Investment in Healthcare Sector in India

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Introduction:

India, one of the biggest emerging markets, is currently an important destination for Foreign Direct Investment (”**FDI**”). Despite India’s potential to become one of the most dominant economies in the world, yet its economic progress since gaining its independence in 1947 has generally been masked by its perception of being a closed, developing country. However, this perception has changed in the recent past and India is accepted as one of the most stable and robust economies.

The healthcare sector as an industry is expanding rapidly and has not been as severely impacted by recent economic slowdown as some of the other industries. It comprises of hospital services, diagnostic services, diagnostic products, medical technology, clinical trial services and clinical research organizations. This sector is predominantly privatized and accounts for more than 80% of total healthcare spending in India[1] with almost 75 to 80 % of hospitals being managed by private sector.

The Indian hospital industry was estimated to be worth about USD 44 billion as of 2010 and is predicted to be worth around USD 280 billion by 2020. Further, the Indian hospital service industry is projected to grow at a compounded annual growth rate of more than 9%.[2] It’s undergoing metamorphosis by broadening focus of the services by using technology, deliverables and newer applications. The hospitals that were confined to a specified area with limited infrastructure and services are now expanding mainly due to the foreign investment being received by the sector. The Indian Healthcare sector is emerging as one of the fast-growing service sectors in India, contributing 6% to the country’s growth domestic product (GDP)[3]

According to 2001 population norms, there was still a shortage of 4,477 primary healthcare centers and 2,337 community healthcare centers and India would require 1.75 million beds by 2025. Over 6800 more hospitals are needed in India to provide basic health facilities to people in rural areas. In the recent past various hospitality brands such as Fortis, Apollo, Max, Global and Care have started aggressive expansion in the country.[4]

Foreign investors can play significant role in the development of the hospital sector. This is evident from the fact that private equity funds (including venture capital funds) have invested over $ 2 billion in healthcare and life science sector over the past five years.[5] Further, India has received USD 1, 32,837 million as aggregate FDI from April 2000 to April, 2011 and specifically hospital and diagnostic centers have received FDI of USD 1030.05 million from April 2000 up to April 2011 constituting 0.78% of the total FDI into India.[6]

[1] Northbridge Capital, Hospital Scetor Research, November 2010, available at http://northbridgeasia.com/ResearchReports/HOSPITAL%20RESEARCH%20REPORT%20(1)%20(1).pdf, last visited on December 27, 2010.

[2] *id*

[3] http://myiris.com/shares/research/firstcall/HEALTHCA_20100424.pdf

[4] *id*

[5] The Venture Intelligence survey of leading PE and VC players

[6] FDI Statistics, Department of Induatrial Promotion & Policy, Government of India available at http://dipp.nic.in/fdi_statistics/india_FDI_April2011.pdf last visited December 31, 2010.

Opportunities:

The Indian healthcare sector is ripe for the expansion and significant growth due to the reasons mentioned above. One of the main factors is increase in the space of medical tourism in India. Medical tourism in India is growing at a compounded annual growth rate of over 27 per cent during 2009-2012. Medical tourism market is valued to be worth USD 310 million and is expected to generate USD 2.4 billion by 2012 and is growing at 30 per cent a year.[7] Due to increasing medical tourism and greater clinical trial activities in India, there is a need to upgrade the service standards and provide the state-of-the-art facilities to bring the service levels on par with global standards. This changed outlook has created an excellent opportunities for the investors to provide much needed managerial and financial support. The following sectors have significant opportunities for the investors.

- Hospitals and Infrastructure

There is tremendous demand for tertiary care hospitals and specialty hospitals in India. There is a gap between the availability of the beds and required beds in the hospital in India. It is estimated that an investment of USD 25.7 will be required to meet the requirement of additional 450,000 beds by 2010. The government would not be playing significant role in bridging this gap giving private players immense opportunity.[8] Further, medical tourism industry in India with estimated market of USD 350 million in 2006 and likely to reach USD 2 billion by 2012 [9] will also play significant role in the development of hospital sectors. It is estimated that this sector has a potential to attract one million medical tourists each year from all over the world. We have also seen the concepts of “Medicity” emerging. Government is encouraging this sector by providing certain incentives like lower import duties, higher depreciation on medical equipments and expedited visa for patients from foreign countries. Some trends that have been observed are that most of the healthcare players have been setting up additional facilities to cater critical care or super specialty healthcare. Some leading hospital players are very aggressive on raising funds for their expansions. India is also witnessing growth of advanced diagnostic equipments and excellent infrastructure. Separately, there is also a need for institutions that train professionals, nursing and paramedics to overcome the shortage of trained professionals in the health care sector in India.

