



# Recommendations and Proposals

November 2009, New Delhi - India

## **American Chamber of Commerce in India**

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# Preface

Established in 1992, Amcham India is an exclusive association of American companies operating in India. With a nationwide membership of 500 U.S. companies spread all over the country, Amcham espouses the shared vision of American businesses and acts as an interface between Government and industry. The mission of Amcham is to develop mutually beneficial Indo-U.S. economic relations; promote two-way trade and encourage U.S. investments into India.

India is one of the fastest growing economies globally. Foreign investors are significantly looking to invest in India in various sectors. There is a constant need to identify areas of improvement in framework conditions, Government policies and investment climate which can aid the inflow of foreign investment into India.

This paper aims to assess the key tax challenges sectors like solar, oil and gas, bio fuel, manufacturing, renewable energy agriculture and food processing, medical, infrastructure, supply chain development, insurance and homeland security among others and discusses critical success factors that can open doors to foreign investors.

In the last few years the Government of India has brought about several policy changes to attract FDI, but a lot more needs to be done. AMCHAM offers its recommendations in various sectors to work with the Government and help increase the influx of foreign investment into the country.

This brief document is prepared based on inputs received from members of AMCHAM and its Sectoral Committees. Some of Amcham's prominent committees are:- Civil Aviation; Defense Equipment; Education; Energy; Financial Services; Food, Beverages & Agri Business; HR Forum; Homeland Security; IT Communication & Telecom; Intellectual Property Rights; Infrastructure; Insurance; Manufacturing; Medical Equipment and Devices; Indo-US Bilateral Investment Treaty; Retail & Supply Chain; Tax & Tariff. Recently a committee to address Anti-Corruption (FCPA) Compliance issues has also been formed.

We do hope this document is of use to Governments both in India and the US in their decision making process.

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# 1.Executive Summary

**AMCHAM has developed a range of recommendations that can assist the Government of India to increase foreign investment and create a stable, attractive, co-operative investment framework. A stable policy and regulatory regime, standardization, collaboration between government, academia, and industry, and a unified regulatory framework are all critical to attract foreign investment.**

## **Key Tax Challenges & Direct Tax Code**

Last couple of years witnessed several settled **tax** positions being challenged by the Indian tax authorities. This has undermined investor confidence in the country's tax regime. Concern is being expressed on tax issue in cross border mergers and acquisitions/ restructuring activity. Availability of capital gains exemption in future under the India Mauritius tax treaty needs to be clarified.

There have been several instances of unjustified allocation of an MNC Group's non-Indian companies (the overseas companies) profits to India. Certain sections of the tax department have raised high-pitched transfer pricing assessments on Captive Information Technology and Information Technology Enabled Services players. The process of defending tax position in India is viewed to be extremely slow, time consuming and expensive in terms of professional costs. Often MNC's are viewed as soft targets and the coercive action of the tax authorities is an attempt to pressurise them into paying disputed amounts. Thus, there is a need for a facility whereby companies can seek advance rulings in respect of tax disputes.

The Government of India recently released a comprehensive discussion paper and draft of the **New Direct Tax Code** that seeks to revamp and simplify the direct tax law and its administration in the country through several radical changes. The code envisages meaningful reduction in tax rates while being revenue neutral for the government. It aims to increase the tax base and rationalise the myriad tax incentives prevalent under the current law. In our view, the overall changes proposed will be quite beneficial for a number of sectors and companies, albeit definitively withdrawing tax holidays being currently enjoyed by different sectors, something that has been contemplated and proposed often in the past.

## **Solar Energy**

For **Solar**, the manufacturing ecosystem may be enabled, with a well-formulated feed-in-tariff, implementation of off-grid applications, establishment of solar module manufacturing, utilization of solar generated power, a focus on R&D, and standardization for processes, products, and materials. Strong corporate governance and financial processes may be factored in to attract investments. Significant utilization of solar end products may be driven for domestic consumption, to increase the need for investments throughout the value chain, from raw materials to modules to systems to storage to end products.

## **Oil and Gas**

For **Oil and Gas**, a stable unified regulatory framework is needed. This may feature an open acreage licensing policy, establishment of an independent regulator, removal of price controls and tax distortions, and

formalization of an industry consultation process. Additionally, National Exploration and Licensing Policy (NELP) bid criteria must be weighted for capability and technical competence. For natural gas, the tax holiday on natural gas should be restored, an independent, transparent, non-discriminatory regulatory authority could be established, and an industry consultation process to assist the GOI with creating and implementing effective regulations and policy guidelines may be formalized.

## **Biofuels**

For **Biofuels**, a stable policy and regulatory framework may be enacted, with independent regulators appointed, a streamlined plantations segment, and clarified entry criteria for retailing. Additionally, distortions in diesel and biofuels pricing may also be removed.

## **Renewable energy**

For **Renewable energy**, especially wind and hydro energy, benefits could result from income tax holidays, accelerated depreciation, duty free import of wind energy equipment, capital subsidies and concessionary financing from IREDA. AMCHAM members recommend exemption from electricity duty and sales tax, and a liberalized financial institution approval regime to facilitate foreign investment and transfer of technology through joint ventures.

## **Insurance**

For **Insurance** the proposed amendment to increase FDI cap could be a great way of fair sharing of the capital burden between the foreign promoter and the Indian partner.

## **Infrastructure**

For **Infrastructure** a better framework for private investment, political will and mechanism for user charges, clear and consistent environmental policy, improvement in project management skills in private sector, consistent and friendly land acquisition policy, and financing reforms are some of the key focus areas.

## **Supply chain development**

For **Supply chain development** there is a need for the US and the Indian Government to work in close cohesion to increase revenue of farmers and get better quality goods to the consumer at better prices. This may require elimination of the middle men and policy changes.

## **Manufacturing**

For **Manufacturing** local manufacturers and multinationals may have equality in terms of taxes and other policies.

## **Agriculture and food processing**

For **Agriculture and food processing**, a total macro view may be necessary, rather than a sectional view. The excise duty on packaged drinking water, for example, may be put in the NIL category, and if not removed, then at the minimum may be reduced in the first stage to 4%, gradually and progressively being brought to

zero rate of excise duty. For food processing, food items that are exempt from the levy of excise duty may be encouraged to grow, with this exemption continued as the revenue implications are minimal.

## **Medical**

For **Medical**, benefits could be realized from the rapid adoption of long-pending labor reforms, disciplined dealing with unauthorized/unrecognized trade unions, and modification of much of the existing labor act(s) to fulfill international best practices. Beyond formulating macro policies and beyond specific sectors like Telecom, Oil and IT, the GOI should play a stronger role in attracting large investors who are not comfortable dealing with state governments due to delays and other reasons.

In closing, India can overcome challenges that are restricting growth by creating effective policy and execution of that policy. For long-term investment, the GOI needs to give the investor confidence in the system and government agencies. A stable and attractive investment framework should be internationally and co-operatively created. Clarity on issues will make a positive contribution to shaping policy and creating a level playing field for local manufacturers and multinationals. Through barriers exist from a technology, policy and investment perspective, India promises to be one of the largest markets for US companies across sectors, and US companies have a significant role to play in both trade and investment.

## **Homeland Security**

The Indian Government needs to define an overall **Homeland Security** Policy. The National Security Act (1980) is inadequate in the current enhanced threat scenario and needs to be amended.

Coordination between various departments including Centre and State needs to be streamlined. There is a crying need for networked systems for Information Fusion and Analysis.

Engaging private companies actively, (including AMCHAM members) while setting specification standards and establishing testing procedures.

For the US administration :

Considering the developing strategic relationship between India and the US, there is a need to relax the stringent US export control norms to India on Homeland & Defense related areas.

An Indo-US Centre for Defense & Homeland Security R&D - with private industry support and engagement needs to be set up.

Facilitate knowledge sharing across the security roadmap to leverage on the vast US experience/projects.

Provide training to various Security Enforcement Agencies in India from the relevant US departments / companies.

