

[www.pwc.com](http://www.pwc.com)

# *APAs: Will this end litigation?*

## *The Indian APA Regime*

FCCI

6 October 2012

---

# *Agenda*

- Current transfer pricing (TP) scenario in India
- Indian advance pricing agreement (APA) scheme
- Post APA compliance
- Practical considerations

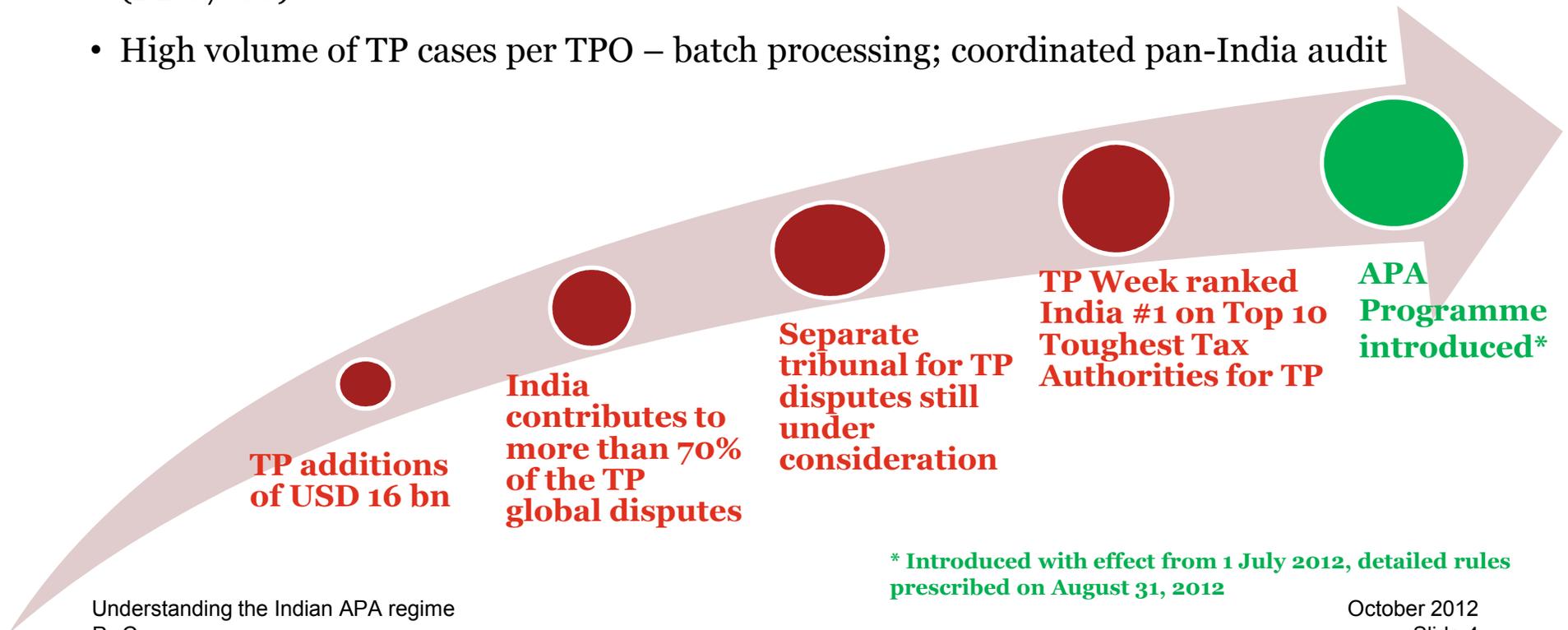
# *Current TP scenario in India*



# ***TP audit environment in India***

## ***Snapshot***

- TP Week ranked India #1 on Top 10 Toughest Tax Authorities for TP
- TP additions to the tune of USD 16 billion over seven audit cycles
- Exponential increase in TP adjustments -- USD 9 billion in the seventh audit cycle (FY 07-08)
- High volume of TP cases per TPO – batch processing; coordinated pan-India audit



# *Indian APA scheme*



## ***Key features***

### **Types of APA**

- Unilateral, bilateral and multilateral APAs allowed
- Allows flexibility during the process

### **Term**

- Up to five years
- Roll-back not specifically provided for

### **APA team**

- Besides revenue officials, the APA team to include experts in economics, statistics, law, etc.

