Doing business 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.

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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.

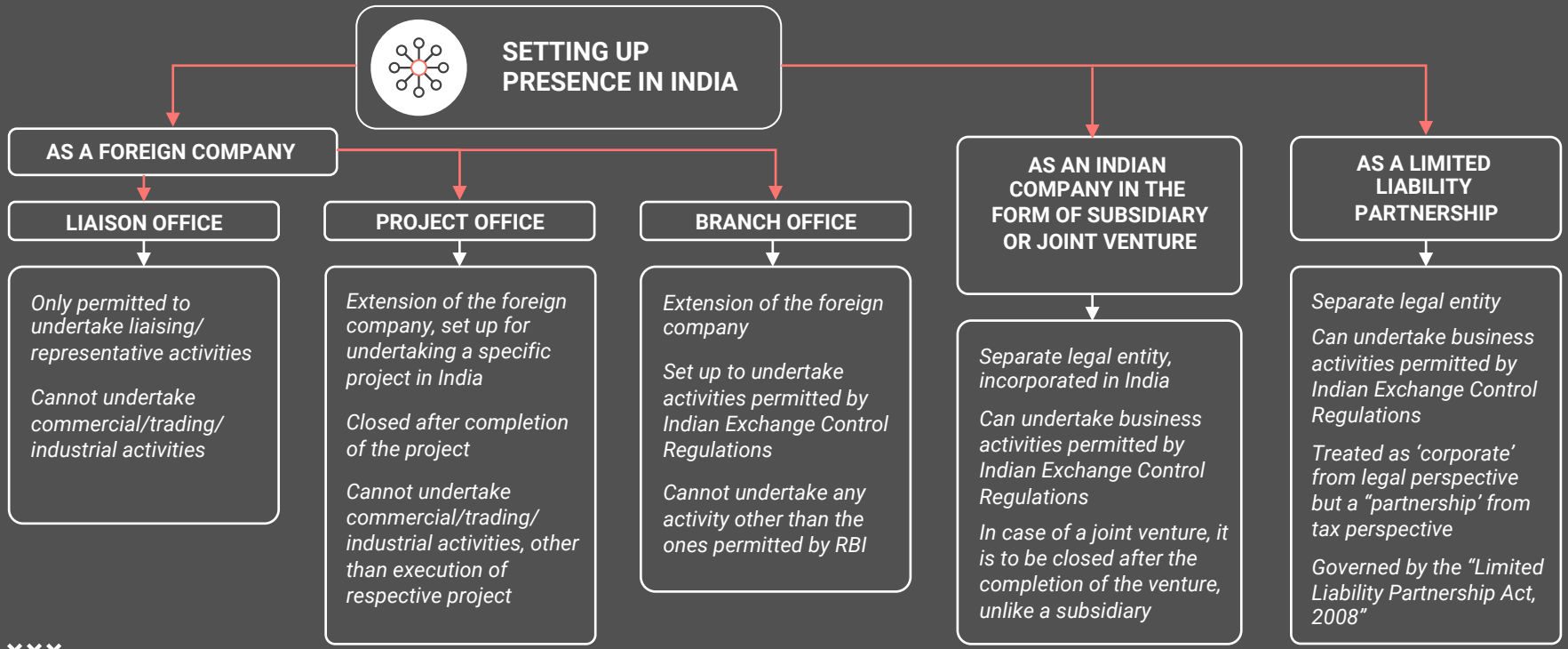
The first two chapters cover the initial phase, where we discuss how to setup a business in India and how to structure the funding of that new business. The third chapter focuses on understanding corporate taxes in India which is then followed by the fourth chapter, which emphasizes on transfer pricing 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

Setting up presence in India

This chapter contains an overview of various models under which a company can set up an establishment in India. A foreign entity has the following options for setting up presence in India:



1. Liaison Office ('LO')

1.1 OVERVIEW OF LO

LO is a representative office and acts as a channel of communication between the head office overseas and its customers/ prospective customers in India. An LO cannot undertake business activities in India and hence, cannot earn income in India. The role of such office is therefore limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers.

1.2 APPROVAL PROCESS

Prior permission from Authorized Dealer (AD) Bank - I is required for setting up of a LO in India. Parent company/Head office ('HO') is eligible to apply to an AD Bank for approval, if it has a profit-making track record during the immediately preceding 3 financial years in the home country and has a net worth of not less than USD 50,000.

An application in form FNC (along with prescribed documents) is required to be made to AD-I bank to obtain approval for establishing LO in India. After obtaining necessary approval from the AD Bank for setting up an LO, Form FC-1 is required to be filed with the Registrar of Companies ('ROC') to obtain 'Certificate of Establishment' of place of business in India.

Initially, approval is granted for 3 years. Subsequent extension can be taken prior to expiry of the initially approved term from an AD Category I Bank.

1. Liaison Office ('LO')

1.3 LO FUNDING

All expenses of the LO are to be incurred from inward remittances from the HO.

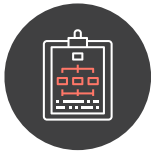
1.4 ANNUAL TAX FILINGS

LO is not liable to pay income tax in India as it does not earn any income in India. Form 49C is required to be filed annually by the LO for reporting of expenses in India.

1.5 WITHHOLDING TAX OBLIGATION

LO shall be required to withhold tax at prescribed rates on various payments such as salaries, professional fee, rent, contract fee, etc. Such taxes are to be withheld on payments made to residents as well as non-residents.

2. Project Office ('PO')



2.1 OVERVIEW OF PO

Project Office refers to a place of business of a foreign company executing a project in India. The presence and activities of the PO are restricted to a particular project for which it is established. On the completion of the project, the PO has to be closed.

2.2 APPROVAL PROCESS

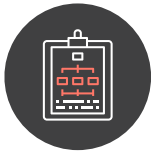
A PO can be opened in India only after the PO has secured a contract from Government of India or Indian concern. The PO shall obtain the funding according to the modes mentioned in para 2.3. Subsequently, an application shall be made in Form FNC (with other requisite documents) to the AD Bank for obtaining approval to establish a PO in India. After obtaining necessary approval from the AD Bank for setting up an PO, Form FC-1 is required to be filed with the Registrar of Companies ('ROC') to obtain 'Certificate of Establishment' of place of business in India.

2.3 CRITERIA FOR ESTABLISHING PO

A foreign company can open a PO in India, provided it has secured a contract from an Indian company and:

- The project is funded directly by inward remittance from abroad; or
- The project is funded by a bilateral or multilateral international financing agency; or
- The project has been cleared by an appropriate authority; or

2. Project Office ('PO')



- A company or entity in India awarding the contract has been granted a term loan by a public financial institution or a bank in India for the project. However, if the above criteria are not met, the foreign entity has to approach the Reserve Bank of India, for prior approval.

The PO can be set up only after project is awarded to foreign company.

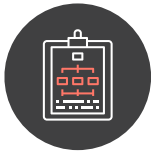
2.4 INCOME TAX IMPLICATIONS

Under the IT Act, a PO is treated as a 'permanent establishment' or 'business connection' of a foreign company in India and income attributable to Indian operations shall be subject to tax in India as follows:

Corporate Tax: Income attributable to such PO is taxed in India on a 'net income basis', i.e., after allowing deduction for admissible expenses and depreciation computed as per the provisions the IT Act @ 40%[1] (plus applicable surcharge and education cess).

Deduction for general administration expenses (indirect expenses) incurred by the HO/reimbursed to HO would be limited to 5% of the total income before allowing for such deduction. Accordingly, general expenses attributable to the income derived from Indian operations exceeding 5% of the total income would not be allowed as deduction for the purposes of computation of taxable income of the PO in India.