## 2.Key tax challenges

**Last couple of years has witnessed several settled tax positions being challenged by the Indian tax authorities. This has undermined investor's confidence in country's tax regime. Though a country's foreign investment regime is an important factor that an investor considers before making an investment decision, several fiscal considerations also need to be factored in. Stability and certainty in tax regime is one such important consideration. Following are some of the key tax challenges confronted by several MNC's operating in the country:**

### **Tax issue in cross border mergers and acquisitions/ restructuring activity**

- Recently, tax authorities in India have put forward an unprecedented view that India is entitled to capital gains tax on share divestments taking place outside India, involving transfer of shares in a non-Indian company and taking place between two foreign entities.
- The general principle, flowing from the sovereignty of States, is that laws made by one State can have no operation in another State.
- As stated above, the extant law regarding transfer of shares (being capital assets) provides for taxation only if they are situated in India. It is a well settled position that shares are deemed to be situated where the registered office of a company is located. Accordingly, it cannot be said that a shareholder who buys shares, buys an interest in the property of the company except in specified cases.
- Approach by the Indian tax authorities seeking to tax transfer of shares of an offshore company between two non-residents, therefore, appears to be outside the realm of the Indian tax law.
- The position adopted until date is that no taxes were payable in India on an offshore transaction involving two non-residents in respect of shares of another offshore company. Accordingly, neither a non-resident seller was subject to Indian tax law nor a non-resident buyer was under an obligation to withhold taxes on payments made to a non-resident seller.

### **Availability of capital gains exemption under the India Mauritius tax treaty**

- The India-Mauritius tax treaty provides a key benefit, by way of an exemption from capital gains tax to foreign investors. The foreign investors have often invested in India on account of tax exemption on capital gains accruing at the time of exit from their investment.
- Tax authorities have, notwithstanding the guidance issued by the Government of India through the Central Board of Direct Taxes and the judgment of the Apex Court continuously challenged the tax benefits available under the treaty. The Apex Court had decided that the treaty benefit needs to be provided irrespective of the motive of having used Mauritius as a conduit to invest in India. The decision of the Apex Court was based on the presumption that tax treaties are entered into not just to prevent double taxation

but also to encourage investments in the country. This is amplified by the fact that more than 40% of the FDI that came into India has come in from Mauritius over the last 10 years.

- The decisions and interpretation of the Apex Court are final and non-appealable. In spite of this, challenges to the availability of the Mauritius treaty benefits prevail.
- The most recent illustration of this is the E\*Trade case where the tax authorities have attempted to tax a transaction between two Mauritian companies, in respect of shares in an Indian company. The same has been undertaken based on the argument that the seller of the shares has to be disregarded and its US parent needs to be considered as the actual owner of the shares.
- As such, the tax authorities should render clarity to their substance over form contention to disregard India-Mauritius tax treaty.

## **Permanent Establishment issues**

### **Seconded employees**

- There have been cases where presence of employees who have been seconded (employed by Indian Company) to the Indian operations have been regarded as constituting a permanent establishment ('PE') of the foreign company in India.
- In a case involving a British Company engaged in equipments manufacturing, the Tax Authorities have taken steps to increase the tax liability of the UK parent company from 15% (gross basis) to 41.82% (on a net income basis) during a tax assessment proceeding. It may be noted that the UK parent derived income from India from its India subsidiary by way of royalty only in consideration of the exclusive right to use the technology developed wholly outside India for use in the manufacture of equipments in India under a License from the UK. However, the assessing authorities linked the presence of seconded employees of the UK parent in India to a deemed presence of the UK parent in India as a permanent establishment on the pretext that the presence of these employees helped the company to increase the sales from Indian Operations and consequently the royalty income, almost the entire royalty income (i.e. 80% after allowing 20% towards expenses) accruing to the UK parent was taxed at tax rate of 41.82% [40%+ surcharge @ 2.5%+(2% education cess)] on a net income basis instead of normal rate of 15% applicable on gross basis.
- As such, the investor community favors an urgent clarification in respect of the circumstances under which seconded employees may be regarded as triggering a PE in India. The tax department should also clarify that the reimbursement of salaries of such secondees to Group companies is free of any withholding taxes.

### **Excessive attribution of profits in India**

- There have been several instances of unjustified allocation of an MNC Group's non-Indian companies (the overseas companies) profits to India. This is through a combination of -
- Contending that the overseas companies have permanent establishments (PE) in India, in spite of what the taxpayer believes is a lack of any substantive evidence.
- Allocating a disproportionately high level of income to those PEs. The overseas companies' contention is that, even if, a PE had been created, the level of profit that is attributable should be minimal in view of the

functions performed and risks taken by the overseas companies outside India compared with the activity in India.

- The tax authorities seeking excessively large transfer pricing adjustments in respect of the MNC's Indian entities, through the use of inappropriate comparables.
- The Indian entities that the tax authorities contend are PEs of the overseas companies already declare a profit that is taxed in India and the MNC group considers that that profit constitutes appropriate remuneration for the low level of functions performed and risks taken in India.

### **Transfer Pricing for IT/ ITES industry**

- Certain sections of the tax department have raised high-pitched transfer pricing assessments on Captive Information Technology and Information Technology Enabled Services players in Bangalore, alleging that Returns on Total Cost ranging from 25% to 30% should be earned by such taxpayers, based on third party comparables identified by the tax department. In doing so, the tax authorities are completely disregarding fundamental principles of transfer pricing whereby associated enterprises should be earning returns commensurate with their functions performed, assets employed and risks undertaken. Most of these captive IT/ ITES players are set-up as risk-free service providers i.e. they undertake minimal or no risks related to performance or service liabilities, working capital, receivables, market, under-utilization of employee pool, etc. Despite this, the tax authorities view these enterprises as full-risk bearing enterprises and benchmark them with independent enterprises that carry such risks in their operations.
- Expectedly, such matters are clogging the appeals process and are taking inordinately long for being decided at the first appeal level due to, understandably, issues such as limited appellate staff, high volume, time taken to obtain remand report from the assessing officers, election duties. At the same time, the tax office is unrelenting in pushing for and collecting tax demands for the years in question and even subsequent years, where the same issues are being repeated and high tax demands are being raised.

### **Absence of a dispute resolution mechanism**

- The process of defending tax position in India is viewed to be extremely slow, time consuming and expensive in terms of professional costs. There is no mechanism for:
  - Reaching a pragmatic solution with the tax authorities without going through the long litigation process;
  - Combining a number of years with the same point of contention into a single action;
  - Combining actions where there is an interaction between the tax positions of two related companies and regard should be had to impact that the tax position of one company has on the other;
  - Combining penalty proceedings with the original action;
  - Fast-tracking the process.
  - Often MNC's are viewed as soft targets and the coercive action of the tax authorities is an attempt to pressurise them into paying disputed amounts.
- Thus, there is a need for a facility whereby companies can seek advance rulings in respect of tax disputes.

# 3. Impact of the proposed Direct Tax Code on the industry

The GOI recently released a comprehensive discussion paper and draft of the new Direct Tax Code that seeks to revamp and simplify the direct tax law and its administration in the country through several radical changes. The code, which the government plans to enact and implement financial year 2011 onwards with suitable changes if required, envisages meaningful reduction in the tax rates while simultaneously being revenue neutral for the government. It aims to achieve this by increasing the tax base and rationalising the myriad tax incentives prevalent under the current law. In our view, the overall changes proposed will be quite beneficial for a number of sectors and companies, albeit definitively withdrawing tax holidays being currently enjoyed by different sectors, something that has been contemplated and proposed often in the past.

## **Reduction in corporate tax rate a positive; withdrawal of tax incentives on exports, etc. not a surprise**

Reduction in the corporate tax rate from 33% (including surcharge) to 25% will benefit companies across sectors but sectors, especially in FMCG and banking where the effective tax rates are close to 33% for most companies. Moreover, business losses will be allowed to be carried forward indefinitely, unlike 8 years at present.

The reduction in tax rates is intended to be compensated by a withdrawal of various tax incentives available to sectors such as exports, infrastructure, area-based tax holidays, etc. Moreover, the allowable depreciation rate on plant and machinery is also proposed to be brought down to 15%.

Profits from businesses such as infrastructure, exports, etc. are presently exempt from taxation under various provisions such as section 10A, 10AA, 10B, 10BA, etc. While existing projects will not lose these benefits over the next few years as these profit-based incentives on existing projects expire.