- Health Insurance

The percentage of the Indian population that has been covered under health insurance is unfortunately very insignificant. Lack of awareness, casual approach is some of the reasons that have contributed to this. Though there is increase in number of health care insurance policies over past few years majority of the population remains without any coverage. Growing size of middle class population in India that spends on healthcare has led to the possibility of emergence of health insurance market. Health insurance is expected to touch USD 5.75 billion by 2010.[10]

7. Northbridge Capital, Hospital Scetor Research, November 2010, available at http://northbridgeasia.com/ResearchReports/HOSPITAL%20RESEARCH%20REPORT%20(1)%20(1).pdf, last visited on December 27, 2010.

8 CRISIL. Healthcare in India..Emerging market report 2007 by PWC

9 CII-McKinsey report

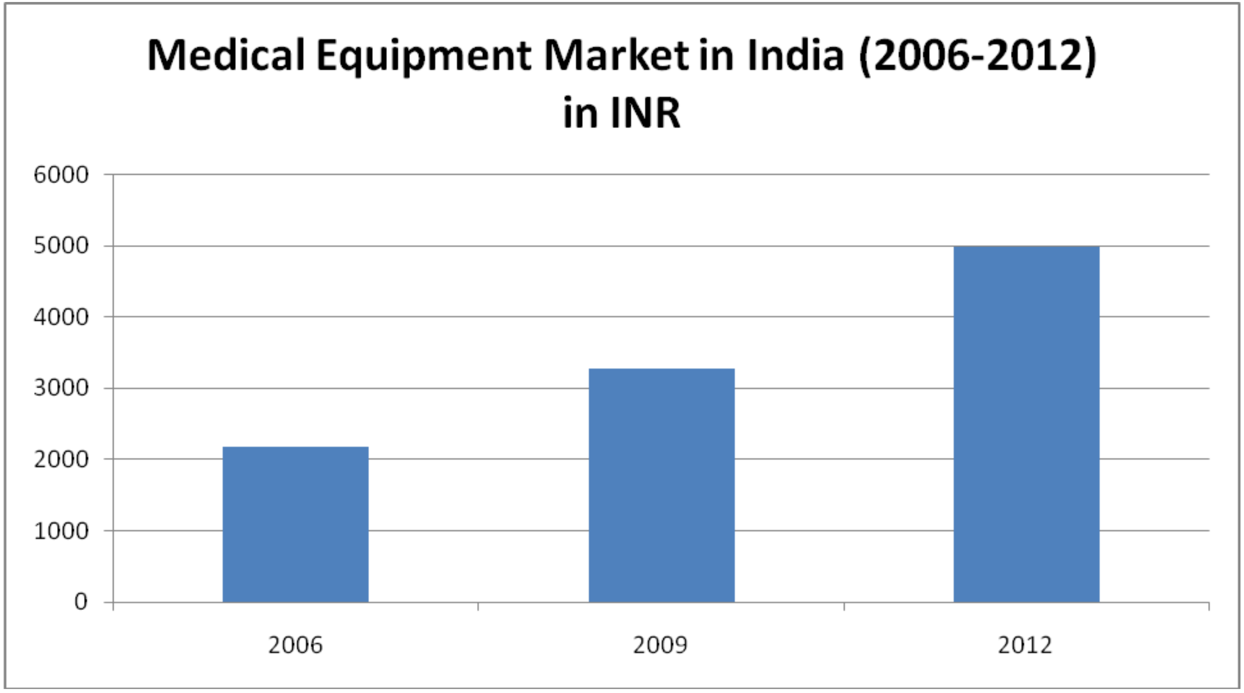
10 Study by PHD Chamber of commerce and industry , New Delhi.

