



A New Outlook in DIRECT TAXES

Opportunities' & Challenges for CMAs

CMA Mrityunjay Acharjee

Outline

- **A regime Change**
- **Migrating to International Tax Standards and Best Practice followed across the universe**
- **Source based taxation and re-structuring DTAA**
- **Emphasis of Digital Footprint of any and every transaction & audit concept based on such IT framework**



Outline

- **Basics of transfer pricing**
- **Background of TP legislation in India**
- **TP regulations as per the Income-tax Act, 1961**
- **Domestic TP law and Treaty interplay**
- **Thin Capitalization**
- **BEPS and POEM**



BEPS Concept

- **Base Erosion and Profit Shifting** - Firms make **profits** in one jurisdiction, and **shift** them across borders by exploiting gaps and mismatches in tax rules, to take advantage of lower tax rates and, thus, not paying taxes to in the country where the **profit** is made.
- **significant changes in key elements of the international tax architecture**
- **Base Erosion & Profit Shifting – International Tax Standards**
- **India is actively following the BEPS recommendations and has been bringing amendments in the domestic law to be in line with BEPS regulations.**

BEPS Concept

- **Growing concern with respect to the serious losses of tax revenues due to BEPS. These hurdles resulted in the launch of the BEPS project by the Organisation for Economic Co-operation and Development (OECD) .**
- **OECD has designed a 15 point action plan for tackling this problem of shifting profits.**



BEPS Concept

- BEPS project helps measure the need for behavioural change, at every level.
- Tax administrations now won't just introduce stricter measures and look for restricting tax treaty benefits, but would also test arrangements which in their view, lack substance or has a real commercial principal purpose.
- 2. Enhanced transparency is one of the key objectives of the BEPS framework. This brings new reporting obligations such as Country-by-Country Reporting (CbCR).
- 3. As the implementation of BEPS quickens, businesses increasingly would require track how changes to transfer pricing practices and domestic laws, and the revised double tax treaties would affect them.

Entities make profits in one jurisdiction, and shift them across borders by exploiting gaps and mismatches in tax rules, to take advantage of lower tax rates and, thus, not paying taxes to in the country where the profit is accrued.



Restrict deduction of interest paid by an Indian company to its associated enterprises where the interest pay-out exceeds INR 10 million in a year. The interest deduction in such cases will be restricted to 30% of the EBITDA of the borrower.

[Finance Act 2017]



India Enters into 17 New Tax Information Exchange Agreements - New Approach to Direct Taxes

Switzerland stood out as a country that did not accept the clause for sharing full information.

Due to international pressures, the country's Federal Council recently announced its intention to adopt the OECD (The Organisation for Economic Co-operation and Development) standard on administrative assistance in tax matters.



Base Erosion and Profit Shifting (BEPS)

