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APREA

MUMBAI SILICON VALLEY BANGALORE SINGAPORE MUMBAI BKC NEW DELHI

Roundtable + Webinar

2013 Budget implications

New structures evolving for Offshore Real Estate Funds

WEDNESDAY, 10TH APRIL, 2013, 9.30 AM

NISHITH DESAI ASSOCIATES, BANDRA KURLA COMPLEX, MUMBAI

Budget 2013 has brought about new challenges for offshore real estate funds. Buy-backs have been subjected to an additional tax of 20% posing a challenge to tax efficient cash up-streaming to offshore real estate funds. On a positive note, in a move to encourage foreign rupee denominated debt, different categories of debt limits have been merged into one thereby substantially enhancing the pool available for corporate bonds. Current SEBI auction mechanism of allocating debt limits for corporate bonds has also been replaced by the 'on tap system' currently in place for infrastructure bonds, which is likely to be a huge boost for offshore funds wanting to invest in structured debt products in the sector.

Separately, choice of jurisdiction for setting up of funds may need to be carefully weighed in light of Finance Minister's statement that a tax residency certificate shall be 'necessary, but not sufficient proof' to avail benefits under the DTAA.

In this session, we propose to discuss the impact of Budget 2013 on offshore real estate funds and new structures for investing in real estate that we see emerging, both from a fund investment and fund formation standpoint.

PROGRAMME SCHEDULE

Registrations & Refreshments : 9:30 AM

Panel discussion : 10:00 AM – 11:00 AM

Q&A : 11:00 AM – 11:30 AM

SPEAKERS

MR. NISHCHAL JOSHIPURA
Partner - Corporate and Securities Laws and Head Fund Formation and Investments, Nishith Desai Associates

Nishchal Joshipura is Partner, Corporate and Securities Laws and Head Fund Formation and Investments at Nishith Desai Associates. Nishchal has advised on setting up of numerous domestic and offshore real estate funds and developing innovative tax efficient investment structures for investment in real estate and other asset classes. He is a

Participants who cannot attend in person, may dial-in at 9:50 AM (IST)

REGISTER

MUMBAI (India):
Wednesday, 10 April 2013, 09:50:00 IST
UTC+5:30 hours

SINGAPORE (Singapore):
Wednesday, 10 April 2013, 12:20:00 SGT
UTC+8 hours

TOKYO (JAPAN):
Wednesday, 10 April 2013, 13:20:00 JST
UTC+9 hours

NEW YORK (USA):
Wednesday, 10 April 2013, 00:20:00 EDT
UTC-4 hours

LONDON (UK):
Wednesday, 10 April 2013, 05:20:00 BST
UTC+1 hour

SAN FRANCISCO (U.S.A):
Tuesday, 9 April 2013, 21:20:00 PDT UTC-7 hours

Dial-in Details:

Primary Number : +91 22 6629 0347
Secondary Number : +91 22 3065 0347

For participants who can attend in-person, please join us at the venue by 9:30 AM (IST)

VENUE (in-person):
Nishith Desai Associates
2nd Floor, Avenue 3, Maker Maxity, Bandra Kurla Complex, Mumbai 400 051 India

VENUE (by video conference):
Nishith Desai Associates
93 B, Mittal Court, Nariman Point,

Chartered Accountant, an MBA and a Lawyer.

MR. RUCHIR SINHA

Head Debt and Private Equity in Real Estate, Nishith Desai Associates

Ruchir Sinha heads Debt and Private Equity in Real Estate practice at Nishith Desai Associates. He has advised a majority of domestic and offshore real estate funds on formulating, negotiating and implementing structures for investments into Indian real estate and other asset classes from a legal, tax and regulatory perspective.

MR. RAHUL RAI

Head Real Estate Investment Business, ICICI Prudential Asset Management Company Ltd

Over 20 years of experience spanning Real Estate Investment & Funding,Corporate Finance, Tax and Regulatory, with exposure across all product classes and cities.Previously associated with SUN-Apollo Real Estate Advisors, Ernst & Young and Arthur Andersen. Chartered Accountant, Graduate of Cost Accountancy, Graduate in Commerce. He has been with Real Estate PMS of ICICI Prudential AMC since November 2010.

MR. SHOBHIT AGARWAL

Managing Director - Capital Markets, Jones Lang LaSalle

Shobhit Agarwal heads the Capital Markets division of Jones Lang LaSalle, and is based out of the Mumbai office of the firm. The Capital Markets division advises & structures real estate investment transactions on behalf of realty funds, developers and investors. These include investments in income generating properties, green-field development projects, distressed asset sales as well as restructuring corporate real estate portfolios.

MODERATOR:

MR. NITIN GUPTA

Managing Director, Macquarie Capital Advisors India

Nitin Gupta is a Managing Director with Macquarie Capital and leads their real estate banking practice in India. Nitin has over 20 years of experience in financial services sector. Macquarie Capital has been the front runner in raising global private capital for Indian market.

ABOUT ASIA PACIFIC REAL ESTATE ASSOCIATION LTD. (APREA)

Asia Pacific Real Estate Association Ltd. (APREA) is a non-profit industry association with over 180 members representing real estate in Asia Pacific. APREA encourages greater investment in the Asia Pacific real estate sector through the provision of better information to investors and our activities cover regulatory advocacy, investor training and outreach, best practices, research, industry training, valuation and sustainability. We are headquartered in Singapore but have member chapters in 9 countries including India. APREA in India is led by its Indian Chapter board (comprising representatives from developers (DLF, K Raheja Corp), investors (GIC, HDFC Property Fund), property consultants (JLL, CBRE) and banks (Macquarie).

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THERE IS NO DELEGATE FEE BEING CHARGED FOR THIS PROGRAMME.
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ABOUT NISHITH DESAI ASSOCIATES

www.nishithdesai.com

Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Silicon Valley, Singapore, Mumbai-BKC and New Delhi. It specializes in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.

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

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"NISHITH DESAI ASSOCIATES: 2013 BUDGET IMPLICATIONS – NEW STRUCTURES EVOLVING FOR OFFSHORE REAL ESTATE FUNDS"

APRIL 10, 2013

TRANSCRIPT

MAIN SPEAKERS:

MR. NISHCHAL JOSHIPURA – PARTNER-CORPORATE & SECURITIES LAW AND HEAD FUND FORMATION & INVESTMENTS, NISHITH DESAI ASSOCIATE.

MR. RUCHIR SINHA – HEAD DEBT AND PRIVATE EQUITY IN REAL ESTATE, NISHITH DESAI ASSOCIATES.

MR. RAHUL RAI - HEAD, REAL ESTATE INVESTMENT BUSINESS, ICICI PRUDENTIAL ASSET MANAGEMENT COMPANY LIMITED.

MR. SHOBHIT AGARWAL – MANAGING DIRECTOR, CAPITAL MARKETS, JONES LANG LASALLE.