## **Minimum Alternate Tax ('MAT') provisions a key negative**

The tax code proposes a radical change in the MAT provisions. Under the new system, MAT will be paid at a specified percentage of gross assets of a company (broadly equates to capital employed, although it is unclear whether net or gross current assets will be considered for computation). The specified percentage is 0.25% for banking companies and 2% for all other companies. Although intended to widen the tax base by reducing tax evasion, the new MAT proposals appear to be onerous on several counts:

- Companies suffering genuine losses or sub-normal return on capital due to initial gestation period or cyclical downturn would also have to pay MAT at 2% of gross assets.

- Moreover, MAT credit will not be available, making the provisions even more onerous.

## **Sectoral Impact**

### **Agriculture - Neutral**

#### **Measures**

- Reduction in the corporate tax rate from 33% to 25%
- Decrease in the depreciation rate for plant and machinery.

#### **Impact Analysis**

- The industry is currently under a full tax regime; hence, a reduction in the tax rate would definitely lead to an increase in profits.
- Negative for cash rich companies that have invested surplus cash in mutual funds and other financial instruments.
- In new tax code there is no mention about continuity of the above-mentioned special economic zone regulations.

### **Automobile - Positive**

#### **Measures**

- Changes in personal income tax slabs.
- Reduction in corporate tax rate to 25% (33% at present).
- The allowed rate of depreciation on plant and machinery has also been reduced to 15%.
- MAT will be 2% of the value of gross assets (15% of book profits at present).

#### **Impact Analysis**

- Change in tax slabs for personal income will boost consumption, owing to rising disposable income in the hand of consumers. Positive for most of the auto majors.
- A reduction in the corporate tax rate to 25% will benefit high tax-paying companies.
- The allowed rate of depreciation on plant and machinery has also been cut to 15%. Thus, companies going for higher investments, that have been paying low tax will likely pay more on a higher PBT, and mitigate the positive effect of a lower tax rate.
- The rate of MAT will be 2% of the value of gross assets. Marginally negative for cyclical and highly capital intensive companies.
- There is a lack of clarity as regards the exemptions available to certain states like Uttaranchal, where most of the auto companies are putting up incremental capacities or shifting their existing capacities. If these exemptions are withdrawn, it may prove disadvantageous for the sector.

## **Banking - Positive**

### **Measures**

- Reduction in corporate tax rate to 25%.
- MAT at 0.25% of gross assets.
- Increase in tax incentive limit on savings from INR 0.1 million to INR 0.3 million; taxation of such savings at the time of eventual withdrawal.
- Withdrawal of a key incentives for home loans, viz. tax exemption on the Interest paid up to INR 0.15 million.
- Provision for non-performing assets ('NPA') allowable up to 1% of aggregate average advances as against 7.5% of total income and 10% of rural advances at present.

### **Impact Analysis**

- Positive, as majority of the companies in the sector are paying taxes close to the maximum rate of 34%. Very few companies (mainly mid-cap banks UCO Bank, etc.) could be hit by the proposed MAT at 0.25% of gross assets.
- Increase in the limit is a positive for banks having large financial subsidiaries in life insurance and asset management such as ICICI Bank, SBI, etc. However, the prospect of eventual taxation at the time of withdrawal could weigh on investment decisions and reduce attractiveness of tax-saving instruments such as unit linked insurance plans.
- Negative for banks generally but especially for mortgage companies like HDFC and LIC Housing Finance. This should generally ensure allowability of NPA provisions for a majority of banks, except for few private banks like HDFC Bank, Kotak Mahindra Bank, etc. which have higher amount of provisioning due to larger proportion of retail loans in segments like auto, personal, etc. in their overall credit mix.

## **FMCG - Positive**

### **Measures**

- Significant changes in personal income tax slabs.  
Basis for computing MAT changed from 'book profits' to 'gross assets'
- MAT to be charged at 2% of gross assets and will be the final tax and will not be available as tax credit in subsequent years.
- Corporate tax rate proposed to be reduced to 25%

### **Impact Analysis**

- Changes in the personal income tax slabs are likely to drive higher consumption owing to rising disposable income levels. This is a key positive for FMCG companies.
- The rate of MAT will be 2% of the value of gross assets. This proposed measure could have a marginal impact on companies paying tax at lower rates. However, since most of these companies manage a low gross asset base (debt free and high dividend payouts), this provision may have a positive impact
- A reduction in the corporate tax rate to 25% will benefit most FMCG companies.

## **Hotel - Positive**

### **Measures**

- Tax rate of companies (both domestic and foreign) to be reduced to 25%.
- Significant changes in personal income tax slabs

### **Impact Analysis**

- Since the industry falls in the full tax bracket (33% tax), the proposal of reducing the tax rate would be positive.
- The tax slabs for individuals are proposed to be revised significantly, thereby leading to increased disposable income in hands of individuals, and triggering additional spending.

## **Infrastructure - Neutral**

### **Measures**

- An investment-linked tax incentive has been proposed, which allows for tax exemption only for the period until the investment is recovered.
  - Basis for computing MAT changed from 'book profits' to 'gross assets'
  - MAT to be charged at 2% of gross assets and will be the final tax and will not be available as tax credit in subsequent years.
- Corporate tax rate proposed to be reduced to 25%

### **Impact Analysis**

- Negative for companies having presence in Build Operate and Transfer ('BOT') space and claiming MAT credit since they will not be able to claim further credit.
- This, in effect, implies that once all capital expenditure (exceptions: land, goodwill and financial instruments) is recovered, the entity will be subject to the normal (full) tax rates.
- Proposed reduction in the corporate tax rate is likely to be a positive for all construction companies as they pay tax at a marginal rate, on a standalone basis

## **Media - Positive**

### **Measures**

- Significant changes in personal income tax slabs.
  - Basis for computing MAT changed from 'book profits' to 'gross assets'
  - MAT to be charged at 2% of gross assets and will be the final tax and will not be available as tax credit in subsequent years.
- Corporate tax rate proposed to be reduced to 25%

## **Impact Analysis**

- Changes in personal income tax slabs are likely to drive higher consumption owing to rising disposable income levels. Key positive for Media companies as it is likely to drive higher advertising.
- A reduction in corporate tax rate to 25% may benefit most media companies

## **Oil & Gas - Neutral**

### **Measures**

- The new tax code has recommended moving away from the profit linked tax exemption to an investment linked tax scheme of exemption for activities in energy, petroleum and refining sector. Under this, an entity would be allowed to recover all capital expenditure (except land, goodwill and financial instruments). Post recovery of the capital expenditure, the entity would pay the income tax on the profits. Hence, the time taken in recovering entire capital and revenue expenditure will be the period of tax holiday.
- Basis for computing MAT changed from 'book profits' to 'gross assets'
- MAT to be charged at 2% of gross assets and will be the final tax and will not be available as tax credit in subsequent years.
- Corporate tax rate proposed to be reduced to 25% for domestic and to 36.75% for foreign companies

### **Impact Analysis**

- Shifting to investment-linked tax incentives from profit-linked tax incentive may be negative for upstream companies. Currently, there exists a 7 year tax holiday on crude production from the NELP blocks and certain pre-NELP blocks, while there exists ambiguity regards taxability of the gas profits from the NELP blocks.
- Upstream companies tend to recover the capital expenditure involved within the 3-4 years depending on realisations, capital expenditure and ramp-up in production. Thus, under the current scenario of 7-year tax holiday, the upstream companies earn tax-free income for the remaining period; implementation of the recommendation appears difficult.
- Shifting of MAT computation coupled with absence of MAT credit is likely to have an adverse impact.
- Proposed reduction in the corporate tax rate is likely to be a positive for companies that are expected to pay tax rates in excess of 25% by financial year 2011-12.

## **Power - Neutral**

### **Measures**

- Basis for computing MAT changed from 'book profits' to 'gross assets'
- MAT to be charged at 2% of gross assets and will be the final tax and will not be available as tax credit in subsequent years.
- Corporate tax rate proposed to be reduced to 25%
- Reduction in rates of depreciation on plant and machinery to 15%.

