QUARTERLY BUZZ

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FOREWORD

In the first nine months of this year, global M&A reached USD 3.41 trillion, the second highest volume on record high of USD 3.59 trillion in 2007. This has been due to announcement of 45 megadeals totaling USD 1.15 trillion, the highest ever. Among the 26,000 M&A deals announced, the largest deals have been in healthcare, technology and energy sectors. Notable deals this quarter include merger of Anthem Inc and Cigna Corporation valued at USD 55.2 bn, Altice's USD 17.7 bn acquisition of Cablevision, General Electric's USD 14 billion acquisition of Alstom's energy business.

Content

In India, M&A has made a comeback in the first nine months this year with 599 transactions amounting to USD 39.5 bn. Key deals include ONGC's investment in Russia's second largest oil field, JSW Energy's acquisition of two hydropower assets of Jaypee Group and Lupin's acquisition of two US-based pharmaceutical companies. The deal activity is going head-to-head with the high seen in 2007 and is likely to even reach a new high by the end of this year.

On the regulatory front, Indian Govt. has introduced composite caps for all sectors except defense and banking. This has done away with sub-limits within the overall limit for FPIs / FIIs, thus simplifying the existing FDI regime. In another move, DIPP has clarified that facility sharing agreements between MNC group companies would not be considered as FDI in real estate business. In corporate laws, it has been provided that money raised from relatives of directors would not amount to raising deposits subject to appropriate disclosure. To augment Smart City projects, SEBI has notified regulations that enable municipalities to issue and list debt securities and raise funds from public or on private placement basis. As part of its efforts to promote the start-up environment, SEBI has amended extant regulations to provide for a lesser stringent framework for startups to come up with IPOs and has also exempted them from delisting, takeover and alternative investment fund regulations.

On the Direct Taxes front, CBDT issued two circulars providing greater clarity to the public about requirements and compliance window allowed by black money law. CBDT has clarified that MAT shall not be applicable to foreign companies not having a PE (in case of DTAA) and not required to register under Companies Law (in case of absence of DTAA) which gave a big relief to foreign investors. As another step towards easing compliance, Income Tax Department has simplified verification process of submitted ITR – which can now be done using internet banking or aadhar or in applicable cases, electronic verification code. On the Indirect Taxes front, CBEC provided clarity on non-binding nature of those circulars which have become contrary to judgments of Hon'ble Supreme Court and High Courts. The CBEC also specified the procedure for use of DSC for invoicing, electronic records and authentication.

This newsletter aims to captures the key M&A of Q3 of 2015 as well as the major tax & regulatory developments of this quarter. We hope you find the same an interesting read.

GM Corporate Solutions

M&A Trends

M&A has seen a comeback this year with 599 transactions in the first nine months this calendar year. Amounting to USD 39.5 bn, the deal value is set to cross the record USD 50.2 bn worth of deals in the year 2007.

On one hand, inbound deals have shrunk by 19 percent, on the other hand, there has been almost five-fold rise in outbound deals.

Transaction trends have been spread across sectors. The activity has been far more broad-based compared to 2007 with many companies looking at opportunities to improve their valuations. Telecoms, IT, financial services, consumer and healthcare sectors have seen most of the activity.

Few M&A deals of Q3 - 2015

Lupin agreed to acquire US-based Gavis Pharmaceuticals LLC & Novel Laboratories Inc for USD 880 mn making it the largest overseas acquisition by an Indian pharma company

Cipla's UK arm has agreed to acquire two US-based companies: InvaGen Pharmaceuticals Inc and Exelan Pharmaceuticals Inc in a transaction valued at USD 550 mn making it one of the biggest overseas buy by and Indian drugmaker

Aricent Inc, USA acquired chip design services company SmartPlay Technologies, India for USD 180 mn. This is Aricent's biggest ever acquisition in India and one of the biggest acquisitions in the semiconductor space in India.

