



INVEST INDIA

NATIONAL INVESTMENT PROMOTION
& FACILITATION AGENCY

Taxation

September 2019

Background

Post its independence in 1947, India has been a federal republic governed under a parliamentary system. India is a pluralistic, multilingual, and a multi-ethnic society, which today is a union of 28 states and 9 union territories. Since, economic liberalisation reforms in 1991, Indian economy has grown multi-fold and is one of the fastest-growing major economies of the world.

The Government of India has implemented many reforms in the recent past to boost India's growth. Efforts towards transparency in governance, liberalisation of foreign direct investment (FDI) norms, easing the cost of doing business, stability and predictability in tax decisions, reforms in the taxation and regulatory environment of the country. The Government of India has also launched various flagship schemes such as Make in India, Skill India, Digital India, Start-up India to complement various sector reforms. Today, the Indian economy enjoys macroeconomic stability as well as investor confidence.

The Indian regulatory and tax authorities have rolled out certain key changes to reform and upgrade the country's regulatory and tax for different entities functioning in the economy and are subject to the different rates in the environment. For instance the Goods and Service Tax (GST) is one of the major reforms in the economy and has replaced the complex multiple indirect tax structure from 1st July 2017. The objective of this toolkit is to present a synopsis of the tax and regulatory laws of India and can be referred to as a ready reckoner for all future references.

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Abbreviations

AAC	Annual activity certificate	FTS	Fee for technical services
AAR	Authority for Advance Rulings	Gol	Government of India
AD	Authorized dealer	GST	Goods and Service Tax
AE	Associated Enterprises	IGST	Integrated Goods and Service Tax
ALP	Arm's length price	ITA	Income-tax Act, 1961
APA	Advance Pricing Agreements	LLP	Limited Liability Partnerships
BCD	Basic Custom Duty	LO	Liaison office
BCEA	Bilateral Comprehensive Economic	M&As	Mergers and Acquisitions
Agreements		MAT	Minimum Alternate Tax
Bn	Billion	Mn	Million
BO	Branch office	MSME	Micro and Small Enterprises
COC	Certificate of Coverage	NOR	Not ordinarily resident
CSR	Corporate Social Responsibility	NR	Non resident
CST	Central Sales Tax	PAN	Permanent Account Number
CVD	Countervailing Duty	PO	Project office
DPIIT	Department for promotion of industry and	R&D	Research and development
internal trade		SAD	Special Additional Duty of Customs
DPIN	Designated Partnership Identification	SEZ	Special Economic Zones
Number		SSA	Social Security Agreements
DSC	Digital Signature Certificate	TAN	Tax deduction account number
FDI	Foreign Direct Investment	VAT	Value added tax
FIS	Fees for Inclusive Services		

Introduction to the toolkit

This toolkit intends to give general guidance to the readers on the taxation aspects in India. Toolkit covers key concepts involved in the taxation and regulatory environment in India.

Divided in sections, the Section 1 of the toolkit briefly explains the concepts of Income Tax in India. This is followed by a sub-section on residential status in India, one of the most crucial concepts. The Section 2 details important concepts pertaining to the Direct Taxation. In the section, one can refer to topics such as MAT, Dispute Resolution, Different Tax Regimes and Treaties for further clarity in the relevant issues in the corporate space.

Section 3 of the toolkit captures different Incentives available in India basis the purpose of such incentive. Section 4 deals with Indirect Taxes which essentially covers the recently implemented Goods and Services Tax. However, readers are requested to separately verify and check the applicability of various provisions of the laws on case to case basis. For further reading, one can refer to various clarifications and updates issued by GST Council. Sections 5 and 6 briefly touch upon the taxation aspects related to the M&A and Transfer Pricing in India. However one must refer to the 'Contacts' section for the relevant URL and Invest India coordinates for further clarification.

Reasonable efforts are made so that the information in this toolkit is up-to-date when printed/circulated. However, given the nature of the subject, It is advised to seek guidance from a professional before taking any specific steps in relation to any matter discussed in the toolkit.

Invest India

September 2019

Please note: 1 USD – 72 INR

Taxation Overview in India

Taxes in India are levied by the Central Government and the state governments. Some minor taxes are also levied by the local authorities such as the municipalities and local government.

	Major Central Tax	Major State Tax
Direct tax levied on individuals and corporate entities and cannot be transferred to others	<ul style="list-style-type: none"> • Income Tax : Tax on income of a person <ul style="list-style-type: none"> ❖ Tax on salaries ❖ Tax on income from house property ❖ Tax on capital Gains ❖ Tax on Profits and Gains from Business and profession ❖ Tax on other income 	<ul style="list-style-type: none"> • Stamp Duty and Registration: Levied for the transaction performed by way of sale/purchase / lease/ conveyance deed etc. • Property Tax
Indirect Tax Levied on goods and services and collected by intermediaries selling goods or services	<ul style="list-style-type: none"> • Customs duties: Duties on import and export of goods • Central Good & Service tax: Taxes on provision of services and supply of goods • Integrated Good & Service tax : Tax on interstate supply of goods and services • Central excise* 	<ul style="list-style-type: none"> • State Good & Service tax: Taxes on provision of services and supply of goods • Value Added Tax (VAT)*

*Alcohol for human consumption and Petroleum products

1

Income Tax

Residential Status

Residential Status & Taxability in India

Heads of Income

Expatriates – taxability, exemption and social security

Tax rates , Surcharge, Cess

Taxability of Dividends

Capital Gains

Income Tax

Residential Status

Income Tax is levied under the Income-tax Act, 1961 (ITA), which is administered by Central Government. It applies to all individual, companies, firms, Limited Liability Partnerships (LLPs), association of persons and other artificial juridical persons. A tax year (referred to as 'Financial Year' or 'Previous Year') runs from 1st April to 31st March in India.

Taxability of an income in India depends upon residential status of various taxable persons, is determined as under:

Category	Condition for qualifying as a 'Resident'
Individuals	<ul style="list-style-type: none">• Present in India for 182 days or more in a tax year, or• Present for 60 days* or more in a tax year <u>and</u> for 365 days or more in past 4 tax years immediately preceding the relevant tax year
Companies	<ul style="list-style-type: none">• Companies incorporated in India, or• Foreign Cos. having 'place of effective management' in India
Firm / LLP / Others	<ul style="list-style-type: none">• Control and management of its affairs is situated (wholly or partially) in India

The duration of 60 days shall be replaced by 182 days in following two cases:

- I. where an Indian citizen leaves India in any previous year as a member of the crew of an Indian ship or for the purposes of employment outside India;
- II. where an Indian citizen or a person of Indian origin, who being outside India, comes on a visit to India in any previous year.