- Technology driven services

Significantly low presence of physicians in rural and semi-urban areas has led to the limited access to proper healthcare facilities for the people living in these areas. Telemedicine is considered to be one of the solutions to this lacuna in accessibility to health care services in rural and semi-urban areas. Growth of IT sector in India which plays crucial role in telemedicine has led to emergence of this sector in India. Tele radiology has emerged very fast with increasing number of foreign hospitals active in this space. Many hospitals have adopted the approach of public – private partnerships ("PPP") to render services through telemedicine. Indian Space Research Organization has planned to set up telemedicine centers across the country by linking various district hospitals. India also has tremendous potential in the sector of medical equipments and devices ranging from basic equipments like EKG machines to high end equipments like CT scanners, MRIs etc.

Investment into manufacture of medical equipments:

Even investment into the sector of manufacture of medical equipments is one of the most attractive areas for investment. The medical equipment manufacturing industry is expected to grow in tandem with hospital sector which is expected to grow to USD 60 billion by 2016. Further, the following graph shows the growth expected in the medical equipment market in India over the 2006-2012 period.[11] The market is expected to register an increase from $2.2 billion in 2006 to close to $5 billion in 2012. India has received USD 368.48 million rupees as FDI from April 2000 to October 2010.[12]



Source: Ernst and Young Analysis along with FICCI, available at http://www.ficci.com/media-room/speeches-presentations/2007/jan07/ExecutiveSummaryReport.pdf.

[11] Private Equity Pulse on Healthcare & Life Sciences, July 2009, available at www.ventureintelligence.in
[12] Statistics available at www.dipp.gov.in.

The medical and surgical appliances industry is clearly a high growth segment in the healthcare sector, where one could foresee increased FDI and collaborative arrangements to expand domestic manufacturing capacity.[13] The reasons which could be attributed to this rise in investments in the life sciences sector can be:

- Increasing per capita incomes and positive income elasticity of healthcare spends;
- Increasing urbanization and salience of lifestyle diseases;
- Increasing literacy and awareness;
- Increasing healthcare penetration and organized sector employment;
- Robust growth in demand for services;
- Significant supply shortfall in terms of quantum and quality;
- Ability to absorb significant amounts of capital due to high capital intensity; and
- Predictable demand and recession proof nature of the industry.

The private sector, which already accounts for about 75% of the healthcare services delivered, is expected to account for over 90% of future investments in developing the country's hospital infrastructure. The role of the government will largely be focused towards disease prevention, improving access to primary care, increasing and improving the quality of the country's pool of medical manpower and incentivizing the private sector to invest in capacity building and improving access to healthcare services.[14]

The aspect which has to be looked is that there is a significant potential for growth in tier-II and tier-III locations. Even though these tier- II and tier- III towns have considerable number of primary healthcare centers, they lack quality healthcare services. These tier-II or tier-III locations have less population when compared to a metro; however these areas can serve as quality healthcare units to the nearby villages and towns. As a result of this, there is significant activity in these locations by both national players as well as regional hospitals either by setting up hospitals or even tying up with an existing hospital in these locations. However, a careful analysis and evaluation is required in order to gain considerable returns from these tier-II and tier-III locations. Therefore, the business or commercial strategy needs fine tuning for investing into hospitals located in these areas.

Foreign Direct Investment in Hospitals and Manufacture of Medical and Surgical Appliances:

The economic reforms launched by the Government from 1991 onwards have resulted in substantial economic growth and the integration of India into the global economy. The pace of reforms has gained a new momentum due to political stability and strong industrial growth. With the opening up of the Indian capital markets to Foreign Institutional Investors in 1993, the Foreign Direct Investment (FDI) regime too has been progressively liberalized.

Foreign Direct Investment ("**FDI**") into India is governed by the Foreign Exchange Management Act ("**FEMA**"), 1999, the rules and regulations made thereunder by the Reserve Bank of India ("**RBI**") and the

[13] Chanda Rupa, Foreign Investment in Hospitals in India: Status & Implications, available at http://www.whoindia.org/LinkFiles/Trade_Agreement_Foreign_investment-full_text.pdf, last visited on July 03, 2009.

[14] Siddharth Dondhiyal, Private Equity Pulse on Healthcare & Life Sciences, July 2009, available at www.ventureintelligence.in.

Industrial Policy and Procedures issued by the Ministry of Commerce and Industry through the Department of Industrial Policy and Promotion ("**DIPP**"), Secretariat for Industrial Assistance.

The provisions pertaining to FDI are laid down in Schedule I of the FEMA (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000. These provisions are subject to compliance with the provisions of the Policy Guidelines and the Press Notes / Press Releases issued by the DIPP, from time to time.