Fairfax-owned Thomas Cook has acquired India & Hong Kong business of Kuoni Group for USD 84 mn to scale up its inbound tour business and expand in foreign markets. This is the second biggest deal in the India travel space.

Govt. owned ONGC Videsh Ltd has acquired a 15 percent stake in Russia's second largest oilfield by production owned by OAO Rosneft for USD 1.3 bn. The oilfield has an annual capacity of 22 metric tonnes.

JSW Energy concluded the acquisition of two hydropower projects of Jaypee Group having a combined capacity of 1,391 MW for about USD 1.5 bn. Further, a separate MoU has also been signed between the two for acquisition of a thermal power plant of 500 MW capacity.

JK Tyre has agreed to acquire a manufacturing unit of BK Birla Group's flagship Kesoram Industries Ltd for USD 332 mn. This makes it one of the biggest acquisitions in automotive tyre sector and marks an entry for JK Tyres in two-wheeler and three-wheeler tyre market.

Ballarpur Industries Ltd, the flagship company of the Avantha Group, is selling its Malaysian subsidiary Sabah Forest Industries at an enterprise value of USD 500 mn. The proceeds will be used to reduce its overall of debt of USD 1060 mn.

Malaysian healthcare services major IHH Healthcare Bhd has agreed to acquire a 73.4% stake in GE Medical Associates which runs a chain of five hospitals under 'Global Hospitals' brand for USD 195 mn

Viacom acquired 50% stake in Prism TV Pvt. Ltd. which runs five regional language channels under ETV brand for USD 150 mn. Post acquisition, the channels will be rebranded under 'Colors' brand.

PE Trends

The first nine months of this calendar year have seen a surge in PE investments with 504 transactions touching USD 13 bn, all set to cross the record highs of 2007 – which had seen USD 14.7 bn invested across 535 transactions.

In the third quarter, PE firms invested USD 5.9 bn, a 125 percent increase against same period last year. There were as many as 9 investments worth USD 100 mn or more and 7 worth USD 200 mn or more.

This year has also emerged as the best one for exits too with investors grossing over USD 6 bn between January and July, a 33% increase over last year. There have been 3 exits with more than 10x return and 7 exits in 5x to 10x range.

Real estate investments at USD 2.4 bn across 53 transactions in the first 9 months this year have surpassed the full-year investments in 2014 which were USD 2.1 bn across 80 transactions.

Few PE deals of Q3 - 2015

Flipkart raised USD 700 mn from its existing investors at a valuation of USD 15.2 bn. This round saw participation from Tiger Global and Steadview Capital.

PE firms TA Associates and India Value Fund Advisors (IVFA) will invest approximately USD 500 mn to acquire 95% stake in Atria Convergence Technologies. This would also mean a roll-over of the stake held by IVFA, an existing investor.

Fairfax India Holdings acquired a 74% stake in National Collateral Management Services Ltd (NCMSL) for about USD 126 mn. NSMSL is a private sector agricultural commodities storage company which has been operating for more than 10 yrs.

Softbank Corp, Alibaba Group Holding, Foxconn and other investors together invested USD 500 mn in Jasper Infotech which runs online e-commerce marketplace Snapdeal for about 10% stake in the company.

KKR has agreed to invest USD 150 mn in JBF Industries Ltd, manufacturer of polyester products, for a 20% equity in the company and zero-coupon convertible preference shares with 14.5% voting rights in its unlisted Singapore subsidiary.

Blackstone Group has acquired offshore private sector BPO operations of Serco Group for USD 385 mn. Interestingly, this marks a buy-back of nearly the same asset Blackstone had sold to Serco four years ago for USD 634 mn.

Ola Cabs raised undisclosed amount from Ratan Tata in July. In September, it raised USD 225 mn led by existing investor Falcon Edge Capital. It has also raised undisclosed amount from Didi Kuaidi – China's leading cab aggregator.