MR. NITIN GUPTA, MANAGING DIRECTOR, MACQUARIE CAPITALS ADVISERS INDIA.

Moderator

Ladies and gentlemen good day and welcome to the interactive session on "2013 Budget Implications: New Structures Evolving for Offshore Real Estate Funds" being organized by Nishith Desai Associates and Asia Pacific Real Estate Association Limited. Should you need assistance during this conference call, please signal the operator by pressing '*' followed by '0' on your touchtone telephone. All are requested to please keep their mobile phones on the mute mode. Please note that this conference is being recorded. The speakers of this conference are, Mr. Nishchal Joshipura, Partner- Corporate and Securities Law and Head Fund Formation and Investments at Nishith Desai Associates; Mr. Ruchir Sinha, Head Debt and Private Equity in Real Estate at Nishith Desai Associates; Mr. Rahul Rai, Head Real Estate Investment Business at ICICI Prudential Asset Management Company Limited; Mr. Shobhit Agarwal, Managing Director Capital Markets at Jones Lang LaSalle and Mr. Nitin Gupta, Managing Director at Macquarie Capitals Advisers India. At this time I would like to hand over the conference to Mr. Nitin Gupta, Managing Director at Macquarie Capitals Advisers India, thank you and over to you sir.

Nitin Gupta

Thank you everyone and on behalf of APREA and Nishith Desai Associates I welcome everyone. Just a brief introduction of APREA, APREA as you are aware is a non-profit making industry association that represents and promotes real estate asset class in Asia-Pacific region. APREA was formed in 2007 and since then it has grown very rapidly, today it has chapters in 9 countries including India and has over 180 members. In India it is represented by Ms. Neetu Sigh, who is the Country Principal here and I would encourage everyone to get in touch with Ms. Neetu to know more about APREA and for becoming a member; we appreciate the support that people have given to APREA in India. I also thank Nishith Desai Associates for sponsoring and organizing this session and we appreciate the support and also thank the panel members who are participating in this seminar.

I think the panel topic "Budget 2013: New structure evolving for offshore funds" is really apt in the current times. Few budget proposal and ongoing Cyprus situation makes us sort of focused on the area. As we know in the recent budget of 2013, it has been proposed to tax the buyback being made by the unlisted companies to the extent of 20% which makes the up-streaming of cash by such company's tax inefficient. Also following statement by Finance Minister that Tax Residency Certificate is necessary but not a sufficient route for availing the treaty benefits is a cause of concern for investors as to whether the tax authorities will go behind the deal to tax the investors.

Also coupled with that the ongoing Cyprus controversy and situation where deposits were getting taxed and there is a sort of fear in the minds of investors whose money is right now currently rooted from Cyprus as to what will happen to their money is causing a lot of concerns in the investor community. To discuss all these issues we have a very eminent panel here. The panel has already been introduced and I will not take names to do that again. Maybe I can straightaway start by asking a few questions and then we can debate. The way we have planned this session is that for one hour we will have a standard discussion followed by half an hour of Q&A which will give opportunity to all the participants to seek some answers from the panel members. So Nishchal, in fact I may start from you - I think your firm has been leading the formation of offshore funds and given what is happening, what kind of advice are you giving to the clients as to where they should be setting up their offshore vehicles?

Nishchal Joshipura First of all we should thank Pranab Mukherjee because without him this session would not have been possible and because of the extraordinary budget which he gave in 2012, he was elevated to the post of the President which is harmless and good for the international investors also. Now post the budget 2012 there was a lot of discussion on Mauritius versus Singapore and even today the same discussion goes on and whether Investors should set up their funds in Mauritius or Singapore. So, somewhere Cyprus was feeling a bit left out that nobody was giving any attention to us and then as we know sometime negative publicity is better than no publicity, so banking crisis happened in Cyprus and as we have been discussing since the last couple of months on what should be done with the existing structures in Cyprus because as you know Cyprus is the best jurisdiction for making debt investment in India because of the benefit of the lower withholding tax rates as per the India Cyprus Tax Treaty.

In the Indian tax laws any interest on CCD, compulsory convertible debentures or a non-convertible debenture, it is taxed at 40% or if it is FII it is 20% but the Cyprus Treaty reduces this tax rate to 10%, making Cyprus the most favored jurisdiction. Some of the other jurisdictions like Netherlands, Germany also have a lower withholding tax rate of 10% but the issue there is that the local tax rate in those countries is quite high as 27.5% and because Cyprus also has a lower local tax rate of 10%, Cyprus emerged as the best jurisdiction for making debt investment in India. So the usual model that was followed earlier even before the GAAR provisions were introduced was - setup of pooling vehicle in Mauritius, make equity investments from Mauritius, drop down a subsidiary from Mauritius to Cyprus and then Cyprus entity will make debt investment in India.

Now because of this banking crisis there has been a huge dent on the image of Cyprus as the jurisdiction itself, be it for equity or debt investment, and today if you ask, Cyprus-India has the best tax treaty even on equity and debt, so if Cyprus would have done a better job on developing itself as an offshore financial services jurisdiction just like Mauritius and Singapore, then Cyprus could have got a lot of business from Mauritius and Singapore but unfortunately they were not able to garner that international support or sophistication of the regime which any international investor would want to have. So far as the existing structure what we are seeing is that the investments which are already being made in CCDs or NCDs in the Indian companies, the investors and developers are somewhere negotiating so they may be accruing interest but payment is definitely delayed because of the issues with the banking system in Cyprus.

We are also seeing situations where for new structures especially where you are looking at debt investment clients are also looking at doing it through Singapore because it might be better to suffer a higher tax rate of 5% as far as the withholding tax is concerned as against losing out the entire capital plus interest because of the way the Cyprus issues are going on.

So that is on Cyprus we’re looking at and the second is on Mauritius versus Singapore, now this is again a classic debate which has been going on, on whether the new offshore fund should be set up in Mauritius or Singapore and I think that post the GAAR provisions, one there is no cookie cutter solution as I said either one could blindly go to Singapore because sometimes what happens is that you may not have the same setup which another GP may have in Singapore and that is where in one of the funds we decided to go with Netherlands as the jurisdiction for setting up of the fund instead of Singapore, so even today if you compare Singapore and Mauritius on majority of the counts Mauritius fairs better than Singapore.

Let us take three or four parameters like for redemption of the interest, now this is something which is very common in a fund structure where you want complete flexibility on redemption of 100% of the interest of the LP you do not need to wait for it, you can just do it. In Mauritius you can redeem the interest at one go, you do not to have to wait or there is no requirement like in India where we have 25% buyback requirement under the Companies Act. In Mauritius there is no such requirement but in Singapore if you're using an equity structure then to buyback more than 10% of the shares that is something which is not permitted in Singapore, so in one financial year you can only buy back up to 10% of the shares, so this is one count on which Mauritius is still preferred.

