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Chapter 17

INDIA

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I INTRODUCTION

The World Wealth Report 2013 highlighted that in the Asia Pacific region, India recorded a 22.2 per cent growth in the number of high net worth individuals (HNWIs) in 2012, second only to Hong Kong.[2] Statistics show that there has been a steady rise in India's HNWI population over the past few years and this rise is predicted to continue.[3]

With almost 90 per cent of Indian businesses being family run, private wealth planning in India assumes special significance due to the promoter-driven nature of the Indian economy. While a significant majority of HNWI promoters do not have personal or business succession plans in place, this trend has slowly begun to change.

The scope for wealth creation in India has multiplied as a result of globalisation, the growth of the Indian economy and the rise of educated first-generation entrepreneurs. As businesses and families have grown, family members are taking up residence in foreign countries, which means that not only Indian businesses but also Indian families are 'going global'. At the same time, we are seeing a reverse-migration of sorts of Indian-origin HNWIs, who are not only shifting their physical presence to India but

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2 Available at http://articles.economictimes.indiatimes.com/2013-06-19/news/40069794_1_HNWI-population-global-hnwi- wealth-world-wealth-report.

3 The HNWI population in India grew at 20.8 per cent to 153,000 in 2010 compared with 126,700 in 2009, available at http://businesstoday.intoday.in/story/india-high-networth-HNWI-population-grows-by-20-per-cent/1/19634.html; a recent study has projected that the number of HNWIs and ultra-HNWIs will triple in the next five years to 219,000 by 2015–16, available at http://businesstoday.intoday.in/story/HNWI-india-high-networth-individuals-charity-philanthropy/1/16122.html.

also consolidating their asset bases in India. Such global families are concerned about maintaining and preserving their personal wealth, ensuring the sustainability of such wealth, and passing it on to future generations. Planning to achieve these objectives is often difficult due to emotional considerations that pose a challenge to centralised and seamless decision-making by the family, which is required to function much more cohesively and possibly in a more conservative mindset than in Western countries. That said, the new generation of business families is more educated and brings with it fresh ideas and innovative solutions, adding to the generational divide. Generational differences in interpretation of family and business values has led to more and more business families finding themselves in the middle of much-publicised family feuds with parties having differing interests and ambitions for the business. Families are increasingly looking to minimise the impact of these issues on the business through wealth and succession planning. Later generations, being more savvy and more educated, favour such planning and have made it more acceptable to implement such measures.

Private wealth planning is also attractive as a result of the many obligations that exist among families, which make it important for Indian HNWIs and businesses to provide for dependents, save for the often-lavish weddings of their children and protect their assets against creditor action to ensure that business affairs do not affect the well-being of their families.

Another key trend to note is the growing number of people who are enquiring about pre-nuptial agreements. A pre-nuptial agreement is considered culturally taboo and legally untenable, but as couples become more pragmatic, informal pre-nuptial agreements have become popular. In the event of a dispute, the agreement is expected to provide the courts with a guideline as to the intentions of the couple.

For clients concerned about such issues, the creation of a wealth plan that includes special purpose vehicles, such as trusts and foundations, together with governance mechanisms, makes perfect sense from both a fiscal and a non-fiscal perspective. Historically, special purpose vehicles such as trusts were not very popular, since the idea of giving up ownership and control was not acceptable to the Indian patriarch. Further, since India does not have death taxes, Indian business families did not feel the need to create a plan around their estate and its succession. The concept has, however, slowly begun to spread and there is greater acceptance of institutional trustees, protectorship structures and even the process of will writing than ever before (traditional Indian families continue to consider it inauspicious to discuss the death of the patriarch).

An additional point to keep in mind is the place that philanthropy has had in Indian culture for several centuries. India has a long history of family and corporate philanthropy by the rich and a recent development in this area has been the stipulation of guidelines by the government on corporate social responsibility (CSR). Introduced in 2009, these guidelines aim to provide an effective regulatory framework for Indian corporates to enable them to contribute to the overall growth of society. Moreover, under the Companies Bill 2012 (pending presidential assent), the government is pushing for a more robust CSR regime, with companies expected to allocate 2 per cent of their average net profits in previous three preceding financial years towards CSR.