DLF has entered into a JV with Singapore sovereign fund GIC for its two upcoming residential projects in Central Delhi. GIC would invest about USD 300 mn for the projects. This is the largest investment in India's real estate sector.

GIC has entered into non-binding agreements with clean energy producer Greenko for sale of Greenko Mauritius' portfolio of India-based wind, hydroelectricity, biomass and natural gas assets. The deal is valued at USD 255 mn making it one of the largest transactions in the Indian renewable energy space.

In separate transactions, Warburg Pincus and Goldman Sachs invested USD 284 mn and USD 150 mn respectively in Piramal Realty for minority stakes . The investment by Warburg Pincus is the second largest in India's real estate sector.

Key Regulatory Highlights

FEMA & FDI – Key Updates

- ***Composite Caps under FDI policy:*** As per extant FDI policy, there were sub-limits for FPI / FII investments in certain sectors such as commodity, power & stock exchanges and credit information companies. These led to confusion and requirement of layered due diligence to comply with the sub-limits at all times.

  To bring uniformity and simplicity, DIPP has now introduced composite caps in all sectors except defense & banking. Consequently, the sub-limits within sectors relating to FPIs / FIIs have been done away with. Thus, current distinctions between FDI, FPI and other categories of foreign investors have been abolished. Foreign investors can now invest up to the overall sectoral caps.

  This move is expected to boost overall investment flows, especially in the sectors, supra.

- ***Issue of ESOP / Sweat Equity Shares to non-residents:*** As per extant policy, Indian company could issue shares under ESOP scheme to its non-resident employees or non-resident employees of its JV / WOS, directly or through a trust, provided that such scheme had been drawn in compliance with SEBI regulations and face value of shares to be allotted does not exceed 5% of paid up capital of the company.

  Indian companies have now been allowed to issue ESOP/sweat equity shares to its employees /directors or employees/directors of its holding company, JV/WOS, resident outside India provided that:
  - The scheme has been drawn under SEBI regulations or Companies (Share Capital & Debentures) Rules, 2014, as applicable
  - Shares being issued are in compliance with the sectoral cap applicable to the company
  - Where foreign investment is under approval route, such issue of shares shall require prior approval of FIPB

- ***Change in definition of Capital:*** The extant FDI policy has been amended to now include partly paid equity shares and warrants under eligible capital instruments for FDI. This means that in case of sectors covered under automatic route, such instruments can now be issued without any government approval, which was the case earlier. This is also in line with RBI guidelines which were already treating partly paid equity shares & warrants as capital instruments.

- ***FC-TRS can be filed online:*** With effect from 24th Aug, 2015, form FC-TRS can also be filed online on Govt. of India's e-Biz platform. The form is used for reporting transfer of shares, convertible debentures, and partly paid shares & warrants from resident to non-resident (and vice versa). The manual system would continue as an alternative till further notice.

- ***Clarification on FPIs made in corporate bonds:*** As per extant regulations, all future investments in corporate bonds by FPIs have a minimum residual maturity of three years. RBI has now clarified that the condition of residual maturity of three years is not applicable on investments by FPIs in Security Receipts issued by Asset Reconstruction Companies. However, such investments shall be within the overall limit prescribed for corporate debt from time to time.

- ***FDI Policy on facility sharing agreements:*** DIPP has clarified that facility sharing agreements between group companies through leasing/sub-leasing arrangements for the larger interest of business will not be treated as 'real estate business' within the provisions of consolidated FDI policy circular of 2015 provided that:
  - Such arrangements are at arm's length in accordance with relevant provisions of Income Tax Act, 1961; and
  - Annual lease rent earned by lessor company does not exceed 5% of its total revenue

  It is to be noted that as per extant policy, FDI is prohibited in real estate business

- ***FDI clarifications on single brand retail trading (SBRT):*** DIPP has clarified that non-resident entities, whether owner of brand or otherwise, can undertake SBRT business in India through one or more WOS / JVs in India. The consolidated FDI policy that was released in May earlier was silent on this aspect and this clarification comes as a welcome relief and opens further structuring options to foreign players in the SBRT business. DIPP has also clarified that conditions for FDI in SBRT sector under extant policy shall equally apply to Indian brands receiving FDI in India.