Second count is in Singapore you need to meet with the solvency test which is much more stringent as compared to what is there in Mauritius, so directors are personally liable who are sitting on the board of the Singapore fund, in case there is a wrong undertaking or a declaration given by them on the solvency of the Singapore fund.

The third thing is if you see the managers - now if you are locating the managers in Mauritius, the maximum tax rate on the manager would be 3% on the management fee received by the manager as against that in Singapore the lowest you can go for the manager is 10%, so this is again a third disadvantage that Singapore has as against Mauritius.

Fourth things on the GST, the goods and services tax, in Mauritius under the management fee paid by the fund to the manager there is no GST but in Singapore when a Singapore-based fund based as a Singapore manager there is again a GST.

So plus as all of you may be knowing that the Singapore India tax treaty is linked to Mauritius India tax treaty, so the capital gain tax benefits are withdrawn from the Mauritius India tax treaty, it will automatically get withdrawn from the Singapore India tax treaty. Now there has been a lot of discussion going on this matter. In fact I just met a couple of days back with one of the members from Mauritius side who is working with Indian Government on the negotiation of the tax treaty and he said that there are a lot of misconceptions which India has with respect to Mauritius especially on the money-laundering side and the Government of Mauritius has challenged the Indian government that give us one case of money-laundering and we will give you whatever you want in that treaty, so that is something which at diplomatic level is going on and Mauritius is very confident that as far as anti-money-laundering is concerned they are completely safe and that is why till date they have been able to not allow the Indian government to renegotiate the treaty but he said that given the political situation the treaty is likely to get renegotiated obviously with the limited, may be an LOB clause, may be like Singapore, or maybe a diluted version of that.

So that is the update on the renegotiation on the India Mauritius tax treaty but why Singapore is getting more and more popularity, is because of the fact that the GAAR provisions when they become applicable from 1st of April 2015 to all the structures, I think that is where Singapore will as per the present GAAR provisions fair better than Mauritius because you have people with fund management experience stationed in their jurisdictions and it is very difficult for Mauritius because nobody would want to stay in Mauritius for a year, it is a good holiday destination but not for staying there, that is where Singapore may get more preference and that is where over a period of time if you see in the last two or three years Singapore also is gearing up to develop its fund regime.

So there were a lot of issues in Singapore on the characterization of income earlier - when a Singapore entity sells shares of an Indian company, earlier even though you may get the benefit of the capital gains characterization under the treaty, there was a risk that under the local Singapore tax laws it would be taxed as business income, so even though you're exempt from tax in India on capital gains, you are still paying 17% tax in Singapore which was killing the structure as far as Singapore is concerned.

Now they have come up with two regimes, one is called 13X regime and that the second one is called 13Z regime. 13X regime is called enhanced tier fund regime where there is an exemption available for Singapore funds from any income earned by the Singapore fund, so there is no local tax on the Singapore fund on the income earned by that Singapore fund under 13X regime if you meet with certain conditions, some of the conditions are that the minimum size of the fund should be $50 million at the time of application, then you need to have minimum three qualified people whose salary should not be lower than Singapore $ 3500, then you need to have an administrator in Singapore, plus the standard condition of 200,000 Singapore dollars which you need to spend in one financial year.

Subject to the satisfaction of these conditions you should be able to get the tax exemption in Singapore under 13X and there is another section 13 Z under the Singapore Income Tax Act which says that if the fund or the SPV is owning more than 20% of ordinary shares in the portfolio company in India then any transfer of shares after 24 months of holding will be considered as capital gains in Singapore, so the risk of capital gains being characterized as business income is not there under this regime. Plus there is also one tax concession which is given on GST where as I mentioned for Singapore fund paying management fee to the Singapore manager is a GST.

If you're registered under this 13x regime then you also get 87% of the recovery on the GST, so only 13% is taxable as GST in Singapore. Singapore is taking a lot of stress right now to develop itself as a financial services regime but at the same time we cannot write off Mauritius because as you all know Mauritius still is a source for a lot of foreign investment in India, so the question is how do you establish commercial substance in Mauritius because if you are able to crack that then there may not be a need to shift to Singapore which has some challenges as we discussed right now.

So we are still looking for more clarity on the GAAR provisions which may come out in near future but some of the ways you can demonstrate substance are as follows - one is typically you have the master feeder structures especially a US LPs where US LPSs preferred Delaware LP for taxable investors and Cayman corporation for tax exempted investors, so there you have two feeders and those feeders feed into the master vehicle in Mauritius, now some of the structures might become challenging in light of GAAR because the tax authorities may want the Mauritius entity to be pooling vehicle where all the LCs directly come into the pooling vehicle that is one and second important commercial substance which can be used to justify Mauritius, is that Mauritius and India have a very good bilateral investment treaty.

Today we know that in India it is not only the income you need to protect but even the capital as it is something which is at stake given some of the cancellation of telecom licenses and some of these things which we saw last year, so till 2011 there was only one claim under BIT against India, in 2012 there were 6 to 7 claims and in one of the cases the Government of India also lost which was the *White Industry Case*, so now BITs are becoming more and more important and this is one more justification from a commercial substance perspective which can be used for choosing Mauritius to invest in India. Then Mauritius has got an extremely good treaty with India where in case there is any expropriation by the Indian Government then Mauritius India bilateral investment treaty can be used.

As time evolves, we need to see how the structures are made but what is important is all this is very specific to each GP and based on the requirements of LP, so there is no straightforward answer on whether it should be Mauritius, Singapore or Netherlands but it completely depends upon if your largest LP is from a jurisdiction for let us say from Netherlands then in that case it might make sense to come through Netherlands also and we have done structures based on that, so it is something very specific and each structure has to be evaluated separately.

Nitin Gupta I think the choice of jurisdiction is quite subjective and I think all GPs would continue to I think avail specialized services from firms like you to make sure that they don't fall into any trap. Maybe I can look at Rahul - Rahul now you represent one of the largest domestic fund houses and you're managing some domestic funds and proposing an offshore fund. Two questions from you - one is from your existing domestic funds: what kinds of exit you are seeing and what kind of challenges you are expecting, and secondly in terms of jurisdiction: what your current thoughts are, you are also looking at Singapore or you're discarding Mauritius or you're …?

Rahul Rai I think it can be divided into two parts, the domestic part and the international part. Both are entirely different.

As far as the domestic thing is concerned so far it was a combination of convertible debentures and equity shares which are being used and we have not faced any challenges in using those structures except that from last year onwards there has been some issue on transfer pricing and we instead of taking debentures through which majority of the returns or the interest are paid to us, used to make investment in 50% of the equity from a control point of view, but taking of 50% equity is now under challenge because of the problem of being categorized as an associate entity taking the interest that is being paid to us is open for scrutiny. Hence, the equity amount that now we take in a company is reduced to 10%.