## **Impact Analysis**

- Discontinuance of the provision to carry forward MAT for companies availing MAT
- Reduction in the corporate tax rate to 25% from 33% is a positive for the companies not covered under MAT and which fall under higher tax bracket like on a standalone basis
- Reduction in rates of depreciation on plant and machinery to 15% may negatively impact companies availing high rates of depreciation. Neutral for the sector as the tax benefits may be somewhat mitigated by the decrease in depreciation expense claimed.

## **Pharmaceutical - Negative**

### **Measures**

- Basis for computing MAT changed from 'book profits' to 'gross assets'
- MAT to be charged at 2% of gross assets and will be the final tax and will not be available as tax credit in subsequent years.
- Corporate tax rate proposed to be reduced to 25%.
- Export-based incentives under section 10 to be eliminated.

### **Impact Analysis**

- The stated provisions may be a negative for most pharma companies as the tax expense in the Income statement is likely to increase on non-availability of MAT credit.
- Reduction in corporate tax rate will be beneficial

## **Retail - Positive**

### **Measures**

- Tax rate of companies to be reduced to 25% from 33% earlier.
- Significant scale-up in the tax slabs for individuals.

### **Impact Analysis**

- Since the industry falls in the maximum tax bracket (34% tax), the proposal of reducing the tax rate would be positive, consequently providing a boost.
- The tax slabs for individuals are proposed to be revised significantly, thereby leading to increased disposable income in hands of individuals, and triggering additional spending

## **Software – Neutral**

### **Measures**

- Basis for computing MAT changed from 'book profits' to 'gross assets'
- MAT to be charged at 2% of gross assets and will be the final tax; will not be available as tax credit in subsequent years.
- Corporate tax rate proposed to be reduced to 25%.

### **Impact Analysis**

- Negative for companies with a low tax rate and claiming MAT credit.
- There is a lack of clarity as regards the exemptions available to SEZs (currently under Section 10AA), which is where IT companies are shifting most of their incremental business owing to the sunset clause for the STPI scheme (Section 10A/B).
- If the exemptions under the SEZ scheme are withdrawn, there is no rationale for shifting to an SEZ, and this is likely to lead to IT companies coming under the purview of a full tax regime
- The proposed reduction in the corporate tax rate is likely to be a positive for companies that are expected to pay tax rates in excess of 25% by financial year 2011-12.

### **Telecom – Negative**

#### **Measures**

- Basis for computing MAT changed from 'book profits' to 'gross assets'
- MAT to be charged at 2% of gross assets and will be the final tax; will not be available as tax credit in subsequent years.
- Corporate tax rate proposed to be reduced to 25%.

### **Impact Analysis**

- Negative for companies with a low tax rate and claiming MAT credit.
- The proposed reduction in the corporate tax rate is a positive for the sector.

# 4. Solar Energy

**Solar energy can help in a big way in contributing to the economic development of urban and rural India. The Indian government has made some initial efforts to attract investment in this area. But more needs to be done to adequately court foreign investors with public financing for large scale projects.**

## **Current status of the industry**

India has studied China's blueprint for drawing foreign investment into renewable green energy, and the recent results are encouraging. The Indian Venture Capital Firm ('IVCF') launched the €50 million (approximately \$80 million) Green India Venture Fund. A streamlined approval process is also a big step in this direction.

- **High export potential:** According to Frost & Sullivan, the Semiconductor Policy and Government Incentives for grid-interconnected solar power plants have resulted in several companies aggressively focusing on the solar Photo Voltaic ('PV') space in India. Of the total solar PV cells produced in the India today, more than 60 percent is exported. Assuming the same trend of exports is to continue, India could potentially earn cumulative export revenues of anywhere between US \$4-6 billion over next 3 years. Although the year-wise exports would contribute less than 1 percent of India's total global export, this is just a beginning.
- **Low manufacturing base:** Solar PV, in spite of various challenges especially in the Indian context, is a promising technology. The Government, realizing the potential of this technology, is taking positive steps to tap opportunities by formulating regulations/incentives. Coupled with India's low manufacturing base, it's just a matter of time that the solar PV business in India translates into an ocean of opportunities.

## **Challenges**

- **High deployment price:** This is the main hurdle before a solar market. Various organizations are developing innovative funding schemes to catalyze solar's attractiveness.
- **Not many Investors:** Efforts like solar loan programme sponsored by the United Nations Environment Programme ('UNEP') in partnership with Canara Bank and Syndicate Bank, and their sponsored Grameen Banks are encouraging. This four-year, \$7.6 million effort, launched in April 2003 will help accelerate the market for financing solar home systems. The Multilateral Development Banks ('MDBs') like World Bank and Asian Development Bank are also helping India but, the funding from MDBs on solar energy enhancement is negligible compared to other clean energy support in India. Investment by private companies is a trend that has just started.

## **Recommendations**

- **Enable the Manufacturing Ecosystem:** Setting up of facilities for all aspects of the value-chain: silicon feedstock manufacturing, low cost cell and module manufacturing among others. Reduction of cost/watt is critical in this matter, and the ecosystem should help enable do that.

- **Well formulated Feed-In-Tariff ('FIT'):** Germany has led in a proper FIT to be defined and implemented. This could be suitably modified for the Indian environment.
- **Off-Grid Applications:** Replacement for DG back-ups, solar lanterns, solar heaters, powering water pumps in rural areas, powering remote cell phone towers can directly impact a large population.
- **Manufacturing:** The solar module manufacturing and semiconductor chip manufacturing are very similar in terms of equipments, processes and chemicals. Setting up and growing the manufacturing environment will help set up the semiconductor manufacturing ecosystem.
- **Utilization of Solar Generated Power:** A government policy mandating all new residential and commercial infrastructures having a suitable percentage of their power consumption through solar generated power can help generate a local market for solar panel manufacturers, and help increasing the usage of green energy.
- **Focus on R&D:** Investments by, and collaboration between, government, academia, industry (including various research labs) may prove critical to maintain leadership in technology.
- **Standardization:** It is very critical to define, and set, standards for processes, products, materials. This could help effective utilization of various vendors and optimization of the value chain.
- **Human Resources:** The industry and government can help establish educational programs in universities to develop human resources in solar devices, manufacturing, systems, chemistry/physics and energy cells.

#### **Recommendations to Attract Foreign Investments**

- **Approvals for Solar Fabrication Proposals:** Given that there are billions of dollars worth proposals submitted to the Government of India – study/analysis/approvals of the same would kick-start the solar manufacturing ecosystem. This could help multi-national corporations to invest in the areas of manufacturing equipments and software related to processes, simulation, devices, production and yield.
- **Further Streamlining of Imports Procedures:** Easier steps for imports, bonding, warehousing, etc may help in investments towards optimization of supply chain, logistics, etc.
- **Corporate Governance:** Given the present environment, more visibility into strict adherence to corporate governance and financial processes may be an added factor to help investments.
- **Drive to Grow Domestic Market:** With support from the Government, a significant utilization of the solar end products – PV (cells/modules), Thermal (heaters), Light (solar lanterns) may be driven for domestic/national consumption. This could significantly increase the need for investments all through the value chain.

# 5. Oil and gas

**A stable unified regulatory framework is needed to attract foreign investment and it could feature an open acreage licensing policy, setting up an independent regulator, removal of price controls and tax distortions and formalize an industry consultation process.**

## **Current status of the industry**

India is the 6th largest consumer of oil in the world with nearly 3.1% of the world's oil consumption. It imports over 70% of its crude oil requirements. The industry still dominated by National Oil Companies ('NOCs'), while private and foreign players are gaining presence.