Income Tax

Residential Status

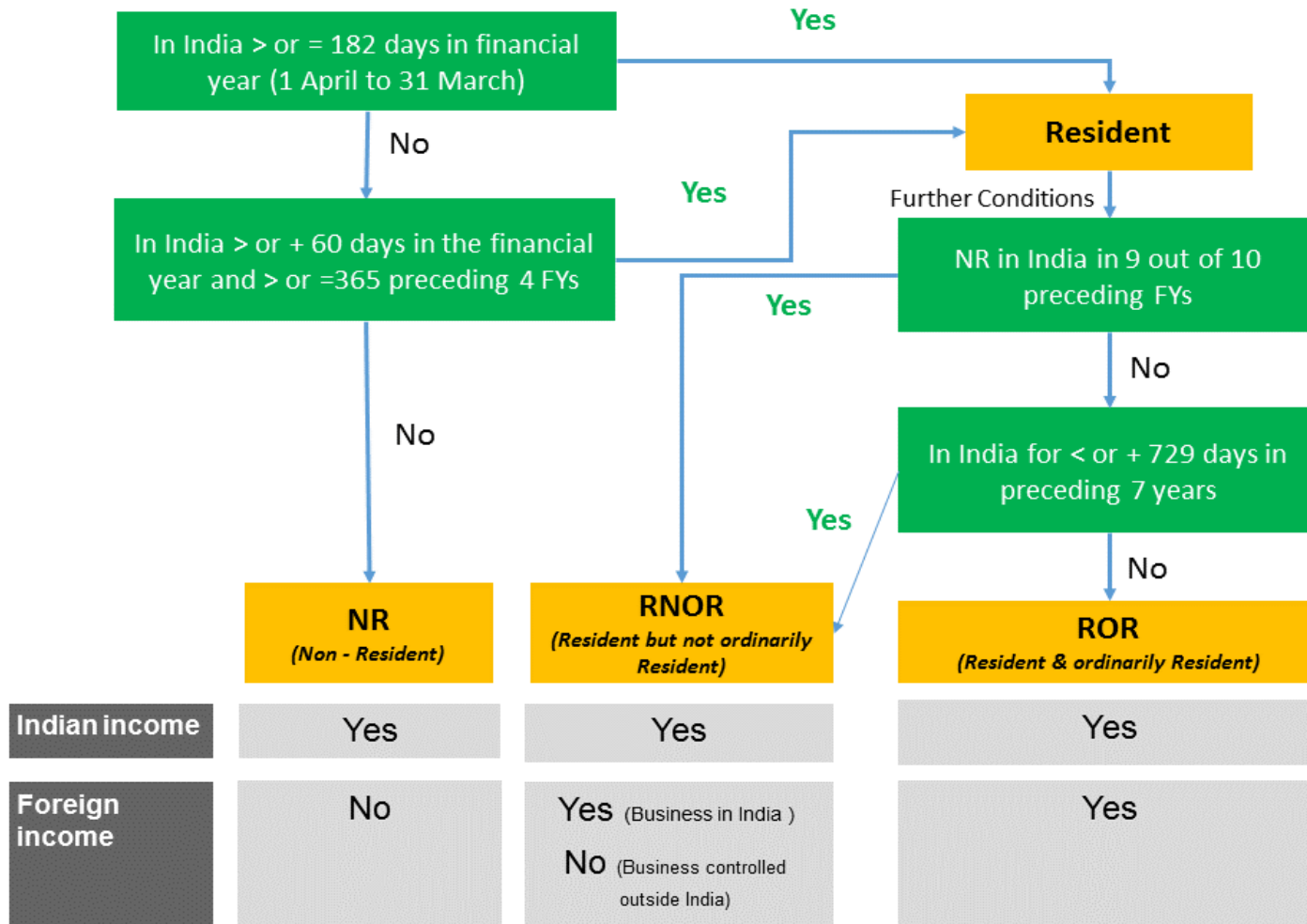
Residential status	Income taxable in India
Ordinarily Resident	Global income
Not ordinarily resident*	<ul style="list-style-type: none">• Income that arises in India, or• Income that arises outside India, but from a business controlled in India or a profession set up in India
Non-resident	Income that arises in India

Resident but not ordinarily resident (NOR): A resident individual who does not satisfy either of the following conditions, qualifies as a Resident but not ordinarily resident ('NOR'):

- If he was a NR in India, in 9 out of 10 immediately preceding tax years, or
- If he was present in India for a 729 days or less, in 7 immediately preceding tax years

Income Tax

Residential Status & Taxability in India



Income Tax

Heads of Income

Under the ITA, income is classified and accordingly taxable under the following heads:

Head of Income	Description of Income
Income from salaries	Income arising on account of employment taxable in the hands of the employee (individual)
Income from house property	It is a charge on the potential of property to generate rental income not merely on the actual rent received therefrom
Profits and gains from business or profession	Income earned by a tax payer on exercise of a business or profession computed on net basis (revenues less allowable expenses) or presumptive basis
Capital gains	Capital Gain represents the profit or gain arising to a tax payer on transfer of a capital asset during a year
Income from other sources	It is the residual head of income covering any income which is not covered under the above heads (like dividend, interest etc.)

Income Tax

Expatriates - Taxability

It is a common trend for expatriates to take up employment in India. Strategic investors also depute (under a secondment arrangement) senior level personnel to take up key managerial positions in their Indian venture.

Common concerns of such expatriates are:

- Taxability in India
- Implications under social security regulations of India

Taxability of expatriates is driven by their **tax residential status** in India.

- If their stay in India is **medium term (6 months to 2 years)**, they may qualify as **Resident but Not Ordinarily Resident**. In such a case, only the salary earned for services rendered in India (wherever received), shall be taxable in India.
- Expatriates who visit India for **very short term (less than 6 months)** are generally eligible to avail a **short-stay exemption**.

Income Tax

Expatriates – Basis of Stay

Expatriates – Medium Term Stay

Such expatriates are seldom exposed to Indian taxation in respect of incomes that arise outside India, unless they qualify as Resident and Ordinarily Resident.

Their salaries, for services rendered in India, are taxable in India in the same manner and at the same rate, as applicable to Indian salaried earners, that is:

- They are subjected to progressive taxation, at slab rates discussed later, and
- Taxable element of salary is determined on the basis its various constituents / components – for example, certain allowances enjoy tax exemption (that can be partial or conditional) and some of the in-kind perquisites are either exempt or valued in a concessional manner.

Expatriates – Short Stay Exemption

Under the ITA, salary received by a NR for the duration for which he was present in India, is exempt from Indian taxation, provided:

- His stay in India does not exceed a total of 90 days in tax year
- His employer is not engaged in any business in India, and
- Such salary is not deductible in computing any income of his employer, that may be chargeable to tax in India

DTAAs between India and several countries, grant similar exemption even where presence of such NR / expatriates in India is for a slightly longer duration.

Income Tax

Expatriates – Social Security

All employees (domestic or international) are required to contribute towards statutory social security contribution funds. Withdrawal from such funds is **possible at the time of termination of employment**.

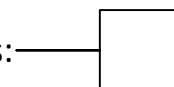
- To exempt international workers from the requirement of contributing towards Indian social security funds, **India has entered into Social Security Agreements (SSA) and Bilateral Comprehensive Economic Agreements (BCEA)** with various countries.
- As a result, inbound assignees from countries with which India has entered into a SSA, and holding Certificate of Coverage (COC) issued by their home country, **can claim exemption** from Indian social security contributions.

Income Tax

Tax Rates

AY 2020-21 (i.e. FY 2019-20)

Normal Rates for corporates (excluding surcharge and cess)

- Domestic companies:  Turnover in FY 2017-18 \leq INR 4000 mn (\$ 55.55 mn) : 25%
Turnover > INR 4000 mn (\$ 55.55 mn) in FY 2017-18 or otherwise : 30%
- Foreign companies : 40%
- Firms (including LLPs) : 30%

Press Release dated 20 September 2019 changes:

- Domestic companies can opt for concessional tax regime @22% (25.17% inclusive of surcharge and cess) provided that such a company has not claimed any income tax incentive or exemption and will not be liable to Minimum Alternate Tax (MAT)
- New Domestic manufacturing companies: 15% (17.01% inclusive of surcharge and cess) for companies incorporated on or after 1 October 2019, making fresh investments in manufacturing and commencing production on or before 31 March 2023 may opt for such concessional tax regime. Such company cannot avail any other income tax exemption/ incentive under the Income-Tax Act
- A company which avails any tax exemption/ incentive shall continue to pay tax at pre-amended rates and cannot opt for the new concessional tax regime.
- However, the option of availing lower tax regime of 22% can be opted after expiry of tax holiday/ exemption period, however, once the same is opted it cannot be subsequently withdrawn by the taxpayer.
- MAT rate for companies availing exemptions/ incentives reduced from 18.5% to 15%.