From a taxation perspective, the government introduced a new tax bill in 2010 – the Direct Taxes Code Bill (still under review) – to replace the Income Tax Act 1961 (ITA). Separately, the discussion on revival of estate tax has resumed in parliament.

While there is so far no certainty on the outcome of these proposals, it is anticipated that India will begin to pay more attention to its super-rich, who have begun to plan for their rapidly growing wealth.

II TAX

i Taxation of Individuals

The ITA provides for chargeability to income tax on the basis of residence. Determination of residence is on the basis of a day-count test of physical presence in a given fiscal year or over a specified number of past fiscal years (or both) depending on the circumstances (with a relaxed test for non-resident Indians and persons of Indian origin).

India provides for a differential rate of taxes on ordinary income and capital gains. The benefit of a lower rate on capital gains is linked to the period for which the capital asset is held as specified for different asset categories.

Clubbing of income

The ITA provides that income of any person on transfer in certain situations may still be considered as income of the transferor and taxed as his or her income. This would occur where there has been a transfer of income without a transfer of assets or where the transfer is revocable (as statutorily defined). Such consequence would not apply if the transfer is irrevocable during the lifetime of the beneficiaries (in a trust scenario) or of the transferee, unless the transferor derives direct or indirect benefit from the income arising by virtue of such transfer.

Other levies

Under the Wealth Tax Act 1957, certain non-business assets of a company, an individual or a Hindu undivided family (HUF), are chargeable to wealth tax at the rate of 1 per cent of the value of such assets above 3 million rupees.[4] Net wealth is calculated by aggregating the value of all specified non-productive assets, less the debts that have been specifically secured on or incurred in relation to these assets.

There are also state specific stamp duties that may be levied at the time of executing documents such as trust instruments, release deeds or sale deeds. Some states impose a fixed duty while in other states the duty is a percentage of the value of the property.

ii Recent developments

Currently, India does not have inheritance tax, estate duty or gift tax.[5] A quasi-gift tax was, however, introduced into the ITA by Finance Act 2009 and in the run-up to

4 The proposed Direct Taxes Code Bill fixes this threshold at 10 million rupees.

5 Gift Tax was in force from 1958 but ceased to apply on gifts made on or after 1 October 1998.

Budget 2013–14, the government has contemplated the feasibility of reintroducing estate duty.[6]

Under the ITA vide Finance Act 2009, any sum of money (exceeding 50,000 rupees) received by individuals without consideration from any person or persons would be considered as income in the hands of the recipient and chargeable to tax at ordinary income tax rates. A similar provision also covers properties received for zero or inadequate consideration. Monies or properties received from a relative (as defined statutorily) or under a will or by way of inheritance are, however, exempt from these provisions.

Companies and firms that receive shares of closely held companies for less than their actual market value may be subject to tax on the difference between the market value of shares and the consideration paid.[7] Such income is taxable at rates applicable to ordinary income.

To enhance transparency in real estate transactions, the ITA introduced a provision to take effect from June 2013 mandating the purchaser of immoveable property (other than agricultural land) worth over 5 million rupees to withhold tax at the rate of 1 per cent of the consideration payable to a resident transferor.

Similar to the efforts of other nations to make the super-rich contribute more by way of taxes, the Indian government too, in pre-budget discussions this year, had considered different options: introducing a higher tax slab, increasing the effective tax rate on dividends to HNWIs or imposing a surcharge (a tax on tax). While the first two proposals were not enacted, a 10 per cent surcharge has been imposed on persons whose total income exceeds 10 million rupees (this measure is applicable only for one year).

A development with far-reaching implications is the adoption of a General Anti-Avoidance Rule (GAAR) in the ITA. Initially introduced under the Direct Taxes Code Bill, GAAR was separated out and inserted into the ITA in 2012. GAAR was initially slated for implementation from April 2013 but has been postponed to financial year 2015–16. It has been widely criticised on account of ambiguities in its scope and application, lack of safeguards and possible misuse by tax authorities. GAAR gives tax authorities considerable discretion in taxing 'impermissible avoidance arrangements', disregarding entities, reallocating income and even denying tax treaty benefits to a non-resident investor. Further, GAAR shall apply only if the main purpose of an arrangement is to obtain a tax benefit. Presumably, the new GAAR provisions may not apply if an arrangement is backed up by sufficient business purpose. There needs to be more clarity on how GAAR would operate in a private wealth planning context, especially

6 Estate duty was in force from 1953 to 1985 and was removed since the costs of administering it turned out to be higher than the revenue it generated. It also faced issues on the enforcement front. Reintroduction of estate duty continues to be a topic of discussion and we may yet see further developments on this issue.

