

Direct tax in India

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Disclaimer

This document has been developed to simply provide a quick overview in simple terms of the manners or models under which a company could setup an establishment in India; and the tax and regulatory frameworks that could preside over such an entity.

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The materials contained in this publication were assembled in April 2021 and were based on the law enforceable and information available at that time.









Abbreviations

AD Bank-1	Authorized Dealer Bank -1	HO	Head Office
AE	Associated Enterprises	JV	Joint Venture
ALP	Arm's Length Price	LLP	Limited Liability Partnership
AMT	Alternate Minimum tax	LO	Liaison Office
APA	Advance Pricing Agreements	MAT	Minimum Alternate Tax
BEPS	Base Erosion Profit Shifting	MCAA	Multilateral Competent Authority Agreement
BO	Branch Office	MNC	Multi-National Company
BOD	Board of Directors	OECD	Organization for Economic Co-operation and Development
CBDT	Central Board of Direct Taxes	PE	Permanent Establishment
CFS	Consolidated Financial statements	PO	Project Office
DDT	Dividend Distribution Tax	POEM	Place of Effective Management
DTAA	Double Taxation Avoidance Agreement	RBI	Reserve Bank of India
ECB	External Commercial Borrowings	ROC	Registrar of Companies
ED	Executive Director	ROI	Return of Income
FCCB	Foreign Currency Convertible Bond	R&D	Research & Development
FDI	Foreign Direct Investment	SHR	Safe Harbor Rules
FTS	Fee for Technical Services	The Act	Income Tax Act 1961
FY	Financial Year	TP	Transfer Pricing
GAAR	General Anti Avoidance Rules	TRC	Tax Residency Certificate
GDR	Gross Depository Receipt	WOS	Wholly-Owned Subsidiary
GOI	Government of India		



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This document covers the six major aspects for doing business in India, which companies need to understand in order to successfully initiate and sustain operations in the Indian market. These aspects have been divided into a multitude of sub-topics which have been carefully evaluated and collated to provide an insight on maintaining a fruitful business presence in India.

The first two chapters cover the initial phase, where we discuss how to setup a business in India and how to structure the funding of that new business. The third chapter focuses on understanding corporate taxes in India which is then followed by the fourth chapter, which emphasizes on transfer pricing methods and regulations in India. The fifth chapter discusses the Goods and Services Tax implications in India, which is proving to be a ground-breaking tax regime and finally, the sixth chapter discusses the concept of expatriate taxation in India.

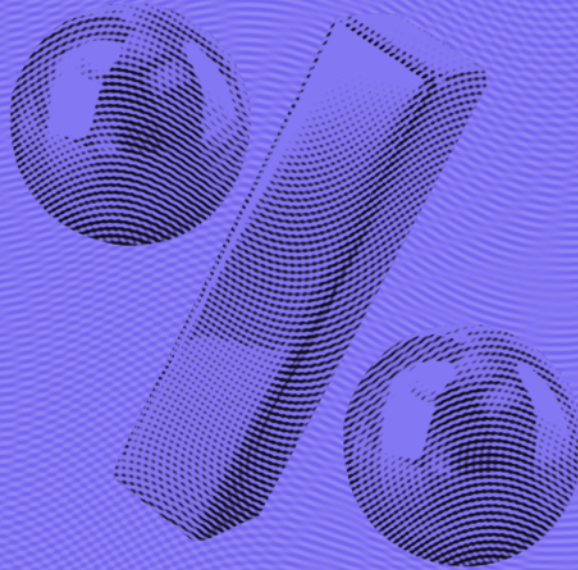
The inherent demand of quality advisory and financial services in the mentioned topics, coupled with our expertise in these six critical touch-points makes this document an important tool to analyze, evaluate and ease the decision-making process of companies looking to do business in India.

Click to jump to the respective pages





Direct tax





Direct tax, by way of income tax is levied by the Central Government. The administration, supervision, and control in the area of direct taxes lies with the CBDT. The Indian tax year extends from 1st April of a year to 31st March of the subsequent year.