2. Project Office ('PO')



Minimum Alternate Tax ('MAT'): Where tax liability computed under the normal provisions of the IT Act (as stated above) is less than 15% of the book profits as per Profit & Loss Account (after making certain adjustments), MAT @ 15%[1] of the adjusted book profits is liable to be paid. Tax paid under MAT is eligible to be carried forward as tax credit for a period of subsequent 15 tax years and can be adjusted against income tax under normal provisions of the IT Act, subject to certain limitations.

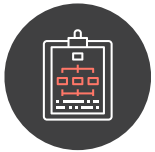
Deductibility of Payments made to HO: Fees/Royalty/Interest paid by the PO to group companies shall be allowed as deduction for computation of taxable income of PO. Such payments are subject to transfer pricing ('TP') regulations and withholding tax requirements.

Reimbursement of expenses incurred by HO on behalf of PO should be allowed as deduction, subject to TP regulations and restriction of 5% of net income condition for administrative expenses (indirect expenses).

2.5 TRANSFER PRICING

TP regulations prescribed under the IT Act provide that international transactions between two or more associated enterprises ('AE') (i.e., transactions between PO and any foreign related parties including the parent company) should be at arm's length price, computed as per the provisions of Indian TP regulations.

2. Project Office ('PO')



PO would be required to maintain the prescribed information and documents with respect to every international transaction with its AEs. Determination of the applicable arm's length price with respect to an international transaction is required, based on an analysis of the functions, risks and assets relatable to the transaction.

2.6 WITHOLDING TAX OBLIGATION

PO shall be required to withhold tax at prescribed rates on various payments such as salaries, professional fee, rent, contract fee, etc. Such taxes are to be withheld on payments made to residents as well as non-residents.

2.7 OTHER REGULATORY CONSIDERATIONS

Intermittent Remittance: PO is allowed to make intermittent remittance of surplus funds to HO, pending its closure. For this purpose, the PO shall submit the requisite documents to the AD Bank along with an undertaking that remittance will not affect completion of project and any shortfall of funds shall be met by inward remittance. No tax is applicable on intermittent remittance to the HO.

[1] plus applicable surcharge and cess

3. Branch Office ('BO')

3.1 OVERVIEW OF BO

A BO is an extension of a foreign company and for all legal purposes, it is treated as a foreign company in India. It does not have a separate legal status. It is suitable when short-term or medium-term business presence is envisaged, and debt funding is not required for Indian operations.

A BO is permitted to undertake only following activities in India as permitted by RBI:

- Export/import of goods (procurement of goods for export and sale of goods after imports allowed only on wholesale basis)
- Rendering professional or consultancy services
- Carrying out research work, in which the HO is engaged
- Promoting technical or financial collaborations between Indian companies and the HO or the overseas group company
- Representing the HO in India and acting as a buying/selling agent in India
- Rendering services in information technology and development of software in India
- Rendering technical support to the products supplied by HO/group companies
- Representing a foreign airlines/shipping company.

3. Branch Office ('BO')

A BO is not allowed to:

- Undertake retail trading activities of any nature in India
- Carry out manufacturing or processing activities in India, directly or indirectly

3.2 APPROVAL PROCESS

Prior permission from AD Bank-I is required for setting up of a BO in India. Parent Company/HO is eligible to apply to AD Bank for approval, if it has a profit-making track record during the immediately preceding 5 financial years in the home country and has a net worth of not less than USD 100,000.

An application in form FNC (along with prescribed documents) is required to be made to AD-I bank to obtain approval for establishing BO in India. After obtaining necessary approval from the AD Bank for setting up an BO, Form FC-1 is required to be filed with the Registrar of Companies ('ROC') to obtain 'Certificate of Establishment' of place of business in India.

3.3 BO FUNDING

All expenses of the BO shall be funded by inward remittance or through income from permitted activities.

3. Branch Office ('BO')

3.4 INCOME TAX IMPLICATIONS

Corporate Tax: Income attributable to Indian operations is taxed in India on a 'net income basis', i.e., after allowing deduction for admissible expenses and depreciation computed as per the provisions the Act @ 40%[1] (plus applicable surcharge and cess).

Deduction for general administration expenses (indirect expenses) incurred by the HO/reimbursed to HO would be limited to 5% of the total income. Accordingly, general expenses attributable to the income derived from Indian operations exceeding 5% of the net income would not be allowed as deduction for the purposes of computation of taxable income of the BO in India.

MAT: Where tax liability computed under the normal provisions of the IT Act (as stated above), is less than 15% of the book profits as per Profit & Loss Account (after making certain adjustments), MAT @ 15% [1] of the adjusted book profits is liable to be paid. Tax paid under MAT is eligible to be carried forward as tax credit for a period of subsequent 15 tax years and can be adjusted against income tax under normal provisions of the IT Act, subject to certain limitations.

Deductibility of Payments made to HO: Fees/Royalty/Interest paid by the BO to the group companies shall be allowed as deduction for computation of taxable income of BO. Such payments are subject to TP regulations and withholding tax requirements.

Reimbursement of expenses incurred by HO on behalf of BO should be allowable as deduction subject to TP regulations and restriction of 5% of net income condition for administrative expenses.

3. Branch Office ('BO')

3.5 TRANSFER PRICING

BO would be required to maintain the prescribed information and documents with respect to every international transaction with its AEs. Determination of the applicable arm's length price with respect to an international transaction is required, based on an analysis of the functions, risks and assets relatable to the transaction.

3.6 WITHOLDING TAX OBLIGATION

BO shall be required to withhold tax at prescribed rates on various payments such as salaries, professional fee, rent, contract fee, etc. Such taxes are to be withheld on payments made to residents as well as non-residents.

3.7 OTHER REGULATORY CONSIDERATIONS

Profit Repatriation: Profits earned by BO are freely remittable from India, subject to payment of applicable taxes.

Closure: A BO can be closed after obtaining prior permission of the AD-I bank. Prescribed documentation would need to be submitted for repatriation of winding up proceeds outside India.

[2] plus applicable surcharge and cess

4. Corporate entity

4.1 OVERVIEW OF WHOLLY OWNED SUBSIDIARY ('WOS')

A WOS is a separate legal entity and a domestic company in India. It has a separate legal status, independent of its shareholders.

A WOS is suitable where long-term business presence is envisaged. Being an Indian company, a WOS has greater freedom to undertake activities that are incidental to its permitted business activities.

4.2 TYPES OF COMPANIES

Companies in India can be broadly classified as public and private companies. A company can be registered with its liability as limited or unlimited. In the case of the former, the personal liability of the members is limited to the amount unpaid on their shares, while in the latter, their liability extends to the entire amount of the company's debts and liabilities. A company can also be registered as a guarantee company.

We have summarized below the various types of companies that may be set up under Indian corporate laws.

4. Corporate entity

One person company

Only 1 member (should be an Indian citizen and resident)

At least 1 director

Small company

Not a public company

Paid up capital not more than INR 5 million and turnover according to latest P&L shouldn't exceed INR 20 million

Private company

Company members (2 to 200)

Minimum two directors (at least one director to be resident in India)

Transfer of shares permitted, subject to certain pre-requisites

Public company

Minimum 7 members

Minimum 3 directors (at least one director to be resident in India).