### **Filing fees**

- Approx INR 1 million to 2 million depending on the amount of intercompany transactions

### **Documentation simplification**

- Provides for simplified annual compliance report during the APA term

### **Compliance audit**

- Provides for annual compliance audit by the transfer pricing officer

## *Consistent with global best practices*

Transactions to be covered under APA

Pre-filing meeting:  
Available on anonymous basis

Formal APA application

Filing fees

Critical assumptions

Withdrawal

Concept of cancellation and revision

APA renewals

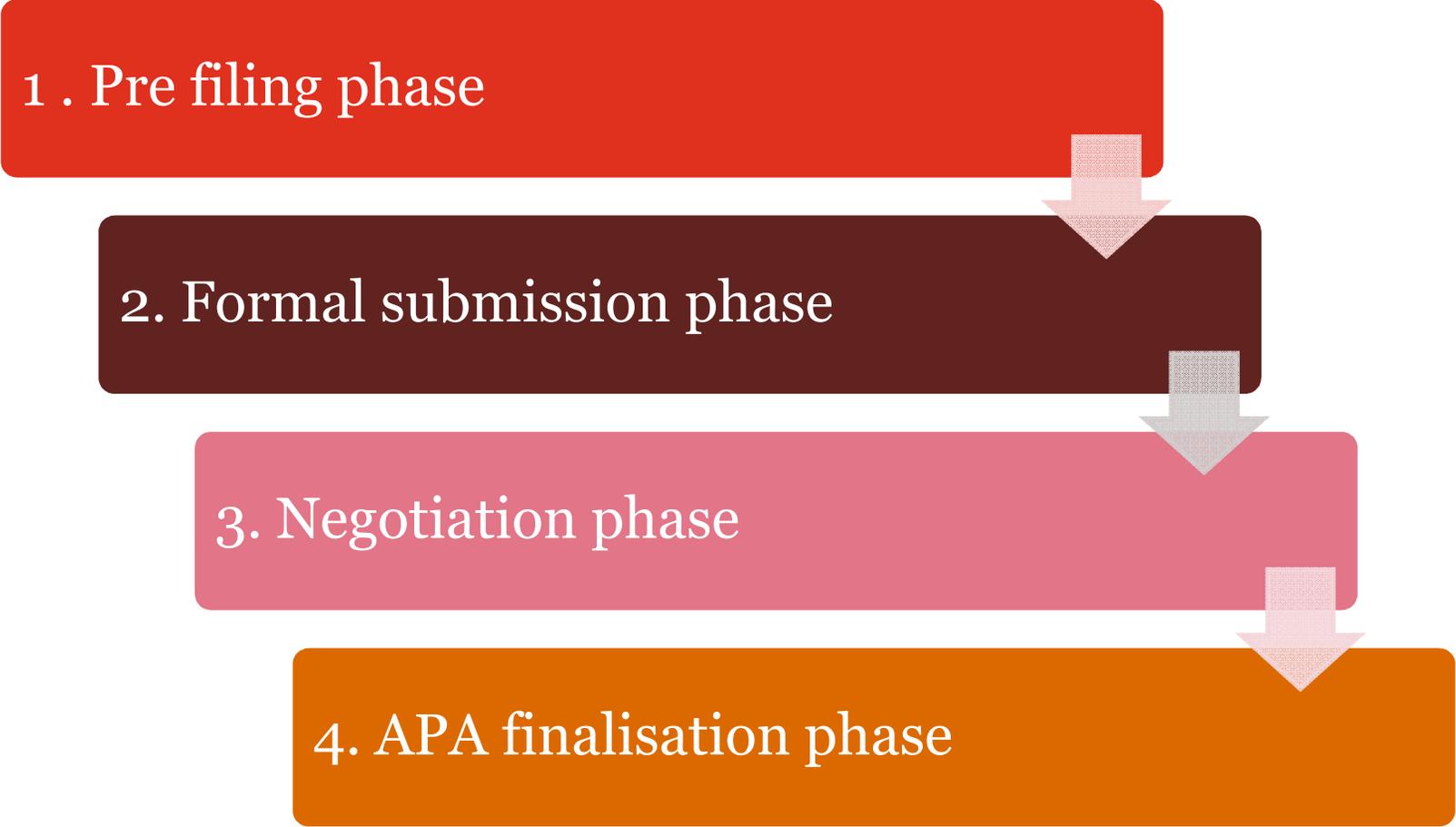
Annual compliance report

Annual compliance audit

---

## ***Indian APA process: Similar to global practices***

1 . Pre filing phase



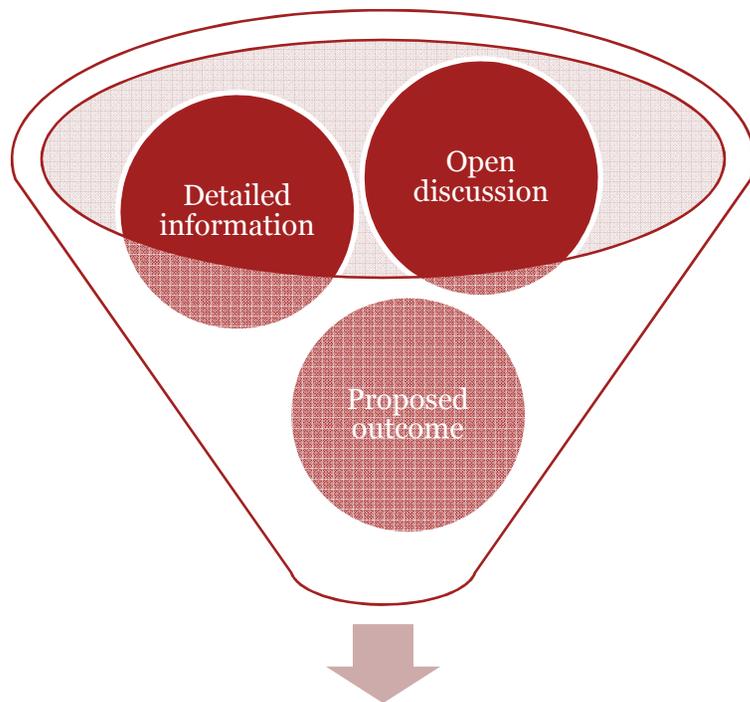
```
graph TD; A[1. Pre filing phase] --> B[2. Formal submission phase]; B --> C[3. Negotiation phase]; C --> D[4. APA finalisation phase];
```

2. Formal submission phase

3. Negotiation phase

4. APA finalisation phase

## ***Phase I : Pre-filing Consultation***



**Clear APA strategy**

***Objective is to identify transactions & agree approach/price***

***Key is to strike a balance between the amount of work to be performed and the focus on timeline***

- Can be on anonymous basis
- No fees applicable
- Application in prescribed Form
- Information to include -
  - Business model & overview for the past three years
  - FAR analysis
  - Transaction details
  - Proposed APA term
  - Audit history, critical assumptions, third party comparables, etc.

## ***Phase II : Formal submission***

### **Formal application**

- Projections and simulation
- Detailed FAR analysis
- Performing benchmarking analysis
- Data requirement

### **Procedure**

- For unilateral agreement: Application before the Director General of Income Tax (International Taxation)
- For bilateral or multilateral agreement: Application before Indian CA
- APA application fees to be paid at this stage

### **Timing**

- For existing transactions: To cover FY 2013-14 and beyond, formal application to be filed before 31 March 2013
- For future transactions – any time before undertaking the transaction

## ***Phase III : Negotiation***



- APA team to submit the draft report before the DGIT (Intl)
- For bilateral and multilateral APAs, DGIT to forward the draft report to the CA of India
- Indian CA to invoke MAP procedure with the CA of the other country(ies)
- After negotiation, the DGIT (for unilateral APA) and India CA (for bilateral and multilateral APA) to draft the 'agreement'