Key Regulatory Highlights

Companies Act 2013 key updates

- ***Extension of filing date for Annual Filings*** – MCA had vide Circular No. 10/2015 informed that eForms for annual filings would be made available by 30th Sept. (except form for filing consolidated financial statements which shall be provided by 31st Oct). In view of this, MCA has relaxed additional fee payable on requisite forms up to 31st Oct (and for CFS, up to 30th Nov).
- ***Change in Annual Return Form*** – MCA has vide Companies (Management & Administration) Amendment Rules, 2015 changed the form for filing annual return. The new form is simplified and does away with minute details required in earlier form.
- ***Clarifications on circulation and filing of financial statements*** – It has been clarified that a company holding a general meeting at shorter notice can also circulate financial statements, to be laid/considered in that general meeting, at such shorter notice.

  As per extant provisions, companies are required to place separate audited accounts for each of its subsidiaries on its website. Further, companies are also required to file accounts of its foreign subsidiaries at the time of annual filing. It has been clarified that for a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in its country and has not got its accounts audited, the Indian holding company may place / file such unaudited accounts in English language and, as far as possible, in accordance with requirements under Companies Act, 2013.
- ***Rules on XBRL Filings*** – For financial years commencing on or after 1st Apr, 2014, companies covered under following categories shall file their financial statements using XBRL forms:
  - listed with any stock exchange in India and their Indian subsidiaries; or
  - having paid up share capital of INR five crore or more; or
  - having turnover of INR hundred crore or more; or
  - companies which had done such filing in earlier financial years

  The above categories are the same as existed earlier.

  Banking, insurance, power sector and NBFC companies have been exempted from XBRL filing of their financial statements.

  Further, XBRL form shall also be used for filing cost audit reports.
- ***Amendments in rules for deposits –*** Earlier, only the amounts received from directors of the company were exempted from being included in deposits. Vide Companies (Acceptance of Deposits) Second Amendment Rules, 2015, it has now been provided that a company may receive money from relatives of directors of company and such receipt shall not be counted as deposits. Also, the Board shall be required to disclose details of money so accepted in its report.

  Earlier, only paid up share capital and free reserves were considered for determining how much deposits a company could raise. After the amendments, securities premium account shall also be considered for computing such limits thus increasing the base.
- ***Changes in Schedule III*** – Schedule III provides formats for Balance Sheet and P&L of a company. In this, trade payables that comes under current liabilities will be required to be classified into two parts: outstanding dues to MSMEs and those due to other creditors.

  In a separate notification, it has been provided that govt. companies producing defense equipments including space research will not be required to disclose certain information including raw material & purchases, value of imports, foreign currency expenditures, etc. in notes forming part of their P&L provided that:

  - The Board of Directors of the company has given its consent for such non-disclosure
  - In notes forming part of financial statements, the fact of grant of exemption vide the notification shall be disclosed
  - Company shall comply with accounting standards and ensure that its financial statements present a true and fair view
  - Company shall maintain and file such information as may be prescribed or called for by the govt., RBI or any other regulator

Key Direct Tax Highlights

- ***E-Verification of ITR*** – For AY 2015-16, ITR can also be verified electronically through internet banking and aadhar based authentication process. For small taxpayers having total income of INR 5 lakh or less without any claim of refund, ITR can also be verified using electronic verification code.
- ***Foreign Account Tax Compliance Act (FATCA)*** – On July 9, U.S. Ambassador to India and Indian Revenue Secretary signed an inter-governmental agreement to implement FATCA with effect from 30th Sept, 2015.