Limits placed on remuneration paid to directors

Not for profit company

Established for charitable purposes

Profit generated must be used for the purposes for which it was established

4. Corporate entity

4.3 PRIVATE COMPANY VS. PUBLIC COMPANY

Following are the few key comparisons between a private company and a public company:

S.NO.	PARTICULARS	PRIVATE COMPANY	PUBLIC COMPANY
01	Minimum number of members	2	7
02	Maximum number of members	200	Unlimited
03	Minimum number of directors	2	3
04	Limits on managerial remuneration	No limit on remuneration payable to managerial personnel	Approval of Central Government is required if the remuneration payable is beyond the specified limits
05	Transfer of shares	Transfer of shares permitted, subject to certain pre-requisites	No such restriction on transfer of shares

4. Corporate entity

S.NO.	PARTICULARS	PRIVATE COMPANY	PUBLIC COMPANY
06	Requirement of Independent Directors	No such requirements	Companies having paid up capital of INR 100 Mn or more or turnover of INR 1 Bn or more or which have in aggregate outstanding loans and debentures exceeding INR 500 Mn are required to appoint at least 2 Independent Directors.
07	Requirement of Woman Director	No such requirement	Companies having paid up capital of INR 1 Bn or more or turnover of INR 3 Bn or more are required to appoint at least 1 Woman Director on its Board.

4. Corporate entity

S.NO.	PARTICULARS	PRIVATE COMPANY	PUBLIC COMPANY
08	Borrowing Limits	No maximum limit	There is a limit on borrowings by a company up to the aggregate of paid up capital + free reserves + Securities premium of the Company and if such a limit is breached then a prior approval of Members is required by way of a Special Resolution.
09	Loan to Directors/persons in which Directors are interested	Loans can be granted to Directors provided there are certain restrictive conditions as provided under Section 185 of Companies Act, 2013 (“Act”) which have to be complied with.	No loans can be granted to Directors.

4. Corporate entity

S.NO.	PARTICULARS	PRIVATE COMPANY	PUBLIC COMPANY
10	Limit of acceptance of deposits from members	Private Companies may accept from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.	No such exemption has been provided to Public Limited Companies.

4. Corporate entity

4.4 SETTING UP OF WOS/JOINT VENTURE (JV)

Under Indian Exchange Control Regulations, a foreign company is permitted to set up a WOS in India to undertake a wide spectrum of activities except a few areas which is either not 100% open to foreign investment or requires prior approval/ license from the Government of India

4.5 CAPITALIZATION OF WOS

Initial funding of the WOS is to be done in the form of share capital (equity). Alternate mode of capital structuring such as convertible debentures and preference shares, or external commercial borrowing ('ECB') are allowed. A WOS can also take loans from Indian banks as well as ECBs from overseas lender or issue a Rupee Denominated Bond to them, subject to certain conditions.

4. Corporate entity

4.6 CORPORATE LAW REGULATIONS

- Indian corporate law requires a WOS to prepare and maintain proper books of accounts with respect to all transactions undertaken by the WOS.
- Private limited company is required to have at least 2 shareholders and 2 directors. Directors should be individuals. Company should have at least one resident director who shall stay in India for not less than 182 days during the ongoing financial year.
- Annual audited accounts along with other necessary documents of the WOS are required to be submitted with ROC. WOS, being an incorporated entity is also subject to certain statutory requirements.

4.7 INCOME TAX IMPLICATIONS

Under the IT Act, a WOS is treated as a domestic company and is taxed as a resident of India. The taxation of the WOS would be as follows:

Corporate Tax: WOS is taxed in India on a 'net income basis', i.e., after allowing deduction for expenses and depreciation computed as per the provisions the IT Act @ 22/25/30%*[1,2]. WOS being an Indian tax resident is taxed on its worldwide income. (Please refer slide no 34-35 for Corporate tax rates and other applicable conditions)

4. Corporate entity

MAT: Where tax liability computed under the normal provisions of the IT Act (as stated above), is less than 15%[1] of the book profits as per Profit & Loss Account (after making certain adjustments), MAT @ 15%*[2] of the adjusted book profits would be liable to be paid. Tax paid under MAT is eligible to be carried forward as tax credit for a period of subsequent 15 tax years, which can be adjusted against income tax under normal provisions of the IT Act, subject to certain limitations.

Repurchase of Shares: Capital gains arising on buy-back of shares held by parent company in the WOS shall be taxable @ 23.296% in the hands of WOS.

4.8 DEDUCTIBILITY OF PAYMENTS

Fees/Royalty/Interest paid by WOS to the parent company or other associated enterprises shall be allowed as deduction for computation of taxable income of WOS. Such payments are subject to TP regulations and withholding tax requirements.

WOS shall be required to withhold tax at prescribed rates on various payments such as salaries, professional, rent, contract, employee related payments, etc. Such taxes are to be withheld on payments made to residents as well as non-residents.

**[1] Surcharge at 10% shall be levied where the tax rate is 22%. In other cases, surcharge at 7% or 12% shall be levied where taxable income exceeds INR 10 Mn or 100 Mn respectively and 4% education cess levied in all cases.*

**[2] Applicable surcharge and cess*

4. Corporate entity

4.9 TRANSFER PRICING

A WOS would be required to maintain the prescribed information and documents with respect to every international transaction with its AEs. Determination of the applicable arm's length price with respect to an international transaction is required, based on an analysis of the functions, risks and assets relatable to the transaction.

4.10 OTHERS REGULATORY ASPECTS

WOS does not require any prior approval for remitting profits to its parent company. India has liberalized Exchange Control Regulations which permit remittance of most of current account transactions without any prior approval.

No prior approval is required for winding up of WOS. However, winding up of a WOS is a long drawn judicial process and the time frame involved is substantially higher.

5. Limited liability partnership ('LLP')

5.1 OVERVIEW OF A LLP

A foreign company can form a LLP in India. LLP formed by a non-resident in India is treated at par with a resident LLP and is considered as a separate legal entity in India.

5.2 SETTING UP A LLP

Under Indian Exchange Control Regulations, LLPs in India can be set up by non-residents only in those sectors/activities where 100% FDI is allowed under automatic route (i.e., without the prior requirement of Government approval).

5.3 CAPITALISATION OF A LLP

Initial funding of a LLP is to be done in the form of capital contribution by the non-resident. There is no prescribed minimum capital contribution. A LLP is permitted to take loans from Indian banks. It can also raise loans from overseas lenders in the form of ECB, subject to the fulfilment of certain prescribed conditions.

5.4 LLP ACT REGULATIONS

- LLP is required to register with the ROC before commencing its operations

5. Limited liability partnership (‘LLP’)

- It should have at least two Partners. Any individual or body corporate can be a Partner in a LLP. A body corporate has been defined under the LLP Act and includes any company or LLP incorporated outside India. However, the definition of body corporate does not include other forms of corporation
- LLP should have at least 2 Designated Partners (out of Partners) who are individuals & a body corporate can also be a designated partner through its authorised representative (‘AR’) and at least one of them shall be a resident in India
- ‘Resident of India’ means a person who has stayed in India for a period of not less than 182 days during the immediately preceding calendar year
- LLP Act requires an LLP to prepare, change and maintain proper books of accounts with respect to all transactions undertaken by the LLP
- Any LLP whose turnover is less than INR 4 Mn in any financial year or whose contribution is less than INR 2.5 Mn is not required to get its accounts audited. However, if the partners of such LLP decide to get the accounts of such LLP audited, the accounts shall be audited only in accordance with such rule.
- Annual audited accounts of the LLP are required to be submitted with ROC in Form 8 by 30 October of every year.
- Every LLP shall file an annual return in Form 11 duly authenticated with registrar within 60 days of closure of its financial year in such form and manner, as may be prescribed

5. Limited liability partnership ('LLP')

5.5 INCOME TAX

Income Tax: An LLP is taxed in India on a 'net income basis', i.e., after allowing deduction for expenses and depreciation computed as per the provisions the IT Act @ 30%*. LLP, being an Indian tax resident is taxed on its worldwide income.