If I look at how we go about doing our domestic investment it is a plus of 10% of the equity so that we get some minority protection in the company and then largely over 90% of the amount that we deploy will be like a debenture which will give us back our returns from coupons. Again this is relevant from the Budget point of view as the new provision relating to buyback and taxes. We have not seen that much of challenge because as I've mentioned majority of the money is debenture and what happens is that the debenture gets reduced, it gets redeemed at a premium.

There are tax laws which are established which says that company presently paying interest on the debentures can reduce the debentures at a premium and all of it is considered as a cost for that particular company and it becomes an income for the investor.

Coming to the international side I think what was said was very relevant and we're actually in the exploratory stage of the jurisdiction part. So far, from the first fund we have invested from Mauritius that was fine when we had done in 2007 and the investment that is where the investment is coming from. Ours is a classic Mauritius investment. We do not go via Cyprus because our system does not like it so we're invested out of Mauritius and there so far we have not had any challenges but we might face this issue because of the buyback provisions and so on most likely we will be able to avoid it by getting the promoter to participate or buy our shares and then it will be the promoter who will decide how he takes money from the company into his own kitty.

As far as Singapore is concerned I think that is looking like a more likelier option but at the same time I think one of the other important issues is that it is the kind of substance that is required to operate from Singapore which is much more substantial, the cost, the kind of the seniority of the people that you put into place in Singapore and how you run it is a much more substantial kind of commitment that you have to end up making in Singapore if you want to invest out of Singapore and that is something that we are crackling, with to be honest, we have not fully sorted it but it is a significant issue which everybody will have to take the right sort of advice as to how much cost you will end up incurring,

So in terms of jurisdiction I think most likely it will be Singapore but there will be a commitment to cost and so on which you will have to bear. I think then there are some additional new structures like listed NCDs and so on, which I think that we plan to discuss in detail so we can take it up later.

Nitin Gupta I think that takes us to the next question we have, Ruchir in view of this budget provision of share buyback and other complications which we have seen with respect to various instruments to be used for investing money to India, how has your firm been seeing and what kind of advice now you're giving to your client as to how they should be structuring their instrument to ensure that the whole deal is tax efficient?

Ruchir Sinha I think clearly one of the largest challenges Budget 2013 has posed specially for the offshore funds is in the context of buybacks because for the domestic players routes of redeemable preference shares and redeemable debentures are still open, but any kind of non-resident investing through any kind of redeemable instrument was termed as external commercial borrowing which was prohibited for real estate and even for other kind of asset classes comes with several restrictions. So in most cases, especially for asset heavy asset classes, where there were cash up-streaming requirements from the company, returns to the investors were likely to be structured as buybacks. Indian company would buy back the shares of the foreign investors and the foreign investor would be typically coming from Mauritius, Cyprus, Singapore where the capital gains tax will be exempt, so that was the route that most of these funds typically took to upstream, especially in case of real estate self liquidating assets or other yield generating stabilized assets.

Now the challenge which has come up with Budget 2013 is that they say that buyback is now subjected to an additional 20% tax at the hands of the issuing company. I think most of you have the collaterals with you - this private equity in real estate research paper - please refer to page number 9 of this paper. This paper discusses about the challenges that buybacks are now subjected to. I think there are two or three major issues that have come up now, which make buyback very expensive from a tax perspective.

First, it is an additional tax that the company pays, and not the recipient. So when the company pays the tax the recipient is tax free, actually it is just like dividends, just that buybacks are prohibitively high now, as dividends are 15%, and buyback is 20%. Now because this is the tax which is paid by the company and not the recipient, you do not get a treaty benefit, because treaty is available only when there is double taxation. The recipient or the foreign investor is not even taxed in India at the first place. Second, you do not get any foreign tax credit because you have not paid any tax in India, the tax is being paid by the Indian company so clearly there is no underlying credit that is available. Third, the way the tax regime is going to work for this is very strange - it is going to be the difference between the buyback consideration receivable by the foreign investor minus the issue price of the shares, so it does not take into account the secondaries. Now let us take an example - a share was issued for Rs. 10 to a non-resident, he sold it to someone else at R. 100, the cost of acquisition for the new investor is Rs. 100 and the buyback happens at Rs. 200. In the earlier scenario, the capital gains would have been computed at 200-100 because if cost of acquisition was Rs. 100 and at Rs. 100 capital gains tax were to be paid. Now it is not going to be 100 for him, it will be 200-10 which means Rs.190 is being subjected to a 20% tax in India with no tax credit and no tax benefits. That I think is a huge challenge which is going to rule out buybacks at least from a cash upstreaming perspective.

So, what do you do now? For the existing players and for the new people. For the existing players, I think you might see a lot of promoters kind of puts in friendly situation because you know RBI does not like puts, so promoter could buy the shares if he has the liquidity, or there can be structures where he could take cash from the company to buy the investors, but at the end of it - it is only in friendly situation where the promoter would buy the shares. Since what is covered is only buybacks under section 77A of the Companies Act, secondary purchases by the promoter should not attract the additional tax of 20%.

Second is we would see a lot of schemes of capital reduction under Section100 of the Companies Act. Buy back is essentially nothing but capital reduction - you're extinguishing the capital base. But since only extinguishment of capital base under Section 77(A) of the Companies Act is specifically covered for this additional tax of 20%, if you're doing a scheme of capital reduction under Section 100 the provisions of this additional tax 20% should not be applicable. How does this work? Section 100 is not automatic like buyback. Buybacks you could do without approaching the court so long as you were doing it from permitted sources of capital retained profits and share premium up to 25% of your paid up capital. Capital reduction will require approval of the court, approval of the creditors and to that extent it may take a little longer but courts have typically been forthcoming in case of capital reduction. Even for listed companies they have allowed for selective reduction of capital that means you could just reduce the capital base to the extent its held by the nonresidents, so you could do that. I think this is a route coming up significantly especially for existing players who had planned for cash up-streaming by way of buy back because capital reduction would get them just same kind of tax benefit as buyback did.

But for the newer players I think there is going to be a significant inclination towards structured debt products. I would direct you to page number 11 of the private equity in real estate paper, which discusses the listed NCD structure and how it works. We pioneered this in 2008 for the first time for real estate. What you do in this route is this. A private company issues non-convertible debentures to a non-resident provided that those debentures are listed in 15 days time, listing we have done in three or four days time, listing cost is very minimal it would be less than Rs. 1 million.

The advantages specifically, and in fact the paper sets them out in quite detail but some of the most important advantages is as follows. First, on Put Option and exits. What happened in 2007-08 were largely FDI deals and it came to be known later that RBI does not favor put options and a lot of these players that put in money had really invested the money on the premise that if we do not get our returns by self liquidation, we would really put our shares either on the promoters or the company. However, from an RBI perspective, any kind of 'put' is seen as a redeemable instrument which is ECB and therefore prohibited for real estate, so since NCD is debts, there is no question of put options or other kind of violation of FDI norms, so even if you're giving an assurance of exit an assurance of returns it is perfectly fine.

