

BUZZ QUARTERLY



The first quarter of 2014 saw a few positive developments indicative of improvement in the economic fundamentals which would provide the requisite momentum to the markets in the months to come.

Policy announcements by the Government pertaining to curb on gold imports, tightening of the monetary policy, facilitation of speedy clearance of investment proposals, relaxation of ECB norms, relaxation of FDI limit in asset reconstruction companies yielded certain positive results. The first quarter has witnessed early signs of moderation in the consumer price index inflation, trade as well as current deficits, stabilisation of the rupee and increased foreign fund flows.

Globally, the value of global mergers & acquisitions activity increased up to 54% in the first quarter as compared to the same period last year. This upsurge is attributed to announcements of several large transactions. The value of worldwide announced deals as reported by Reuters totaled USD 710 billion. Some of the major deals being, Comcast Corp's whopping bid for Time Warner Cable at USD 70.6 billion, acquisition by Ireland based Activis of US based pharmaceuticals firm Forest Laboratories for USD 23.8 billion, much talked about Facebook acquisition of mobile messaging services firm Whatsapp for an amount of USD 19.4 billion.

In comparison, the India M&A story was moderate in the first quarter with experts expecting a greater traction after the general elections. A higher momentum in deal activity is expected in post election period since a number of investors have deferred the deals in light of the uncertainty of the new Government's policy stance.

With some indicators signifying an improvement in the India economy, the outlook for FY 2014 remains optimistic. The general elections are coming up next month and the industry as well as the global investors alike are awaiting for the outcome and clarity of the policies which shall be adopted.

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Globally, M&A activity has witnessed an upswing in the first quarter as compared to the same period in 2013, suggestive of renewed deal making confidence and a positive sentiment amongst the companies.

In India, the overall deal activity and landscape remained moderate. The value of announced M&A deals involving Indian companies increased by a marginal 2.8% during the first quarter as compared to the same period last year, whereas completed M&A deals involving Indian companies totaled USD 8.4 billion, a 37% increase compared to the first quarter of 2013. The total M&A and PE deals in the month of January & February 2014 were valued at USD 4.2 billion (169 deals) as compared to USD 4.69 billion (168 deals).

Greater momentum and traction is expected after the general elections in April 2014 as number of deals have been deferred to gain clarity on the new Government's policy stance. The sectors which look promising are healthcare, pharma, IT & ITes, aviation. Based on the clarity provided by the new Government's policy in sectors of retail, telecom and financial services, these sectors may also expect to see an upsurge.

The notable sectors which dominated the first quarter of the year were FMCG, Food & Beverages, Real Estate, Pharmaceuticals & Healthcare, IT & ITes, Electronics, Breweries & Oil & Gas and Hospitality. E-commerce continued to receive the interested of many Venture Capitalist and Private Equity investors.

Few PE Deals of Q1

Group of financial investors led by Capital Square Partners and CX Partners invested USD 260 mn in Aditya Birla Minacs Worldwide, country's 6th largest BPO

CDC Group invested USD 32 million in Pristine Logistics & Infrastructure

Temasek & IDFC Alternatives invested USD 183 million in GMR Infrastructure

Multiples Alternate Asset Management Company invested USD 24 million in apparel maker Arvind Ltd

Tata Opportunities Fund invested USD 60 million in auto-component maker Varroc Group – funds will be utilised for developing new products and expansion of presence in Europe and emerging markets

Data RPM, a Big data analytics start-up selling business intelligence software secured USD 5.1 million in series A funding from US based InterWest Partners

Kalaari Capital invested USD 3 million in Big Data analytics start-up Germin8 and USD 10 million in jewellery e-retailer Blue Stone (group of investors)

Pune based Persistent Venture Fund invested an undisclosed sum in California based Hygenix Inc. for expansion of its operations in USA. The Company develops wrist based technology focused on enhancing the hand hygiene programmes of healthcare service providers