7 Public listed companies are excluded from the purview of the proposed provision, so also are transfers where the difference between fair market value and transfer price is less than 50,000 rupees. Exceptions have also been provided for transfers that take place in the course of specified kinds of mergers and demergers, but not for acquisitions.

since structures are not motivated only by commercial considerations and may involve intervening steps or stages in order to effectuate an individual's or family's wishes.

iii Cross-border structuring

India has entered into double taxation avoidance agreements (DTAAs) with various countries under which Indian residents may claim double tax relief. The ITA provides that it will apply to the extent that its provisions are more beneficial to the person assessed to tax. Further, the ITA grants unilateral relief to residents in the event that they derive income from a country with which no DTAA exists. For an entity to benefit under a DTAA, a tax residency certificate from the country of residence and the filing of tax returns in India is mandatory. In order to benefit from the lower rate of tax under the DTAA, it is also essential for the said entity to obtain an Indian permanent account number.

iv Regulatory issues

India imposes exchange control regulations mainly addressed through the Foreign Exchange Management Act 1999 (FEMA) and the rules and regulations issued under FEMA. Due to the absence of full capital account convertibility, capital account transactions are not permitted unless otherwise specified. Therefore, offshore investment by resident Indian individuals through India-sourced funds is possible but only to a limited extent and in specified situations.

Outward gifts and donations

There are restrictions on outward gifts amongst family members. Previously, the Liberalised Remittance Scheme (LRS) (a scheme under which Indian-resident individuals can undertake permissible capital and current account transactions) restricted cash remittances to up to US$200,000 per individual per financial year for such transactions; however, as recently as 14 August 2013, the limit has been reduced to US$75,000 per financial year.

Ownership of immoveable property

General permission is available to non-resident Indians (NRIs) and persons of Indian origin for purchasing immoveable property in India but only for residential and commercial property. Purchase of agricultural land, plantation property or a farmhouse in India is not permitted unless it is inherited from a person resident in India. A foreign national of non-Indian origin, resident outside India, cannot purchase any immoveable property in India unless such property is acquired by way of inheritance from a person resident in India.

Previously, funding for acquisition of offshore immoveable property was a permitted capital account transaction under the LRS for resident Indian individuals; however, as per the recent notification dated 14 August 2013, the LRS cannot be used for the acquisition of immoveable property, directly or indirectly, outside India.

Trusts

For repatriation from Indian trusts with NRI beneficiaries, all income being dividend, interest, rent and pension can be repatriated entirely (without prior approval) to offshore beneficiaries, either directly in their offshore accounts or by way of credit to their non-resident accounts in India. Capital repatriation, however, is restricted to a limit of US$1 million in every financial year.

On settlement of a trust by an NRI, the foreign direct investment policy expressly states that foreign investment in a trust (other than a venture capital fund) is not permitted. Indian residents are permitted to settle offshore trusts under the LRS.

Loan arrangements between relatives

A resident Indian individual can borrow sums of up to US$250,000 or its equivalent from close relatives staying outside India subject to certain conditions. An individual resident can lend money within the overall limit of US$75,000 (as per the aforementioned notification) per financial year under the exchange control scheme referred to above, to meet the borrower's personal or business requirements in India, subject to certain conditions.

iv Issues affecting entrepreneurs at the proprietor level

To improve corporate governance and protect minority shareholders, the Securities & Exchange Board of India (SEBI), India's capital markets regulator, directed that all listed companies must have a 25 per cent minimum public holding, failing which stringent action would be taken on promoters or promoter groups, such as freezing of voting rights and corporate benefits and suspending trading in relevant securities.