Second you can structure returns on your debt instrument to be a function of whatever you commercially agree. It could be a function of cash flows. You could have a minimal coupon and you can have your redemption premium a function of cash flows - that means that if the company makes lesser money you get lesser money, if the company makes more money you get more money.

Third I think over the period of time expectations have been tempered and investors are not looking at 40 to 50% kind of IRRs. Today, what is more important for them is asset protection. This route offers you collateralization benefits. So you can have security trustees in India through which you can create any kind of security interest. Security interest is not permitted under FDI, but here you can have a mortgage of the underlying real estate property, you can have pledge of shares, you can have hypothecation of receivables, whatever kind of securities you need - we can have it under this round through a security trustee or debentures trustee - as we call it - would be typically acting on instructions of certain number of debenture holders 90% or whatever is commercially agreed.

Fourth is from a tax perspective. Any kind of coupon or redemption premium is seen as the cost of funding, and therefore a deductible. There was a ambiguity earlier on tax treatment - whether redemption premium is a deductible or a capital expense. There have been a series of judgments. Supreme Court in Madras investments case and more recently the Mumbai High Court in the Raymond's case have clearly said that any kind of redemption premium is also to be seen in the nature of deductible expense for the Indian company.

On a comparison, let us see, if you take dividends - you first have to pay corporate taxes of 30% and then out of profits you would pay dividends which would be again subjected to 15% tax. Whereas, in case of NCDs you do not have to pay any corporate taxes (so a straight 30% saving to that extent) because whatever you are paying as redemption premium or the coupon is really a deductible for the Indian company, it is an expense. For the recipient there will be a tax because any kind of interest is subject to a withholding tax of 40% in India on rupee denominated debt which gets reduced to 20% if you are an FII entity which further gets reduced to 15% if you are coming from Singapore under the India Singapore tax treaty or 10% in case of Cyprus and so on and so forth. By the way, just for clarification, in Singapore the treaty for interest is not subjected to the LOB provisions, so the S$200,000 test that you need to meet for seeking capital gains tax exemptions is not required to be met when you are claiming benefit under the treaty for interest. Now the government has in fact in this budget made one more change for infrastructure - the withholding tax rates for infrastructure which was supposed to be 40%, has been slashed to only 5%, so all debt investments in industrial parks, roads other kinds of stabilized infra assets SEZ etc. will be subject to only a 5% withholding.

Questions are sometimes asked about rights. All your rights can actually be structured contractually and imbibed into the articles or charter of the company so you have adequate protections. At the end of it, you will still remain a lender but you can have your veto rights and controls as you contractually want.

Because this is really a route which is not FDI, this is not ECB, this is debt portfolio investment route which is called the FII route or the QFI route now, you are not subjected to the restrictions of the FDI, of course you cannot get into the prohibited sectors because of the specific restrictions barring the investment into prohibited sectors, but restricted sectors should be fine. Now the important path is who can do it because larger challenge with debt earlier was that first of all you had to be in FII entity, secondly you have to bid for debt allocation limits. You had no surety that debt allocations will be available for you or not. I think one positive sentiment that has come from the Finance Minister is that if you have to bridge the current account deficit, you need more foreign investment and to that extent foreign debt should be encouraged and therefore there have been a series announcements in the past couple of years, especially in this budget which are aimed at encouraging structured debt products in India.

So no more bidding now, you don't need to be an FII entity anymore! Any non-resident can buy debt securities under the FII route or the QFI route. So there are two routes by the way open, the page number 14 of the PERE paper talks about the QFI route which we call as disintermediation of the markets. So earlier when ever nonresidents had to invest on the bourses on listed securities they had to come in through intermediary which would need to register with the SEBI, so they have to invest into a FII entity, FII would then make investments into India. Now the government has opened up the route and allowed nonresidents to directly come and invest into the listed securities and debt securities under the QFI route. There is no registration required, you just need to open an account with the depository participants, just like as a resident you open a broker account similarly you need to open an account as a QFI.

There were earlier debt limits, with corporate bond limits of about $25 billion, infra bonds limits for about $25 million again and QFI had a very small $1 billion limitation, now all those limits have been merged into one and put into one bucket, and under an allocation system what we call as the 'on tap' system. So that means 90% of $51 billion limit is automatic and only 10% will be under the auction route. So for 90% of the $51billion limit is 'on tap', that means you don't need to do any bidding, bother for any allocations, you just instruct your custodian in case of FII, QDP in case of QFI to buy the debt securities, just buy them on the floor. So I think that is significant development and of course last time when we had auctions there was cost attached of 100 basis points, 80 basis points, 50 basis points all those costs now will be alleviated because there is no bidding. So I think that is largely it, and don't want to overshoot. I will be happy to answer questions.

Nitin Gupta I think the government is focused on increasing the confidence of the international investment by pushing more debt products and structured debt products. I come back to Shobhit; your firm has been spear heading the fund raising and investment for various developers and fund managers. Again two questions from you, one is, in what form you are seeing the exit because I think, you are advising lot of fund managers. We have seen some of the exits and investments through various structured instrument how are you seeing all this happening and what kind of challenges if any they are facing. And secondly whether in your fundraising mandate you are seeing fund managers moving towards more debt products or other products to raise funds from international markets?

Shobhit Agarwal You have sort of summed it up yourself quite well that on fund raising perspective or let me say LP perspective, they are now expecting India to move on the next level. They are expecting India to move to the next level and have specialized fund managers, so far everybody who is opportunistic very techno agnostic, has given the same story of affordable housing post 2009 it was all commercial assets. Now people are sort of tired as they say we have heard the stories and we have seen what you have delivered, first show me what you have exited, so really there is some pressure for funds or currency is to demonstrate and deliver it and if they have not being able to deliver people want to know as to what is the challenge they have faced, so nobody is blaming you to say look you have lost money or you have not played money well but tell me what really went wrong and really what was the learning from phase 1 of investment.

So 2006-07 vintage funds are maturing and to some degree the exit environment has improved. There have been reasonable exit from 2011 we collated a report which said $3.2 billion off exits last year we did about $1 billion where essentially what we noticed is 66% of promoter buyback other than self-liquidation, so maybe there was very little third-party exit that is happening except in the SEZ and the industrial park space which is the stabilize assets which are free to trade. And in both of the cases the challenges are not so much on the commercials but slightly on the regulatory where on industrial path you faced with the challenge of qualifying for industrial path that what really qualifies and what happens if your tenants move, how do you replace them and in SEZ the process itself is so painful of going to BOA and taking an approval.

There are two cases that commercially get closed out, we find the definitive agreement subject to BOA approvals which took at least between 6 to 9 months to start, there was nothing in it we just had to go and wait in the queue pretty much like the environmental approval of the construction. So I think there is good news on these assets there is demand as investors are moving away from fund development deals since they do not like it and are just too tired of the delay, both the approvals and on construction in India that say, look, we like stabilized assets, you have anything show it to us.