Income Tax

Tax Rates

Tax Rate	Income (INR)	Income (USD)
Nil	Up to INR 250,000	Up to \$ 3,472.22
5%	INR 250,001 - INR 500,000	\$ 3,472.23 - \$6,944.44
20%	INR 500,001 - INR 1,000,000	\$ 6944.458 - \$ 13,888.89
30%	Above INR 1,000,000	Above \$ 13,888,90

Budget 2019 changes:

- Budget has provided for relief to salaried taxpayers, it is proposed to allow a standard deduction of Rupees 50,000/- (\$ 694) or the amount of salary per annum, whichever is less in lieu of the present exemption in respect of Transport Allowance and reimbursement of miscellaneous medical expenses. (Section 16)
- if income does not exceed Rs.5,00,000 (\$ 6,944) , there is deduction of Rs. 12,500 (\$ 174) or 100% of Income tax whichever is less. Therefore, if taxable annual income of an assessee is up to Rs.5,00,000 (\$ 6,944), he shall not pay any tax but if Income exceeds Rs.5,00,000 (\$ 6,944) then slab rate shall be applicable. (Sec 87A)

Income Tax

Tax Rates

AY 2020-21 (i.e. PY 2019-20)

- **Special Rates:** Certain income are taxed at special rates. For example, **Long Term Capital Gains (LTCG)** are taxed @ 20% (in some cases, LTCG are taxed @ 10%) and in some cases **Short Term Capital Gains (STCG)** are taxed @ 15%
 - **Short Term Capital Asset (STCA)** means a capital asset held for less than thirty-six months immediately preceding the date of its transfer
 - **Long Term Capital Asset (LTCA)** means a capital asset held for more than thirty-six months* immediately preceding the date of its transfer
- * *In case of **listed shares / securities** of a company, Units of UTI or equity oriented mutual funds and zero coupon bonds, the period of thirty-six months shall be replaced with twelve months.*
- * *In the case of a unlisted shares of a company, or an immovable property, being land or building or both, the period of thirty-six months shall be replaced with twenty-four months.*

These rates are to be increased by a surcharge and education cess, discussed later.

Income Tax

Surcharge & Cess

Tax Rates are increased by Surcharge and Education Cess. **Surcharge is computed as a percentage of tax payable, whereas Education Cess is applied on the total of Surcharge and Tax payable.** Rates of Surcharge and Education Cess may vary from year to year. Presently, these rates are:

AY 2020-21 (i.e. PY 2019-20)

	Individuals / LLP	Domestic Company	Foreign Company
Surcharge	10% - If income exceeds INR 5 mn (\$ 69,444.44)	7% - If income exceeds INR 10 mn (\$ 138,888.89)	2% - If income exceeds INR 10 mn (\$ 138,888.89)
	15% - If income exceeds INR 10 mn (\$ 138,888.89)	12% - if income exceeds INR 100 mn (\$ 1,388,888.89)	5% - if income exceeds INR 100 mn (\$ 1,388,888.89)
Cess	4%		

Marginal relief is available i.e. the additional amount of income tax payable (together with surcharge) on the excess of income over INR 10 mn (\$ 138,888.89) should not be more than the amount of income exceeding INR 10 mn (\$ 138,888.89).

Income Tax

Taxability of Dividend

Taxability in the hands of company declaring the dividend

- A company declaring dividends in India, shall pay **Dividend Distribution Tax (DDT)** computed in a prescribed manner. The effective rate of DDT is 20.36% of dividend declared.
- Upon payment of DDT, dividends can be freely repatriated outside India.

Taxability in the hands of shareholder

- Dividend in excess of INR 1 mn (\$ 13,888.89) received by any resident shareholder (except where the shareholder is an Indian company itself), are taxable in the hands of such shareholder @ 10% plus surcharge as cess, as applicable on an amount in excess of INR 1 mn (\$ 13,888.89).
- Dividends received by a non-resident shareholder, or dividends upto INR 1 mn (\$ 13,888.89) received by a resident shareholder, are not taxed in the hands of such shareholders.

Income Tax

Capital Gains

Capital gains are taxed at certain specified rates under the ITA, which depend upon several factors – such as nature of asset, duration for which it was held before transfer, status of transferor etc. Certain important rates of capital gains tax are tabulated below:

Type of asset	Holding period before sale	Rate, when seller is Non Resident / Foreign Co.	Rate, when seller is a Resident
Listed equity share	+ 12 month	<ul style="list-style-type: none">Exempt, if sale as well as purchase of shares, subjected to Securities Transaction Tax (STT), however shall be taxed @ 10% (surcharge plus cess) if LTCG > Rs. 100,000 (\$ 1,388.89).Exemption will not be withdrawn where STT is not paid on purchase, if purchase of equity shares has taken place prior to 1 October 2004, or purchase are through IPOs, FPOs, bonus issue, rights issue, acquisition by non-resident in accordance with FDI policy of the Government etc.Same as in case of Unlisted shares (+24 month), if not subject to STTIf no STT paid, LTCG taxed @ 20%	

Income Tax

Capital Gains

Capital gains are taxed at certain specified rates under the ITA, which depend upon several factors – such as nature of asset, duration for which it was held before transfer, status of transferor, etc. Certain important rates of capital gains tax are tabulated below:

Type of asset	Holding period before sale	Rate, when seller is NR / F Co.	Rate, when seller is a Resident
Listed equity share	≤ 12 month	<ul style="list-style-type: none">15%, if sale has been subjected to STTNormal tax rate, i.e. 40% for Foreign Co.; 30% for Indian Co.; Slab rate for Individuals (R / NR), if sale has not been subjected to STT	
Unlisted shares	+ 24 month	10%	20% (or 10% with no inflation adjustment)
Unlisted shares	≤ 24 month	Normal tax rate, i.e. 40% for Foreign Co.; 30% for Indian Co.; Slab rate for Individuals. (R / NR)	

Income Tax

Capital Gains

Some DTAA entered into by India, have more beneficial positions, than the domestic tax provisions discussed in previous slides. For example:

- India-Mauritius DTAA and India-Singapore DTAA exempts sale of shares in Indian Co., by a Mauritius / Singapore resident, if they were acquired before 1 April 2017, subject to a 'Limitation of Benefit' condition
- India-Cyprus DTAA has similar exemption on sale of shares in Indian Co., by a Cyprus resident, if they were acquired before 1 April 2017
- Even for shares acquired after 1 April 2017 and sold before 1 April 2019, in India-Mauritius DTAA and India-Singapore DTAA restrict the Capital Gain rate to 50% of rate generally applicable under ITA (discussed in previous slide).
- For shares acquired after 1 April 2017 and shares sold on or after 1 April 2019, taxation rights are now provided to the State of residence of the company whose shares are alienated (source country - India) on gains from alienation of shares acquired on or after 1 April 2017

*The LOB provision is an anti-abuse provision which lays down further conditions to be fulfilled for claiming capital gains exemption in the source country

Income Tax

Capital Gains

- Where a NR is shareholder in a Foreign Co. that derives its value substantially from assets located in India (that is, if FMV of such underlying Indian assets > INR 100 mn (\$ 1,388,888.89) and at least 50% of all assets of Foreign Co.), transfers such shares outside India, the same shall be taxable in India under the ITA.
- The CBDT has notified final rules for determination of FMV and reporting requirements under the Indian indirect transfer provision. It has also issued the circular incorporating the clarifications on applicability of the indirect transfer provisions to (i) various investment funds that conduct portfolio investments in India through different fund structures, and (ii) on other salient aspects of the indirect transfer provisions.

Tax Base

Tax rates shared above are applied to a tax base, which is computed in a prescribed manner. For instance, taxable business profits are computed with reference to accounting profits, subject to certain adjustments prescribed in ITA such as depreciation allowance, provisions for employee benefits, etc.

2

Direct Taxes

Taxation of Different Entity Forms

Taxation of Business Trusts : REIT and InVIT

Minimum Alternative Tax (MAT)

Presumptive Taxation

Tax Deadlines

Dispute Resolution

Tax Treaties

Tax Regime

Direct Taxes

Taxation of Different Entity Forms

Form of Entity	Taxability
Liaison Office	<ul style="list-style-type: none">• A Liaison office (LO) is generally not subject to Indian income tax, as it cannot conduct business activities and earn profits on account of Indian exchange control regulations.• It is required to obtain an Indian tax registration no. (PAN) and a withholding Tax registration no. (TAN).• It is required to file an annual statement of its financial affairs and an Annual activity certificate (AAC).• Repatriation / Exit Taxes: As a LO cannot generally earn any profits, no repatriation taxes are applicable to it. Even if there are any unutilized funds available at the time of its closure, they can be repatriated without any exit taxes.
Project Office	<ul style="list-style-type: none">• A branch office / project office is treated as an Indian Permanent Establishment of its headquarter Foreign Co. Therefore, it is taxable in respect of its Indian profits @ 40%*.• It is required to obtain a PAN and TAN, file an annual return of income and an AAC.
Branch Office	<ul style="list-style-type: none">• Repatriation / Exit Taxes: Repatriations of surplus or at the time of closure of PO / BO, are not subject to any additional taxes.