***Pre-filing & formal application phases are critical***

*MAP = Mutual Agreement Procedure*

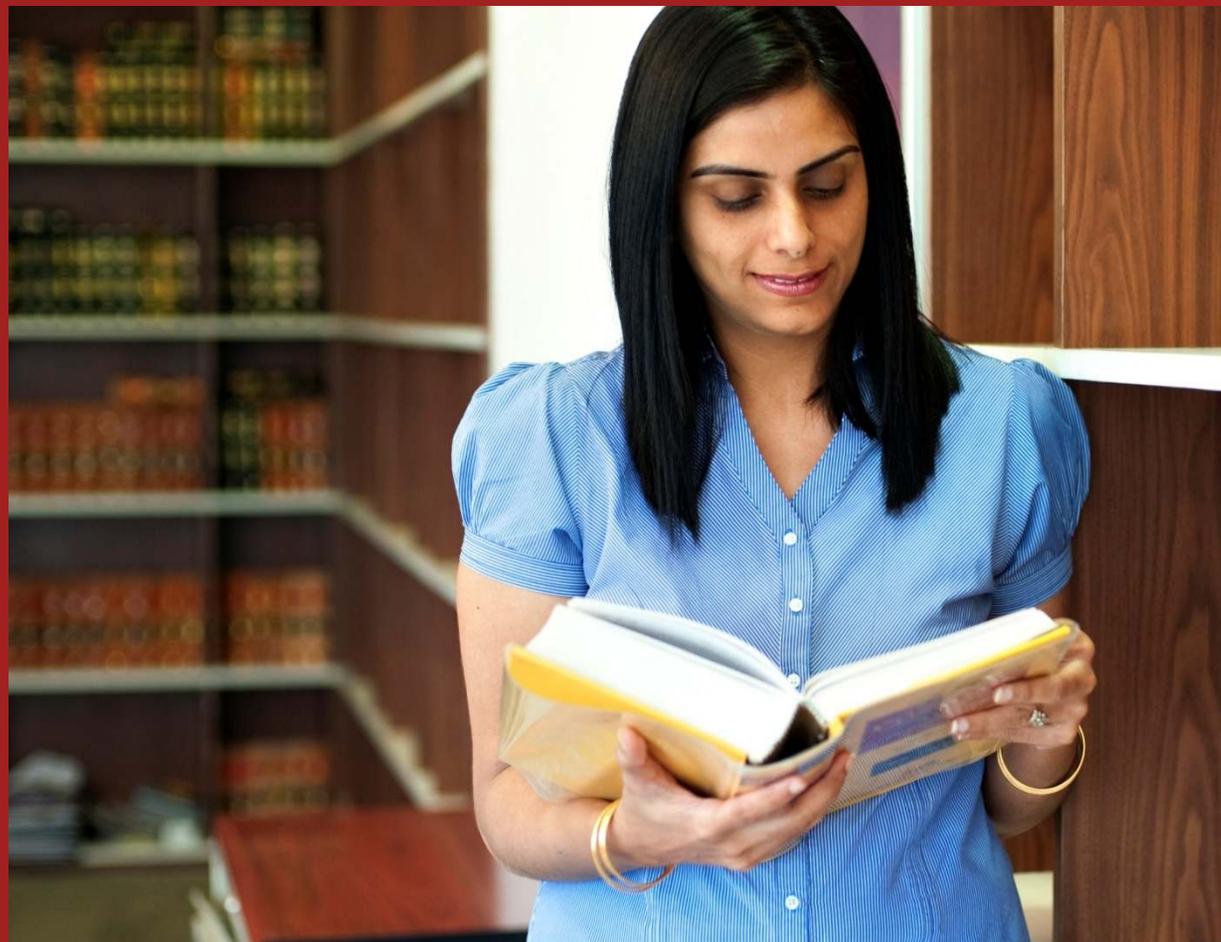
## ***Phase IV : APA finalisation***

### **APA finalisation**

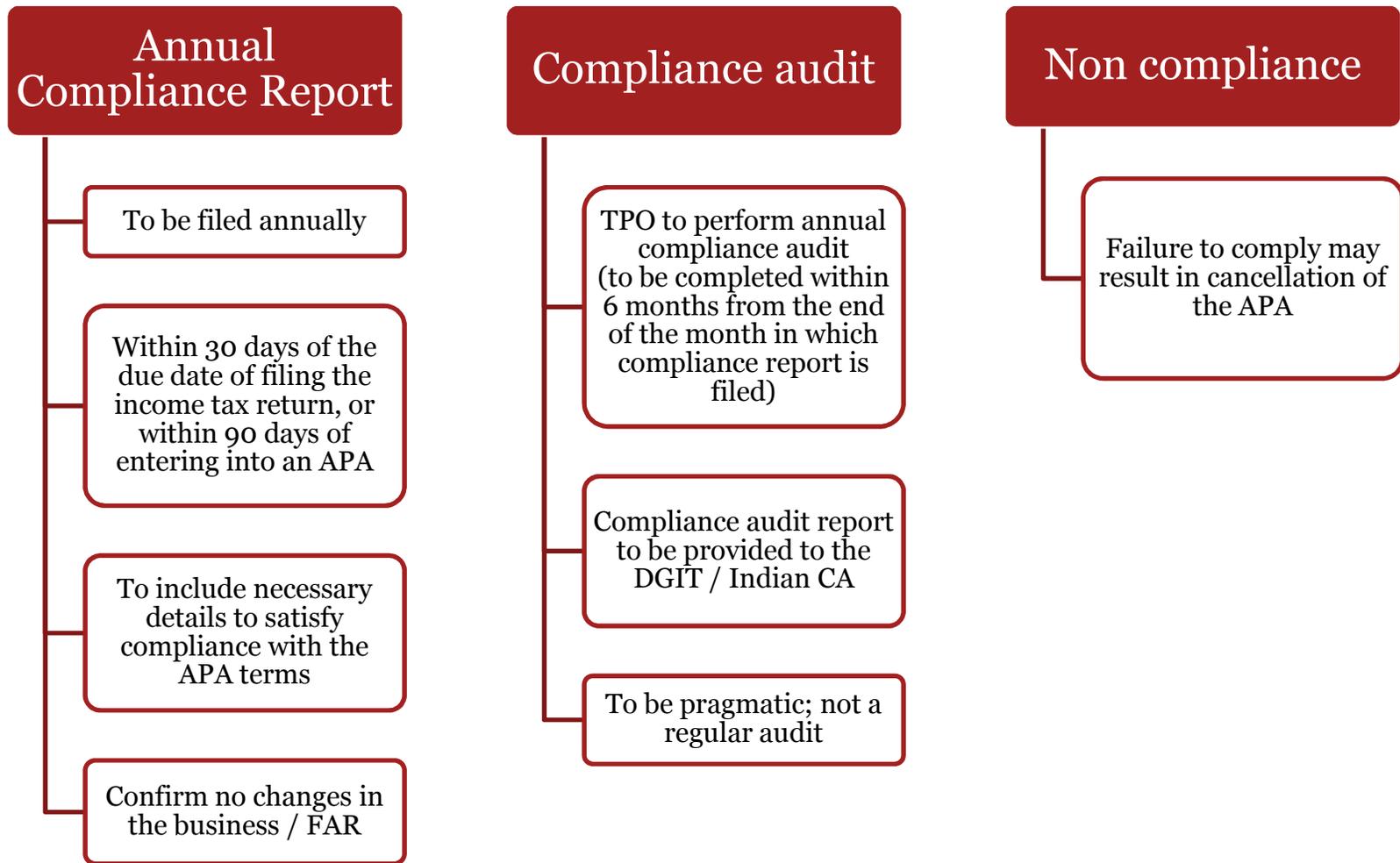
<b>Liaison with APA team / CA</b>	<b>Review and provide comments on draft agreement</b>	<b>Computation of compensating adjustments</b>	<b>Filing of revised returns</b>
-----------------------------------	---	--	----------------------------------

***Extremely important to be engaged with the APA team / CA office on a continued basis throughout the process***

# *Post APA compliance*



## Phase V : Compliance



## ***Certain parameters***

### **Revision of the agreement**

- Change in critical assumptions
- Change in law
- Request from CA in the other country

### **Cancellation of the agreement**

- Failure to file annual compliance report
- Material errors in annual compliance report
- Adverse finding during annual compliance audit
- Taxpayer not in agreement with the proposed revision

### **Renewal of the agreement**

- Same procedures as an initial APA request
- Advisable to file renewal application before the expiry of the APA term
- Renewal to be completed in a relatively shorter time

### **Withdrawal of the agreement**

- Withdrawal permitted before APA finalisation
- Taxpayer to provide reasons for withdrawal
- Fee would not be refunded

# *Practical considerations*



## ***Practical considerations***

Should I be the first one?

Timeframe for unilateral and bilateral APAs

Information confidentiality

Compliance audit

APA team outlook

---

# *Thank you!*

Kunj Vaidya  
Associate Director, Transfer Pricing  
PwC India  
Chennai Office  
Email : [kunj.vaidya@in.pwc.com](mailto:kunj.vaidya@in.pwc.com)  
Mobile : +91 996 209 5555

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, [insert legal name of the PwC firm], its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

© 2012 PricewaterhouseCoopers Private Ltd. All rights reserved. "PwC", a registered trademark, refers to PricewaterhouseCoopers Private Limited (a limited company in India) or, as the context requires, other member firms of PwC International Limited, each of which is a separate and independent legal entity.