Another important consideration in the context of listed companies is the SEBI Substantial Acquisition of Shares and Takeover Regulations 2011 (the Takeover Code). The Takeover Code prescribes certain threshold limits in respect of acquisition of shares or voting rights or, in other words, change of control of the company that would trigger disclosure and public offer requirements. The Takeover Code provides for (1) disclosures to be made when the acquirer (along with persons acting in concert with it) holds more than the stipulated percentage of shares in such company; and (2) an open offer to be made when the acquirer acquires more than the stipulated percentage of shares or voting rights in, or acquires control of, a public listed company.

Under Indian trust law, a trustee is the legal and beneficial owner of trust property and this status continues under the Takeover Code. Where a trust holds shares in a listed company on behalf of the beneficiaries, the trustee would be the legal and beneficial owner. In a situation where there is a change in trustee without any change in the beneficiaries, the trustee would have to transfer shares held in its name to the new trustee, who would then hold the shares on behalf of the beneficiaries. In such a situation, a change in trustee would effectively result in transfer of shares from one trustee to another and may create issues under the Takeover Code.

Recently, SEBI considered the application of the Takeover Code in a situation involving the settlement of shares of a closely held company (which held a 70.3 per cent stake in a listed company) in several family trusts. To understand whether a settlement might result in an indirect transfer of shares or control in the target company, thus triggering a mandatory offer requirement under the Takeover Code, the promoter, in his capacity of trustee of the family trusts, approached SEBI for an exemption from the application of the Takeover Code. SEBI granted an exemption order as the transaction was merely a family arrangement involving a restructuring of shareholding and did not necessarily result in a change in control of the underlying company.

Such orders are, however, fact-specific and it must be kept in mind that the provisions of the Takeover Code must be considered before making a settlement of shares in a trust.

III SUCCESSION

i Personal laws in India

Indian society is composed of different groups having their own personal laws, some aspects of which have been codified. The presence of both statutory and customary law has led to personal laws being complex and unsettled in some aspects.

The colonial British government attempted to harmonise succession laws by enacting the Indian Succession Act, but as this attempt was not completely successful. The post-British era government, made another attempt by including in the Directive Principles of State Policy in the Indian Constitution, a directive to implement a uniform Civil Code that would apply to all religious groups. This was difficult due to reluctance of various religious groups to compromise on their customary practices. Consequently, Hindus have their own personal law (part codified, part customary); Muslims have their own textual law of inheritance (Islamic Law on Succession), while Parsees, Christians and others are covered under the more secular Indian Succession Act 1925. All wills (except Muslim wills) are, however, governed under the Indian Succession Act 1925 for the purposes of execution, probate, etc. The only exception to this is the state of Goa, which is governed by the Portuguese Uniform Civil Code (which also provides for community property rules). There are also regional differences within certain personal laws.

It has been observed that when it comes to personal laws, courts are usually reluctant to impose a public law standard to adjudge personal law matters. This attitude is well-reflected in a judge's observation in a case challenging the constitutional validity of divorce provisions under the Hindu Marriage Act 1955 when he said: 'Introduction of constitutional law in the home is most inappropriate. It is like introducing a bull in a china shop.'[8]

The difficulty faced in harmonising succession laws and constitutional directives on uniform personal laws is demonstrated by the decision of the Supreme Court in *Mohd Ahmed Khan v. Shah Bano Begum*,[9] pertaining to a Muslim woman's right to maintenance. The court expanded the scope of such a right (otherwise limited under Muslim personal law) holding that if a divorced Muslim woman is not capable of maintaining herself, she is entitled to claim alimony as provided under the Code

8 *Harvinder Kaur v. Harmander Singh Choudhry*, AIR 1984 Delhi 66.

9 1985 SCR (3) 844.

of Criminal Procedure 1973, a code that is applicable to all, irrespective of caste or religion; however, following societal criticism of this judgment, the government enacted the Muslim Women (Protection of Rights on Divorce) Act 1986, which had the effect of diluting the above judgment and restoring the position under Muslim personal law.

ii Developments in succession law

Succession law has largely remained static since initial codification and recent high-impact developments have been few and far between.

