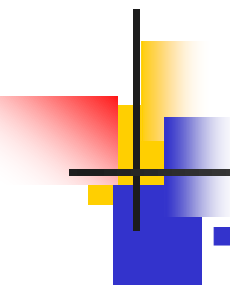
- India is also entering into agreements with several tax havens for exchange of information pertaining to tax matters (TIEA)
- TIEAs with 22 priority jurisdictions
 - Negotiations completed with 17 countries / jurisdictions
 - 9 TIEAs signed (Argentina, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Isle of Man, Jersey, Guernsey and Liberia)
 - 5 entered into force (Bahamas, Bermuda, British Virgin Islands, Cayman Islands and Isle of Man)
- New jurisdictions for TIEAs identified
- India will have one of the largest networks of DTAAAs and TIEAs



INDIA'S REGULATORY APPROACH (con't)

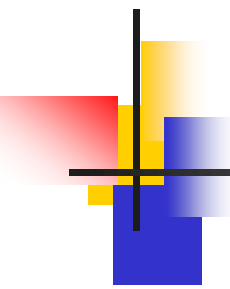
Tax Information Exchange Agreements:

- Based on international standard of transparency and exchange of information, India has signed and notified Information Exchange Agreement with Bermuda, Bahamas and Isle of Man
- Salient features are –
 - Information must be relevant to the administration and enforcement of the domestic laws of the Contracting Parties.
 - Such information be relevant for determination, assessment and collection of taxes or recovery thereof or investigation of tax matters.
 - The requesting State has to provide some minimum details about the information requested in order to justify the relevance criteria.
 - Also provides for disclosure of information to any other person or entity
 - Requested Party shall use its information gathering measures to obtain the requested information even though that Party may not need such information for its own tax purposes.
 - There is a specific provision for providing banking and ownership information.
 - Some of the Agreements also allow exchange of past information in criminal tax matters.



INDIA'S REGULATORY APPROACH (con't)

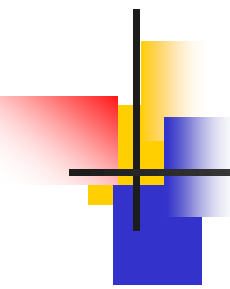
- Notified Jurisdictional Area – Section 94A
 - Finance Act , 2011, inserted provisions to enable Central Government to notify overseas jurisdiction not cooperating in effective exchange of information as 'notified jurisdictional area' (NJA)
 - Transactions between assessee and a person located in NJA
 - Person located in NJA means:
 - Resident of the NJA
 - Person not being individual established in NJA
 - A PE of a person other than above two categories in NJA
- Impact:
 - Transfer pricing regulations to apply on transactions with any person located in such area
 - Receipts from any person located in NJA to be deemed as income unless the assessee satisfactorily explains the source of the source
 - Any receipt by a person in NJA to attract withholding tax rate at the higher of normal tax rate or 30%



INDIA'S REGULATORY APPROACH (con't)

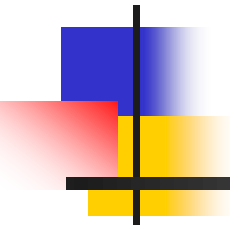
Finance Bill, 2012:

- General Anti-Avoidance Rules
 - A transaction entered into with the objective of obtaining tax benefit and lacking commercial substance may be declared impermissible
 - Threshold and guidelines left to be prescribed by the CBDT
 - GAAR will override the provisions of DTAA (Treaty Override)
 - GAAR to counter treaty shopping
- Thin capitalization - introduced allowing characterization of debt to equity or vice-versa under GAAR
- CFC Rules proposed in DTC
- Change in reporting norms and period of limitation involving any undisclosed foreign asset



IS THERE A FUTURE FOR TAX HAVENS?

- AS CONCEALMENT CENTRES?
- AS SERVICE CENTRES OFFERING REAL ECONOMIC BENEFITS?



Thank You