Alternate Minimum Tax ('AMT'): LLP is liable to AMT, only in limited cases where it is claiming certain deductions, on its adjusted total income at an effective rate of @ 18.5%*, provided the tax payable under normal provisions is less than the tax computed under the provisions of AMT.

Distribution Tax: No distribution tax is applicable on profits distributed by the LLP to its Partners.

5.6 DEDUCTIBILITY OF PAYMENTS

Fees/Royalty paid by LLP to AEs (other than the Partners) shall be allowed as deduction for computation of taxable income of LLP subject to restrictions as per Indian TP regulations. Such payments shall be required to withhold tax at prescribed rates on various payments such as salaries, professional, rent, contract, employee-related payments, etc. Such taxes are to be withheld on payments made to residents as well as non-residents.

**Applicable surcharge and cess*

5. Limited liability partnership ('LLP')

5.7 TP REGULATIONS

An LLP would be required to maintain the prescribed information and documents with respect to every international transaction with its AEs. Determination of the applicable arm's length price with respect to an international transaction is required, based on an analysis of the functions, risks and assets relatable to the transaction.

5.8 TAXABILITY OF PARTNERS IN INDIA

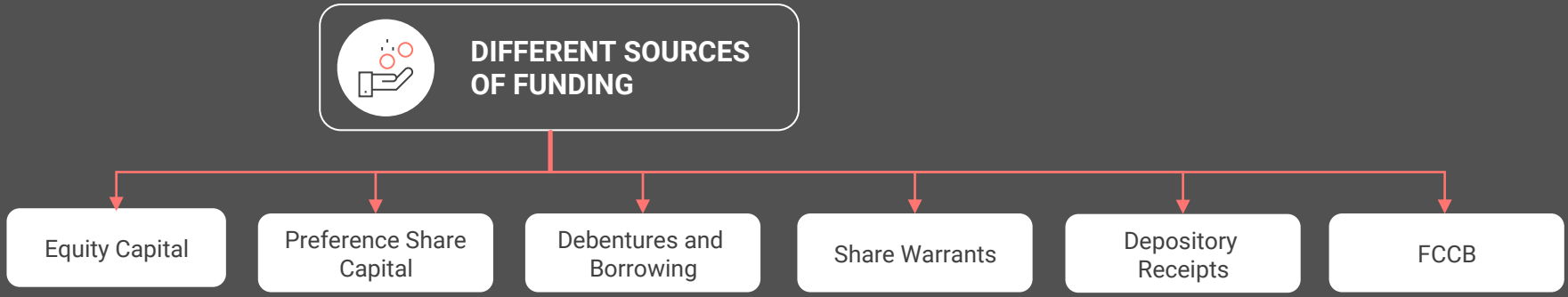
- Partners shall not be liable to tax in India on profit distributions from LLP
- Fee or royalty paid by LLP to Partners shall be subject to withholding tax in India @ 10%
- TP regulations and withholding tax requirements shall be applicable
- Remuneration received by partners from an LLP shall be taxable as the business income of the partners in India

**Applicable surcharge and cess*

Funding of Indian business

1. Equity capital

This chapter contains an overview of various models in which an Indian business can be funded.



Invested money, which in contrast to debt capital is not repaid to the investor in the normal course of business. On the balance sheet of the company, equity capital is disclosed as stockholders' equity or owners' equity.

1.1 FEATURES

- Carries voting rights in the investee company
- Pay-out via dividend
- No end-use restriction
- Freely transferable, subject to specific lock-in condition

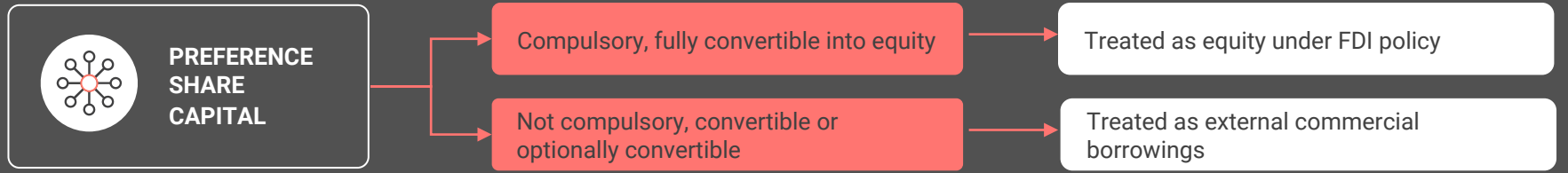
2. Preference share capital

Preference shares are shares of a company's stock with the right of fixed dividend and are paid out to shareholders before common stock dividend ('equity dividend') is issued.

2.1 FEATURES

- Fixed rate of dividend, irrespective of amount of profit
- Dividend paid on it is not tax-deductible expenditure
- Preference shareholders have voting rights under certain conditions
- Preferential right to receive dividend and repayment of share capital, in the event of winding up

2.2 TYPES OF PREFERENCE SHARE CAPITAL



3. Debentures

Companies can raise funds by issuing debentures, bonds and other debt securities or by accepting deposits from the public. Debentures can be redeemable, perpetual, bearer or registered, and convertible or non-convertible.

Compulsory, fully convertible debentures are treated as equity under the FDI policy. Non-convertible/optionally convertible debentures are treated as ECB and should conform to ECB guidelines.

Conversion ratio on compulsory, convertible debentures should be determined upfront. The rate of interest is subject to Indian TP regulations and corporate laws.

3.1 EXTERNAL COMMERCIAL BORROWINGS (ECB)

Commercial loans availed in foreign currency are termed as ECB. The RBI, with a view to further improve the ease of doing business in India has rationalized the extant framework for ECB and Rupee Dominated Bonds. Under the revised framework, the loans can be raised under the following 2 options:

- ***Foreign Currency ('FCY') denominated ECB;*** - ***INR denominated ECB***

ECB under the above mentioned 2 options have certain conditions with respect to eligible borrowers, lenders, all-in-cost ceiling, end use restriction, exchange rate, etc. which has been duly explained in the ECB Master Directions as issued by RBI..

3. Debentures

Further, the list of eligible borrowers has now been extended to include “all entities eligible to raise Foreign Direct Investment (‘FDI’)”. As a result of the same, LLPs and trading entities are now eligible to raise ECB.

Indian entities who have borrowed monies from outside lender by way of issuance of Rupee Denominated Bonds are allowed concessional tax rates on the interest income earned, subject to satisfaction of certain conditions.

3.2 LISTED DEBENTURES/BONDS

SEBI-registered FIIs/FPIs/FPIs are allowed to invest in listed debt securities, subject to regulatory conditions.

3.3 BANK LOANS

A bank loan is the most common form of loan capital for a business. A bank loan provides medium or long-term finance.

3.4 CONVERTIBLE NOTES

Convertible Note is an instrument issued by an Indian startup company for an amount of INR 2.5 million or more initially as debt, which is repayable at the option of the holder, or convertible into equity shares of such startup company, within a period not exceeding five years from the date of issue of the convertible note.

4. Share warrants

Share Warrants can be issued by an Indian Company in accordance with the provisions of the Companies Act, 2013 and Regulations issued by the Securities and Exchange Board of India (in case of listed companies).

Further, as per the FEMA guidelines, at least 25% of the consideration shall be received upfront and the balance amount within 18 months of issuance of share warrants. In case of non-payment of balance consideration, the forfeiture of the amount paid upfront will be in accordance with the provisions of the Companies Act, 2013 and the Income Tax provisions, as applicable.

5. Depository receipts

Depository Receipt means a foreign currency denominated instrument whether listed on an international exchange or not, issued by a foreign depository in a permissible jurisdiction on the back of eligible securities issued or transferred to that foreign depository and deposited with a domestic custodian and includes ‘global depository receipt’ as defined in the Companies Act, 2013.