Direct Taxes

Taxation of Different Entity Forms

Form of Entity	Taxability
LLP	<ul style="list-style-type: none">• An Indian incorporated LLP is treated as a tax resident of India, and is taxed @ 30%* of its global income.• It is required to obtain a PAN and TAN, and file an annual return of income.• Repatriation / Exit Taxes:<ul style="list-style-type: none">– When LLP distributes its profits to partners, they are not taxed in the hands of the LLP or its partners.– Repatriation of capital contribution (say, upon dissolution) is permissible without any thresholds, and is not subject to any additional taxes.
Company formed in India (Wholly Owned Subsidiary / Joint Venture)	<ul style="list-style-type: none">• An Indian incorporated co. is treated as a tax resident of India, and is taxed @ 30%* on its global income. However, if its turnover is up to INR 4000 mn (\$ 55,555,555) in FY 2017-18, applicable rate of tax is 25%*.• Tax @ 15%* for a new manufacturing company incorporated on or after 1 October 2019 and commences production on or before 31 March 2023 (such a company cannot avail any other tax incentive and exemption and also not liable to MAT)• Option of being taxed @ 22%* for any domestic company (such a company cannot avail any other tax incentive and exemption and also not liable to MAT)• It is required to obtain a PAN and TAN, and file an annual return of income.• Exit / Repatriations - Profit repatriations by way of dividend are subject to 'Dividend Distribution Tax' (DDT) in the hands of the Company @ 20.36% of dividend declared.

* Plus applicable surcharge and cess

Direct Taxes

Taxation of Different Entity Forms

Form of Entity	Taxability
Company formed in India (Wholly Owned Subsidiary / Joint Venture)	<ul style="list-style-type: none">• Exit / Repatriations (cont.)<ul style="list-style-type: none"><input type="checkbox"/> Dividend in excess of INR 1 mn (\$ 13,888) received by any resident shareholder (except where shareholder is an Indian company itself), are taxable in the hands of such shareholder @ 10%* on dividend exceeding INR 1mn.<input type="checkbox"/> Any dividends received by a NR shareholder, or dividends upto INR 1 mn (\$ 13,888) received by a resident, are not taxed in the hands of such shareholders.<input type="checkbox"/> Upon payment of DDT, dividends can be freely repatriated outside India.<input type="checkbox"/> Repatriations by way of capital reduction (to the extent of availability of accumulated profits of the Company) are treated as 'Dividend', and taxed in the manner described in previous slide. Also, before proceeding with Capital Reduction, prescribed regulatory approvals are required to be obtained.<input type="checkbox"/> Repatriations by way of 's' are subject to 'Buy Back Tax' in the hands of the Company, @ 20% (plus applicable surcharge and cess) of buy-back gains arising to shareholders.

* Plus applicable surcharge and cess

Direct Taxes

Taxation of Different Entity Forms

Form of Entity	Taxability
Company formed in India (Wholly Owned Subsidiary / Joint Venture)	<ul style="list-style-type: none">• Exit / Repatriations (cont.)<ul style="list-style-type: none">❑ Gains from sale of shares of an Indian Co. are taxable in the hands of shareholders (irrespective of their residential status), and tax incidence shall depend upon several factors such as their period of holding, listing status, etc. (Discussed in subsequent slides).❑ In case of winding up of the Company, distributions to the extent of accumulated profits are treated as 'Dividend'. Sum received by shareholders in excess of the above, is taken into account in computing capital gains upon extinguishment of shares in such company.

Direct Taxes

Taxation of Business Trusts

Real Estate Investment Trust (REIT)

Makes direct investments in Real Estate properties which produces Rent. REIT may also invest in SPVs (acquire controlling stake) which are holding Rent producing Real estate properties. REIT issues units against cash to unitholders which are mandatorily listed in recognised stock exchange or it may issue units for consideration other than cash by way of acquiring controlling stake in SPVs.

Stakeholder	Income Source	Taxability	
		Business Trust	Unitholders
REIT	Rental income (letting out of Real estate property)	Exempt	Taxable
	Interest on Loans to SPV	Exempt	Taxable
	Dividend from SPV shareholding	Exempt	Taxable
	LTCG/STCG on property sale	Taxable at 10%/20%	Exempt
	LTCG/STCG on sale of shares	LTCG u/s 10(38) – Exempt (10% if > Rs. 100,000 (\$ 1,388)) Other LTCG – 10%/20% STCG u/s 111A – 15%	Exempt
	Other Income	Taxable at Maximum Marginal Rate	Exempt

Direct Taxes

Taxation of Business Trusts

Infrastructure Investment Trust (InVIT)

Makes direct investments in Infrastructure facilities which are yielding income. InVIT may also invest in SPVs (acquire controlling stake) which are holding Income yielding infrastructure facilities.

InVIT issues units against cash to unitholders which are mandatorily listed in recognised stock exchange or it may issue units for consideration other than cash by way of acquiring controlling stake in SPVs.

Stakeholder	Income Source	Taxability	
		Business Trust	Unitholders
InVIT	Rental income (letting out Infrastructure facilities)	Taxable at Maximum Marginal Rate	Exempt
	Interest on Loans to SPV	Exempt	Taxable
	Dividend from SPV shareholding	Exempt	Taxable
	LTCG/STCG on property sale	Taxable at 10%/20%	Exempt
	LTCG/STCG on sale of shares	LTCG u/s 10(38) – Exempt (10% if > Rs. 100,000(\$ 1,388)) Other LTCG – 10%/20% STCG u/s 111A – 15%	Exempt
	Other Income	Taxable at Maximum Marginal Rate	Exempt

Direct Taxes

Minimum Alternate Tax (MAT)

Corporate taxpayers are liable to pay higher of the following:

Tax liability computed under general provisions ('Normal Tax')

- Computed @ 25% / 30% / 40% of Taxable Income as applicable
- Taxable Income is computed under normal provisions of ITA

Minimum Alternate Tax

- Computed @ **18.5%*** of '**book profits**' computed as per Companies Act, 2013
- From FY 2019-20, MAT to be computed @ **15%*** of '**book profits**' computed as per Companies Act, 2013
- Book Profit means Net Profit as per P&L account, as adjusted for certain items prescribed under MAT provisions, such as provisions for unascertained liabilities, provisions for bad debts, incremental depreciation on account of asset revaluation

*excluding surcharge and cess

In case MAT liability exceeds Normal Tax, such excess is **available as a credit** – To be offset in next 15 years when Normal Tax exceeds MAT.

Direct Taxes

Minimum Alternate Tax (MAT)

Illustration

Particulars	Normal Tax	MAT
Profit Before Tax	200	200
Adjustments under general provisions, for computing Taxable Income	(90)	xx
Adjustments for computing 'Book profits' liable to MAT	xx	(10)
Taxable Income	110	xx
Book Profits	xx	190
Tax rate	30%	18.5%*
Tax Payable	33	35.15

Company will pay MAT, being higher of the two, and excess sum paid (of 2.15 in the case above) shall be carried forward as MAT credit and will be adjusted against tax in future years.

**To be reduced to 15% from FY 2019-20 onwards*

Direct Taxes

Equalization Levy

In line with OECD's BEPS project Action Plan 1 (Digital Economy), India has introduced an Equalization **Levy of 6%** which is applicable on payment made by a resident carrying on business or profession or the Indian PE of a non-resident to a non-resident providing specified services. A "specified service" has been defined as an online advertisement, or provision for digital advertising space or any other facility or service for the purpose of online advertisement, and also includes any other service notified by the central government.