One noteworthy development that took place in 2005 was the admission of daughters to the coparcenary system (i.e., the right by birth to an interest in family property). Under Hindu law, an HUF consists of a common ancestor and all his lineal male descendants and their wives and unmarried daughters. A coparcenary is a narrower institution within an HUF. Traditionally, the coparcenary consisted only of male members, but through the 2005 amendment to the Hindu Succession Act 1956, daughters now have the same rights and liabilities in the coparcenary property as sons.

iii Relevant cross-border developments

India gives due regard to private international law, where, in the event of intestate succession, inheritance of moveable property is governed by the law of the deceased's domicile, while inheritance of immoveable property is governed by the law of the place in which the property is situated. Therefore, on the demise of a foreign citizen domiciled in India or an Indian citizen domiciled abroad the following rules should be applicable:

Domicile	*Immoveable property*		*Moveable property*	
	India	Abroad	India	Abroad
India	Indian law	*Lex situs*	Indian law	PIL rules applicable
Outside India	Indian law	Law of domicile	Law of domicile	Law of domicile

Where the law of the nation to which the deceased foreigner belonged at the time of death refers the inheritance issues back to India (i.e., the place in which the estate is situated), the applicable law that governs the deceased's estate in India takes precedence. An offshore will should be enforceable in India as long as it has been certified by an appropriate authority in the jurisdiction.

Execution of foreign divorce decrees

Foreign judgments are conclusive under Section 13 of the Code of Civil Procedure 1908 (CPC) if they are in accordance with the conditions set out in it.[10] These may

10 Under Section 13 of the CPC, the court may refuse execution of a foreign judgment as inconclusive and unenforceable in the following circumstances:
- not pronounced by a court of competent jurisdiction;
- not given on merits;
- based on incorrect view of international law or a refusal to recognize the law of India;
- opposed to natural justice;

broadly be said to be conditions ensuring that the foreign decree was procedurally and substantively valid and not in breach of Indian law. Foreign judgments (including foreign divorce decrees) passed in reciprocating territories[11] are enforceable by way of execution proceedings in India. Courts in India may refuse to enforce them, however, if they fail to comply with any of the conditions set out in Section 13 of the CPC.

FATCA obligations

Indian HNWIs who are US taxpayers, trustees and financial institutions who maintain accounts of such persons have taken heed of their compliance obligations under the Foreign Account Tax Compliance Act (FATCA), the US legislation that targets tax non-compliance by US taxpayers with foreign accounts. Due to the broad definition of foreign financial institutions, FATCA obligations will apply to family trusts and possibly even HUFs (if considered a trust or alternatively a non-financial foreign entity).

Classification of Indian entities offshore and offshore entities in India

Classification of entities across jurisdictions assumes importance in many private wealth-planning structures, especially in a cross-border context.

For example, an HUF is considered to be a distinct taxpayer in India but may not be accorded the same treatment in other jurisdictions. Close approximations for an HUF under foreign law may be a trust or a partnership. Similarly, hybrid entities such as LLCs or S-corps are not recognised in India and holding assets in or through such structures may not attract the same pass-through treatment that they might have ordinarily enjoyed. Such cross-border differences in characterisation of structuring vehicles affect the tax and regulatory benefits available to the structure and subtle differences must be carefully considered.

iv Applicable changes affecting personal property

The Indian government set up a panel to review alimony and maintenance laws that had not kept up with the changes in societal and economic conditions. The government's initiative was spurred by the decision of the Bombay High Court in 2011, which had held that 50 per cent of the husband's assets should be transferred to the wife under a divorce. The review panel proposed that in order to provide legal recognition to women as equal partners in a marriage and to recognise their contribution to the household, all assets acquired by a couple post-marriage should be viewed as joint property, regardless of who bought it. It also proposed that such joint property should be divided equitably in the event of separation or desertion. These proposals were incorporated in the Marriage Laws (Amendment) Bill 2010.

- obtained by fraud;
- breach of any law in India.

11 'Reciprocating Territory' means any country or territory outside India that the central government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and 'superior Courts', with reference to any such territory, means such courts as may be specified in the said notification.

These amendments resulted in more debates both within the government and in the wider society, forcing the government to refer the matter to a Group of Ministers (GoM). The GoM has recently given its recommendations proposing that instead of a 50 per cent share, the courts should be empowered to decide the compensation amount from the husband's inherited and inheritable property for the wife and children upon finalisation of divorce proceedings. These recommendations have been well received but they are not yet in final form.