  Under this agreement, both the US and Indian revenue departments will receive information from financial institutions of their counterparts about accounts held by their respective residents in those financial institutions. The information to be shared will broadly be name, account no., gross credits / interests, tax identification no., etc.

  It may be noted that India has already joined Multilateral Competent Authority Agreement on Automatic Exchange of Information on June 3rd. With this, India will be able to receive information on an automatic basis from jurisdictions which have joined MCAA (currently 60) and those that will joint it subsequently.
- ***Cost Inflation Index –*** For FY 2015-16, the index has been notified as 1081. The index is used to calculate long term capital gain.
- ***Clarifications for educational institutions –*** CBDT has vide a circular dated 17 Aug clarified some issues relevant to educational institutions. A few of them are:
  - Mere generation of surplus from year to year cannot be a basis for rejection of grant of exemption
  - Charging of small amounts under different heads of fee does not, in general, represent a profit making activity provided that it does not violate any central or state regulation and no amount in the nature of capitation fee is charged directly or indirectly
  - Withdrawal of registration of trust/ institution u/s 12AA due to certain adverse findings shall not lead to an automatic withdrawal of exemption u/s 10
- ***Extension of due date for filing ITR and Tax Audit Report*** – Amid a lot of hue and cry and few contradictory judgments in High Courts for extension of due date, CBDT vide a press release on 1st Oct acquiesced to the demands of tax professionals and extended the due date for filing ITR and tax audit report for FY 2014-15 to 31st Oct, 2015.
- ***Black Money Law*** – A difficulty had arisen in interpreting the expression 'date of commencement of the (black money) act' since the law provided that:
  - The act was supposed to come into force on 1st Apr, 2016
  - Compliance window for voluntary declaration of undisclosed foreign income / asset was to be from date of commencement of the Act and date to be notified by govt. (30 Sept, 2015).

  Since the act received the assent of the President of India on 26th May, 2015; therefore, to remove the difficulties aforementioned, the Act has been made applicable from 1st July, 2015.

  Black Money and Imposition of Tax Rules, 2015 have been made applicable from 2nd July, 2015. These rules specify various valuation methods for different assets besides the forms to be used.

  CBDT also released two circulars to provide for explanatory notes to the Black Money Act and answering 32 questions on scope of tax provision scheme and procedures to be followed.

  Vide a press release on 1st Oct, CBDT revealed that 638 declarations were received during the compliance window amounting to approx INR 4,147 crores (USD 640 mn).
- ***Applicability of MAT on foreign companies –*** Vide a press release, it has been provided that w.e.f. 1st Apr, 2001, MAT shall not be applicable to a foreign company:
  - which is resident of a country having DTAA with India and does not have a PE within the terms of relevant DTAA
  - which is not required to seek registration under Companies Act, 1956 or Companies Act, 2013 in case such company is a resident of a country which does not have a DTAA with India

Indirect Tax Highlights

Indirect Taxes

- ***Clarification regarding binding nature of circulars & instructions*** – CBEC has clarified that those of its circulars which are contrary to judgments of the Hon'ble Supreme Court become non-est in law and should not be followed by tax authorities. This would also apply to those judgments of High Courts where CBEC has decided not to file any appeal on merit.

  CBEC is now taking steps to rescind such contrary circulars & instructions and has instructed that all pending cases based on such circulars and decided after date of judgments of Supreme Court or High Courts (as the case may be) should conform to those judgments

- ***Use of DSC for invoices, electronic records and authentication – Central Excise & Service Tax*** – CBEC has specified that every assessee proposing to use DSC shall inform following details at least 15 days in advance to the jurisdictional Deputy / Assistant Commissioners of Central Excise:

  - name, e-mail ID, office address, designation of person authorized to use DSC;
  - name of certifying authority; and
  - date of issue of DSC, its validity along with copy of certificate issued by certifying authority and complete address of the said authority

  In case of any change in the details aforesaid, such change shall be intimated at least 15 days in advance.