- Foreign Direct Investment ('FDI') regime:
  - 100% FDI allowed for petroleum products under automatic route except:
    - 26% divestment condition in case of actual trading and marketing
    - 49% FDI limit with prior approval from Foreign Investment Promotion Board ('FIPB') in refining NOCs

## **Challenges**

- ***Absence of a stable and unified fiscal and regulatory regime***
  - Fragmented regulation of all segments
  - Involvement of multiple agencies – leading to delays in approvals
- ***Lack of an independent regulator***
  - Decisions of regulators like Director General of Hydrocarbons ('DGH') [upstream] and Petroleum and Natural Gas Regulatory Board ('PNGRB') [downstream] influenced by Government directives
  - Government could abstain from influencing the regulators in order to demonstrate independent governance (it is an interested party due to its stake in the dominant NOCs)
- ***Upstream***
  - Regulatory approvals: Although the licensing terms have improved to include foreign ownership rights, numerous requisite approvals at Central and State levels lead to a time consuming and inefficient process
- ***Downstream***
  - Post dismantling of the Administered Pricing Mechanism ('APM'), the oil companies were allowed to adjust prices of petrol and diesel on the basis of 'import parity mechanism' on a fortnightly basis
  - In practice, the price revision is still done after clearance from the Ministry
  - Kerosene and domestic LPG continue to be subsidized products
  - NOCs are compensated only to a certain extent for under recoveries, a level playing field does not exist for private companies
  - Adulteration of refined products
  - Revenue loss to oil marketing companies
  - Negative environmental impact

- **Natural Gas**

- Currently, crude oil and coal enjoy the declared good status and states can levy a uniform 4% sales tax. On the contrary, sales tax rate @ 12.5% is levied on natural gas
- Removal of tax holiday on natural gas withdrawn in the recent budget proposal.
- Setback to all market players who have discovered natural gas in blocks awarded under NELP
- The proposed Gas Utilization policy seems to violate the sanctity of Production Sharing Contracts ('PSCs') signed under NELP which allows producers to market gas at arm's length prices

## **Recommendations**

- Have a consolidated fiscal and regulatory regime to facilitate long term investment decisions
- The Government may either be an industry regulator or the biggest stake-holder in order to act as an independent party.

- **Upstream**

A single window clearance for all requisite approvals may be provided.

- **Downstream**

- The Government may restore freedom to adjust retail prices of petrol and diesel
- Subsidies available to the NOCs may also be removed which distort market dynamics
- Monitor retail fuels quality by focusing on movement of product between refinery and point of sale
- Companies interested in marketing of transportation fuels are required to invest Rs. 2,000 crore (over USD 450 million) in development of oil and gas sector in India. This is a road block for the entry of majority of the foreign companies as the committed investment is quite substantial. Accordingly, this threshold limit could be reduced to facilitate and encourage investment.

- **Natural Gas**

- "Declared good" status may be provided for natural gas as it would remove market distortion
- The tax holiday benefit to natural gas that currently stands withdrawn may be restored by the Government.
- Existing contracts with producers ought to be honored
- Involve international oil companies to share their experiences and assist the Government in creation and implementation of effective policy guidelines
- Policies for emerging Indian market could be based on experiences from mature markets globally
- Due to their global experience in the market, Indian Oil Corporation may be allowed to participate in development of the regulatory framework

# 6. Biofuel

**Despite a huge demand for biofuels and a liberalizing economy that needs energy to grow, India has been unable to attract major investment or significant capacity in the biofuels sector. Diversification of the country's fuel mix is being encouraged by the government with a view of keeping energy prices at rational levels that spurs growth. Biofuels especially biodiesel could be the answer.**

## **Current status of the industry**

The biodiesel sector can be basically divided into 4 main segments – plantations, seed collection and delivery, oil expelling, tran-esterification, blending and sales and marketing. Demand for oil has more than doubled between 1990 [63 Metric Tonne of Oil Equivalent (MTOE)] and 2005 (129 MTOE). Transportation is the major users of oil and in 2005 used up 27% of the country's oil consumption which is likely to rise to 47% by 2030

- India imports over 70% of its crude oil requirement which is more than 30% of the country's total import
- The Indian oil & gas industry is estimated to be a USD 90 billion industry and is among the largest contributors to the GDP as well as exchequer.
- Its share represents over 16% of the GDP
- Although no clear policy has been framed for the sector in India, a number of firms have availed of the option of up to 100% FDI.

## **Challenges**

- **Unclear policy:** Even after 5 years of the sector gaining prominence, India has been unable to release a policy that would see the development of the sector in the short to medium term. The main cause of this is a lack of policy framework.
- **Inadequate pricing formula for biofuels promotion:** Pricing has been left in the hands of the Oil Marketing Companies which in turn have set very low support prices for both biodiesel and ethanol, making biofuel production and distribution unviable.
- **Inadequate feedstock:** Total dependence on non edible oils like Jatropha and Pongamia pinnata due to Government decisions of not allowing use of edible oil for the production of biofuels.
- **Identification and development of a suitable hybrid for India:** The major challenge is to identify a hybrid through cross breeding of genomes which can be grown throughout India and provides a good yield as well as oil content. Scientists are still undertaking research in this area.
- **Less clarity for direct retailing of biodiesel:** There is no clarity on the manner in which the private sector can enter retailing and there is even confusion whether biodiesel comes under diesel under India's trade laws or can be classified as another non edible oil product which in turn means it by passes a number of hurdles connected with petroleum retailing.

## Recommendations

- **Stable policy and regulatory framework may be enacted:** All segments of the biodiesel industry need a stable policy and regulatory regime, preferably in the form of laws enacted by the Parliament to ensure stability with a long term vision based on energy security for their development.
- **Independent regulators to be appointed:** The Government may ensure that regulators are independent, and are not controlled by the largest stakeholder in the industry i.e. the Ministry of Petroleum and Natural Gas and modeled on the lines of regulators in the power sector
- **Streamlining the plantations segment:** The plantation segment needs an overhaul if India is to emerge as a serious player in biofuels. This sector would require handholding and financial support during the initial 5 years till it attains scale on its own and becomes financially viable.
- **Entry criterion for retailing biofuels:** Qualification criterion and the statutory permissions/ clearances for marketing bio-fuels directly to the consumer are still not clear which restricts its uptake in the market. A number of companies are ready and waiting to enter the Indian retail. Marketing exploration and production, refining, pipelines or terminals may be liberalized since there are few profitable green-field opportunities available in India to invest.
- **Removal of distortions in diesel & biofuels pricing:** Diesel price setting mechanism may be decontrolled and left to vagaries of market which help creation of competitive market for biodiesel in the future. Biofuels pricing has been based on costing undertaken at present and future costs keeping in mind the potential for price reductions through research and development and scale of operations.

# 7. Renewable Energy

**Through barriers exist from a technology, policy and investment perspective, India promises to be one of the largest markets for wind & hydro energy, and U.S. companies have a significant role to play in both trade and investment.**

## **Current status of the industry**

India has a target of achieving 8% annual GDP growth will need 800 GW power by 2030 as projected by GOI. Present installed capacity is 144986 MW out of which 34% is renewable energy including 25% hydro and facing power shortage of 12%. Numerous opportunities are available for US Firms in Wind and Small Hydro Energy Technology in India. Large gap between requirement and availability of energy provides good opportunity for trade and investment. Out of total energy requirements 10% is to come from Clean Energy Technologies. Different states are in process of issuing tariff orders for R.E. generation and specifying quota for wind and small hydro projects in accordance with the Electricity Act 2003. This push of government of India may translate into a major opportunity of FDI.

## **Policy Initiatives**

India's energy sector has gone under significant renaissance even in the last decade as numbers of new policies have created both institutional promotion for clean technology development and momentum and Govt. support to see project through to completion. Following policy initiatives taken at GOI level has put market getting right prices by creating stable and attractive investment frame work co-operating internationally.

- Income tax holiday
- Accelerated Depreciation
- Duty free import of wind energy equipment
- Capital subsidies and concessionary financing from Indian Renewable Energy Development Agency (IREDA)
- Exemption from electricity duty and sales tax

In addition to these financial initiatives there is also a liberalized financial institution ('FI') approval regime to facilitate foreign investment and transfer of technology through joint ventures ('JVs')

# 8. Insurance

The Indian Insurance Sector was opened up in 2000 and since then there has been tremendous growth both in the life and the non-life sectors. The proposed amendment to increase FDI cap will enable a fair sharing of the capital burden between the foreign promoter and the Indian partner, with the latter continuing to retain control with 51% hence, local control with foreign financing.