IV WEALTH STRUCTURING AND REGULATION

i Wealth-planning vehicles

Due to limited options available for wealth-planning vehicles in India, the private trust has become popular due to its flexibility and adaptability. It assists in achieving a wide range of objectives of the Indian HNWI, by providing:

a separation of ownership from actual control and management over the assets and consolidation of assets;
b professional management and guidance on onshore and offshore passive investments;
c business and family governance, and avoidance of family and business disputes;
d the chance for family members to pursue other professional interests while providing for their personal needs;
e the accumulation, management and disposal of an estate as per the desires of the estate owner without going through time-consuming and litigious probate procedures;
f contributions to religious and charitable causes; and
g other financial, tax, and business planning.

India gives due recognition to foreign trusts. Foundations are not recognised in India and there are few precedents on how an offshore foundation would be treated for Indian-resident beneficiaries.

The Indian concept of trust is similar to that of many common law jurisdictions. Private trusts, not being public charitable trusts or private charitable trusts, are governed by the Indian Trusts Act 1882 (the Trusts Act). In India, a trust is not a separate legal entity but is an obligation. The Trusts Act defines a trust as being a legal obligation annexed to the ownership of property and arising out of a confidence placed in the trustee by the settlor, for the benefit of the beneficiaries as identified by the settlor including or excluding the settlor him or herself. Under the Trusts Act, the trustee of an Indian trust is the legal and the beneficial owner of the trust property. The beneficiaries (regardless of whether they are Indian residents) to such a trust only have a beneficial interest in such trust property.

Family (private) trusts may be set up either during one's lifetime or under a will (in either case, orally or under a written instrument). A trust encompassing immoveable property must, however, be declared by a registered written instrument.[12] A trust may be set up either as a revocable trust (that is, a trust that can be cancelled by its settlor at any time); or as an irrevocable trust (that is, a trust that will not come to an end until the terms of the trust have been fulfilled); and each of the above may be either of the following:

a discretionary trust: an arrangement whereby the trustee may choose, from time to time, who (if anyone) among the beneficiaries is to benefit from the trust, and to what extent; or

b determinate trust: an arrangement whereby the entitlement of the beneficiaries is fixed by the settlor, the trustees having little or no discretion.

For the purposes of taxation, trusts in India are fiscally transparent entities and the income of the trust is effectively taxed in the hands of its beneficiaries. The obligation to pay tax, however, falls on the trustee in the capacity of a representative assessee.

For determinate trusts, the trustee would be assessed to tax to the same extent that would be recoverable and levied upon the beneficiary. At the same time, the trustee is entitled to recover the tax amount from the beneficiary. If the income of the trust includes profits and gains of business or profession, then such income would be taxed in the hands of the trustee at the maximum marginal rate (now, 30 per cent).[13] For discretionary trusts, income would be taxable at the maximum marginal rate.

ii Disclosure and transparency

In India, the anti-money laundering regime is governed by the Prevention of Money Laundering Act 2002 (PMLA). The PMLA criminalises money laundering and provides for confiscation of property derived from, or involved in, money-laundering. The PMLA and the rules framed under it provide that whoever directly or indirectly attempts to indulge, knowingly assists, is a party to or is actually involved in any process or activity connected with the proceeds of crime (i.e., property, value of such property derived or obtained, directly or indirectly, as a result of criminal activity) and projects it as untainted property shall be guilty of the offence of money laundering. Every banking company, financial institution and intermediary is required to maintain records of prescribed transactions, furnish information of transactions to the specified authority and verify and maintain records of the identity of all the clients in a prescribed manner. Further, in the PMLA (Amendment) Act 2012, the definition of money laundering has been expanded to cover mere 'possession' of proceeds of a crime. Further, the minimum threshold for initiating money-laundering cases has been removed.

Last year, the Ministry of Finance tabled before the Indian parliament the 'White Paper on Black Money', a report analysing the relationship between unaccounted income and the policy and administrative regime in India. As another initiative to

12 The trust deed has to be registered under the Indian Registration Act 1908.

13 Maximum marginal rate means the rate of income tax (including surcharge) applicable in relation to the highest slab of income in the case of an individual, association of persons or, as the case may be a body of individuals.

address the problem of money laundering, this report made various suggestions such as reducing disincentives against voluntary compliance, reforms in sectors especially vulnerable to generation of black money, tax incentives for use of credit and debit cards as opposed to cash.

