

# **International Tax Concepts**

## **Vodafone**

**- Analysis of the High Court Judgement**

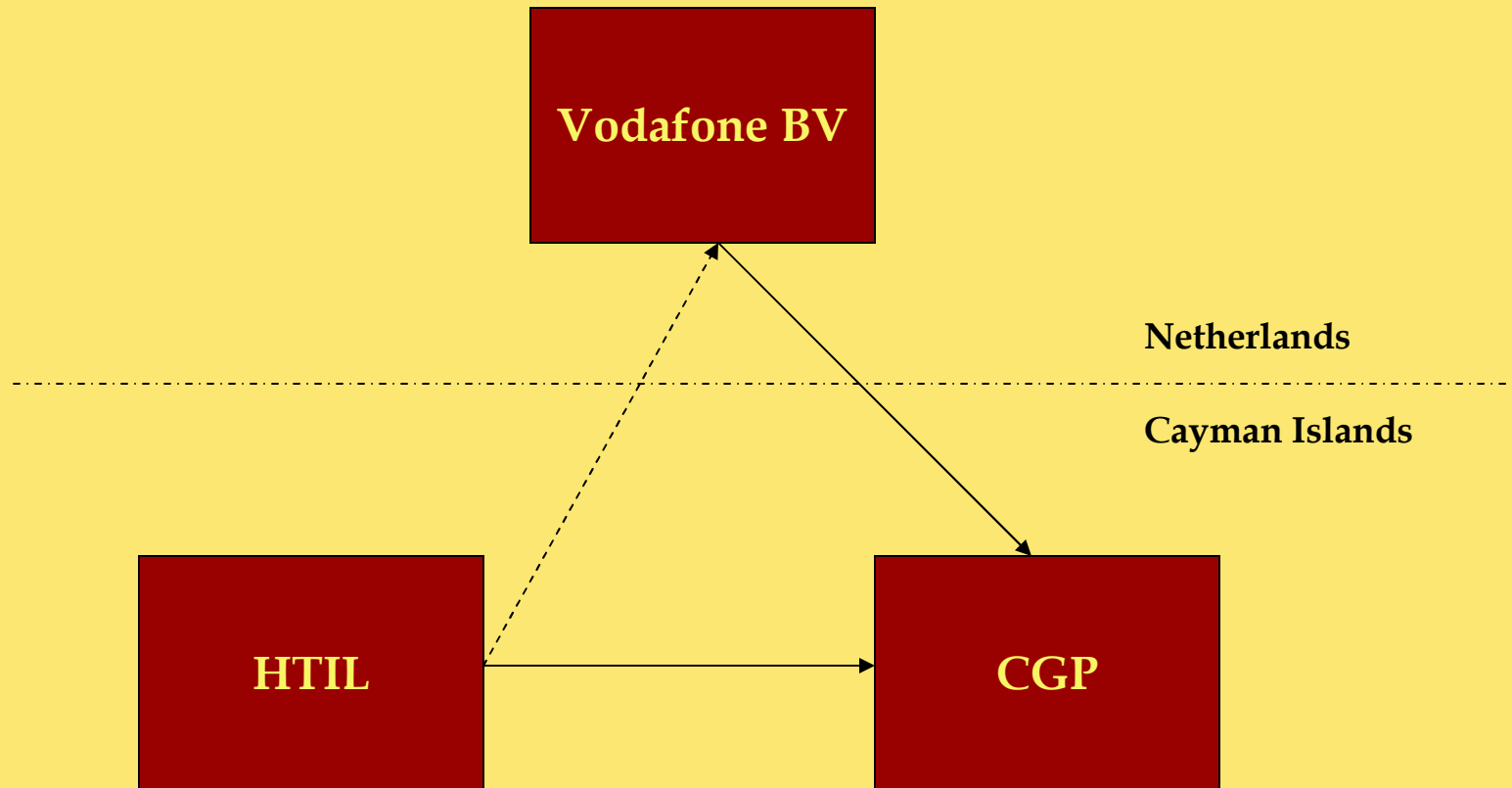
14<sup>th</sup> March 2009

**Rutvik R. Sanghvi**

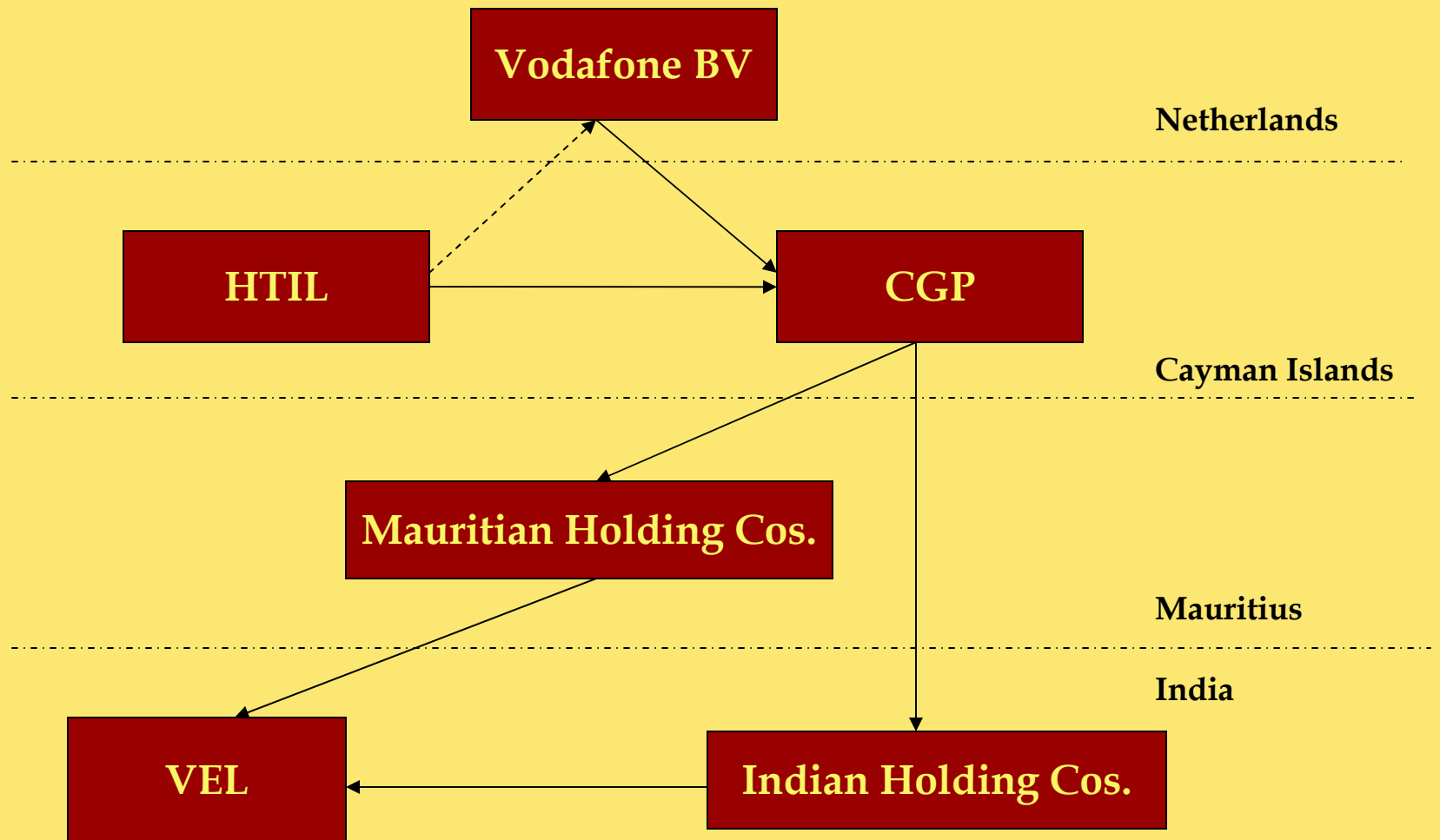
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# Vodafone – Facts



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# Vodafone - Issues

- Chargeability to tax
- Extra-territorial Jurisdiction

# Vodafone - Issues

## Chargeability to Tax

### Vodafone's Arguments:

- Transfer of Foreign Co.'s shares
- Controlling interest not separate from shares
- A Co. is a juristic person, distinct from its shareholders
- Sec. 9 can only apply when there is direct transfer
- No Business Connection

### Revenue's Arguments:

- Transfer of business interests in India
- Transfer of group co. in India
- Capital gains accrued to HTIL and not CGP
- No need to lift corporate veil
- Dominant purpose of transaction
- Different stand for different purposes
- Effects Doctrine

# Vodafone - Issues

## Chargeability to Tax

Food for thought:

- Substance v. Form
- Tax Havens
- Is Co. always a separate legal entity?
  - Section 34 of the Companies Act

# Vodafone - Issues

## Extra-territorial jurisdiction

### Vodafone's Arguments:

- No Nexus with India
- Whole of India
- 'Person'
- Sec. 195 unworkable

### Revenue's Arguments:

- Nexus as soon as income is chargeable
- Whole of India
- Lack of machinery not valid ground for holding law invalid
- Signing of agreement – nexus with India
- Bound to comply with all laws
- Effects Doctrine

# Vodafone - Issues

## Extra-territorial jurisdiction

Food for thought:

- Are Non-residents liable to deduct tax at source on foreign transactions?
- Presence in India



# Vodafone – Forward thinking

- No clarity of intention
- No certainty of decisions
- What should a tax advisor do?
- Wake up call