  For Central Excise Duty, a manufacturer having more than one factory shall maintain separate electronic records for each such factory.

  For service tax, a service provider having more than one service tax registrations shall maintain separate records for each such registration.

  On request by a Central Excise Officer, such records shall be produced before him through e-mail / specified storage device. Such electronic records shall be maintained and preserved for a period of 5 years immediately after the FY to which they relate.

Other Buzz

Make in India and FDI

- On 14th July, DIPP received the Frost & Sullivan 2015 Asia-Pacific Economic Development Innovation: Policy and Program Implementation Excellence Award in Manufacturing for the Make in India initiative.
- FDI has improved remarkably in manufacturing with increased investments in electronics, automobile industry
- India moved up by 16 positions to rank 55th as the world's most competitive economies as per World Economic Forum
- As per a report by Financial Times, India attracted FDI inflows of USD 31 billion in first half of 2015 surpassing China and the US to take the top spot in attracting FDI. However, the data put out by the DIPP and the RBI on FDI put the figure at around USD 19 bn.

States Performance

The governments of states & union territories had agreed on a 98-point action plan for business reforms last year on 29th Dec. To take stock of the reforms implemented by them from 1st Jan to 30th June, 2015, a joint assessment was conducted by DIPP, the World Bank Group, KMPG, FICCI and CII which released their report on 14th Sept.

The assessment recognizes that most states have already embarked on ambitious reform programs or expanded their ongoing reform efforts since the announcement of the 98-point action plan. It has also identified good practices on different parameters. Overall, Gujarat, Andhra Pradesh, Jharkhand, Chhattisgarh and Madhya Pradesh emerged as the top 5 states.

Start-up Activity

India has been on a startup spree. The startup ecosystem continues to evolve with considerable change in the profile of investors. Besides HNIs now entrepreneur investors have also come on board. PE firms have also started investing in Series B, C and D investment rounds to capture the momentous growth startups can harness.

VC investors pumped in USD 4 bn in Indian startups in 329 deals from January till September this year. This is excluding PE rounds of large internet companies – Paytm, Flipkart, Quikr and Snapdeal –which have already amassed more than USD 2 bn this year. Seed and angel investments also saw tremendous increase to 415 deals till third quarter of 2015.

E-commerce biggies like Flipkart, Snapdeal and technology startups like Paytm have gained entry into the unicorn club with valuations continuing to rise. A certain section of investors are, however, wary of the startup environment as it stands now.

Amid all these concerns, the Indian Government has been quite proactive. The announcement of SETU fund and Atal Innovation Fund, initiatives like Digital India, e-biz portal, reduction in royalty tax rate have been welcome steps towards fostering the investment climate. The Prime Minister's recent visit to the US, particularly the Silicon Valley, saw seven MoUs being signed between various organizations of India and the US to provide support to budding entrepreneurs.

Glossary

Abbreviation	Description	Abbreviation	Description
CBDT	Central Board of Direct Taxes	ITeS	Information Technology enabled Services
CBEC	Central Board of Excise & Customs	JV	Joint Venture
DIPP	Department of Industrial Policy & Promotion, Govt. of India	MAT	Minimum Alternate Tax
DSC	Digital Signature Certificate	MCA	Ministry of Corporate Affairs, Govt. of India
DTAA	Double Taxation Avoidance Agreement	MSME	Micro, Small and Medium Enterprises
ESOP	Employees Stock Ownership Plan	NBFC	Non-banking Financial Companies
FDI	Foreign Direct Investment	PE	Permanent Establishment (in context of Direct Taxes); Private Equity
FPI	Foreign Portfolio Investment	RBI	Reserve Bank of India
HNI	High Net-worth Individual	SEBI	Securities Exchange Board of India
ICDR	Issue of Capital and Disclosure Requirements	VC	Venture Capital
IPO	Initial Public Offer	WOS	Wholly-owned Subsidiary
IT	Information Technology	XBRL	eXtensible Business Reporting Language

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