Country by Country Reporting

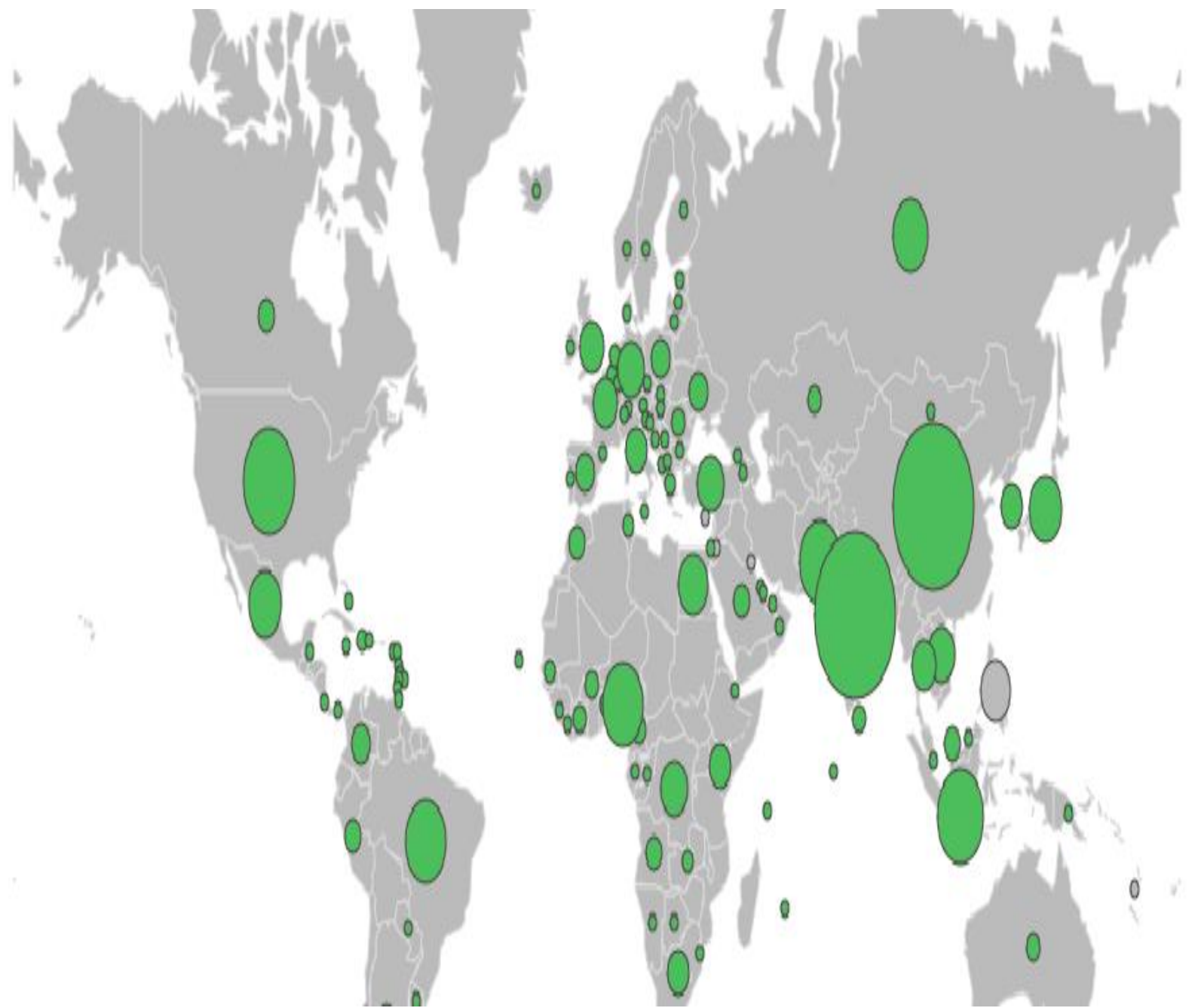
**OECD's BEPS Action Plan 13, the ,
(CbCR) has prescribed the rules for
maintaining and furnishing the
Master File (MF) and Country – by -
Country (CbC) report.**