The DIPP has issued a consolidated policy with respect to foreign investment into Indian companies. Currently, foreign investment is regulated by Consolidated FDI Policy issued by DIPP in the form of Circular 2 of 2011.[15]

The exchange control regulations permit 100% FDI in most sectors under the automatic route, i.e., where no prior approval of the Foreign Investment Promotion Board ("**FIPB**") is required.

Currently FDI is permitted up to 100 percent under the automatic route in hospital sector and manufacture of medical and surgical equipment in Greenfield projects. The FDI in all Brownfield projects in pharma sector will henceforth be scrutinized by the FIPB as an interim measure until the government comes up with a comprehensive policy to regulate such investments. It is also proposed that in future, all Brownfield investments will be scrutinized and approved by the Competition Commission of India (CCI)

Foreign Venture Capital Investment:

Another, vital means of investment into the healthcare as well as medical and surgical appliances is through venture capital investment by registered entities with SEBI. From the year 2000, SEBI has brought into effect new set of guidelines enabling foreign venture capitalists and private equity investors. It is not mandatory for a private equity investor to register as a Foreign Venture Capital Investor (FVCI) under the FVCI regulations.[16] However, by registering the fund as a FVCI there are few advantages available. The FVCI's are exempted from following pricing guidelines for the acquisition of securities at the time of entry as well as exit. Secondly, in cases where the promoters of the company intend to buy-back the securities from FVCI, they are exempted from making an open offer under the Takeover code.[17]

Further, under the ICDR Regulations,[18] the entire pre issue capital of a company going public is locked-in for a period of one-year from the date of allotment in the public issue. However, an exemption from this requirement is granted to FVCI's registered with SEBI, provided the shares have been held by them for a period of at least one year as on the date of filing the draft prospectus with SEBI.

[15] Consolidated FDI Policy, Government of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion, SIA (FC Division), available at http://dipp.nic.in/English/Policies/FDI_Circular_02_2011.pdf .

[16] SEBI (Foreign Venture Capital Investor) Regulations, 2000.

[17] Reg. 3, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

[18] Securities Exchange Board of India (Issue of Capital and Disclosure Requirements) 2009 ("ICDR Regulations").

Regulatory aspects of Hospitals:

As a part of due diligence, the investor would typically ensure that the investee entity has complied with all applicable laws. There are multiple laws that govern the sub-sets of the health care sector. There are several permissions and licenses that are required to be obtained by the establishments, e.g.

1) Nursing home Registration certificate
2) Certificate of registration under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994;
3) Certificate of registration for ultrasound machine;
4) No objection from Pollution Control Board, for setting up hospital under the Air (Prevention and Control of Pollution) Act, 1981;
5) Authorization for operating a facility for generation, collection, reception, storage, transportation, treatment and disposal of bio medical wastes;
6) Authorization to operate a common facility under Bio-Medical Waste (Management and Handling) Rules, 1998 from the Pollution Control Board;
7) License to store compressed gas in pressure vessels;
8) Authorisation to obtain and possess certain category of drugs for use of patients;
9) License to operate a blood bank for procession of whole human Blood for preparation for sale or distribution of its components;
10) License for grant of DD6 Narcotic drug license;
11) Registration under the Pre Natal Diagnostic Techniques (Regulations and Prevention of Misuse) Act, 1994;
12) Permit for the purchase and possession of denatured spirit;
13) Registration under various applicable Labour Laws;
14) Registration under various Indirect Tax Statutes.

Regulatory Aspects for Medical Devices:

The medical devices industry was not regulated in India which led to import and manufacturing of devices which could not meet the globally acceptable standards. The Central Government of India issued notifications, in the years 2005 and 2010 ("**Notifications**") respectively, for regulating the manufacture, sale and distribution of the certain sterile medical devices,[19] as "drugs" as per the Drugs and Cosmetic Act, 1940 ("**Drugs Act**")[20]. In March 2006, the government issued guidelines for the Import and Manufacture of Medical Devices ("**Guidelines**").

It may be noted that in respect of the medical devices other than those as laid down in the Notifications ("**Regulated Devices**"), at present there are no rules or regulatory mechanisms to regulate the manufacture, sale or import of such other devices.

