

International Tax Controversy & Litigation

STATEMENT OF CAPABILITY

2011

Nishith Desai Associates

Legal & Tax Counseling Worldwide

Mumbai • Silicon Valley • Bangalore • Singapore • Basel • New Delhi

Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Silicon Valley, Singapore, Basel and New Delhi. We specialize in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner. We focus on niche areas in which we provide significant value and are invariably involved in select highly complex, innovative transactions. Our key clients include marquee repeat Fortune 500 clientele, of which over 60 per cent are US corporations.

Core practice areas include International Tax, International Tax Litigation, Litigation & Dispute Resolution, Fund Formation, Fund Investments, Capital Markets, Employment and HR, Intellectual Property, Corporate & Securities Law, Competition Law, Mergers & Acquisitions, JVs & Restructuring, General Commercial Law and Succession and Estate Planning. Our specialized industry niches include financial services, IT and telecom, education, pharma and life sciences, media and entertainment, real estate and infrastructure.

Our Tax, Investment Funds and Technology-Media-Telecom (TMT) practices have been consistently ranked in tier 1 by Legal 500, while Chambers & Partners have ranked us # 1 for Tax, TMT and Real Estate - FDI. We've received honorable mentions in Asian - Counsel Magazine for Alternative Investment Funds, International Arbitration, Real Estate and Taxation for the year 2010. We have been adjudged the winner of the Indian Law Firm of the Year 2010 for TMT by IFLR. We have won the prestigious "Asian-Counsel's Social Responsible Deals of the Year 2009" by Pacific Business Press, in addition to being Asian-Counsel Firm of the Year 2009 for the practice areas of Private Equity and Taxation in India. Indian Business Law Journal listed our Tax, PE & VC and Technology-Media-Telecom (TMT) practices in the India Law Firm Awards 2009 as also Legal 500 (Asia-Pacific) that has ranked us #1 in these practices for 2009-2010. We have been ranked the highest for 'Quality' in the Financial Times – RSG Consulting ranking of Indian law firms in 2009. The Tax Directors Handbook, 2009 lauded us for our constant and innovative out-of-the-box ideas. Other past recognitions include being named the Indian Law Firm of the Year 2000 and Asian Law Firm of the Year (Pro Bono) 2001 by the International Financial Law Review, a Euromoney publication. In an Asia survey by International Tax Review (September 2003), we were voted as a top-ranking law firm and recognized for our cross-border structuring work.

Our research oriented approach has also led to the team members being recognized and felicitated for thought leadership. Consecutively for the fifth year in 2010, NDAites have won the global competition for dissertations at the International Bar Association. Nishith Desai, Founder of Nishith Desai Associates, has been voted 'External Counsel of the Year 2009' by Asian-Counsel and Pacific Business Press and the 'Most in Demand Practitioners' by Chambers Asia 2009. He has also been ranked No. 28 in a global Top 50 "Gold List" by Tax Business, a UK-based journal for the international tax community. Nishith Desai is listed in the Lex Witness 'Hall of fame: Top 50' individuals who have helped shape the legal landscape of modern India.

Our International Tax Controversy & Litigation Expertise

The tax controversy & litigation practice at Nishith Desai Associate has played a key role in some of the most important judgments in the field of international taxation. We are recognized leaders players in the field of international tax controversies & litigation and are recognized for our innovative approach to tax structuring and tax controversy & litigation practice.

"Competitors acknowledge that it is difficult to compete with this firm's knowledge and experience of international tax.

'The lawyers are very plugged into the environment and know the legal system, which is not a small task,' reports an impressed client."

- Chamber Asia, 2010

Our tax lawyers have extensive experience and have represented clients on some of the most complex disputes in the field of international taxation. Our skills in resolution of difficult and unique tax controversies involving substantial sums in dispute has been recognized by clients. Nishith Desai, the founder of the firm, is himself a leading tax lawyer and has been ranked No. 28 in a global top 50 "Gold List" by Tax Business, a UK-based international tax journal.