## Current status of the industry

- **Manifold growth since liberalization in 2000:** From one public sector player in 2000, now there are 22 players (out of which 21 are private sector players). In the non-life insurance space, 16 private sector companies have entered since the sector opened up. Entry of new players has expanded the overall insurance market in India. From 2000 to 2008, the non-life insurers' premium increased at a Compound Annual Growth Rate ('CAGR') of 16.6%, while the total premium in the life insurance segment grew at a CAGR of 28%.
- **Expansion in insurance market with entry of private players:** Both private and public sector players have contributed to the industry growth. Gross written premium for the public non-life sector players has grown by 1.34 times from FY 02 to FY08 [Insurance Regulatory and Development Authority ('IRDA')]. While the first year premium of Life Insurance Corporation of India, the only public sector life insurance player, has grown by almost six times since FY02.
- **More product options for consumers:** With increase in competition, there is greater focus by insurance companies on product/service differentiation. Customers are being offered new and improved products with various add-ons and better services like reduced turnaround time for claims and processing.
- **The growth story continues:** Even in these times of economic slowdown, the insurance industry is growing in double digits. The growth potential of the insurance industry remains undiminished, considering:
  - Favorable demographics and growing disposable incomes
  - The insurance market in India is relatively new and under penetrated
  - Insurance coverage in rural India is critical for achieving the Government's commitment of inclusive growth
  - A vibrant health insurance industry is important for development of healthcare sector in India

## Challenges

- **Capital requirement for geographic expansion, particularly in rural areas:** Raising FDI cap could also help insurers expand their coverage to rural and micro-insurance segments as penetration in such areas requires additional capital infusion. A higher stake is likely to attract more global players and greater focus by existing foreign participants in the Indian insurance industry, which needs companies with resources, innovative products, distribution ideas, and experience in penetrating markets.
- **Need for investment in newer products and leveraging experience for greater penetration:** In addition to capital requirements for growth purposes, Insurance companies are required to maintain a solvency ratio depending upon the risk assumed, which is a function of the number of policies sold.

- **Regulatory requirement:** The capacity of even the strong Indian partners to bring additional capital is limited. Private Insurers have invested significantly over the past two years, when rising stock markets, enabled promoters to raise funds. Now, with attractive valuations not forthcoming, most Indian promoters will, perhaps, be reluctant in committing funds.

## **Recommendations**

The proposed amendment in FDI may benefit this sector and improve it manifold. At a broader level, these amendments could bring radical changes in the insurance sector making it more competitive and leading to overall economic development. Few areas where this would clearly reflect are:

- Industry sources expect an increase in the FDI limit to bring in around USD 4 billion of stable and beneficial form of capital flow through foreign investment in existing ventures as may as well speed up the entry of more players, thus expanding the insurance market further.
- Increasing the FDI cap is likely to enhance competition in the sector resulting in better utilization of resources, rationalization of prices, better marketing, and product innovation and could offer consumer more choices.
- Insurance sector, being the only avenue for very long-term (up to 30 years) investments, could fuel overall economic growth by offering long-term investment options

### **Key amendments that form part of the Insurance Laws (Amendment) Bill, 2008 are:**

- Increase in the FDI cap from the current 26% to 49%;
- Removal of restrictions that requires Indian promoters to reduce their equity to 26% within the tenth year of operations;
- Permitting the public sector general insurance companies to raise capital from the market;
- Insurance companies to be allowed to raise capital from the market through newer instruments like preference shares, bonds and perpetual debt

# 9. Infrastructure

**India is spending approximately USD one Trillion over next 5 years. Private participation is a must and certain steps by the government can go a long way in addressing concerns in this sector.**

## **Current status of the industry**

There is great progress in a framework for private investment. It is based on practice versus theory and rooted in standard international practices. However poorest are paying the highest for power and water. They want usable power and not free power. The government needs to get public support behind the projects.

## **Challenges**

- There is a need for clear and consistent policy framework for Private Public Partnership model along with standard terms & conditions for contracts.
- Political will and mechanism to collect user charges
- Aligned environmental policy
- Project management skills in public sector
- Land acquisition policy
- Further reforms in Infrastructure financing

## **Recommendations**

- ***Framework for Private Investment***
  - Balance of risk for private and public sector
  - Speedy resolution of inter ministerial differences
  - Avoidance of too many policy changes
- ***Political Will and Mechanism for User Charges***
  - Auditable process
  - Front line employee incentives
  - Technology tamper proof/ prepaid metering
- ***Clear & Consistent Environmental Policy***
  - There is a need of incentive driven generation; Generation Based Incentive - 1.2 cents/kWh; Preferential tariffs - 6.4-9.3 cents/kWh; Renewable Purchase Obligation - 14 states; Concessional duties - 5%
- ***Project management skills in private sector***
  - Project management skills are in short supply. Adequate training of public employees or availability of talent on loan may also be a viable option.
- ***Land Acquisition Policy***
  - Fair acquisition price and mechanism to reward landowners and farmers for future value appreciation can be greatly beneficial.
- ***Financing Reforms***
  - Tapping into available private and external capital may lead to growth.

- There is a need of long term financing for infrastructure projects. This can be done by creating long term (over 10 year) debt instruments or by considering government backstopping of municipal bond
- Clear and enforceable customer contracts may add value.
- Viability gap funding for select sectors
- Further liberalize external commercial guidelines for infrastructure
- Step in rights for Non-Banking Financial Companies

# 10. Supply chain development

**Supply chain infrastructure may be improved to increase revenues for the farmers and consumers getting better quality, more variety, and lower prices. Middle men between tractor and tiffin result in wastage, low price realization for farmers, little added value, and hinder producers' ability to gauge the end market for their goods.**

## **Current status of the industry**

Immediate intervention is needed off the farm in large-scale infrastructure development. The private sector will continue to invest, but partnering with the Indian and United States Governments will leverage private initiatives to take them to national scale.

## **Challenges**

- Farmers in countries with organized retail and developed supply chains receive an average of 65% of the final retail price for their goods—but Indian farmers get 35-40% of retail.
- Four core areas deserve urgent and sustained focus:
  - Food chain, including cold chain
  - Supplier modernization
  - Distributor modernization
  - Roads and power Infrastructure

## **Recommendations for the United States Government**

- **Help incentivize investment:** This could be achieved through mobilizing the private sector. For example, the US ExIm Bank-backed Indian Infrastructure Facility could be extended to include rural infrastructure. The US and Indian governments could also agree upon tax credits for private investment in rural infrastructure.
- **Partner with major US-based retailers:** With the US and Indian government attention coupled with private sector relationships, it may be possible to encourage stronger relationships with small and medium-scale Indian suppliers. Over time, this may help the Small and Medium Enterprises ('SMEs') develop into world-class suppliers.

## **Recommendations for the Government of India**

- **Realization of revenue:** The Centre should work closely in those states where the Agriculture Produce Market Committee (APMC) Acts remain in place, hindering development of a wholesale market mechanism. In states where farmers choose their own buyers through a market, they realize higher revenues.
- **Open multi-brand retail to FDI:** Giving multinationals a stake in front-end retail may allow greater profit margins, offsetting the capital-intensive investments in supply chain modernization. Domestic retailers are already modernizing the sector, so it is difficult to see how the impact of global retailers would be different. In fact, global retailers with greater experience and access to best global practices may add significant value to India's efforts toward modernizing its food chain, leading to poverty reduction and prosperity.

# 11. Manufacturing

**AMCHAM has been working with the Government of India ('GOI') and hopes to make a positive contribution towards shaping policy so that there is a level playing field for local manufacturers and multinationals.**

## **Recommendations**

- AMCHAM members feel that India is slowly losing its place as favorable manufacturing investment destination due to labor unrest in many parts of the country, latest being Haryana belt. For any long-term investment, investor needs to obtain confidence in the whole system and the Government agencies. Unless the Central Government quickly adopts Labor Reforms, which is long pending, US investors may look for other destinations like China, Brazil, Argentina, Russia, etc. Unauthorized / unrecognized trade unions may be subject to penal consequences for any violations. Also, many of the existing labor acts may be modified to meet the international best practices.
- AMCHAM Members agree on the Government of India's view on safety and security of the Nation. However, recent Employment VISA Policy announced by the Ministry of Home Affairs puts many of the American Companies in jeopardy. Although we agree for the uniform policy, change of the procedure in such a short notice is delaying our members' on-going investment in many manufacturing units. Many of these investors are not only looking at the domestic Indian Market but also planning to export to various countries. Extension of the announced date from 30th Oct 2009 by another 6 months may help us prepare for the new procedures.
- Most of the countries have National Industrial Policy and thereby attract foreign investment with various incentives and facilities for large and small investors. In India, Government of India does not have any role to play in attracting large investors, except formulating macro policies and in some specific sectors like Telecom, Oil and IT. Many of the investors are not comfortable in dealing with State Governments due to delay and other reasons.
- Many of the issues like Customs, Excise, Income Tax, etc are dealt by the Union Government. We feel that Indian Government may adopt Single Window Clearance at the National Level (in coordination with States), by offering various incentives and other infrastructure facilities to investment from American Companies, especially in the manufacturing sector.