BEPS Concept

International collaboration to end tax avoidance

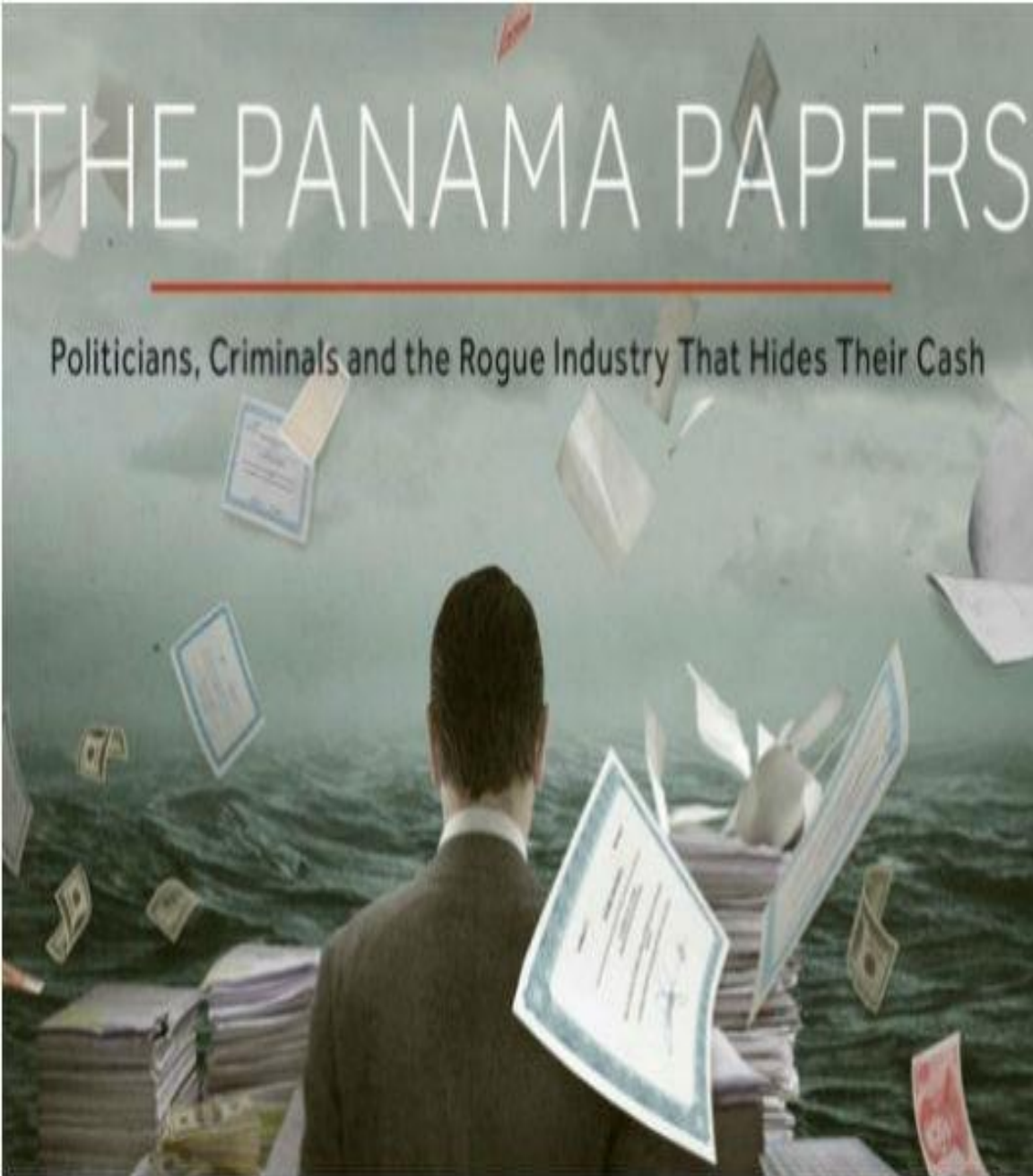
Under the OECD/G20 Inclusive Framework on BEPS, over 130 countries are collaborating to put an end to tax avoidance strategies that exploit gaps and mismatches in tax rules to avoid paying tax.