Our in-depth understanding of industry verticals such as investment funds, e-commerce, business process outsourcing, media and entertainment etc. coupled with our extensive knowledge of International laws and international tax laws enable us to approach tax disputes in an integrated manner.

Our emphasis on research and continuous learning has stood us in good stead, with our people being recognized and felicitated for our thought leadership. Our firm members have thrice in the last four years has won the global competition for dissertations in International Taxation at the International Bar Association.

"Firm founder Nishith Desai and Bijal Ajinkya are recognised as leaders in the field."

Tax Directors Handbook 2010

Some of our accolades include:

- Chambers & Partners has ranked us # 1 for Tax.
- Nishith Desai, Founder of Nishith Desai Associates, voted 'External Counsel of the Year 2009' by Asian-Counsel and Pacific Business Press
- Named by Pacific Business Press as the Asian-Counsel Firm of the Year 2009 for the practice areas of Private Equity and Taxation
- Awarded by Indian Business Law Journal - India Law Firm Award 2009 for Tax
- Listed in Practical Law Company's (PLC) Which Lawyer? Yearbook 2009 as the leading firm in Taxation
- Nishith Desai, Founder, ranked No. 28 in a global Top 50 "Gold List" by Tax Business, a UK-based international tax journal

Scope of Services

Our international tax controversy & litigation practice assists clients on the following:

- Identification of key tax controversy issues at the time of structuring of the transaction.
- Providing strategic guidance for approach to potential tax controversies.
- Preparing submissions before the Tax authorities and the administrative appellate authorities.
- Representing clients before the Dispute Resolution Authority for matters relating to international taxation.
- Representing clients before the Authority for Advance Ruling and the Income Tax Appellate Tribunal.
- Representing clients before the High Courts and the Supreme Court of India and briefing senior counsels where required.

Our Tax controversy & litigation practice has an excellent track record and has represented our clients in a number of landmark judgments before Authority for Advance Rulings and also the Supreme Court of India. These include

- Advising *Vodafone International Holdings BV* in our capacity as special counsel to provide high-end strategic, tactical and legal advice in connection with its USD 2 billion tax dispute
- The first Indian case of beneficial ownership in the context of tax treaties where we successfully represented KSPG recently before the Authority for Advance Ruling (AAR).
- Represented *Nicholas Applegate* in structuring a hedge fund through the use of the Protected Cell Company model and successfully defending the structure before the Income Tax Appellate Tribunal. This has been recognized by the International Tax Law Review for its unique contribution to the limited jurisprudence around the world on the legal and tax implications of the protected cell company structure.
- The *Azadi Bachao Andolan*, where we successfully defended the 'Mauritius route' and which has been regarded as one of the most influential decisions shaping the evolution of international tax jurisprudence in India. Today, nearly 47% of FDI into India flows through Mauritius
- Successfully defended *Morgan Stanley* on PE profit attribution in a landmark tax litigation, first before the Authority for Advance Ruling (AAR) and also before the Supreme Court.
- Represented *AIG* before the AAR in a landmark ruling where the AAR confirmed that the benefits of the India Mauritius Tax Treaty would be available to an offshore fund set up in Mauritius.
- We were one of the first to develop the unique jurisprudence governing the taxation of e-commerce in India by obtaining a favourable ruling in the famous *Dun and Bradstreet* case
- Other clients we have represented clients before the AAR include Bechtel, General Electric Pension Trust, TCW-ICICI and Fidelity.

Representative Clients

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| • Abacus | • Marriott International |
| • Dun & Bradstreet | • Morgan Stanley |
| • Fidelity Emerging Asia Fund | • Prudential Pension Ltd. |
| • Global Business Institute | • Sumitomo Corporation |
| • General Atlantic Partners | • United Health |
| • Kolbenschmidt Pierburg | • Vodafone International |

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