A company can issue depository receipts after complying with the provisions as prescribed under the Companies Act, Depository Receipts Scheme, 2014, FEMA guidelines and other prescribed regulations issued by RBI. The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank.

6. Foreign currency convertible bond (“FCCB”)

FCCB is a bond issued in accordance with the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and as amended from time to time. It is subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole or in part.

FCCBs having underlying of instruments in the nature of debt will not be reckoned for total foreign investment.

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%**	▪ 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%**	▪ 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%**	▪ Companies claiming prescribed deduction, loss attributable to such deduction, additional depreciation and MAT credit; and ▪ Total 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 ben 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 REGMIE

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.

Transfer pricing regulations

With the increase in the size of the global markets, trade practices have seen significant increase in cross border transactions. In present times, MNCs have global presence and operate in more than one country by way of various forms. Resultingly, it is very common for MNCs to transfer goods or services by a company from one tax jurisdiction to a company in another tax jurisdiction.

It is an internationally accepted practice that such 'transfer pricing' (TP) should be governed by the Arm's Length Principle (ALP) and the transfer price should be the price applicable in case of an international transaction. In other words, the transaction between associates should be priced in the same way as a transaction between independent enterprises.

Today in India, transfer pricing is one of the most important matters considered by MNCs as they attempt to fairly distribute their profits amongst the companies within the group.

TP provisions in India are generally in line with the TP guidelines for MNCs and tax administrators issued by the Organization for Economic Co-operation and Development (OECD), though with certain noteworthy differences.

1. Meaning of associated enterprises

According to Indian TP regulations, two enterprises are considered to be ‘associated’ if there is direct or indirect participation in the management, control or capital of an enterprise or by the same persons in both the enterprises.

Furthermore, TP regulations suggest certain other deeming provisions that trigger an associated enterprise relationship, such as shareholding, giving more than 26% voting power, dependence on source of raw materials or customers, influences on price, depending on borrowings, and authority to appoint BOD or EDs beyond a certain threshold.

2. Meaning of International transaction

The TP regulations define an international transaction as a transaction between two or more AEs, where either or both of which are non-residents and have a bearing on the profits, income, losses or assets of such enterprises.

A few examples of international transactions subject to TP are:

- Purchase, sale, lease of tangibles or intangibles;
- Capital financing such as loan, purchase/sale of equity;
- Provision/availing of services;
- Cost apportionments, allocations, contributions;
- Cost reimbursements;
- Transaction of business restructuring or re-organisation;
- Transactions having a bearing on profits, income, losses or assets; and
- Transactions with unrelated parties as a result of prior arrangements with related parties.

Further, a transaction with a non-AE may also be deemed as an international transaction if a prior agreement or arrangement pertaining to such transaction exists between the non-AE and the taxpayer's AE.

3. Specified Domestic transactions

The Finance Act 2012 brought certain Specified Domestic Transactions ('SDT') under the umbrella of TP regulations in India. The transactions exceeding INR 200 million are covered under such provisions, which includes transactions with units eligible for tax holiday, and newly set up manufacturing companies covered u/s 115BAB.

4. Introduction of Three-TIER documentation

The Government, in line with OECD's BEPS Project (Action 13) has introduced a three-tier TP documentation process, keeping in mind India's commitment to implementing OECD/G20's BEPS recommendations.

Taxpayers will now need to prepare a master file, a local file and a CbCR (Country-by-Country Report). The local file will have to be maintained in the same manner as earlier years.

Indian TP regulations require taxpayers to maintain prescribed the TP documentation and information, and electronically furnish an accountant's report to the tax authorities containing the prescribed details about international transactions.

The new regime is effective from FY 2016-17 onwards. In case of Indian subsidiaries with parent companies resident outside India, CbCR will be filed by the parent company or designated entities in their home countries.

Indian tax authorities will have access to CbCR-related information through mutual exchange of information agreements with such countries, failing which their Indian subsidiaries will have to provide the reports.

India has signed the Multilateral Competent Authority Agreement (MCAA) to facilitate automatic exchange of CbCR. By doing so, it has agreed to bilaterally and automatically exchange CbCR with countries that are signatories of the MCAA.

4. Introduction of Three-TIER documentation

Master File:

- *Intends to provide an overview of the MNC's business*
- *Applicable in India from FY 2016-17 onwards*
- *Due date – 30th November*
- *Documentation in line with Action Plan 13, with few key additional requirements*
- *Threshold – International transactions exceeding INR 500 million during the financial year and the consolidated group revenue exceeding INR 5 billion during the financial year*

Local File:

- *Refers to international transactions of the taxpayer*
- *Due date – 31st October*
- *Documentation requirement same as earlier years*
- *Threshold for maintaining documentation – International transaction exceeding INR 10 million during the financial year; no minimum threshold for specified domestic transactions.*
- *Threshold for reporting a transaction – No minimum threshold for international transactions; INR 200 million threshold for specified domestic transactions.*

4. Introduction of Three-TIER documentation

CbCR:

- *Seeks information related to the global allocation of MNC's income and taxes paid in addition to the location of economic activity within MNC group*
- *Applicable in India from FY 2016-17 onwards*
- *Due Date – 31st December**
- *Details required in line with Action Plan 13 report.*
- *Threshold – Consolidated group revenue exceeding Euros 750 million*

** due date may change depending upon parent entity's financial year.*

5. Transfer pricing calendar

FORM NAME	PARTICULARS	DUE DATE
Form 3CEB	*Local File*	31st October
Form 3CEAA	*Master File*	30th November
Form 3CEAB	*Intimation by designated entity for filing of Master file*	31st October
Form 3CEAC	*Intimation of CbCR being filed by parent entity or alternate reporting entity*	31st October
Form 3CEAD	*CbCR*	31st December*

** due date may change depending upon parent entity's financial year.*

6. Mechanism for providing clarity for TP issues in India

6.1 SAFE HARBOR RULES

In order to reduce the number of TP audits and prolonged disputes, the Finance Act (No. 2) 2009 provided that the determination of ALP with respect to international transactions shall be subject to Safe Harbor Rules (SHR). The CBDT is empowered to draft and issue SHR. Safe harbor indicates circumstances under which tax authorities accept a transfer price declared by a taxpayer. Safe harbor rules have been notified by the CBDT for various types of eligible transactions.

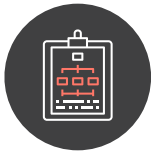
6.2 ADVANCE PRICING AGREEMENTS (APA)

The Finance Act 2012 introduced an enabling provision which empowers the CBDT to enter into an APA with a taxpayer to determine ALP or to specify the manner in which an ALP is to be determined, in relation to an international transaction. APA is an effective tool in place in several countries with established transfer pricing regimes, to provide certainty and avoid potential disputes in a cooperative manner.

Some of the salient features of the provisions are as follows:

- ***APAs are applicable for a maximum prospective period of 5 consecutive years, with a provision for roll-back of up to 4 years;***
- ***Types of APA – Unilateral, Bilateral and Multilateral;***
- ***APA team includes revenue officials, experts in economics, statistics, law, etc.;***
- ***Filing fees – approx. INR 1 million to INR 2 million, depending upon inter-company transactions;***
- ***Provides for simplified annual compliance report during APA term for covered transactions;***
- ***Provides for annual compliance audit by transfer pricing officer;***
- ***An APA is binding on income tax authorities and the taxpayer.***

7. Recent developments



7.1 THIN CAPITALISATION RULES

In line with recommendations from OECD's BEPS project, the Finance Act 2017 has introduced the Thin Capitalisation Rules. These provisions do not allow deduction for payment of interest under certain circumstances.