So really LPs coming back saying show me fixed assets we are happy to put four times, probably their return expectation has come down, once they are not taking certain risk and now they are talking about differentiated products, which are all the debt type structures, there are already two or three funds that are floating in the market hopefully they will fit into close in the second half, the first one raising should be done for debt like structure. I think the market is maturing, we're having differentiated products, in terms of exit like I mentioned $4.2 billion not all of it was in the negative as most people believe I think lots of fund managers have made money, projects have delivered. The problem is on the dollar return basis they are struggling, so when you go overseas and when you talk to LP's there are saying look I do not care what you did because project levels are very nicely done with this 20% return but unfortunately I lost all of it on the Rupee to Dollar conversion and that has been a big problem.

So I think hedging is coming back and the debt funds allow you to hedge, equity could not so really again going back to say these are some fundamental structural changes that are taking place and to that extent LPs are open they evaluating and are very keen and it requires in my mind to investing education to take a look if that is possible through these kind of webinars and seminars are really look this is possible. In terms of how do we exit, really like I've mentioned that 70% of all the money like I mentioned $4.2 billion was put into is in residential assets and most of that is either self liquidity or promoter buyback of the problem can be is on commercial assets that some buyers are a far and few and if there are lots of things are still very grave for example I do not know whether you should invest in retail asset in 2006 and today is ready and yielding exits that have happened, so rarely those are some challenges that have not been addressed so far, as it come to my mind that at some point this money has to go back and obviously their stock may be we Nitin can talk more about it in these markets opening up in India itself so I think 2 or 3 drafts have gone by. I also hear that the SEZ laws are softening hopefully by June this year. Which will demonstrate and allow more people to exit. So it is really nice to see money go back because that allows more funds to come in. we are hoping that 2013 will be good for those two markets.

Nitin Gupta I agree with Shobhit. What has happened is over last 1 year, despite all the negativities we keep hearing there have been some few positives as well. I think what is happening is few fund raising routes have opened up, one is the Singapore market, we saw Fortis Healthcare listing here, a very innovative structure by the promoters and Fortis Healthcare listed in Singapore. We also saw Godrej Properties raising an innovative captive fund kind of structure which allowed Godrej access to a recurring source of capital. We are also seeing a lot of non-banking finance company getting set up through which investors are funding their money and that is the route which is now becoming very popular.

The other mode of fund raising is through core office vehicle again that debt product is becoming very popular with investors because that takes away the risk from the asset portfolio. And investors are still hoping to get in rupee terms around 15 – 20% IRR by holding the asset over a long period of time. I think what we have learnt over last one year is that if you put together right package for international investors there is demand for Indian assets clearly. India is not a market that an international investor can ignore. I think they have got some selling and I think India is not the only country. There have been cases in the market as well. I think to get back to the global investors, we need to put together the right package which is tax efficient, which is meeting some of their near-term objectives and not taking too much risk this is something which some developers are not able to control and if we are able to do it, I am sure there is capital out in the market.

I would like to end on a very positive note that the capital market, the international market are shut. We are seeing the good flows of capital from international market whether from public or private routes capital is available. So may be I can just open the floor for Q&A, if someone from the audience has any questions to ask from the analysts I will be happy to answer that.

Participant Sir on the capital reduction, how frequently you can go for any of the buy back, quarter-on-quarter, year-on-year or can I call it for six months?

Ruchir Sinha It's entirely court driven and no timelines have been prescribed. So there is no limitation in terms of periods as was in the case of buy backs, but clearly if we are approaching the courts very frequently, which may be the case now, the courts may not see it favorably. This is a route which has not been tested very often on a regular basis for cash upstreaming but I think it should not be used too exhaustively. Legally, there is no restriction under law and courts have been allowing this.

Nishchal Joshipura By the law there is no restriction and at the end of the day a scheme of capital reduction is a private arrangement within the shareholders and the creditors of the company. So as long as both these parties are comfortable with it, there should be no issue in doing it. We need to keep timing issues in mind as getting court order may be a long process.

Participant Do we get clearance for the entire schedule of buy back or is it taken for each tranche.

Ruchir Sinha Each time if you want to give the money out, you need to get that. Essentially it is the decision of the court but I think giving them elaborate schedule and saying that you prove it now might not work.

Ruchir Sinha Even on the buy back, tax of 20% is applicable from 1st of June if any of the offshore fund want some money, then you still have time till 31st of May to get the buy back.

Participant Has the finance bill been passed or still not?

Nishchal Joshipura Not yet.

Participant So when it gets passed to you expect any change in buy back clause?

Nishchal Joshipura I think the only change we are expecting is on the cost of acquisition which Ruchir mentioned. So right now they have said that the cost of acquisition will be the issue price of the share. It should actually be the acquisition price for the investor whose shares are being bought back. So instead of 190 the example which Ruchir gave it should be only 100.

Participant This clause 100 being open seems to be a mistake and may be plugged in sometime?

Ruchir Sinha You may say that, but the way you could also look at it is this that capital reduction is a more supervised court driven route with consent of creditors, shareholders and everyone. So a thought process might be that it is really not going to be used for cash up streaming but more for genuine cases of reduction of capital. So, I don't think it's a loophole, or it will be plugged soon.

Nishith Desai Also you can ask questions as lots of people are in virtual world so it may be useful to give them opportunity.

Participant What do other jurisdictions do? In the US, though the buyback is tax free.

Nishchal Joshipura As far as US is concerned and some of the developed jurisdictions, they don't tax the nonresident on capital gains at all. So, if an Indian company is holding shares of a US company and Indian company sells shares of US company, even if the Indian company makes a billion dollars capital gain, US does not tax it. That's why the difference between a developed country and developing country comes in the picture. For a developed country, it usually follows residents based taxation whereas the developing country which is getting more capital from outside world, they follow source system of taxation. If the source of capital gain is in developing country, they want to get maximum share of tax. So how do you collect more taxes? This is just one way of doing that. May be post GAAR, after 2 years, we may be holding another session. On GAAR where simple things like getting a carried interest and tax authorities say this is nothing but a performance fee why should you pay tax rent to long term capital gain tax rate. You are rendering services to the fund and this is something which is a different form of management fee. So we should take 30% tax plus re-characterization of instruments and they say the return you are getting on NCD of 25% less than domestic scenario it's too high in the Indian context and another re-characterize out of 25%, 15% lets say is the benchmark and 10% will be characterized as dividend instead of interest. So we will see more and more of complications going forward. I think they have just crashed the surface of complications right now but once GAAR comes in there will be a lot of issues.

Participant My question to you Shobhit is that you mentioned about $4.2 billion worth of exits for the last 2 – 3 years .Can you give in a more granular sense of that? If you sliced it by IRR for the benefit of the audience, how much is underwater and above water so on and so forth?