To enhance transparency, additional disclosure obligations have been made mandatory in the tax returns under the ITA, regardless of the resident earning any income in a financial year. Residents must disclose separately all overseas and domestic assets (including financial interests and signing authority in any offshore account), regardless of the Indian resident having taxable income in the relevant financial year.

The time limit for an issue of notice for reopening an assessment (under both income and wealth tax) was increased from 6 to 16 years if the income is in relation to any offshore asset (including financial interest in any entity) is chargeable to tax and has escaped assessment.

India has also entered into tax information exchange agreements (TIEAs) with most of the offshore island jurisdictions to expand its information collection system. Further, the Indian government has allowed for the blacklisting of countries that do not cooperate in sharing information about suspected tax evaders.

There have been concerns in recent years that foreign direct investments into India routed through Mauritius were a means of money laundering and round tripping of illicit funds. To address this concern, India has been trying to renegotiate the DTAA to have checks and balances in place on foreign investments into India through Mauritius. A major focus of these negotiations has been insertion of a 'limitation of benefits' clause under the DTAA with Mauritius. To facilitate exchange of information, India has also been pushing for a TIEA with Mauritius.

V CONCLUSIONS AND OUTLOOK

Despite an unprecedented global recession, India remained the second-fastest growing economy in the world. Whereas most countries suffered negative growth in at least one quarter from 2008 to 2010, India's GDP grew by more than 6 per cent throughout this period – and by 7.9 per cent in the last quarter of 2009.[14] However, the impact of financial crisis on the equity markets led HNWIs to explore new pastures. Investments that provided a fixed income or that were hitherto dwarfed by the equity markets were pursued more actively for wealth-planning purposes (such as the Indian art market).

As mentioned above, globalisation has brought about a change in attitude in both legislators and wealthy individuals towards wealth planning. That said, a major challenge for wealth planning in India is the complex web of personal laws. Harmonising personal laws or enacting a uniform civil law has proved to be socially difficult and politically unpalatable. Further, in comparison with laws that govern planning for purely commercial ventures, laws that impact private wealth planning have received little attention. This has led to a mismatch in the pace and extent of

14 Shashi Tharoor, 'How India Survived the Financial Crisis', available at www.project-syndicate.org/commentary/how-india-survived-the-financial-crisis#1z13sJMwhlF27WvG.99.

modernisation of laws that affect the larger universe of wealth planning. Addressing private wealth planning should not be limited to targeted changes in tax law alone. To build a framework conducive to private wealth planning that recognises legitimate concerns motivating inter-generational wealth transfer, what is also required is clarity and flexibility in the types of wealth-pooling or holding vehicles that may be possible. Only time will tell what form these options will take, but it is clear that private wealth planning in India is taking on a more mature hue and more robust measures in this field are only to be expected.

Appendix 1

ABOUT THE AUTHORS

MANSIE SATHIANATHAN

Nishith Desai Associates

Mansie Sathianathan is an associate at Nishith Desai Associates. She is part of the international estate and succession-planning practice focusing on planning wealth for HNWIs, UHNWIs and assisting various private banks and wealth managers in complex cross-border structuring and implementation.

Her practice includes structuring and advising private banks and private clients on domestic and cross-border estate planning and involves various succession laws, private and international laws, foreign exchange and tax issues and drafting of related documentation.

SHREYA RAO

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Shreya Rao heads the private client practice at Nishith Desai Associates and is a senior member of the international tax practice. She is a graduate of NALSAR University of Law and also holds a master of laws from Harvard University.

She has extensive experience in advising on cross-border issues in private client law, especially on India–US matters. She is also a regular speaker at international conferences and is now part of the Executive Council of IFA, India and an active participant in the activities of the Young IFA Network.

Ms Rao has also written extensively for reputed Indian and international tax journals and was awarded a scholarship by the International Bar Association (Taxation Section) in 2008, for a paper examining the applicability of evolving fiscal jurisdiction theories to the business models of global service industries.

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