Direct Taxes

Presumptive Taxation

In order to bring an ease in determination of tax liability and in undertaking tax compliances, certain specified businesses are permitted to pay tax on a small percentage of their gross receipts, thereby dispensing any need to prepare detailed accounts or to undergo tax audit. For example:

S.No	Business	Presumptive income
1	NR carrying on shipping activities	7.5% of freight received on account of carriage of passengers, livestock, mail or goods shipped at any port in/outside India
2	NR carrying on aviation activities	5% of freight received from any place in India or any place outside India
3	NR oilfield service providers, and Lessors for oilfield machines	10% of gross receipts
4	NR engaged in civil construction, in relation to an approved turnkey power project	10% of gross receipts
5	Small businesses (Turnover upto INR 20 mn (\$ 277,777.78))	8% of gross receipts (6%, if received by account payee cheque / electronic mode / account payee bank draft)

Direct Taxes

Presumptive Taxation

Presumptive Taxation (as per Section 94B)

- Applicable where an Indian company or permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest exceeding INR ten mn which is deductible under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident
- The non-resident lender, being an Associated Enterprise of the borrower
- Interest shall not be deductible in computation of income under the said head (in the hands of the borrower) to the extent of:
 - Total interest paid or payable in excess of 30% of EBIDTA (Earnings before Interest, Taxes, Depreciation and Amortisation); or
 - Interest paid or payable to AE, whichever is lower

Direct Taxes

Tax Deadlines

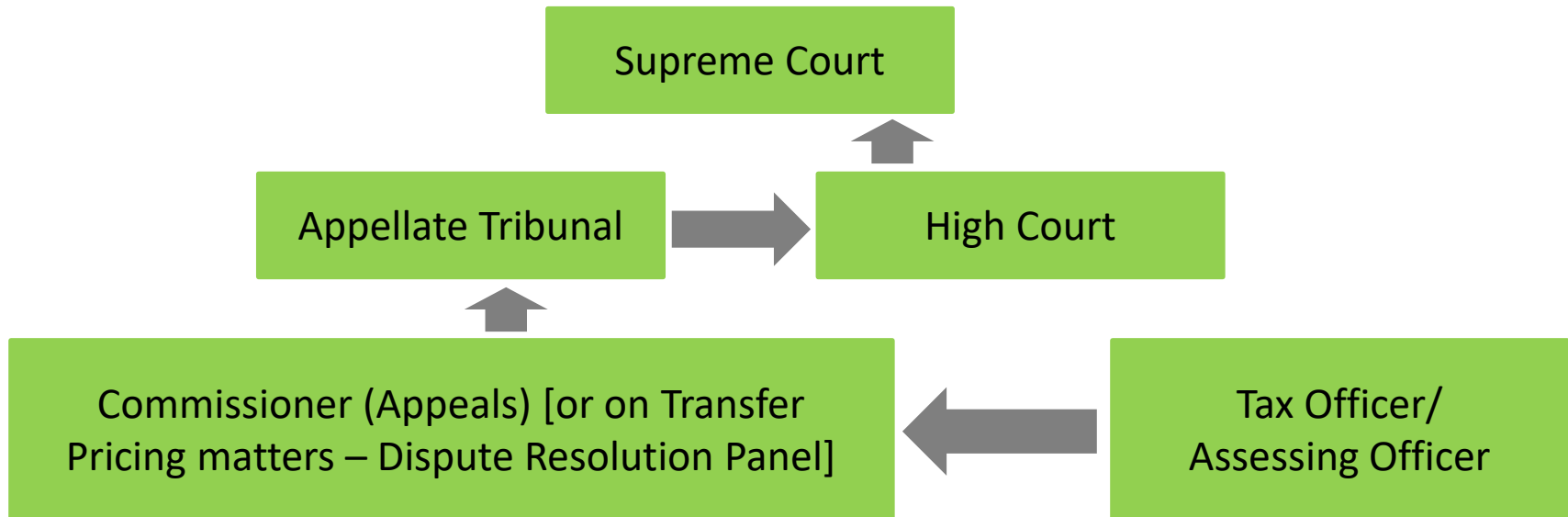
Every taxpayer is required to undertake certain compliances, such as:

- **Annual filing** of:
 - Return of income
 - Report of audit under the ITA (if applicable)
 - Transfer Pricing certificate (if applicable)
- **Monthly deposition** of withholding taxes
- **Quarterly filing** of withholding tax return
- **Quarterly deposition** of advance tax

Direct Taxes

Tax Administration and Dispute Resolution

- In certain cases, return of income filed by a taxpayer is subjected to verification / audit by tax authorities. This process is called an '**assessment**'.
- In case a taxpayer is aggrieved by the outcome of assessment, he can challenge the same before **dispute resolution authorities** as illustrated below.



Hierarchy of tax administration

Direct Taxes

Alternative Dispute Resolution

Authority for Advance Rulings (AAR)

- An applicant can approach the AAR to determine income-tax implications for any transaction / **proposed transaction**.
- Applicant means any person who-
 - Is a non-resident
 - Is a resident
- **Key advantage of approaching the AAR**

Rulings pronounced by the AAR are binding on tax authorities. Therefore, a favorable ruling helps in achieving finality as regards Indian tax implications. The facts that an AAR can be applied for, even in respect of a proposed transaction, can help a non resident plan his taxes in advance.

Direct Taxes

Tax Treaties

When a person who qualifies as a non resident (under the ITA) is a tax resident of a country with which India has entered into a **Double Taxation Avoidance Agreement** (also known as a DTAA or a 'tax treaty'), and the terms of such DTAA are **beneficial** to him (in comparison to the ITA), he can opt to be governed by the same instead of the ITA.

India has entered into 88 such DTAAs so far, to promote mutual economic relations, trade and investment. Moreover, there is a constant endeavour to evolve these DTAAs keeping in view the changes in international tax and investment climate.

Recently, India has revised its DTAAs with **Singapore, Mauritius and Cyprus**.

Direct Taxes

Tax Treaties

Snapshot of tax rates in DTAAAs with certain key jurisdictions

Income	ITA	US	Mauritius	Singapore	Netherlands
Dividend	Exempt	Not relevant, on account of exemption in the ITA			
Interest	10% / 5%	15%**	7.5%*	15%**	10%
Royalty	10%	15% / 10%	15%	10%	10%
FTS	10%		10%	10%	10%

** 10% if loan is granted by a bank carrying on *bona fide* banking business or by a similar financial institution

* Exempt if interest income derived from Government or its agency or local authorities
Exempt if loan is granted by bank carrying on bonafide banking business

Direct Taxes

Tax Treaties

Fee for technical services

General Rule of Indian tax treaties

- **Fee for technical services** (FTS) clause is based on source rule of taxation
- Recipient should be the beneficial owner of 'FTS'
- FTS deemed to arise in India when the payer is: Indian State itself, a political sub-division, a local authority of India; or a resident of India
- Tax rate under DTAA for FTS - 10% to 25%

Exceptions

- Different tax treaties may have different definition, tax rate and taxability condition for FTS income
- Some of the tax treaties may not have FTS clause

Direct Taxes

Tax Regime

Off-shore Funds

- In order to incentivize Private Equity funds for establishing their operations in India, certain relaxations have been provided under the ITA.
- An 'eligible fund' is not considered an Indian tax resident, nor is it deemed to have an Indian business connection, merely on account of presence of its fund manager in India.
- One of the qualification criteria for this purpose is, that the monthly average corpus of such fund shall not be less than INR 1 billion (\$13,888,888) (except in the year in which such fund is started or wound up).

Patent Box

- Budget 2016 introduced a 'Patent Box' regime to encourage indigenous research and development activities.
- A resident taxpayer, being the 'true and first inventor' of a patent that has been developed and registered in India, shall be entitled to a concessional tax rate of 10% in respect of income from such patent.
- This tax rate shall apply on gross royalty income, that is no expenses shall be deductible against such income.

A patent will qualify for this provisions, only if:

- 75% (or more) of expenditure on its development, has been incurred in India, and
- Such patent is granted under the Patents Act, 1970.

Capital gains on sale / alienation of such patents shall not be eligible for such concessional tax rate.

3

Direct Tax Incentives

Export Promotion

International Financial Service Centers

Inclusive Development

Research & Development

Investment linked

Startup India Scheme

Tax Incentives

Export Promotion

Incentives to unit in Special Economic Zones (SEZ)

- A 15 years' tax holiday is granted to SEZ units that are engaged in export of goods and services. The tax holiday is computed with reference to profits from exports of goods or services.

Quantum of deduction for SEZ unit	Period of Deduction
100% of export profits	First 5 years
50% of export profits	Next 5 years
50% of export profits	Next 5 years, provided an equal amount of profit is retained or transferred to a special reserve in the books of accounts.