The due date for filing ROI for Companies is as follows:

Particulars	Date of Filing of Return
Companies who are required to submit a TP certificate in Form 3CEB (with respect to international transactions or specified domestic transactions)	30th November
Companies other than those who fall under the above category*	31st October

Non-resident taxpayers are also required to file ROI in India if they earn income in India or have a physical presence or economic nexus with India. Corporate tax liability needs to be estimated and discharged by way of advance tax on a quarterly basis. Late filing of a ROI and delay in payment or shortfalls in taxes are liable to attract interest at prescribed rates.

** The due date for other forms of entities may differ depending upon the prescribed conditions.*





1. Scope of taxable income

A company, resident in India (resident company) is taxed on its global Income. A company resident outside India (Foreign company) is taxed in India only with respect to its income that:

- accrues or arises in India
- is received or deemed to have been received in India
- Accrues or arises to the Foreign company from an asset or source of income in India (interest, royalties and fees for technical services), a 'business connection' in India or transfer of a capital asset in the country
- Accrues to a non-resident having significant economic presence in India

The term 'business connection' is used in Indian tax laws instead of Permanent Establishment (PE), as in tax treaties, to tax profits from business. The term is considered wider in its scope than PE.

1.1 RESIDENTIAL STATUS OF COMPANY

A company is considered a resident of India if it is an Indian enterprise, i.e., if it is incorporated in India or its Place of Effective Management (POEM) in that year is in India.

1.2 RESIDENTIAL STATUS OF LLP

Ordinarily, LLP registered in India is always considered to be resident in India unless situs of the control and management of its affairs is situated wholly outside India during the year.



2. Corporate tax rates

Broadly, the corporate tax rates for entities range from 15% to 40%. Domestic and foreign companies are subject to tax at a specified base tax rate.

STATUS OF THE ENTITY	PERCENTAGE	CONDITIONS
Manufacturing Domestic Company	15%	<ul style="list-style-type: none">▪ New Company incorporated on or after 1 October 2019 and commencing manufacturing (including companies engaged in power generation) on or before 31 March 2023 with certain other conditions;▪ Business is not formed by splitting up and reconstruction of business in existence;▪ Does not use machinery or plant previously used in India;▪ Does not use any building previously used as a hotel or convention center; and▪ Does not claim benefits of additional depreciation;
Other Domestic Company	22%	<ul style="list-style-type: none">▪ Any domestic company including manufacturing may opt for this rate;▪ The total income is computed without claiming prescribed deductions such as 10AA relating to SEZ etc. and losses attributable to such deductions;▪ Does not claim benefits of additional depreciation and▪ Once opted, the rate to remain applicable for succeeding years





STATUS OF THE ENTITY	PERCENTAGE	CONDITIONS
Other Domestic Company	25%	<ul style="list-style-type: none">Companies claiming prescribed deduction, loss attributable to such deduction, additional depreciation and MAT credit; andTotal turnover/gross receipts in previous year does not exceed INR 4 Billion. For AY 2021-22 return, the total turnover or gross receipts of previous year 2018-19 does not exceed INR 4 Billion
	30%	Any other domestic company
	40%	All foreign companies
	30%	All firms/LLPs

The rates mentioned in the table are exclusive of surcharge, which is levied on the basis of the quantum of taxable income earned during the year under consideration and education cess levied on the tax amount (inclusive of the surcharge). Surcharge rates range from 7% to 12% for domestic companies and 2% to 5% for foreign enterprises; the education cess rate is constant at 4% for all organizations.





3. Dividend income

Dividend income distributed by domestic companies on or after 1st April 2020 shall be taxable in the hands of the recipients (including foreign companies/non-residents) in India.

However, in case of dividends distributed by a domestic company to another domestic company/ business trusts(inter corporate dividends) which further distributes the dividend shall be eligible for claiming deduction subject to the prescribed conditions.



4. Other considerations

4.1 MINIMUM ALTERNATE TAX (MAT)

Generally, MAT is to be paid by companies on the basis of profits disclosed in their financial statements. However, the chapter of MAT is inapplicable in case of certain classes of companies. Below is the table summarizing the applicability of MAT.