DO you still recall few news clippings

THE PANAMA PAPERS

Politicians, Criminals and the Rogue Industry That Hides Their Cash



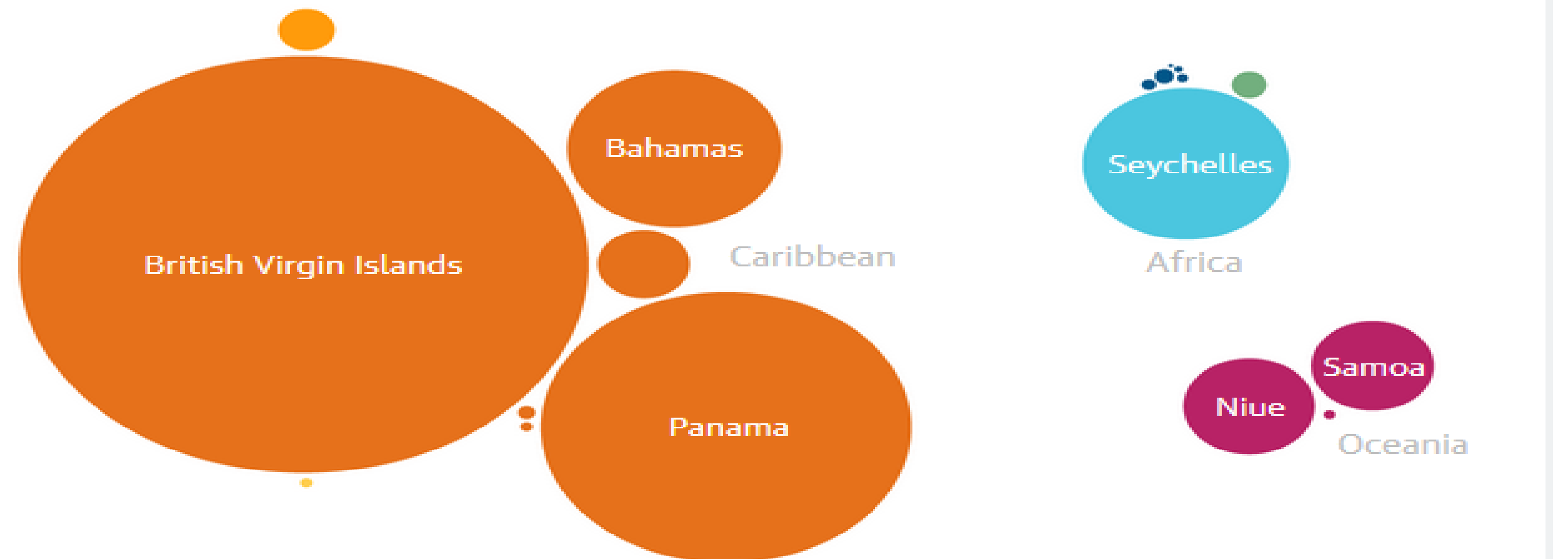
MOSSACK X FONSECA

Panama Papers Leaks
Important Facts



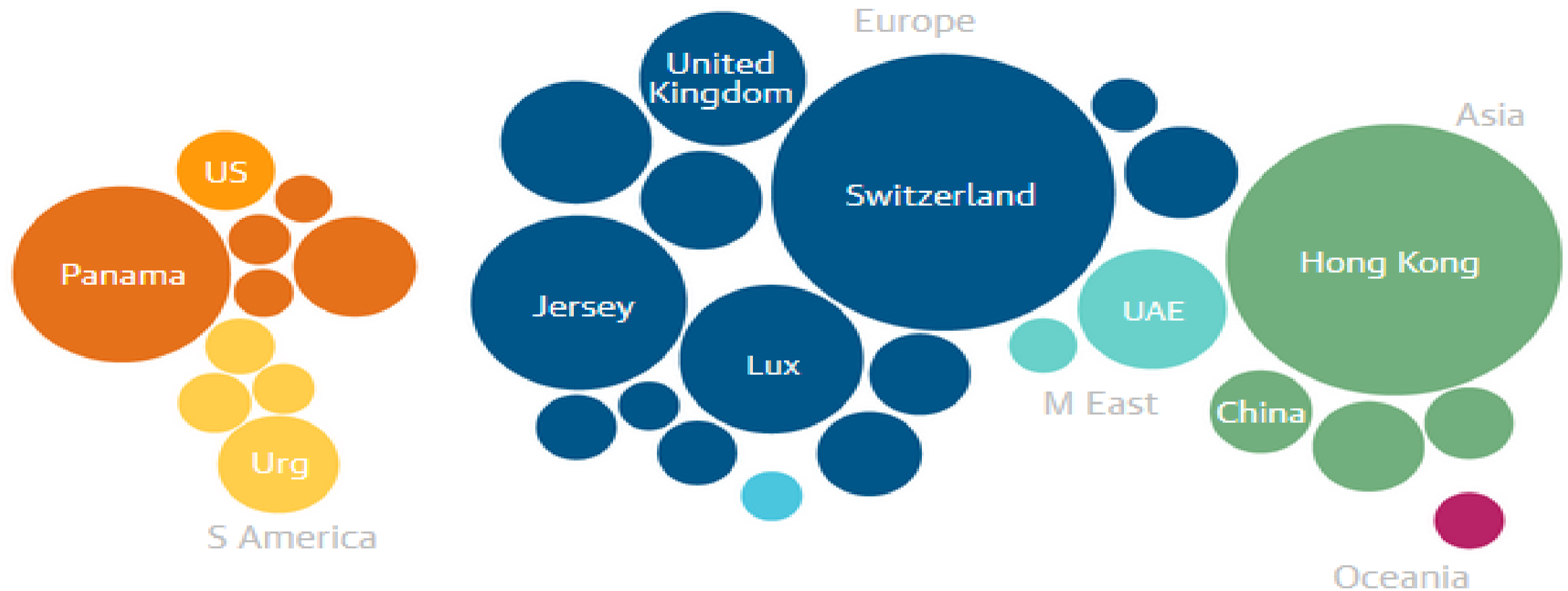
The hiding places

Mossack Fonseca data seen by the Guardian relates to more than 200,000 companies for which the firm acted as registered agent. Often used lawfully to anonymously hold property and bank accounts, these companies were registered in a range of tax havens and this map shows the most popular locations among its clients. The British Virgin Islands held more than 100,000 companies.



The intermediaries

Rather than dealing directly with company owners, Mossack Fonseca mostly acted on instructions from intermediaries, usually accountants, lawyers, banks and trust companies. In Europe, these offshore facilitators are concentrated in Switzerland, Jersey, Luxembourg and the United Kingdom.



**Do you feel that each Tax
Planning leads to Evasion ?**



Inclusive Framework of OECD



**Do you feel that each Tax
Planning leads to Evasion ?**



Total number of ITRs (Income Tax Returns) e-filed up to August 31, 2018 was 5.42 crore as against 3.17 crore up to August 31, 2017 showing an increase of 70.86 per cent. Count till Sept 2019 is 7.56 Cr



India had DTAAAs with 81 countries, 75 of these did not have a specific clause for exchange of banking information.

The Government initiated the process of renegotiation with these 75 countries to broaden the scope of the 'Exchange of Information' Article in Double Tax Avoidance Agreements (DTAAAs), either by way of protocols to existing DTAAAs or new DTAAAs.

As of September, negotiations/renegotiations with 40 countries have been completed



Inclusive Framework of OECD



Obligation to furnish Statement of Financial Transactions or Reportable Account :



Base Erosion and Profit Shifting (BEPS)

4 minimum standards on BEPS :

1. Countering Harmful Tax Practices (Action 5)
2. Treaty Shopping (Action 6),
3. Transfer Pricing Documentation and Country-by-Country Reporting (Action 13)
4. Dispute Resolution (Action 14).