Tax Incentives

Export Promotion

Incentives to unit in Special Economic Zones (Sec 10AA)

- Such 15 years begin from the year in which the unit begins to manufacture or produce (or start rendering services).
- SEZ units which become operational on or after 01 April 2006 but before 01 April 2020 can claim this tax holiday.
- MAT of 18.5% shall continue to apply to SEZ. However, the same is not a significant cost, due to availability of MAT credit.

Special section for offshore banking units in SEZ (Sec 80 LA)

A banking unit incorporated outside India having offshore banking unit in SEZ, includes income from offshore banking operations in SEZ, shall be allowed a deduction from such income of:

- 100% such income for five consecutive assessment years beginning with the assessment year relevant to the previous year in which the permission Banking Regulation Act, 1949 or any other relevant law was obtained, and thereafter;
- 50% of such income for five consecutive assessment years.

Tax Incentives

Export Promotion

Investment Allowance:

To provide an impetus to manufacturing sector in certain states, taxpayers are granted a deduction of 15% of actual cost of eligible asset, in the year of its installation.

Such deduction is in addition to depreciation allowance in respect of entire actual cost of the asset.

This incentive is available to a taxpayer that sets up a manufacturing operation on or after 1 April 2015 in any notified area in the States of:

- Andhra Pradesh
- Bihar
- Telangana
- West Bengal

Eligible asset: New plant and machinery to be used for manufacturing operations, acquired and installed between 1 April 2015 and 1 April 2020.

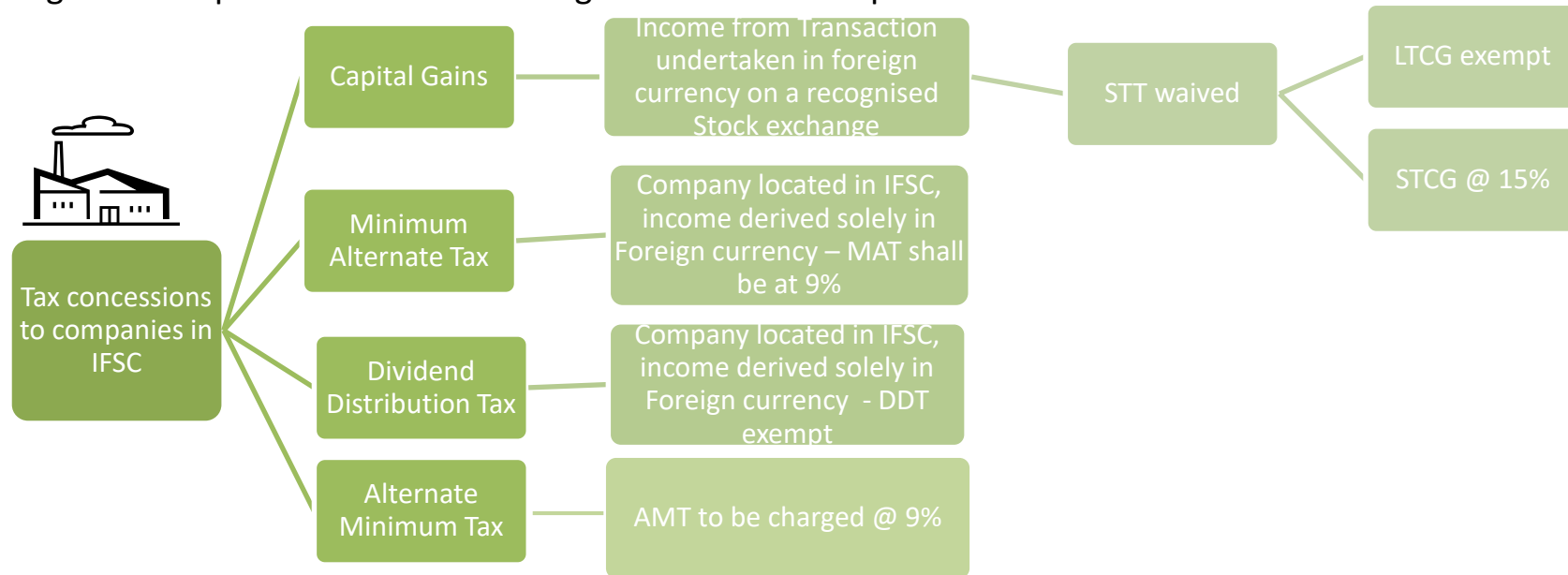
Tax Incentives

International Financial Service Centres

Caters to customers outside the jurisdiction of the domestic economy. Such centres deal with flows of finance, financial products and

services across borders. Services offered include

- Fund-raising services for individuals, corporations and Government.
- Asset management and global portfolio diversification undertaken by pension funds, insurance companies and mutual funds
- Wealth management
- Global tax management and cross-border tax liability optimization
- Global and regional corporate treasury management operations
- Merger and acquisition activities among trans-national corporations.



Note : In order to promote the development of world class financial infrastructure in India, exemption is provided for the capital gains arising from transactions entered into by a non-resident on a recognized stock exchange located in any IFSC, if the consideration is paid or payable in foreign currency for the bonds or GDRs, Rupee Denominated Bonds of an Indian company or Derivatives.

Tax Incentives

International Financial Service Centres

Sec 80 LA : A unit in IFSC

Where Gross total income of assessee being a unit in IFSC, includes income from any Unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a Centre in a Special Economic Zone.

Assessee shall be allowed a deduction of :

- 100% such income for five consecutive assessment years beginning with the assessment year relevant to the previous year in which the permission or registration under the Securities and Exchange Board of India Act, 1992 or any other relevant law was obtained, and thereafter;
 - 50% of such income for five consecutive assessment years.
-

Tax Incentives

Research & Development (R&D)

In-house R&D

- To incentivize R&D in certain sectors, such as bio-tech, manufacturing, etc., a 200%* weighted deducted is granted to companies in respect of any expenditure on R&D in an approved in-house facility. This benefit is available till 31 March 2020.
- However, expenditure incurred on land and building is not eligible for this incentive.
- 150% of actual payment for AY 2018-19 to AY 2020-21.

Other incentives

- Imports for R&D projects are also exempted from customs duty, subject to certain prescribed conditions.
- Any goods designed and developed by a wholly owned Indian company and patented in any 2 countries out of India, USA, Japan and any one country of European Union, are exempted for 3 years from excise duty.
- Drugs that have been developed indigenously or produced through a process developed through indigenous R&D are exempted from Price Control of Drugs (Prices Control) Order.

Tax Incentives

Investment Linked

Deduction for Capital Expenditure

- To incentivize investment in certain sectors, any capital expenditure incurred for specified businesses, is allowed as a deduction in the year in which it is incurred.

These specified businesses include:

- Setting up and operating a semi-conductor wafer fabrication manufacturing unit
- Laying and operating a slurry pipeline for iron ore transportation
- Production of fertilizers
- Building and operating a two-star hotel or above
- Developing and/or operating and maintaining a new infrastructure facility, being a road, bridge, rail system, highway project, water supply project, water treatment system, irrigation project, a port, airport, inland waterway, inland port or navigational channel in the sea, etc.
- Building and operating a hospital with at least 100 beds
- Developing and building a housing project under specified schemes
- Setting up and operating an inland container depot / container freight station
- Setting up and operating a cold chain facility / warehousing facility
- Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network
- bee-keeping and production of honey and beeswax

Tax Incentives

Agriculture linked

To promote agricultural activities a new section 80PA inserted by Budget 2018.

This new provision proposes 100% deductions of profits for a period of 5 years to farm producer companies.

- This deduction is allowed to farm producer companies who have total turnover of up to Rs. 100 crores (\$ 13.88 mn) in financial year. For claiming this deduction, companies' gross total income should include income from:
 - a) Marketing of agricultural produce grown by its members
 - b) Purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members
 - c) Processing of agricultural produce of its members.

Tax Incentives

Housing Projects – 80IBA

Deduction with respect to profits and gains from Housing projects:

Where the Gross Total income of an assessee includes profits and gains from the business of building and developing housing projects, subject to below mentioned conditions, a deduction of 100% of such income shall be allowed.