CLASS OF COMPANY	CLASS OF COMPANIES	APPLICABILITY OF MAT
Class I	Companies claiming benefit of lower tax rates i.e. 15% and 22% with fulfillment of conditions.	Not applicable
Class II	Other Companies	Applicable

For companies falling under class II above, the tax to be paid under MAT provisions shall be 15% book profit plus applicable surcharge and education cess. Book profits (for this purpose) are computed by making the prescribed adjustments to the net profit disclosed by corporations in their financial statements.





The above shall apply only in case the tax payable under normal provisions of Act falls short of 15% of book profit as disclosed by corporations in the financial statement.

The MAT credit is allowed to be carried forward for 15 years and is available to be set off against income tax payable under the normal provisions of the IT Act to the extent of the difference between tax according to normal provisions and tax according to MAT. A report from a chartered accountant, certifying the quantum of book profits, must be filed along with the ROI in the year in which taxes are paid under MAT provisions.

Also, for existing companies opting lower rate of tax (i.e., 22%) shall not be allowed to carry forward any of the MAT credit outstanding in the books and the same shall be lapse from the year in which they opt for lower rate.

4.3 AMT

Indian tax law requires Alternate Minimum Tax ('AMT') to be paid by person other than a company, who claims certain prescribed deductions, on the basis of the adjusted total income of the person. In cases, where the tax payable according to the regular tax provisions is less than 18.5% of the total income, such person must pay 18.5% (plus surcharge and cess as applicable) of their adjusted total income as tax. Adjusted total income (for this purpose) is computed by making the prescribed adjustments to the total income disclosed by the person.

The AMT credit is allowed to be carried forward for 15 years and is available to be set off against income tax payable under the normal provisions of the IT Act to the extent of the difference between tax according to the normal provisions and tax according to AMT. A report from a chartered accountant certifying the adjusted total income must be filed along with the ROI in the year in which taxes are paid under the under the AMT provisions





4.4 DDT

DDT has been abolished with effect from 1st April 2020. Hence, the recipient of dividend shall be liable to pay taxes, if any arising on the dividend received post 1st April 2020.

4.5 TAX ON BUYBACK OF SHARES OF AN UNLISTED INDIAN COMPANY

An Indian company has to pay 23.296% (including surcharge and education cess) tax on 'distributed income' (differential between consideration paid by the unlisted Indian company for buy-back of the shares and the amount that was received by the same unlisted Indian company on the issue of shares) on buyback of shares. On the other hand, the shareholder is exempt from tax on proceeds received from the buyback of shares. No deduction is allowed to the unlisted Indian companies with respect to such tax.

4.6 INDUSTRY SPECIFIC SCHEMES

India has a presumptive tax regime which provides an optional tonnage tax scheme available for the Indian shipping industry, which taxes the income on a deemed profit basis. Oil and insurance corporations have a separate code of taxation. Foreign shipping and air transport companies also have a deemed profit basis of taxation.





5. Other consideration for taxation of Non-Residents



5.1 PLACE OF EFFECTIVE MANAGEMENT (POEM)

A Company is regarded as a resident in India if it is incorporated in India or if its POEM is in India. The Finance Act 2015 amended the residency test for a company, wherein a company would be considered as resident in India if it is an Indian company or if a company's POEM is situated in India during the relevant financial year. POEM has been defined as a place where key management and commercial decisions that are necessary for the conduct of the business of the entity as a whole, are made and such company has a turnover exceeding INR 500 Million in such year. Final guidelines for determination for POEM have been notified by CBDT vide circular 6 of 2017, dated 24th January 2017.





5.2 DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA)

India has entered into 94 Double Taxation Avoidance Agreements and more than 21 Tax Information Exchange Agreements. The tax liability of a person who is a 'tax resident' of a country which India has a DTAA with shall be determined on the basis of the provisions of the IT Act or the DTAA, whichever is more beneficial and accordingly, the taxability is likely to be restricted or modified.

However, in order to be eligible to claim DTAA benefits, a non-resident is required to obtain a valid Tax Residency Certificate ('TRC') containing the prescribed details and also file a self-declaration in Form 10F, wherever required.