# 12. Medical

The Indian Healthcare Industry currently faces a number of challenges that are restricting its growth. At the same time a number of these challenges can be overcome with effective policy and execution that could in turn improve patients' access to high quality healthcare.

## Challenges and Recommendations

- **Infrastructure & trained personnel:** India has an inadequate number of beds for its 1 billion plus population and there is a scarcity of trained healthcare care personnel. Recent growth in infrastructure has not kept pace with the increase in number of reported ailments.
- **Financing options:** Another major obstacle to access to quality care is low return on investment and long lead times on capital investment. AMCHAM seeks to work with both private and public providers to scale up its current innovative financing options.
- **Access/ Reach:** Primary and secondary care in India is not well developed and hence there is a lot of pressure on tertiary care hospitals. Despite increasing growth rates in volumes of medical technology, the geographic spread of the same remains limited to urban areas while it remains low in rural India where the majority of the population is based. Several factors such as low awareness, lack of regulations and insurance and low returns on investment have contributed to this. AMCHAM proposes a collaborative, tailored approach to increase awareness of stakeholders to help mitigate this.
- **Cost/ Delivery:** The penetration of health insurance in India is low. This restricts the funding options for patients and treatment becomes unaffordable for many patients. A customized approach is required to tap the large Indian population and provide access to quality, affordable health services. Around 80 percent of India's healthcare expenditure is financed out-of-pocket with only 12 percent of the Indian population covered by health related insurance schemes. Another factor contributing to higher cost for the patients is the wide gap between selling price by manufacturers and end customer prices charged by retailers.
- **Regulatory:** Although India has well developed drug regulations, the medical device regulations are in its nascent stages and just evolving. The country is transitioning from a non-regulated to a regulated medical device market, which is very much needed to promote and protect the public health and also to stimulate the innovation and facilitate international trade.
- **Supply:** There is a lack of infrastructure and guidelines for storage and transportation of healthcare products and hence the quality of the products may be compromised at different levels in the distribution chain. AMCHAM is actively looking at innovative distribution methods to overcome this.
- **Quality:** The unregulated medical device sector has contributed to the problem of low awareness among clinicians. Out of the 15 lakh healthcare providers in India today, there are 13 lakh private healthcare providers of which 97 percent are in the unorganized sector and 37 percent are still not registered. This growth has fostered an environment of inadequate provisions for regulation, standards and accreditation. The price sensitive medical practitioner often sacrifices quality for cost. There is a lack of national standards and guidelines on quality requirements for healthcare products and sometimes the standards may exist but they are not enforced well. AMCHAM has been and will continue to work with the GOI policy makers to raise the standard of care of consumers and patients.

# 13. Agriculture and food processing

**A total macro view is necessary, rather than a sectional view. The excise duty on packaged drinking water can be at minimum reduced 4%. Similarly for food processing, food items that are exempt from the levy of excise duty should be encouraged to grow, with this exemption continued as the revenue implications are minimal.**

## **Challenges**

- The government is veering around to the view that data protection for a period of 3 years is good enough whereas per Crop Life International it has to be minimum 10 years as in most countries. Data protection is different from product patent regime which is already in place. At the end of 3 year period, the data submitted by the original registrant automatically becomes available to others and alternate registrations are granted with minimum additional data. This should not be allowed; the company interested in registering the product should be asked to submit their own full data.
- Source change guidelines are stringent and as good as a new registration altogether. If the new source is the authorized source of the manufacturer and if the manufacturer undertakes guarantee of quality, then the source change guidelines should be simpler and new source should be approved in max 6 months.
- National Seed Act versus the State Government acts: State Governments ask for local testing data for local registration, which may result into a complicated business environment.
- State Governments are increasingly defining affordability and announcing price controls; this minimizes choice for farmers and for the people.
- The VAT rate of 4% is applicable to fruit juice and fruit juice based drinks. Despite the states coming to an understanding that fruit juice and fruit juice based drinks will be under 4% VAT rate, some states have increased the VAT substantially.

## **Recommendations**

- Elimination of Mandi tax for contract farming by food processing industry
- Excise duty on the packaged drinking water may be brought down to zero. However, if the government on revenue consideration is not able to remove the excise duty completely, it may consider reducing the excise duty in the first stage to 4% and gradually taking it down to zero excise duty progressively.
- The CENVAT has been determined at 8% on several categories of items of the food processing industry. This could be further rationalized if possible.
- The VAT rates as determined by a process of consultation amongst states should be the basis for fixation of VAT. The fiscal prudence that is sought to be altered could lead to other states also making changes in the VAT rate. We request that matter may be appropriately flagged to The Empowered Committee of State Finance Ministers.
- While introducing the Goods and Service Tax ('GST'), wide consultation be carried out with all stake holders so that the model arrived at addresses the basic problem of multiple taxations and reduces the high incidence of taxes levied both by Central & State Governments.

- Stricter laws and enforcement rigorously may prevent widespread availability of spurious products. Bringing laws to prevent companies that sell chemicals and their mixtures under the dubious name of 'bio-pesticides' which helps them to circumvent the registration process altogether. (Rs 200-300 crore market).
- There is a need for a National Regulatory Policy on transgenics crops, this is in place only for cotton
- We recognize that levy of VAT falls under the jurisdiction of the States. However, certain anomalies may need to be addressed and we request that the Ministry of Finance takes the initiative:
  - To promote Fruit and Vegetable Processing Industry, given its backward linkage with the agricultural sector, the industry received preferential status from the Central Government by way of exemption from excise duty and automatic clearance for 100% FDI. The Empowered Committee of State Finance Ministers constituted to oversee implementation of VAT, seeing the cascading impact of the industry on agriculture, recommended a rate of VAT @4% on processed fruits and vegetables.
  - It appears that such State Governments may have inadvertently overlooked the fact that food processing, a priority area, has a cascading impact on the agriculture as well, since it has a backward linkage with agriculture. The move to increase VAT on fruit juice and fruit juice based drinks will subvert the development of the fruit and vegetable processing industry in UP by reversing the build up in the momentum.
  - Since the industry is backwardly linked with agriculture, it may also impact agriculture negatively. While we recognize that VAT is a state Subject, we would none the less request you to use your good offices in persuading the State governments including the government of UP to be guided by the above rationale. The fiscal prudence is sought to be altered and this could lead to other states also making changes in the VAT rate. We request that matter be appropriately flagged to The Empowered Committee of State Finance Ministers.
  - The government of India along with The Empowered Committee of State Finance Ministers is working out a road map to introduce GST. This is a very forward looking initiative and needs to be carefully progressed so that the proposed GST regime addresses the concerns of the industry and removes multiple taxation.. The overall incidence of taxation should come down. This will make the industry competitive while enhancing revenue for the governments both at the centre and states.

# 14. Homeland Security

**The AMCHAM Homeland Security Committee believes that the Government of India ought to focus upon the following :**

## **Policy**

- Define an overall Homeland Security Policy. The National Security Act, defined in 1980, is inadequate in the current enhanced threat scenario and needs to be amended to have a unifying vision for Homeland Security in India.
- Further to the formation of the Indian National Information Grid, promote a follow on Global Counter Terrorism Intelligence Grid that facilitates rapid sharing of time sensitive information between Nations and encourage Private Sector engagement in how to best achieve it.
- Define clear policy for Disaster Management under Homeland Security.
- Define the governance model, pulling together efforts at the Central level and enabling the various state level agencies to work in unison with the center.
- Ensure greater participation of private agencies and public (PPP) in Homeland Security and create an enabling environment.