Conditions:

- Project is approved by competent authority after June 1 2016 and on and before March 31, 2020 (proposed under interim budget 2010)
- Project is completed within 5 years from the date of approval
- The carpet area of the shops and other commercial establishments included in the housing project does not exceed three per cent of the aggregate carpet area.
- Project is plot of land measuring not less than :
 - 1000 sq mt. – project located in Chennai, Delhi, Kolkata or Mumbai
 - 2000 sq. mt – other locations
- The Carpet area of residential unit does not exceed:
 - 30 sq mt. – project located in Chennai, Delhi, Kolkata or Mumbai
 - 60 sq. mt. – other locations
- Separate books of account maintained
- Section not applicable for housing projects executed as a **works contract** awarded by any person

For other conditions, refer sec 80IBA

Tax Incentives

Startup India Scheme

Government of India, has undertaken an initiative to support Start-ups and promote innovation in India.

Tax incentives granted to eligible start-ups:

- Tax holiday for any consecutive 3 years (from initial 7 years) in respect of 100% its profits.

Tax incentive for investors:

- Exemption of capital gains arising from sale of units of venture funds which have been specifically notified

Other non-tax incentives:

- For ease of exit, winding up of a start-up shall be completed within 90 days of making an application.
- Fast-tracking of patent applications, 80% rebate on application fees for patent, regulatory relaxations provided by RBI etc. shall be provided.

For further taxation information, please refer section **80IAC** of the Income Tax Act, 1961.

For the definition of 'Start-up' and the process of startup recognition please refer to the following links: <https://www.startupindia.gov.in/> and <https://www.startupindia.gov.in/startup-recognition.php>

4

Indirect Taxes

Background

GST

Customs

Indirect Taxes

Background

Due to the federal tax structure in India, power to tax rests with the Centre as well as States and hence there exist several indirect tax laws that apply to goods and services, such as Central Sales Tax, Service Tax, Purchase Tax, etc.

Goods and Service Tax (GST) – India's biggest tax reforms since independence. has been implemented in India w.e.f. July 1, 2017. The comprehensive dual Goods and Services Tax (GST) has replaced the complex multiple Indirect Tax structure that existed in the pre GST era.

The GST Council consisting of representatives from the Central as well as state Government, met on eighteen occasions over ten months and cleared the GST laws, GST Rules, Tax rate structure including Compensation Cess, Classification of goods and services into different rate slabs, Exemptions, Thresholds and Tax administration.

On 12 April 2017, the Central Government enacted four GST Bills:

- Central GST (CGST)
- Integrated GST (IGST)
- Union Territory GST (UTGST)
- Bill to Compensate States

Indirect Taxes

Salient features GST

- The GST is a destination based consumption tax, which would be applicable on the supply of goods or services.
- It is a dual GST with the Centre (CGST) and States (SGST) simultaneously levying it on a common tax base.
- The GST is applicable on all goods other than following:
 - Alcoholic liquor for human consumption and
 - Five petroleum products (Petrol, Diesel, Crude Oil, Natural Gas and ATF) in initial years of implementation of GST.
- The GST is applicable to all services barring specified.
- CGST and SGST is now applicable on Intra State supplies.
- CGST and SGST rate and amount is now separately displayed in the invoice of the dealer.
- IGST is applicable on Inter State supplies including exports and imports.
- IGST rate and amount is separately displayed in the invoice of the dealer in case of inter State transactions.

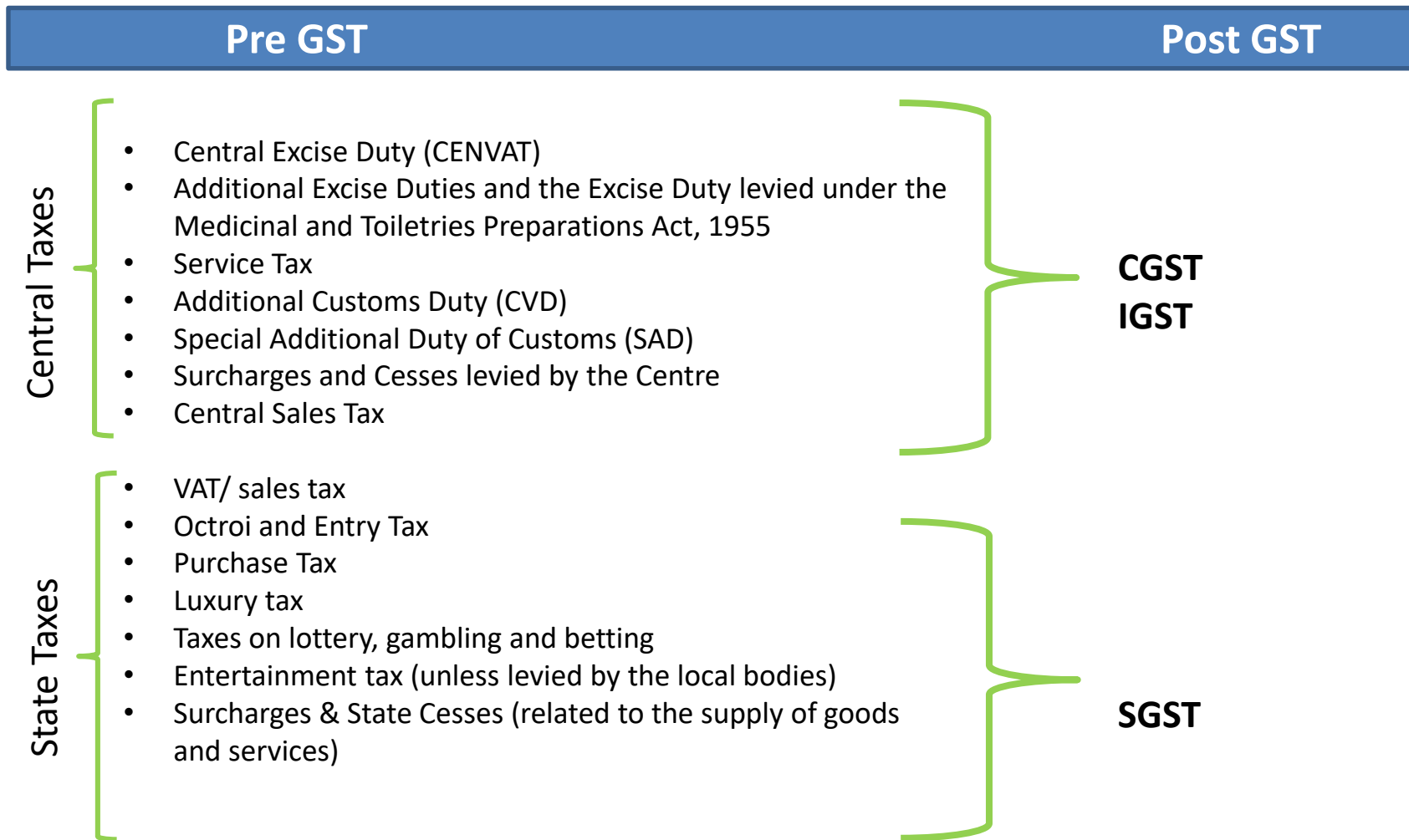
Indirect Taxes

Salient features of GST

- CGST portion of the IGST levied on inter state supplies now belong to Central Government.
- After reduction of the amount of CGST portion from the IGST, the balance SGST amount will be credited to the destination State.
- **Intra State Supplies:**
 - CGST imposed and collected by Central Government.
 - SGST imposed and collected by the State Governments.
- **Integrated GST (IGST) & Inter State Supplies:**
 - IGST imposed on the Inter State Supplies of Goods and Services
 - IGST imposed on Import and Exports (in certain instances)
 - IGST (CGST+SGST) would be imposed and collected by the Central Government.
 - After reduction of the amount of CGST, SGST portion of the State will be credited to the destination State.

Indirect Taxes

GST



Indirect Taxes

GST

Advantages of GST

- Reduction in compliance cost
- A unified market, eliminating demarcation between states.
- Unrestricted movement of goods due to removal of entry tax makes logistics cheaper.
- Double taxation i.e. cascading effect of taxes is minimized due to the Harmonized System of Nomenclature based classification of all goods and services.
- Streamlined indirect tax system with simplified and transparent tax administration.
- Seamless inflow of input credits, reducing cost of end products.