Inclusive Framework of OECD

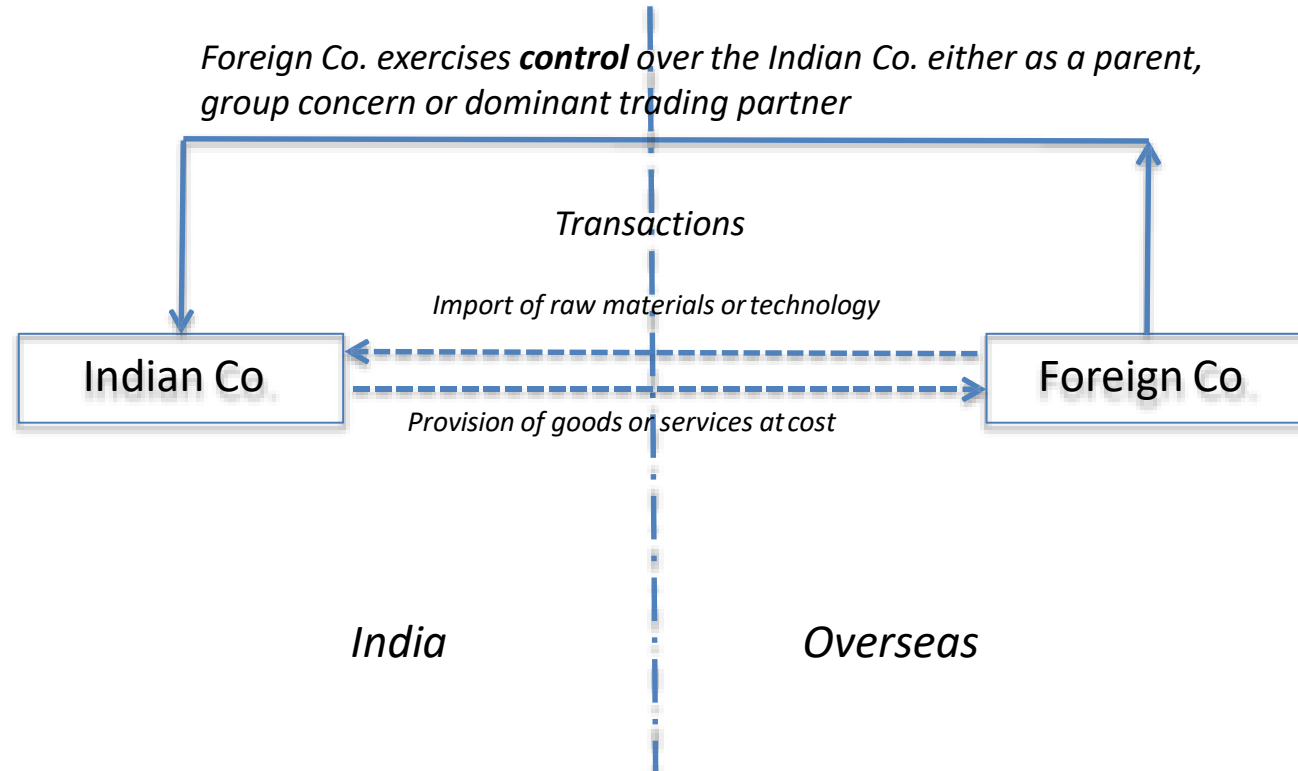


What is Transfer Pricing?

- Transfer pricing is the pricing of inter-company transactions that take place between affiliated businesses.
- The transfer pricing process determines the amount of income that each party earns from that transaction.
 - An exercise largely carried out for Tax Minimization across the group
 - As long as group is controlling the funds, it does not matter where they are parked
- Related-Party transactions, which are called *controlled transactions*.



Scenarios: Cross-border transactions



Scenario 1

Indian Co. is treated as **Permanent Establishment** of the Foreign Co., profits attributable to it are taxed

Scenario 2

Independent streams of receipts by Foreign Co. are made subject to withholding tax requirements

Scenario 3

Transactions between Indian Co. and Foreign Co. are subject to transfer pricing

Arm's Length Price (ALP)

- **ALP is as per OECD as under:**

- “Where conditions are made or imposed between the two associated enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.”

- **The principle laid out above in the UN Model has also been reiterated in the OECD Model Tax Convention and the OECD**

