

# International Tax

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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.

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### **Introduction to the International Tax Practice**

Nishith Desai Associate's international tax team plays an integral role in the firm's cross-border practice and is particularly recognized for its innovative approach to tax structuring. Our tax lawyers have extensive experience and we are known for our strategic and creative tax planning and structuring advice, particularly in relation to cross-border transactions. We are also recognized for our skills in resolution of difficult and unique tax controversies. 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.

*"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 Expertise

We advise clients in structuring complex transactions and developing unique business models, many of which have become industry benchmarks. Additionally, with a view to securing our clients world-wide interests and generating viable solutions, we also work with most leading law firms around the world so as to provide a truly global experience. A majority of our clientele is located in the US and Europe and include a number of Fortune 500 companies, financial institutions, leading Indian corporate houses, investment funds besides private clients.

Our in-depth understanding of industry verticals such as investment funds, e-commerce, business process outsourcing, media and entertainment, banking and insurance, infrastructure, real-estate and hospitality, bio technology and life sciences enable us to anticipate and target tax issues in advance.

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

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## Scope of Services

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Our international tax practice work includes representation on a variety of complex cross-border and domestic transactions encompassing areas such as:

- Structuring cross-border mergers and acquisitions
- Financing transactions
- Restructuring of investments
- Advising on transnational joint ventures and collaborations
- India entry and exit strategies
- Globalization of Indian enterprises abroad
- Issues relating to treaty interpretation such characterization of income and permanent establishment concerns
- Transfer pricing issues

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The following are a few of our notable work highlights:

- Creation of the first India-centric fund investment structure amongst others, most of which have now become industry standards for inbound investments into India. The structures are primarily tax driven but also address a number of complex cross-border legal and regulatory issues.
- Recently advised a leading international banking corporation in the development of unique cross border structured financial products by applying advanced tax planning strategies and complex tax treaty interpretation.
- Formulated the business process outsourcing model for Morgan Stanley which has become an industry standard. We also successfully defended the structure before the Indian Supreme Court in a landmark decision.
- Developed a complex business model for a multinational pharma company in connection with its India based contract research, development, manufacturing and export operations on a global basis. The structure addressed complex licensing, permanent establishment, residency, transfer pricing and connected indirect tax issues.
- Structured the entry of multinationals such as Marriott International and Frasers Hospitality into the Indian hospitality industry and development of an innovative business model for projects around India.
- Assisted in the globalization strategies of various Indian multinationals investing abroad.

In addition, we have an extensive international tax controversy practice wherein we have represented our clients in a number of landmark judgments before Authority for Advance Rulings and also the Supreme Court of India. These include

- Representing *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.
- 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
- We successfully represented *KSPG* recently before the Authority for Advance Ruling in the first case on the concept of beneficial ownership in the Indian context.
- Successfully defended Morgan Stanley on PE profit attribution in a landmark tax litigation before the Supreme Court.
- 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 44% of FDI into India flows through Mauritius

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### Representative Clients

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| • Bessemer Venture Partners       | • Morgan Stanley               |
| • EBS Service Company Ltd.        | • Marriott International       |
| • Frasers Hospitality             | • Providence Equity Partners   |
| • Fidelity Emerging Asia Fund LLC | • Prudential Pension Ltd.      |
| • HSBC                            | • Standard Chartered Bank Plc. |
| • Horizon Technology Partner      | • Sequoia Capital              |
| • IKEA                            | • United Health                |
| • ICICI Ventures Ltd.             | • VaxInnate Corporation        |
| • J P Morgan Chase                | • Visa Inc.                    |
| • Kolbenschmidt Pierburg          | • Vodafone International       |
| • Merck & Co.                     |                                |

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