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| FMCG | Groupe Lactalis SA (France) acquired Tirumala Milk Products Pvt Ltd from founders and PE Carlyle Group for USD 275 mn |
| Media & Adv | Publicis Group expanded its operations in India by acquiring majority stake in Law & Kenneth – 8 th acquisition since 2012 |
| Breweries | Diageo Plc. increased its stake in United Spirits Limited by acquiring additional 2.4% stake for USD 138 mn |
| Power | Singapore based Sembcorp to acquire 45% stake in NCC power projects for USD 140 million approximately |
| Hospitality | Aman Resorts acquired Silverlink Holdings for USD 358 million |
| Telecom | Bharti Airtel acquired Loop Mobile from Dubai based Khaitan family for approximately USD 117 million |
| Media | WPP's wholly owned global marketing communications agency JWT acquired a majority stake in Social Wavelength, a full service social media agency for an undisclosed amount |
| E-commerce | Ibibo Group (subsidiary of South Africa digital media conglomerate Naspers Group) acquires on-line bus tracking & analytics platform YourBus.in |
| Real Estate | Mumbai based private developer Lodha Group acquired second London asset (New Court next to LSE and Royal Courts of Justice) for USD 150 mn |
| Gaming | Indian start up Bash Gaming acquired by US multi-media gaming & entertainment company Game Show Network LLC for a reported USD 165mn |
| Agri-commodity | Singapore HQ agri-commodity giant Wilmar International is reported to acquiring 27.5% stake in Shree Renuka Sugars for USD 83 million |
| Digital Media | Global media agency Omnicom's local arm DDB Mudra Group has acquired Bangalore based digital solutions company 22feet Communications Pvt Ltd |
| Manufacturing | German cable support systems firm PUK-WERKE acquires majority stake in cable management company Profab Engineers |

- **Tax Clearance for M&A and restructuring schemes:** The MCA vide Circular dated 15 January 2014 requires the Regional Directors to issue notice within prescribed time frame to the Income Tax department seeking specific comments/inputs in all cases of arrangement/compromise or reconstruction/amalgamation. Further, where considered necessary, the Regional Director may also seek feedback from other applicable sectoral regulators. The views of the Income Tax department and other regulators are required to be submitted by the Regional Directors to the jurisdictional High Court.
- **Amendments in FC-GPR:** Under extant Regulations, Indian companies are required to report the details of issue of shares/convertible debentures in Form FC-GPR within 30 days of the issue of shares/convertible debentures. With the objective of capturing the details of the Brownfield/Greenfield investments and date of incorporation of investee company, Form FC-GPR has been revised with effect from 11 February 2014.
- **Investment limit for FII and QFI in commercial papers reduced:** SEBI vide Circular dated 14 February 2014 has reduced the limit for investment in commercial papers by FIIs and QFIs from USD 3.5 billion to USD 2 billion within the corporate debt limit of USD 51 billion

Companies Act 2013 update

A new Companies Act was enacted in 2013. However, the date(s) when the entire Act will become effective was not notified. The Ministry of Corporate Affairs (“MCA”) vide subsequent notifications have notified the dates of bringing into effect 99 sections of the Act:

- **September 12, 2013** – date of bringing into effect 98 sections of the Act
- **April 1, 2014** – date of bringing into effect Section 135 (relating to Corporate Social Responsibility)
- Additional 183 sections and 6 schedules thereto have been notified as coming into effect from 1 April 2014 vide notification dated March 26, 2014

Thus, out of the total 470 sections, 283 sections have been notified so far.

- **Corporate Social Responsibility:** The CSR provisions have been notified to be effective from 1 April 2014. The CSR Rules lay down the guidelines for companies to formulate a CSR policy, governance framework, qualification of CSR expenditure etc.

The key changes in the final version of the Rules from the draft rules circulated earlier are:

- Net profit calculation excludes dividends from other Indian companies and profits generated outside India
- Indian branches and project offices of foreign companies covered under CSR provisions
- Private companies and certain unlisted public companies exempted from requirement of independent directors for CSR committee
- CSR policy entailing the list of CSR projects, modalities of execution and monitoring process to be displayed on company website
- Political contribution excluded from CSR expenditure