## **Ecosystem Enablement**

- Design an Institutional Framework to handle Program Management of Projects, Governance Model for Centre-State Coordination to enable overall HLS architecture and Technology/Solutions for setting up standards for the industry.
- Streamline coordination between various departments including Centre and State, towards a unifying vision of Homeland Security – Need for networked systems for Information Fusion and Analysis.
- Set up Emergency Response and Operations centres for public safety best practices.
- Set up an expert committee with public private partnership to evaluate technologies in a transparent and scientific manner.
- Providing a platform for a greater interaction between the government and corporate institutions (domestic and international) to encourage information sharing and better understanding of each other's challenges and requirements.
- Engaging private companies actively, which could include some of the AMCHAM members, while setting specification standards and establishing testing procedures.
- Define a minimum standard of training for all security agencies as it is done for all other disciplines like engineering, medicine, law etc.
- The minimum specifications of security equipment need to be codified and enforced.

- Define standard terms and conditions for contracts to enable procurement on fast-track, both at the central government as well as all state government level. The process needs to be simplified and consistently adopted.
- Consider concessional duty and tax structure for security items, especially the technologies not being manufactured in India.
- Simplify export/ import controls & procedures

### **Specific Project/Product-level Suggestions**

- India needs to equip Border Patrol units with advanced equipment for identification and access management and enable information sharing with nearest police stations for quick action.
- Greater compliance to Advanced Passenger Information System ( APIS) from India to meet norms stipulated by US Customs and Border Police for passengers travelling into the US.
- Greater use of smart materials to check Forgery and Counterfeiting, for example, the use of smart materials in passports and packaging.
- Training on Cyber crime and Intellectual Property protection, to Indian Judiciary and Law Enforcement Agencies for critical information infrastructure protection and sharing best practices on law enforcement.

### **Suggestions for the US Government Homeland Security agencies:**

AMCHAM would also try to create a supportive environment from the US by leveraging relationships and experience. A few suggestions proposed to the US government are as listed below –

- **Build Confidence on US Technology Transfer/Export Control** – Considering the developing strategic relationship between India and the US, there is a need to relax the stringent export control norms to India on Homeland & Defence related areas.
- **Joint efforts to build competence in Security Technologies** – Set up Indo-US Centre for Defence & Homeland Security R&D - with private industry support and engagement.
- **Knowledge Sharing** – Facilitate knowledge sharing across the security roadmap to implementation leveraging on vast US experience/projects.
- **Training Support** – Facilitate training to various Security Enforcement Agencies in India from the relevant US departments/companies.

# 15. Amcham National Executive Board

## **Chairman**

Mr. T.P. Chopra  
President & CEO  
**GE India, Srilanka and Bangladesh**

## **Vice Chairman**

Mr. Ramkumar R  
Director  
**Cognizant Technology Solutions**

## **Vice Chairman**

Mr. Gulshan Kumar Sachdev  
Managing Director  
**Quaker Chemical India Ltd.**

## **Hony. Secretary**

Mr. Richard Rekhy  
Chief Operating Officer  
**KPMG India**

## **Hony. Treasurer**

Mr. Atul Dhawan  
Partner  
**Deloitte Haskins & Sells**

## **Ex-officio Members**

Mr. Atul Singh  
President & CEO  
**Coca-Cola India**  
(Immediate Past Chairman, Amcham)

Mr. Carmine D'Aloisio  
Minister Counselor for Commercial Affairs  
**Embassy of the United States of America**

Mr. Blair Parks Hall, Jr.  
Minister Counselor - Economic, Environment & Science Affairs  
**Embassy of the United States of America**

## **Members**

Dr. Narindra Bachlaus  
Chief Executive Officer  
**ExxonMobil Company India Private Limited**

Mr. Virat Bhatia  
President – External Affairs, South Asia  
**AT&T Communication Services India Pvt. Ltd.**

Mr. Michael Boneham  
President & Managing Director  
**Ford India Pvt. Ltd.**

Mr. E.S. Chandramouli  
Managing Director  
**Crown Worldwide Movers Pvt. Ltd.**

Mr. Ty Collins  
General Manager  
**Hyderabad Marriott Hotel & Convention Centre**

Mr. Andrew Horne  
Managing Director  
**Xerox India Limited**

Mr. Raj Jain  
Managing Director and CEO  
**Bharti Wal-Mart Pvt. Limited**

Mr. Balvinder S. Kalsi  
President  
**E.I. DuPont India Private Limited**

Dr. Dinesh A. Keskar  
President  
**Boeing International India Private Limited**

Mr. Shesh Kulkarni  
President  
**UTi**

Mr. Aniruddha Lahiri  
CEO  
**TCG Software Services Pvt. Limited**

Mr. Shyamal Mukherjee  
Executive Director  
**PricewaterhouseCoopers Pvt. Ltd.**

Mr. Gajanan Nabar  
Managing Director  
**Praxair India Pvt. Ltd.**

Mr. Shakti Sagar  
Managing Director  
**ADP Private Limited**

Mr. Amrit Kiran Singh  
Area Director  
**Brown Forman Worldwide LLC**

**Special Invitees**

Mr. C. R. Dua  
Managing Partner

**Dua Associates**

Mr. Mark T. Robinson  
CEO, Citi, South Asia

**Citibank**

Mr. Narayan Ramachandran  
Managing Director, Country Head

**Morgan Stanley**

# 16. Amcham Sectoral Committees

## **Civil Aviation**

Dr. Dinesh Keskar - **Chairman**

President Boeing India

Boeing International India Private Limited

## **Defense Equipment**

Mr. Sanjeev Kakkar - **Chairman**

Director – Business Development, Military Systems Operation

GE Aviation

## **Education**

Mr. Manoj Chugh - **Chairman**

Director Global Accounts, Asia Pacific & Japan

EMC Data Storage Systems (India) Pvt. Limited

Mr. Ramkumar R - **Co-Chairman**

Director

Cognizant Technology Solutions

## **Energy**

Mr. Paul L Kleijnen - **Chairman**

CEO

ExxonMobil Gas (India) Pvt. Ltd.

## **Financial Services**

Mr. Mark T. Robinson - **Chairman**

CEO, Citi, South Asia

Citibank

## **Food, Beverages and Agri Business**

Mr. Amrit Kiran Singh - **Chairman**

Area Director

Brown Forman Worldwide LLC

Mr. Naveen Chahal - **Co-Chairman**

Managing Director

Mosaic India Private Limited

## **HR Forum**

Ms. Padma Ravichander - **Chairman**

Country Head – Mercer India

Mercer Consulting (India) Pvt. Ltd.

## **Homeland Security**

Mr. Anil P. Gupta - **Chairman**

President, India

Honeywell International (I) Pvt Ltd

**ICT**

Mr. Sukant Srivastava - **Chairman**  
Managing Director & Country Manager  
Convergys India Services Pvt. Ltd.

**IPR**

Mr. Deepak Maheshwari - **Chairman**  
Director – Corporate Affairs  
Microsoft Corporation (India) Pvt. Ltd.

**Infrastructure**

Mr. Pratyush Kumar - **Chairman**  
President & CEO  
GE Infrastructure

**Insurance**

Mr. Rajesh Relan - **Chairman**  
Managing Director  
MetLife India Insurance Company Limited

**Manufacturing**

Mr. Michael Boneham - **Chairman**  
President & Managing Director  
Ford India Pvt. Ltd.

**Medical Equipment and Devices**

Mr. Sanjay Banerjee - **Chairman**  
Managing Director  
Zimmer India Pvt. Ltd.

**Retail and Supply Chain Management**

Mr Raj Jain - **Chairman**  
Managing Director and CEO  
Bharti Wal-Mart Pvt Limited

**Tax and Tariff**

Mr. Atul Dhawan - **Chairman**  
Partner  
Deloitte Touche Tohmatsu India Pvt. Ltd.

**Indo-US Bilateral Investment Treaty**

Mr. C. R. Dua - **Chairman**  
Managing Partner  
Dua Associates

**Membership**

Mr. Ramkumar R - **Chairman**  
Director  
Cognizant Technology Solutions

**Anti-Corruption (FCPA) Compliance**

Mr. Anand S. Dayal - **Chairman**  
Partner  
Koura & Company, Advocates