The issuance of the Notifications to identify Regulated Devices as drugs was the first step towards regulating medical devices in India. However, the larger issues still remained to be addressed regarding

[19] The list of these devices is available on the website www.cdsco.nic.in

[20] The Drugs Act is the relevant legislation that regulates the manufacture, sale, distribution and import of pharmaceutical products in India.

specific rules relating to product standards, safety, and clinical trials and manufacturing practices for each of the Regulated Devices.

The Ministry of Health and Family Welfare have now approved certain procedures to be adopted in respect of licensing of import as well as manufacture of these Regulated Devices in the country. The company should primarily obtain a license under the Drugs and Cosmetics Act, 1940. For manufacturing and/or assembling medical and surgical appliances, the standards are prescribed under the Drugs and Cosmetics Act, 1940. The institution should adhere to the standards prescribed under the Bureau of Indian Standards.[21] Further, the institution involved in manufacture of medical devices and surgical appliances has to adhere to the condition as mentioned under the Drugs and Cosmetics Act, 1940.[22]

Taxation Aspects:

a. General Overview

Taxation of income in India is governed by the provisions of the Indian Income Tax Act, 1961 (hereinafter referred to as the "**ITA**"). The ITA is amended by finance acts, from time to time. It lays down elaborate provisions in respect of chargeability to tax, determination of residency, computation of income, et al. The ITA provides for different tax rates for different category of persons, inter alia individuals, domestic company, i.e. a company incorporated in India, foreign company, association of person (AOP), partnerships, etc.

Section 4 of the ITA referred to as the 'charging section' stipulates the basis of charge of income tax and lays down that 'total income'[23] of any person is subject to income tax. The concept of total income is discussed in Section 5 of the ITA, as per which residents are taxable in India on their worldwide income, whereas non-residents are taxed only on Indian source income, i.e. income that is received or is deemed to be received or income that accrues or arises or is deemed to accrue or arise in India.[24] Section 9 of the ITA is a deeming provision, which discusses when income is deemed to have been received, accrued or arisen in India.

India has an extensive network of tax treaties with various countries. Under the ITA, tax treaties override the provisions of ITA; however the taxpayer has the option to choose the application of the ITA if more favorable.[25] In order to avail benefits of such tax treaties the person needs to be a tax resident of the treaty country. Thus, with respect to a non-resident who is a resident of a country with which India has signed a Double Tax Avoidance Agreement ("**DTAA**"), the provisions of the ITA apply only to the extent they are relatively more beneficial to the assessee. This view was affirmed by the Supreme Court in the landmark case of Union of India v/s Azadi Bacaho Andolan and others[26] where the issue centered around the challenge to a Circular dated April 13, 2000 by which the Government had clarified that capital gains

[21] Rule 109-A and 125 A, Drugs and Cosmetics Rules, 1945.

[22] Schedule M and Schedule M-III, Drugs and Cosmetics Act, 1940.

[23] Section 2 (45) defines "Total Income" to mean the total amount of income referred to in Section 5. The scope of "total income" has been listed under section 5 of the ITA.

[24] Section 5 (1) and 5(2) of the ITA

[25] Section 90 of the ITA

[26] 2004 (10) SCC 1

earned by a resident of Mauritius on alienation of shares of an Indian Company shall be taxable only in Mauritius and not in India.

b. Taxation of Entities

Company

The corporate income tax rate is 30% for domestic Indian companies and 40% for a foreign company. A dividend distribution tax ("**DDT**") of 15% is payable upon distribution of dividends to the shareholders. However, such dividend income is then tax exempt in the hands of the shareholders irrespective of their residential status. DDT is payable irrespective of whether the company making the distributions is otherwise chargeable to tax.

Partnership and LLP

A partnership and an LLP are taxed similarly. The rate of income tax for a partnership and an LLP are the same as for corporate entities, that is, 30%. However, the share of profit in a partnership firm (including LLP) is exempt from tax in the hands of the partners.

c. Tax implications of various investment options

Investment by way of equity and preference shares

Gains earned on sale of shares of an Indian entity, being an unlisted company, are taxed at the rate of 20% for long term capital gains[27], and 30% and 40% for short term capital gains[28], for residents and non-residents respectively.

Profits may be distributed by an Indian company either by way of dividends or by buy-back of shares.

- As mentioned above, dividend is taxed in the hands of the company declaring such dividend at the rate of 15% and is exempt in the hands of the recipient of such dividends.