5.3 GENERAL ANTI-AVOIDANCE RULE (GAAR)

These provisions empower the Tax Department to declare an 'arrangement' entered by an assessee to be an Impermissible Avoidance Arrangement ('IAA'). The consequences include denial of the tax benefit either under the provisions of the IT Act or the applicable tax treaty. The provisions can be invoked for any step or part of an arrangement entered, and the arrangement or step may be declared an IAA. However, these provisions only apply if the main purpose of the arrangement or step is to obtain a tax benefit.

The provisions of GAAR will not apply in the following cases:

- Where the tax benefit (for all parties) from an arrangement in a relevant tax year does not exceed INR 30 million
- When FIIs registered with SEBI are not availing any benefit under a tax treaty or investments made in the FIIs by non-resident investors
- Income from investments made up to 31st March 2017





5.4 EQUALIZATION LEVY (EL) – DIGITAL ECONOMY (E-COMMERCE TRANSACTIONS)

An Equalization Levy of 6% is levied on payments made by a resident, who is carrying on business and profession or the Indian PE of a non-resident to a non-resident, providing services in the nature of online advertisement, or provision for digital advertising space or any other facility/service for the purpose of online advertisement.

Further, an EL of 2% shall be levied w.e.f. 1st April 2020 on payments made by a resident or person using an IP address located in India to buy goods/services or a non-resident under specified circumstances to an e-commerce operator (not operating through a PE in India and such supply is effectively connected to PE) for providing services by way of digital or electronic facility or platform for online sale of goods or services.

5.5 PATENT BOX REGIME

In order to encourage indigenous research & development (R&D) and make India a global R&D hub, a 10% tax is applicable on the income from royalty of resident patentees with respect to the patents which have been developed and registered in India. Under this regime, no expenditure or allowance is allowed for computation of taxable income.

5.7 FOREIGN TAX RELIEF

Tax treaties between India with several other countries govern foreign tax relief to avoid double taxation. If there is no such agreement, resident corporations can claim a foreign tax credit for the tax paid by them in other countries, subject to meeting certain requirements. The credit amount is lower than the Indian rate of tax or the tax rate of the said country on the doubly taxed income. CBDT has laid down foreign tax credit rules for granting foreign tax credit.





Annexures for compliance matters





Company law

Secretarial Compliance(s) With Respect To Meetings, Minutes And Other Related Registers And Records For Companies

- Board Meeting – Quarterly or event-based
 - Annual General Meeting – Annual
 - Extra-Ordinary General Meetings – Event-based
 - Registers (Register of Members, Register of Director & Key Managerial Personnel & their Shareholding, Register of Contracts with Related Parties & Contracts in which Directors are interested) – Permanent
-

Annual Secretarial Compliance for Companies

- Disclosure of interest by directors – Annual or event-based
 - Disclosure of non-qualification – Annual or event-based
 - Filing of financials with the Registrar of Companies (“ROC”) – Annual
 - Filing of Annual Return with ROC – Annual
 - Appointment of Auditor – Annual
 - DPT – 3 – Annual
 - MSME Returns – Half yearly
 - DIR-3 KYC – Annual
-





Company law

Annual Compliance For LLPs

- Filing of Annual Return
 - Filing of statement of annual accounts
-

Annual FEMA Compliance for Companies and LLPs

- Filing of Foreign Assets and Liabilities ('FLA') Return
-

Annual Compliance for BO/LO/PO

- Filing of Annual Return
 - Filing of statement of annual accounts
 - Filing of annual activity certificate
-



Direct tax, Indirect tax and Transfer pricing



Direct Tax

- Withholding Tax Computation & Deposit of tax withheld on Salaries and other payments – Monthly
- Withholding Tax Returns – Quarterly
- Advance Tax Payment – Quarterly
- Return Of Income Tax – Annual
- Tax Audit Report – Annual



Transfer Pricing

- Transfer Pricing Report & Accountant's Report – Annual
- Accountant's Report - Annual
- TP Report – Annual
- Master File – Annual
- CbCR – Annual



Indirect Tax

- GST Returns - Monthly/quarterly
- GST Payment – Monthly
- GST Audit- Annually





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