As a basic rule, there will be a 30%* EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) cap on claims for payment of interest to overseas-related parties. Excess interest disallowed in a year will be eligible for carry-forward up to 8 consecutive years.

7.2 SECONDARY ADJUSTMENT

The Indian Finance Act 2017 introduced a secondary adjustment mechanism vide Section 92CE of the IT Act. The primary adjustment results in addition to income or reduction in expense and creates an additional tax liability for taxpayers.

The secondary adjustment will be applicable for the following primary adjustments:

- Suo-moto adjustment offered by taxpayers;
- Adjustment made by Tax Officer (TO) and accepted by taxpayer;
- Adjustment determined by an Advance Pricing Agreement (APA);
- Adjustment made according to India's Safe Harbor Rules;
- Adjustment arising due to a Mutual Agreement Procedure (MAP) resolution.

As per the existing provisions, the primary adjustment, if not repatriated to India within 90 days, shall be deemed to be an advance made by the taxpayer to such AE.
Accordingly, the provision adopted the scheme of imputing interest on the amount of primary adjustment imposed upon the taxpayer till the said adjustment amount is repatriated in India.

Further, an amendment was made vide Finance Act, 2019 which provided an alternative to the taxpayers to pay a “one-time” and final income tax at the rate of 18% plus surcharge of 12% and cess thereon, on the amount of primary adjustment. No repatriation will be required in the given case. The same is applicable w.e.f. 1st September 2019.

Goods and Services tax

Goods and Services tax

The Government of India implemented the Goods and Services Tax ('GST') with effect from July 1st, 2017 to address and eliminate the old tax structure and its shortcomings. The comprehensive Goods and Services Tax replaced the multiple indirect tax structures, which earlier included Value Added Tax, Sales Tax, etc.

The implementation of GST received overwhelming support across industries. It was embraced as an opportunity to redefine supply-chain models, customize IT processes, and evaluate internal and external arrangements to safeguard interests and minimize their tax costs.

1.Levy of GST

- It is a dual levy with State/Union territory GST and Central GST
- Intra-state supplies attract CGST + SGST/ UTGST
- Inter-state supplies attract IGST which is the sum total of CGST and SGST/UTGST

CATEGORY	APPLICABILITY
CGST	*On transactions within the state or union territory; Levied by Central Government*
SGST	*On transactions within the state (including Delhi and Puducherry); Levied by the state*
UTGST	*On transactions within union territories without a legislature (all except Delhi and Puducherry); Levied by the union territory*
IGST	*Applicable on inter-state and import transactions; Levied by Central Government*

2. BENEFITS OF GST

- Wider tax base
- Elimination of cascading effect of multiple indirect taxes
- Rationalization of tax structure
- Harmonization of Centre and State administrations

3. Important aspects under GST

3.1. DESTINATION PRINCIPLE

The GST structure follows destination principle. Accordingly, imports are subject to GST, while exports are zero-rated. In case of inter-state transactions within India, the state tax applies in the state of destination as opposed to that of origin.

3.2 INPUT TAX CREDIT (ITC)

One of the key features of GST is that it has brought in a liberal ITC regime. Taxpayers are permitted to avail ITC of GST (which they have paid on procurement during the course of, or in furtherance to business to make taxable supplies). ITC can also be utilized to make payment for output GST liability.

Under the earlier indirect tax regime, cross-utilization of VAT paid on goods against output Service Tax liability and vice-versa was not permitted.

Under GST, cross-utilization of taxes paid on goods and services is allowed.

3.3 TRANSACTION BETWEEN RELATED PERSONS

Generally, only supplies made for a consideration are liable to GST. However, in the case of transactions between related parties and the locations of the same entity in different states, even supplies made without consideration will attract GST.

3.4 EXPORTS AND SUPPLIES TO SEZS (SPECIAL ECONOMIC ZONES):

Export of goods or services and supplies to SEZs have been categorized as zero-rated supplies. A supplier making zero-rated supplies is eligible to either:

- Supply goods or services under Letter of Undertaking without payment of tax
- Supply goods or services by paying tax, and thereafter claiming refund for tax paid

3.5 IMPORT OF GOODS

Import of goods into India continues to be governed by the Customs Law. Such imports will attract Basic Customs Duty (BCD), Social Welfare Surcharge, IGST and Compensation Cess (if applicable). BCD and Social Welfare Surcharge paid at the time of import is non-creditable and is therefore, a cost. However, ITC of IGST will be available for adjustment against output GST liability. ITC of Compensation Cess is only available for utilisation against an output Compensation Cess liability.

4. Registration

A supplier of goods and/or services is required to obtain GST registration in every state to which it supplies goods and/or services. GST registration is not required if the aggregate turnover of a supplier is less than the threshold limit for GST Registration, or if the person is exclusively engaged in supplying GST-exempt goods and/or services.

4.1 Compulsory Registration

- Supplier making inter-state taxable supply of goods;
- Every electronic commerce operators;
- Non-resident taxable persons making taxable supply etc.

4.2 THRESHOLD LIMIT FOR GOODS

Currently, the Government the threshold limits is INR 4 Million (INR 2 Million, in case of special category state)

4.3 THRESHOLD LIMIT FOR SERVICE PROVIDERS

Currently, the limit is INR 2 million for service providers (INR 1 million in case of special category states).

However, specified categories of persons (such as non-resident taxable persons or those liable to pay tax under representation) are mandatorily required to obtain GST registration even if their annual turnover is less than the prescribed threshold.

5. Composition scheme

To ease the compliance burden, small taxpayers with an aggregate turnover of up to INR 15 Million in case of goods (INR 7.5 Million for North eastern states) and INR 5 Million in case of services have been given the option to opt for a Composition Scheme. Under this scheme, suppliers can pay tax at a specified percentage of their turnover during the year without claiming the benefit of ITC on their procurement. Such suppliers cannot separately recover taxes from buyers on their invoice.

Consequently, buyers are not eligible for claiming ITC on the tax paid by suppliers wanting to pay under the Composition Scheme. A supplier making inter-state supplies is not eligible for the Composition Scheme and cannot opt for it.

The tax rate prescribed under the scheme:

- 5% of the turnover for persons engaged in supply of food or beverages for human consumption
- 1% of the turnover for manufacturers and traders
- 6% of turnover for service providers in case turnover in the proceeding Financial Year is up to INR 5 Mn

6. Liability to pay GST

Generally, a supplier of goods or services bears the liability to pay GST. However, the recipient is liable to pay tax for certain types of transactions (GTAs, advocates, directors, etc.). This is usually referred to as reverse charge mechanism.

7. COMPLIANCE REQUIREMENTS

The GST law prescribes stringent compliance-related requirements. A supplier of goods and services is required to file multiple returns within a month on a state-wise basis for each registration.

All mandatory compliances under GST are to be undertaken on a common portal managed by the Goods and Service Tax Network (GSTN).

It is clear that businesses will need to be supported by robust IT/ERP systems in order to comply with the complex compliance-related requirements under GST.

8. E-Invoicing

The GST Council has approved the introduction of E-invoicing or electronic invoicing in a phased manner for reporting of business-to-business (B2B) invoices to GST system. CBIC has notified that e-invoicing will be applicable from 1st April 2021 for businesses with a turnover of more than INR 500 Mn (in any financial year from FY 2017-18 onwards).