- The second method of distribution, that is, by the way of buy-back/ redemption of shares would result in capital gains income in the hands of the shareholders. However, such a buy-back of the equity shares is permitted only once in a period of 12 months, and a fresh issue of the same security is not permitted before a period of six months from the date of the buy-back. Further, the Indian company is permitted to buy-back a maximum of 25% of the outstanding paid up equity share capital in one year. However, the shares which are bought back are exempted from the provisions of deemed dividend.

Investment by way of Debt

Investment into an Indian company may also be structured in the form of debts such as loans or debentures. Interest paid on the debentures and loans is subjected to withholding tax at the rate of 10%

[27] Gains on sale of shares held for a period exceeding twelve months

[28] Gains on sale of shares held for a period not exceeding twelve months

in case of resident investors. On the other hand, the withholding tax on interest paid on debentures held by and loans from non-residents is 40%. However, interest payments on loans availed in foreign currency is subjected to a reduced withholding of 20%. The interest expense is, however, a tax deductible expense for the Indian company, and hence will go towards reducing the taxable profits of the Indian company.

All rates mentioned above are exclusive of the currently applicable surcharge of 5% on basic tax rate in case of domestic companies and 2% on basic tax rate in case of a foreign companies, and education cess of 2% plus secondary and higher education cess of 1% on basic tax rate plus the surcharge applicable thereon. Please note that surcharge is applicable only in such cases where the total income is exceeds INR 10 million.

d. Use of Intermediate jurisdictions

Foreign enterprises could make investments into the Indian companies through an intermediate holding company set up in a favorable jurisdiction. India has a wide treaty network and the judicious use of an appropriate offshore jurisdiction could result in benefits for the foreign company such as a reduced or nil rate of tax on capital gains income, reduction in withholding tax rates etc. The choice of an offshore entity would depend on the benefits available under the treaty between India and the offshore jurisdiction and the domestic tax laws of the offshore jurisdiction.

The treaties commonly used for inbound investments include treaties with Mauritius, Singapore, Cyprus and the Netherlands, for the purpose of setting up intermediary holding companies. Mauritius is a favoured route for inbound investments into India. Mauritius accounts for almost 44 percent of the foreign direct investment inflows into India. In accordance with the provisions of the India-Mauritius DTAA, capital gains income earned by a Mauritius resident on sale of shares of an Indian company would not be taxed in India if the Mauritius resident does not have a permanent establishment ("**PE**") in India. Further, as Mauritius does not tax capital gains income currently, such income is not subjected to tax either in India or in Mauritius. Additionally, Mauritius provides a foreign tax credit under its domestic law which in effect brings down the domestic tax rate in Mauritius to a worst of 3% and to a best of 0% (in most cases).

The India-Singapore DTAA also offers substantial tax benefits. Capital gains income is exempt from tax provided, that such person has not arranged his affairs with the primary purpose of availing benefits under the India-Singapore Treaty. Thus a shell/conduit company[29], that is, a company with nil or negligible business operations or with no real and continuous business activities in Singapore, shall not be entitled to the benefits under the India-Singapore Treaty. The Protocol to the India-Singapore DTAA tags the availability of the beneficial provisions under this DTAA with respect to capital gains income to the India-Mauritius DTAA, such that the beneficial provisions for capital gains income shall be operational only so long as the similar provisions under the India-Mauritius DTAA are in effect.

[29] The Protocol amending the India-Singapore DTAA signed on June 29, 2005 provides that a company shall not be a shell/conduit company if:

- It is listed on the recognized stock exchange of the Contracting State; or
- Its total annual expenditure on operation s in that Contracting State is equal to or more than Singapore $ 200,000 or INR 5,000,000 in the respective Contracting State as the case may be, in immediately preceding period of 24 months from the date the gains arise i.e. the date of alienation.

The India-Cyprus DTAA offer benefits similar to the India-Mauritius DTAA. Additionally, the India-Cyprus DTAA is favourable for making inbound investments into Indian debt securities. Pertinently, the interest income earned from the Indian debt securities would be liable to a withholding tax under the ITA or the India-Cyprus DTAA, to the extent whichever is more beneficial. The withholding tax under the ITA is 40 percent whereas under the India-Cyprus DTAA the same is reduced to 10 percent, therefore the more beneficial provision being under the India-Cyprus DTAA may be availed off. Moreover, Cyprus being a European Union ("**EU**") offers access to the wide range of benefits which are allowable to EU nations, including the Parent-Subsidiary Directive.