Tax highlights

- **Vote on Account:** The Interim Budget presented by the Finance Minister on 17 February 2014 announced a few indirect tax measures viz, reduction in excise duty rates on motor vehicles and select goods but made no changes to the direct tax provisions. However, it is subject to the final budget to be presented by the forthcoming Government post the general elections
- With effect from 1 January 2014, the threshold limit for mandatory e-payment of service tax as well as excise duty has been reduced from INR 1 million to INR 0.1 million by virtue of which the taxpayers who have paid a total service tax/excise duty of INR 0.1 million or more in the preceding year are required to deposit the tax/duty electronically
- The CBDT issued an instruction with regard to the controversy surrounding the applicability of withholding tax on payments made to non-residents. As per the Instruction, tax withholding would be applicable only in relation to 'income' component of the payment. The Instruction has been issued in view of the divergent rulings on this matter – while it does not allow a tax payer to suo-moto determine the income chargeable to tax, the interpretation in view of the language of the instruction is that the Assessing Officer can treat the payer as being in default *only to the extent of income component involved in the sum on which tax withholding was applicable*
- The Finance Minister has released the Direct Taxes Code (“DTC”) 2013 for public discussion. The DTC Bill was originally introduced in 2010 with the objective of replacing the existing Income Tax Law in India. In the revised Code the Finance Ministry has accepted 153 of the 190 recommendations made by Parliamentary Standing Committee
- The Government of India signed a tax information exchange agreement with the Government of Belize on 18 September 2013. Vide notification dated 7 January 2014, the agreement shall be given effect to from 25 November 2013
- The Government of India signed a Double Tax Avoidance Agreement (“DTAA”) with the Government of Republic of Fiji on 30 January 2014. The treaty includes provisions for effective exchange of information including exchange of banking information and anti-abuse provisions
- As an update to the Vodafone case, it has been reported that the Union Finance Ministry has sought to withdraw the conciliation proposal and instead move ahead with collection of levy from the UK Telecom major after the company served a supplementary notice to the Government under the Bilateral Investment Protection and Protection Agreement (BIPA) over the tax dispute.
- The CBDT issued a circular for changing the process of allotment of Permanent Account Number (“PAN”) by virtue of which every applicant would be required to submit self-attested copies of Proof of Identity, Proof of Address and Date of Birth documents and also produce original documents for verification at the PAN facilitation counter. This decision to change the procedure was however held in abeyance till further orders

KEY INTERNATIONAL TAX CASES

- Application to AAR cannot be rejected merely because the return of income as been filed [*Mitsubishi Corporation (AAR No. 1309 of 2012)*]
- No royalty income on payment for transfer of software which is a 'copyrighted article' and not a 'copyright right' [*DIT v. Intrasoft Ltd. (ITA No. 1034/2009) (Delhi HC)*]
- Payment for transfer of non-exclusive user right, in respect of software for internal use, is taxable as royalty under the Indian domestic law as well as under the tax treaty [*Cummins Inc. v. DDIT (2013)(ITAT Pune)*]
- Indian subsidiary of a foreign company providing back office support operations does not constitute a Permanent Establishment in India [*DIT v. E-Fund IT Solution (2014)(Delhi HC)*]

French single brand Sports Goods company Decathlon has sought the Indian Government's approval for online retailing in India

UK based retail giant Tesco signed an agreement with Trent Ltd to form an equal JV by acquiring 50% stake in Trent hypermarket Ltd for USD 140 mn

India and Japan entered into a Memorandum for strengthening cooperation in the field of tourism

A bi-lateral meeting was held between Union Minister of New & Renewable Energy and a delegation from Sudan for promoting cooperation in renewable energy between the countries – talks focused on areas of possible cooperation – wind energy, solar energy, bio-mass and small hydro resources

India and Argentina have agreed to enhance cooperation in the field of renewable energy. The two countries Decided to explore avenues for cooperation in areas of solar energy, wind energy and bio-fuel generation

Negotiations and discussions between India and USA have commenced for an inter-governmental agreement to be signed between the two countries under Foreign Account Tax Compliance Act ("FACTA")

RBI had recently decided to withdraw all currency notes issued before the year 2005 by exchanging the same with new currency notes. It was reported that the Income-tax department is considering seeking information on individuals exchanging high denomination notes in huge numbers from banks

| Abbreviation | Description | Abbreviation | Description |
|--------------|---|--------------|------------------------------------|
| AAR | Authority for Advance Ruling | JV | Joint Venture |
| CBDT | Central Board of Direct Taxes | MCA | Ministry of Corporate Affairs |
| ECB | External Commercial Borrowing | PE | Private Equity |
| FDI | Foreign Direct Investment | QFI | Qualified Foreign Investor |
| FII | Foreign Institutional Investment | RBI | Reserve Bank of India |
| ITeS | Information Technology Enabled Services | SEBI | Securities Exchange Board of India |



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