9. REFUNDS

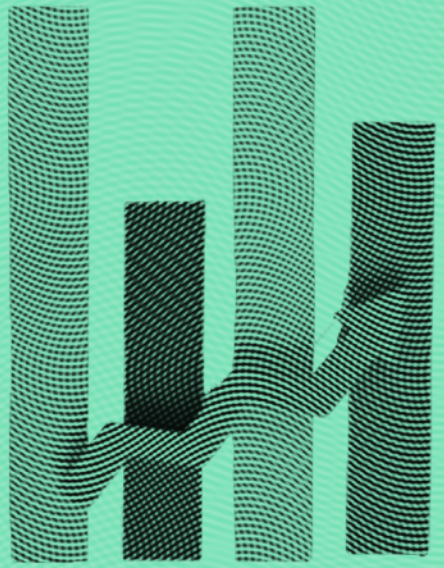
Refunds form a very essential part of any business since they facilitate the businesses to claim back blocked funds, which further helps in easing out working capital pressure.

Central Board of Indirect taxes and Customs ('CBIC') has streamlined and standardized the process of claiming refunds with least possible submission of documents and department intervention.

Below are the broad categories wherein the refunds can be claimed :

1. Export of goods/services including supply to SEZ;
2. Accumulated Input tax Credit ('ITC') under Inverted duty structure *(i.e., when output tax rate is less than input tax rate)*
3. Excess payment due to inadvertent mistake
4. GST-TDS deducted by the specified organization

Expatriate taxation



The concept of tax residency

The Indian fiscal year runs from 1st April to 31st March. An individual is liable to pay taxes in India based on his/her tax residency during a fiscal year. Tax residency is dependent on the stay of the individual in India, irrespective of the purpose of such stay. An individual can be a Resident and Ordinarily Resident (ROR), Resident but not Ordinarily Resident (RNOR) or Non-Resident (NR) in a year. If he arrives in India for the first time, he will be a NR/RNOR for the first two fiscal years. Generally, a person who spends more than 182 days in India during a fiscal year and more than 729 days in India in the previous 7 years will be a ROR for that fiscal year. The tax residency of an individual will determine the scope of income liable to be taxed in India.

SOURCE OF INCOME	ROR	RNOR/NR
RECEIVED IN INDIA	**TAXABLE**	**TAXABLE**
SOURCED IN INDIA	**TAXABLE**	**TAXABLE**
SOURCED AND RECEIVED OUTSIDE INDIA	**TAXABLE**	**NOT TAXABLE**

The concept of tax residency

1.2 TAX REGISTRATION NUMBER OR PERMANENT ACCOUNT NUMBER

An individual who is liable to pay taxes or enters into a financial transaction in India must apply for a tax registration number, i.e., PAN, with the Indian income tax authorities via Form 49AA/Form 49A, as applicable together with the prescribed documents. PAN is generally allotted within 15 days of submitting prescribed documents. It is recommended that an individual arriving in India with an intention of working in India should apply for PAN on or before arrival in India. PAN can be applied online by the individual on submission of relevant documents with an option of receiving E-PAN (i.e. PAN on e-mail) or at his home country by payment of the prescribed fee.

1.3 INDIVIDUAL TAX RATES

India follows progressive rates of taxation for individuals. From the Financial year 2020-21 (1 April 2020 to 31 March 2021), individuals have an option either to pay taxes at existing slab rates by availing benefits of exemptions and deductions or pay tax at new / reduced rates by forgoing certain exemptions/deductions.

Considering that expatriates coming to India on employment have to abide with the minimum salary restriction and thus have an estimated tax liability of 30%- 35%, the quantum of benefit of the new tax regime would have to be analyzed on a case-to-case basis.

The concept of tax residency

INDIVIDUAL TAX RATES

Existing Slab Rates

Income Slab (INR)	Rate
*Up to 2,50,000**	NIL
250,001 - 500,000	5
500,001 – 1,000,000	20
1,000,001 or above	30

Rebate under section 87A is available to a resident individual if quantum of total income does not exceed INR 500,000. Rebate available shall be the lower of amount of tax on total income or INR 12,500.

New Regime (Optional)

Income Slab (INR)	Rate
Up to 2,50,000	Nil
250,001 - 500,000	5
500,001 – 750,000	10
750,001 – 1,000,000	15
1,000,001 – 1,250,000	20
1,250,001 – 1,500,000	25
1,500,001 or above	30

The concept of tax residency

1.4 ADDITIONAL TAXES

Surcharge is levied on the amount of tax computed on the total income at following rates if the total income exceeds specified limits.

NATURE OF INCOME		RANGE OF TOTAL INCOME (AMOUNTS IN INR & MILLIONS)				
		Up to 5	5 to 10	> 10 up to 20	> 20 up to 50	>50 up to 10 and >10
CAPITAL GAIN ON LISTED EQUITY SHARES AND UNITS	LTCG	Nil	10%	15%	15%	15%
	STCG	Nil	10%	15%	15%	15%
DIVIDEND AND INTEREST		Nil	10%	15%	15%	15%
ANY OTHER INCOME		Nil	10%	15%	25%	37%

Further, an education cess at 4% shall be levied on the amount of income tax and surcharge in all cases.

The concept of tax residency

1.5 TAX PAYMENT

Taxes on the income earned will be payable through the following mechanisms.

Withholding Tax (TDS)	▪ Estimation of total income ▪ Monthly deduction and remittance of taxes
Advance Tax	▪ Triggered only if tax payable exceeds INR 10,000. ▪ Determination of tax on estimated personal income ▪ Payment of tax in installments due by 15th June/September/December and March of every fiscal year in proportion of 15%/45%/75% and 100% respectively
Self-Assessment Tax	▪ Determination of tax on actual income ▪ Payment of tax on or before filing return of income

The concept of tax residency

1.6 TAX RETURN

The due date for filing tax returns in India is 31st July, following the end of every fiscal year. The return has to be filed electronically. There is no system of joint filing of tax return with one's spouse. The return may be subjected to scrutiny by revenue authorities. An individual who qualifies as ROR in a fiscal year has to report moveable and immoveable assets held overseas along with any financial interest or signing authority abroad and trusteeship in offshore trusts in the Indian tax returns. This requirement is independent of the individual having taxable income for the fiscal year.

1.7 INCOME TAX CLEARANCE CERTIFICATE (ITCC)

An individual who is returning to his home country permanently should obtain an ITCC, i.e., a No-Objection Certificate from the income tax authorities, which certifies that the individual has no income tax dues in India. This certificate is required to be presented to the immigration authorities at the time of departure from India.

Taxation principles

2.1 SALARY INCOME

Remuneration earned by an individual for services rendered in India during the assignment period is taxable in India (irrespective of where the payment has been received). This will include salary for any holiday period during the assignment. In addition, any sum that is relatable to the Indian service period and received preceding/succeeding the assignment period will also form a part of salary income. Perquisites/fringe benefits such as accommodation, car, employee stock option, education benefits (subject to calculation) provided by the employer are also liable to be taxed as a part of the salary. However, contribution to Provident Fund in India is eligible for deduction from total income up to INR 1,50,000, subject to specified conditions.

2.2 DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA)

India has entered into 94 Double Taxation Avoidance Agreements and 10 Tax Information Exchange Agreements. An individual who is a resident of a country which India has entered into a DTAA with could avail the treaty benefits to either eliminate taxation in one of the countries or avail credit of taxes paid in the country of residence.

Taxation principles

Commencing from Indian fiscal year 2012-13, individuals would require a Tax Residency Certificate (TRC) from the tax authorities of the resident country to avail treaty benefits in the Indian tax return. In addition, prescribed details are to be submitted in Form 10F, if not already mentioned in the TRC.

Individuals rendering services in India for a shorter span may be eligible to claim short stay exemption under the Indian Income

2.3 SOCIAL SECURITY OBLIGATIONS IN INDIA

Foreign nationals, i.e., International Workers (IWs) working in establishments in India to which Employees' Provident Fund (PF) regulations apply are required to contribute to PF except those who have been specifically exempted under the regulations.