Shobhit Agarwal While we don't know the IRRs we would know the money multiples. But I can sort of tell you that we have studied till 2011 – 12, we have done a money multiple of 1.08 for vintage of 2006. If you were to compare this, in Indian rupee terms, it is 1.08 money with 8% interest for five years. If you were to compare this to global standards 2006 vintage fund returned 0.8 globally, so really Lehman did happen for everyone across the world and it was very early for India, we did just open the market and we had a speed breaker even before we peddled. So we can't take pride in what we have written. But we definitely have outperformed the global market in absolute rupee terms or absolute terms so I won't blame ourselves too much for it.

Speaker Actually, there are lot of participants joining us on phone line. I will just give them some opportunity and then we can come back here. Anyone joining us through the Chorus Call or any one wants to ask questions from the panelist?

Moderator Sure sir. Participants anyone who wishes to ask a question you may press * and 1 on your touch tone telephone.

Participant Sir we have a question from Nariman point office. Just want to actually understand how do you see preference shares as a mode of investment and vis-à-vis liquidity or an NCD or that matter convertible debentures?

Ruchir Sinha **If** you are talking in context of offshore funds, then you cannot have redeemable preference shares and just to give you some picture on that - SEBI is planning to come up with a redeemable preference shares regime also for non-residents on the listed platform just like listed NCDs. That should be coming out very soon, it is in final stages. But pending that, as of now you cannot have redeemable preference shares for non-residents.

Between a preference share and debentures from a tax perspective, clearly debentures are likely to be better off. Because interest is a deductible and to that extent you reduce your taxable income and 30% corporate tax thereon, plus you have liquidation preference. Also in context of debentures any kind of coupon or redemption premium on debentures is not dependant on profits as against preference shares where any redemption or dividend can only be out of profits. Importantly, one more point in the current scenario if you are comparing lets say CCPS or CCDs versus nonconvertible debentures, additional point is that both convertible preference shares and convertible debentures which are also called as FDI have a limitation in terms of how much the company can pay out to them. Maximum you can pay out is about 13% which is SBI PLR plus 300 basis points, but in case of NCDs there is no limitation on the amount of coupon paid to foreign investors which can be as high as 18%, 20% or even higher.

Moderator We have couple of questions from the audio participants, can we go ahead. We have the first question from the line of Atul Niwalkar from Sapphire Capital, please go ahead.

Atul Niwalkar Hi this is Atul here. Just wanted to check on an offshore level, if a particular deal is done which is a FDI compliant situation and at the time of investing now that fund is in discussion and they want to actually exit out of the situation but what has happened is if the construction has started and it is sort of plinth level situation and the funds want to exit which is technically not an FDI compliant situation, can you do a deal on the offshore level and still be tax compliant. I hope I was clear with my question.

Nishchal Joshipura From what we understand is, that if a fund wants to exit but not much development has taken place at the Indian company level.

Atul Niwalkar No development has taken place. I will just tell you. I will just take an illustration. See the fund has come in. At the time of investment there was no development which was there on the property piece that is actually in question. Now what has happened is, there is some development which has taken place in the company, obviously it has gone to two or third or fourth floor whatsoever it is and now new fund wants to venture in but this is not a classic, from an FDI perspective this does not remain a classic case. So can a deal happen on an offshore level in this case?

Nishchal Joshipura So one is from an exchange control perspective and other is from a tax perspective. When we say offshore level we understand that you will be selling the Mauritius Company instead of the Mauritius Company selling shares of Indian company. From an exchange control perspective, currently there is no provision to look through and hence from an exchange control perspective lot of deals have happened where Mauritius and Cyprus companies have been sold. So far that was fine but from a tax perspective you will get caught in a Vodafone type situation where as per the last budget, there was this new explanation that was introduced in the income tax act where if there is an indirect transfer of an asset, and if on account of that there are capital gains then there will be a withholding tax requirement on the buyer or that is new fund in this case subject to the treaty benefit being available.

Atul Niwalkar Okay other than that the tax angle obviously there are no problems on the FDI regulation angle at least?

Shobhit Agarwal No should not be. They have done deals in the past.

Moderator We have the next question from the line of Raj Prasad from IREO, please go ahead.

Raj Prasad My question is that the Finance Minister has clarified in Circular 789 investment from Mauritius. Have similar guarantees come in respect of Cyprus also?

Nishchal Joshipura As I mentioned, on 1st of March there was a lot of trouble on the market because of the way the language was worded in the Finance Bill where the finance minister said that TRC will be a necessary requirement, but not sufficient for seeking the treaty benefits and the markets became apprehensive that tax authorities can also challenge the tax residency certificate. There was a lot of hue and cry and markets reacted sharply. So what happened after that was, immediately, there was an announcement that was made by Finance Minister where he said that tax authorities are going to accept the TRC subject to two or three conditions which they have prescribed. As long as those conditions are covered, they will accept the TRC. As far as Mauritius is concerned, in a way circular 789 which was issued a decade back still protects Mauritius from challenging of the TRC because it is clearly mentioned that as long as there is a TRC available with the non resident, the tax authorities cannot challenge the TRC. But with GAAR coming in and some of these things, there is still a question on how circular 789 will fair as compared to GAAR provision. And the intent is clear - that even if you have a TRC which is valid, if you still don't have commercial substance as per provision tax authorities may question their structure.

Participant This is regarding coupon being subject to withholding tax in case of debt structures. Imagine a structure where the redemption premium be subject to withholding that will be treated as interest or will be treated as capital gains?

Ruchir Sinha So, there were ambiguities earlier on how redemption premium be treated? At one point of time it was thought that up to an arm's length it should be coupon, and beyond arm's length it should be capital gains. But I think the way the judgments have gone recently, there is a reasonable amount of certainty that a redemption premium is also essentially nothing else but cost of funding. Now of course the redemption premium is way too high 50 – 60%, 70%, then there is chance that it may disallow.

Participant For the Indian company's interest but for the investor would it be treated as a capital gain or the redemption….

Ruchir Sinha For the off shore investors, it is treated as interest because from a tax authority perspective, most of the investments came from treaty jurisdictions Singapore or Cyprus. If it is interest, they still make 10% withholding in Cyprus and 15% in Singapore. If it was capital gainst, they make no money at all. So currently even for the offshore guys there is withholding and the treatment is that of interest.

Ruchir Sinha As far as some of these jurisdictions are concerned, it wouldn't matter because if it is capital gains there is no tax in Cyprus. If it is interest, there is a local tax of 10% in Cyprus on interest on which you will anyway get a credit of the Indian 10% that you paid. Singapore you may have a 2% leakage because in the 15% withholding and in Singapore domestic tax is 17% so you get credit of 15% but 2% still you have to pay, unless you are exempted from capital.

Participant In case of Mauritius…

Ruchir Sinha So in Mauritius you typically never do a debt product because India-Mauritius doesn't have a favorable treaty on interest. Any receivable on debt should be categorized as interest and you better factor it in your models while doing it.

