



# Goods & Service 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

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





# Chapters

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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***







# Goods and Services tax





# Goods and Services tax

The Government of India implemented the Goods and Services Tax ('GST') with effect from July 1<sup>st</sup>, 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	<i>On transactions within the state or union territory; Levied by Central Government</i>
SGST	<i>On transactions within the state (including Delhi and Puducherry); Levied by the state</i>
UTGST	<i>On transactions within union territories without a legislature (all except Delhi and Puducherry); Levied by the union territory</i>
IGST	<i>Applicable on inter-state and import transactions; Levied by Central Government</i>

## 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





# Annexures for compliance matters







# Company law

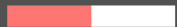
## Secretarial Compliance(s) With Respect To Meetings, Minutes And Other Related Registers And Records For Companies

- 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– Annual





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