Social Security Agreements (SSA): Individuals from countries with which India has signed an SSA, contributing towards the social security of the home country and holding Certificate of Coverage (COC) from the home country will not be required to contribute towards the Indian social security. The COC needs to be filed with the PF authorities.

Taxation principles

Bilateral Comprehensive Economic Agreement (BCEA): India has entered into BCEAs with various countries. Individuals from countries whom such agreements have been entered into with before 1st October 2008 and contributing to their home country's social security would also be exempt from Indian social security contributions on satisfaction of specified conditions. India has entered into a BCEA with Singapore prior to 1st October 2008. Hence, individuals from Singapore can avail exemption under the BCEA, subject to fulfilling the conditions specified therein.

Mandatory Contribution: As per the provisions of the PF scheme, both employer as well as employee will contribute 12% of monthly pay (as defined). Out of the employer's contribution, 8.33% of monthly pay will be towards the pension fund and the balance 3.67% will be towards Provident Fund. An employer needs to deposit the PF by the 15th of the next month. The details of the individuals also need to be provided on a monthly basis in a prescribed form.

Withdrawal/Benefits: The amount deposited in the scheme can be withdrawn by an individual under specific circumstances. Further, the amount withdrawn shall be payable to the credit of the individual's bank account or to the employer's bank account in India.

Taxation principles

PF Withdrawal:

- In case an SSA exists, then as per the provisions of the SSA
  In case no notified SSA exists, then:
  - *On retirement from services after attainment of 58 years*
  - *On retirement on account of permanent and total incapacity for work due to bodily or mental infirmity, as certified by a specified medical practitioner*

Pension Withdrawal:

- Withdrawal benefit as per the provisions of the SSA, where SSA exists
- Annuity – after 58 years of age, subject to satisfaction of certain conditions.

VISA and registration requirements

A foreign national visiting India needs to obtain an appropriate visa before entering India. The type of visa to be obtained depends upon the purpose of the visit to India. The visa may be issued only by the Indian Missions from the country of origin or from the country of domicile of the foreign national, provided that the period of permanent residence of the foreign national in the country of domicile is at least two years.

3.1 BUSINESS VISA AND EMPLOYMENT VISA

The guidelines provide that a business visa may be issued to a foreign national visiting India for a short duration and restrict the nature of activities for which it can be issued.

The activities that fall under the business visa include establishing or exploring the possibility of set-up of businesses, attending meetings, liaising with potential business partners or function as partner/director, negotiating supplies, conducting trade of goods and providing high-level technical guidance on ongoing projects, including monitoring the progress of such projects, etc.

Similar guidelines are provided for employment visa. Illustratively, an employment visa may be issued to a foreign national visiting India for the purpose of taking employment in India, executing projects or contracts, including installation and commissioning of machinery under a contract for supply, providing technical support or services, transfer of know-how for which royalty is paid and consulting on contract basis in the areas of highly skilled services.

VISA and registration requirements

An employment visa may be granted only to the following individuals:

- ***Skilled or qualified professionals visiting India for employment in companies in India or in foreign companies***
- ***Executing projects in India and having salary in excess of INR 1,625,000 per annum (approximately at USD 25,000) (this threshold is not applicable to certain categories of individuals)***

An employment visa may not be issued if a considerable number of qualified Indians are already available to fill the position. No change of employer will be permitted during the duration of the employment visa within India, except under specified circumstances and on satisfaction of specified conditions. An employment visa can be extended in India on an annual basis for a period of five years starting from the date of initial issuance of the visa.

3.2 PROJECT VISA

The Government of India has introduced project visas for foreign nationals coming to India for the "execution of projects in the power and steel sectors". A specific endorsement will be made on the visa sticker indicating the name of the project, the location of the project and the employment/working of foreign national will be restricted to the location of the project. The period of visa will be determined by the Indian Missions in each case and will have a validity of a period of one year or the actual duration of the project, whichever is less with multiple entry facility. The visa can be extended only with the approval of the Ministry of Home Affairs.

VISA and registration requirements

3.3 RESIDENTIAL PERMIT

All foreign nationals holding Employment Visa must register with the police authorities (FRRO and/or FRO) at the local registration office within 14 days of after their date of arrival if their visas are valid for longer than 180 days or if the visa stamp specifically requires this registration, while the same holding a business visa with a stipulation specifically requiring a registration, they must register with FRRO and/or FRO at the local registration office within 14 days of their arrival in India.

Further, foreign nationals holding business visa, must obtain registration with FRRO and/or FRO at the local registration office, if their aggregate stay in India exceeds 180 days in a calendar year.

Prescribed documentation must be presented to registrar and the same may vary based on the location of the registration office. The foreign nationals are issued with a residential permit upon completion of the registration process.

The application for registration is to be applied online at www.indianfrro.gov.in. The requisite documents including scanned copy of passport and visa also need to be submitted in soft along with application for registration. Usually, personal visit to registration office is not required, however, the authorities may call the individual in person, if deemed necessary by them. Registration is generally valid for the term of the visa or for one year, whichever is less, and may be extended upon application.

VISA and registration requirements

3.4 FAMILY AND PERSONAL CONSIDERATIONS

Entry visas (X visa) are issued to accompanying family members of individuals visiting India on business or for employment. However, this visa is issued to legal spouses and dependents only. India does not recognize “common law” partners. Under the guidelines, the visa of the spouse of an employee on an intra company transfer may be converted from an X visa to an employment visa, subject to specified conditions.

Spouses or dependents of working expatriates must obtain separate work permits to be employed in India. Family members intending to reside with a working expatriate must register separately at the local registration office. X visa can also be extended up to the validity of the employment visa of the expatriate.

Other immigration matters

4.1 RESTRICTED AREAS/PROTECTED AREAS

Advance permission is required from Indian diplomatic missions abroad or from the Ministry of Home Affairs (MHA) in New Delhi to visit certain states or areas within these states. The areas which require prior approval are the states of north-east India, parts of Himachal Pradesh, Jammu and Kashmir, Uttarakhand, Rajasthan and the Andaman and Nicobar Islands.

4.2 PERSON OF INDIAN ORIGIN (PIO) AND OVERSEAS CITIZENS OF INDIA (OCI) CARD HOLDERS

Visa and Registration requirements for Person of Indian Origin (PIO) and Overseas Citizens of India (OCI) card holders are as follows:

PARTICULARS	PIO CARD	OCI CARD
VISA	NOT REQUIRED	NOT REQUIRED
REGISTRATION WITH FRRO	REQUIRED IF STAY EXCEEDS 180 DAYS	NOT REQUIRED

Other immigration matters

4.3 REGISTRATION

Foreign nationals working in India need to obtain registration with the FRRO within 14 days of their arrival in India. This registration needs to be renewed periodically during their service tenure in India.

4.4 EXCHANGE CONTROL

India has liberalized its Exchange Control provisions to allow expatriates to freely repatriate their remuneration back to the home country after payment of appropriate taxes and social security and submission of appropriate documents. The norms also permit employers to make direct payments to the employees' foreign bank accounts, net of appropriate taxes and social security.

Requirements in a snapshot

REQUIREMENTS	TO BE COMPLETED BY	PERIODICITY
FRRO Registration	Within 14 days of arrival	To be renewed periodically
PAN application	Prior to FRRO registration	One time
TAX PAYMENTS		
Personal Income	15 June, 15 September, 15 December and 15 March	Quarterly
Tax return	July	Annual
ITCC	Before departure	One time
Social security	On a monthly basis by the employer	Monthly

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
- GST Payment – Monthly
- GST Audit – Annual

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