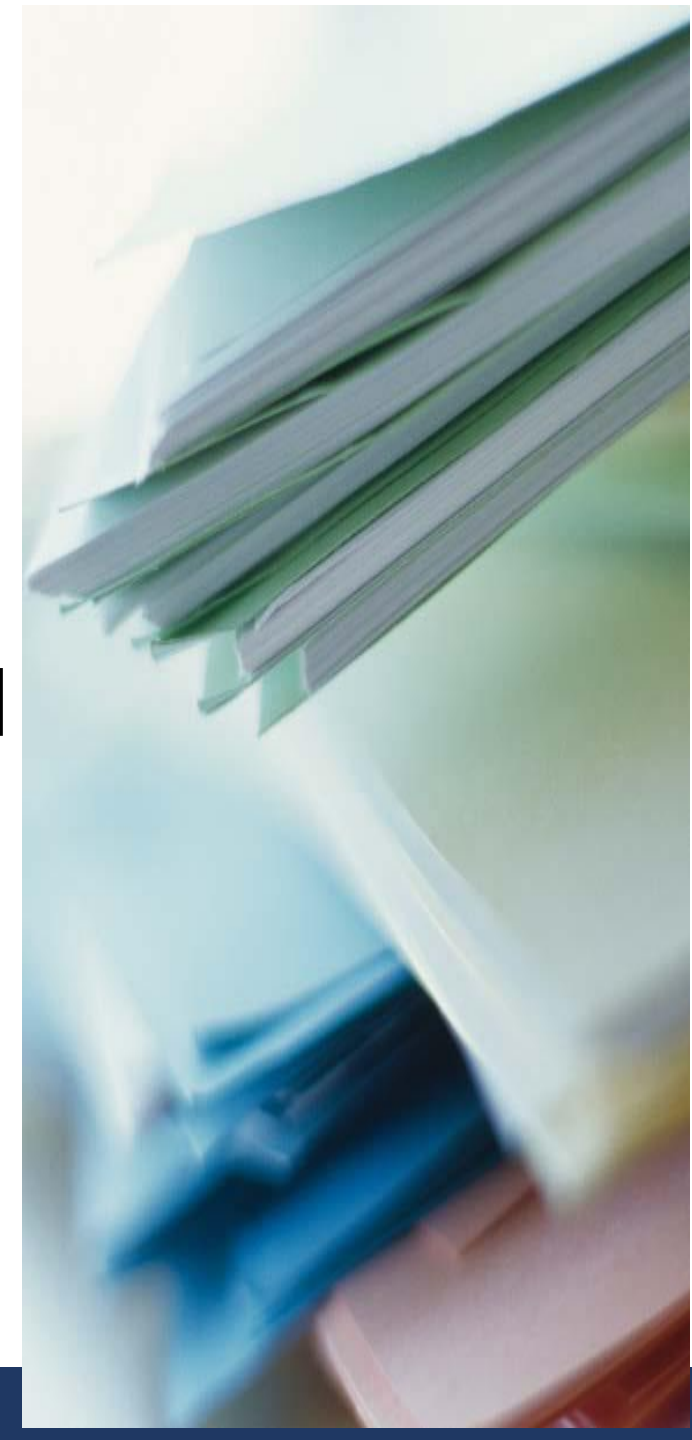


Arm's Length Price (ALP) ... *contd.*

- **Sec. 92F(ii) "arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions;**
- **The term 'transaction' includes an arrangement, understanding or action in concert, whether or not in writing and whether or not intended to be enforced in legal proceedings. A transaction includes a number of closely linked transactions.**
- **An 'uncontrolled transaction' means a transaction between enterprises other than associated enterprises, whether resident or non resident.**

Section 92C – Computation of ALP

- ALP shall be determined by any of the six methods, being the most appropriate method (MAM)
- The six methods include:
 - (a) Comparable Uncontrolled Price method; [CUP]
 - (b) Resale Price Method;
 - (c) Cost Plus Method;
 - (d) Profit Split Method;
 - (e) Transactional Net Margin Method;
 - (f) such other method as may be prescribed by the Board ('other method')



Section 92C – Computation of ALP

Key features of section 92C:

- **Concept of most appropriate method.**
- **Arithmetic mean.**
- **No adjustment to income if variation within 5% of the transaction value.**
- **Whether the 5% safe harbour is available as standard deduction?**
- **No exemption under sec 10A or 10B or under chapter VIA on the addition to income due to adjustment to ALP.**
- **Value of IT can be disturbed only if :**
 - **(a) ALP not determined as MAM.**
 - **(b) Information not maintained as per sec 92D.**
 - **(c) Information used is not reliable.**
 - **(d) Failure to furnish information as per sec 92D(3).**
- **Based on ALP determined of an Assessee, no refund to its AE even if TDS on such transaction.**

Tax Information Exchange Agreement is the legal instrument that provides the framework for the exchange of information upon request only between two Governments.

Each TIEA signed between the Government of the Virgin Islands and the Government of a partner jurisdiction, shall be brought into force in accordance with the provisions of the Mutual Legal Assistance Tax Matters Act, of BVI 2003



**Face Less
is the
New Face
of
Assessment**



Opportunity before the CMAs

- Determination of the Value of transactions
- Identifying the best possible situation / method
- Extending support to the Tax Authority (TP) in determination of the value
- Building confidence in data building for comparison
- Appropriate identification of the methods applied
- Reduction in the TP related adjustments
- Proper value addition to all stakeholder
- Un-biased Audit certification



Opportunities before the CMA Profession



Views &
Questions ?