Participant My question is with respect to the regulation on ECBs for affordable housing, there was news that project where 60% of the project is of less than or equal to 600 square feet, can you give some more clarity on that?

Ruchir Sinha Affordable housing has been encouraged by the government. So long as you have 60% of the project with units upto 60 square meters, then your project could qualify as affordable project, and in the remaining 40% of the project you can do anything. Affordable housing has been given a special category in the ECB. So external commercial borrowing can be procured which is otherwise prohibited for real estate, but that's under approval route and you need to apply to National Housing Board. But, not many approvals have come through as I understand…

Participant Is it more a case of lack of interest or more a case of no….

Ruchir Sinha I would put it this way, affordable housing is not something which is everyone's play. It's something which is difficult and Shobhit can throw light on that. As I said from a foreign investor perspective, when you are bidding money into affordable housing you need to be little careful. Secondly affordable housing ECB has not been allowed for acquisition of real estate. You can only use affordable housing ECB for the purpose of construction and the largest need in the affordable housing segment is really at land acquisition stage, so I think some of those challenges are there. And of course ECB regulation conditions come up in terms of eligible lender, capped returns of 500 basis points above LIBOR etc.

Shobhit Agarwal From a market perspective there is a huge demand, but I think there is a still a regulatory issue to it. If it opens up, I think there will be interest….

Participant The question may not be relevant direct to the subject but the kind of dramatic changes that have been done in the banking institutions at Cyprus, where do we see how far this could be feasible for Mauritius.

Nishith Desai In fact a number of things which we always ignore often are tax management and account and our conversation starts with tax and ends with tax but we hardly look at bilateral investment protection treaties. We do not look at political risk insurance, AIG is now providing. At one point of time, US provided insurance in terms of political risk by OPBC, overseas protection of business cooperation. So there are number of measures that you can take as to how do you protect your basic investment. There are number of ways in which one can do but when you begin to invest you don't want to hear that my investment can be nationalized.

So if you do not consider this non-tax factor often you don't plan for that situation but looks like that Mauritus generally has been steady and Cyprus nobody ever bothered to go into the economic part on a timely basis and how the economy is going.

Nishchal Joshipura If you buy an insurance for a very nominal premium then German government protects the investment of the German company in any foreign jurisdiction. So even if it goes bust the German government will pay capital plus some 6% IRR on that investment. So some of the governments also do that.

Participant Can anybody take that insurance from Germany?.

Nishith Desai haha….You can setup a German company in order to do that.

Moderator We have the next question from Rahul Pai from **Omar** Realty, please go ahead.

Rahul Pai My question is on REMF and REIT, so I wanted to ask if a REMF or REIT can be registered oversees and participate in Indian real estate market?

Ruchir Sinha REMF is really a subset of Indian mutual fund regulations. India really doesn't currently have an REIT regime per se, it came in draft form and I think between ourselves and APREA we are working on introduction of REIT regime in India. It has gone through phases then they are listing. In terms of offshore registration both these regimes are domestic in nature, so they will be registered with SEBI. Foreign participation should be allowed because units are supposed to be listed. So just like any other listed instruments both FII and QFI can participate in units of REIT..

Rahul Pai So what has been the response to the REIT and REMF generally from the retail sector? What is your opinion on that?

Ruchir Sinha I think it is going on but I don't think it is possible to assess the response right now as it is all open. But the challenges that I see are, one , we are looking at perpetual vehicle as against the fixed maturity vehicle as SEBI wants, that's how it works in offshore, and that is something which may not be very amenable to SEBI. So, those discussions are going on, but I think the demand is supposed to be there.

Rahul Pai The question was whether you can have REMF for REIT from outside India investing in India.

Ruchir Sinha I would direct you to Page #36 of the PE in RE research paper which talks about flips and offshore REITs. This really talks about larger amount of flips that are happening today, Religare and Fortis kind of structures. You kind of flip the India ownership of the asset to an offshore company. And in the offshore company goes public and it is typically SBT structure. So I think you would find that helpful. Also Annexure 5 talks about the draft REIT regulation so that might be helpful in India. At an offshore level in Singapore as Nishith Bhai was mentioning we have faced the challenge couple of times because clearly equity has a 10% buyback restriction. Redeemable preference share can be redeemed freely out of profit but if you want to redeem the preference shares out of capital, there is a solvency test that needs to be met. The solvency certificate that needs to be given by the director and the challenge is that if that solvency certificate is incorrect to some extent, there is going to be a criminal liability. So we are currently setting up a couple of funds in Singapore and how do you capitalize the Singapore company becomes increasingly a challenge in a typical way in which it was to be well in Singapore was an ideal mix of one-third, one-third, one-third equity, redeemable preference share and interest fee debt. I think there is keenness now to get away from a RPS to a nominal amount of equity and larger debt. Of course each option has its own set of permutation and combination because redemption and all capital gains are exempt but interest income will still be taxed in Singapore so we need to look at and these are some of the structures that you could look at.

Participant There was a case where DLF exited I think they sold their stake to a REIT base in Singapore. So can you shed some light on that transaction?

Ruchir Sinha I am not aware of anything. They were contemplating setting up a REIT sometime back but…..

Moderator We have the next question from Ravi Shankar from Majumdar & Partners. Please go ahead.

Ravi Shankar I have a general question the additional income tax on buyback of shares provision. It gets effective from June 1. So are we seeing a rush to get share buy back completed before that date?

Nishchal Joshipura Yeah actually we are working on few buy backs right now. It will get completed before 31st of May. So there is a rush which is there subject to portfolio company having money to….

Ravi Shankar The only clarification I require is whether this will have any implications on tax or can the tax authorities say that you did this deliberately or this is something which we need to live with.

Nishchal Joshipura so I think currently there are no GAAR provisions, so technically the tax authorities cannot question the buy back before 31st of May and if you do it before 31st of May the income would still be considered at capital gains, at the end of the shareholders. You can’t stop a lower level tax authority to question it but legally if the defense is sound then at least the tribunal level you will be able to win it.

Speaker Just last question may be we can take.

Participants Shobhit can you elaborate on the government hedging side you said you can hedge the debt instrument but it think hedging cannot done for CCD and only for NCD.

Ruchir Sinha Only for NCDs, hedging products at about 5 - 6% cost can be availed.

Speaker I think we had a fairly informative session today. I hope participants felt benefited by the discussion. I once again thank Nishith Desai Associate for sponsoring and partnering this session and providing this forum for this discussion. I thank to all of you for kindly coming over and participating in this discussion.

Nishith Desai All the proceedings that are happening are concurrently being recorded in an automatic DVD that will come out so if people want possibly we will be happy to share that.

Moderator Thank you sir. Participants, on behalf of Nishith Desai & Associates and Asia Pacific Real Estate Association Limited, that concludes this conference call. Thank you for joining us and you may now disconnect your lines. Thank you.