The India-Netherlands DTAA also offers exemption with respect to tax on capital gains in a restricted form, it also provides for a favourable tax rate with respect to interest income which is taxed at 10%. Most European investors prefer to route their investments into India through Netherlands. Thus India-Netherlands DTAA is favourable for making inbound investments into India. Further, like Cyprus, Netherlands being an EU nation is entitled to the beneficial treatment permitted between EU nations. India-Netherlands DTAA has also proved to be beneficial for outbound investments from India.

e. Industry Specific Incentives:

- Hospitals

The ITA provides specific tax relief to hospitals. The ITA provides a five year tax holiday in respect of profits derived[30] from business of operating and maintaining hospital located anywhere in India other than the excluded area (such as Mumbai, Delhi, Hyderabad, Chennai etc); subject to the satisfaction of the following conditions:

1. The hospital is constructed and has started or starts functioning at anytime during the period beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2013;
2. The hospital has at least one hundred beds for patients;
3. The construction of the hospital is in accordance with the local regulations and bye-laws.

Further, any person engaged in the business of building and operating a new hospital with at least one hundred beds for patients, is allowed a deduction for the whole of the capital expenditure incurred, wholly and exclusively, for the purposes of the specified business. This deduction is available only to such businesses which commence operations on or after April1, 2010.

- Research and development

Any person engaged in any business of manufacture or production of any article or thing (other than certain specified items) is allowed to take deduction of upto two times of the expenditure incurred on scientific research on in-house research and development facility as approved by the prescribed authority. For the purposes of this provision, "expenditure on scientific research", in relation to drugs and pharmaceuticals, includes expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970. This deduction is available only for expenditure incurred upto March 31, 2012.

[30] Section 80-IB (11C) of the ITA

New developments:

The Clinical Establishments (Registration and Regulation) Bill, 2007, prohibits any person from carrying on a clinical establishment unless it has been duly registered in accordance with the provisions of the Clinical Establishments (Registration and Regulation) Bill, 2007. The definition of clinical establishment encompasses all the facilities which offer services in recognized field of medicine. Not only clinical establishments which may be established after the promulgation of Clinical Establishments (Registration and Regulation) Bill, 2007, need to be registered, also clinical establishments in existence as on date of the enactment of the legislation need to obtain registration within one year from the enactment of the legislation. The main objectives of the legislation are to prescribe minimum standards for the facilities and services to be provided by the clinical establishment as well as the minimum qualifications for the personnel. Further, the enactment proposes to create a mechanism for reporting and maintenance of records with respect to clinical establishments. Though this is a welcome step for increasing the standard of healthcare in the country, on the downside, it may act as another additional hurdle from the perspective of an investor intending to set up clinical establishment.

Conclusion:

There are many positive implications of foreign investment in hospitals. One of the major impacts foreign investment would have is the creation of the necessary infrastructure. Investments are also needed beyond the metros to expand access to healthcare. In addition to helping increase physical capacity in the health care sector, such as increasing the number of hospital beds, diagnostic facilities, and increasing the supply of specialty and super-specialty centers, foreign investment can also help in raising the standards and quality of healthcare, in upgrading technology, and in creating employment opportunities, with potential benefits to the health sector and the economy at large. However few things to be kept in mind for achieving success in hospital sector are that the cost of medical care should be affordable most importantly in the tier-II and tier-III locations; the hospitals in tier- II and tier-III locations should concentrate on the ailments which are geography specific.

Suggestion:

Considering the need of proper healthcare facilities, it would act as a major boost to the healthcare sector if the same is included under the ambit of the 'infrastructure' sector. Such policy move would allow healthcare facilities to receive more tax benefits. For the purposes of direct taxation it would be eligible for tax benefits under section 80-IA of the Income Tax Act, 1961. Section 80-IA provides for a ten year tax holiday is to enterprises engaged in the business of development, operation and maintenance of infrastructure facilities, subject to compliance with the conditions prescribed therein.

Such tax holiday may help in reducing the input costs involved in the establishment of a hospital. Such additional money could be used for further investments into the sector which in turn may result in more people receiving proper healthcare and more job opportunities for healthcare workers.