A four-tier GST rate structure has been implemented under five major slabs:

Rates	Particulars
0%	Essential items including food & certain services
5%	Common use items including goods and services
12%	Standard rate for goods and services (currently tax on abated rates)
18%	Standard rate
28%	Luxury and Sin goods such as tobacco, high-end luxury cars

Indirect Taxes

GST

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Indirect Taxes

GST Composition Scheme

About:

Any tax payer, whose turnover is less than INR 1.5 Crore, in Rest of India, and less than INR 75 Lakhs in Special Category States (North Eastern States and Himachal Pradesh), can opt for the composition scheme under GST. The point to be noted is that the GST composition scheme limit is based on the turnover of all businesses which are registered with the same PAN, and thus all businesses under the same PAN can either be registered regular dealers or can be composition dealers – not a combination of both.

Persons Ineligible for Composition scheme:

- Taxpayer supplying Exempt supplies
- Supplier of services other than restaurant related services
- Manufacturer of ice cream, pan masala, or tobacco
- Casual Taxable Person or a Non-resident Taxable Person
- Businesses which supply goods through an e-commerce operator

Rate:

Entity	Rate
Manufacturers & Traders of Goods	1%
Restaurants not serving Alcohol	5%

Indirect Taxes

GST Composition Scheme

Rules:

- A business will need to comply with the following rules, as per the composition scheme under GST:
- No Input Tax Credit can be claimed
- No Inter-state supply of goods can be done
- No GST exempted goods can be supplied
- As per the composition scheme rules, tax need to be paid at normal GST rates for transactions under Reverse Charge Mechanism
- If a taxable person has multiple segments of businesses under the same PAN, they must all collectively opt for or opt out of the composition scheme
- The words 'composition taxable person' must be displayed prominently on every notice or signboard at the place of business
- As per the composition scheme bill format, the words 'composition taxable person' must be displayed prominently on every bill of supply which is issued
- Services worth up to INR 5 Lakh can be supplied under the scheme, by a taxable person who is also supplying goods

Indirect Taxes

Customs and Incentives

Custom Duty on Import and Exports of goods, is a central levy, governed by the Customs Act, 1962.

Types of custom duties levied on Imports are:

- Basic Custom Duty (BCD)
- CVD (Alcohol, petroleum, natural gas)
- SVD (Alcohol, petroleum, natural gas)
- Integrated tax
- GST compensation cess

Incentives and Schemes

Name	About
Merchandise Exports from India Scheme (MEIS)	<p>MEIS is a major export promotion scheme, which seeks to promote export of notified goods manufactured/produced in India. Keeping in mind the global economic downturn and the adverse environment faced by exporters, it currently covers 7,914 tariff lines, all with global coverage.</p> <p>MEIS incentives are available at 2, 3 and 5 per cent of the FOB value of exports</p> <p>Major product groups covered under MEIS are: Agricultural products, Fruits, Flowers, vegetables, Tea Coffee, Spices, Value added and packaged products, Handicraft, Handloom, Jute products etc..</p>
Services Exports from India Scheme (SEIS)	<p>Incentive scheme for eligible service exports, introduced in the Foreign Trade Policy (2015-20). SEIS offers reward @ 3 per cent or 5 per cent of net foreign exchange earned. Only Mode 1 and Mode 2 services are eligible. This scheme covers 'Service Providers located in India' instead of 'Indian Service Providers'.</p>

Indirect Taxes

Customs and Incentives

Incentives and Schemes

Name	About
	<p>Services covered under SEIS are as follows:</p> <ul style="list-style-type: none">• Legal, Accounting, Architectural, Engineering, Educational, Hospital services at 5 per cent• Hotels and restaurants, Travel agencies and tour operators, other business services at 3 per cent.
Advance Authorization Scheme	<p>Scheme allows duty free import of inputs along with fuel, oil, and catalyst etc., required for manufacturing the export product. Minimum value addition prescribed is 15 per cent except for certain items. Exporter has to fulfil the export obligation over a specified time period, both quantity and value wise. Scheme is subject to stipulated conditions</p>
Duty Free Import Authorization (DFIA)	<p>Duty Free Import Authorization (DFIA) Scheme is operational w.e.f. May 5, 2006. DFIA shall be issued on post export basis for products for which Standard Input Output Norms (SION) have been notified, once export is completed. One of the objectives of the scheme is to facilitate transfer of the authorization or the inputs imported as per SION, once export is completed. A minimum value addition of 20 per cent is required under the scheme</p>
Schemes for Gems & Jewellery Sector	<p>Duty free import/ procurement of precious metal (gold/silver/platinum) from the nominated agencies is allowed either in advance or as replenishment. DFIA shall not be available for Gems and Jewellery Sector. The Schemes for Gems and Jewellery Sector are as follows:</p> <ul style="list-style-type: none">• Advance Procurement/replenishment of Precious Metals from Nominated Agencies• Replenishment Authorization for Gems• Replenishment Authorization for Consumables• Advance Authorization for Precious Metals

Indirect Taxes

Customs and Incentives

Incentives and Schemes

Name	About
Niryat Bandhu Scheme	<p>The objective of the Scheme is to reach out to new and potential exporters and mentor (hand holding) them through orientation programs, counselling sessions and individual facilitation so that they may get into international trade and boost exports from India through timely and appropriate guidance of DGFT officers</p> <p>The outreach awareness programs are conducted under the Scheme through the various Regional Authorities (field offices) of DGFT, spread all over the country, which directly comes into interaction with the new and prospective exporters while issuing of Importer Exporter Code (IEC), authorizations, incentives, scrips, etc.</p>
Interest Equalization Scheme on Pre & Post Shipment Rupee Export Credit	<ol style="list-style-type: none">1. The rate of interest equalization @ 3 per cent per annum will be available on Pre Shipment Rupee Export Credit and Post Shipment Rupee Export Credit.2. The scheme would be applicable w.e.f. April 1, 2015 for 5 years. Government, however, reserves the right to modify/ amend the scheme at any time.3. The scheme will be available to all exports under 416 specified tariff lines [at ITC (HS) code of 4 digit] and to all exports made by Micro, Small & Medium Enterprises (MSMEs) across all ITC (HS) codes.4. Scheme would not be available to merchant exporters.5. Banks are required to completely pass on the benefit of interest equalization, as applicable, to the eligible exporters upfront and submit the claims to RBI for reimbursement, duly certified by the external auditor.6. All eligible exports under the scheme would have to meet the criteria of minimum processing for the goods to be called as Originating from India and would be governed by provision of Paragraph 2.108 (a) of Handbook of Procedures of Foreign Trade Policy 2015- 2020.

Indirect Taxes

Customs and Incentives

Incentives and Schemes

Name	About
Special Advance Authorization Scheme for export of articles for apparel and clothing accessories	A new scheme for import of fabrics and eligibility to claim All Industry Rate of Duty Drawback. Exporters are entitled for an authorization for fabrics including inter lining on pre-import basis, and All Industry Rate of Duty Drawback for non-fabric inputs on the exports. The scheme is allowed for export of items which are covered under Chapter 61 and 62 of ITC(HS) Classification of Export and Import, subject to terms and conditions
Export Promotion of Capital Goods (EPCG) Scheme:	The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services to enhance India's export competitiveness. The EPCG scheme allows import of capital goods on zero duty for pre-production, production and post production subject to an Export Obligation (EO) equivalent to 6 times of duty saved amount to be fulfilled in 6 years reckoned from Authorization issue-date

Note : Refer FTP toolkit for detailed schemes

5

Mergers and Acquisitions

Regulations

Taxation Aspects

Mergers and Acquisitions

Regulations

Corporate restructurings such as amalgamation, demerger, and various types of compromise, settlement, agreement or arrangement between a company and its members and/or its creditors are governed by the provisions of the Companies Act, 2013 (CA2013).

Mergers are undertaken in following 2 ways:

- Fast track merger: For private companies having a paid up capital of less than INR 5 mn (\$ 69,444), or turnover of less than INR 20 mn (\$ 277,777), no approval is required from National Company Law Tribunal (NCLT).
- NCLT Route: Other companies shall make an application to NCLT.

For cross border mergers, an approval is required from the RBI.

Take Over Code

- Regulations have been issued by SEBI, to regulate direct or indirect acquisition of shares or control and takeovers of Indian listed companies through a system of disclosure of information and exit opportunity for the public shareholders.

Mergers and Acquisitions

Taxation Aspects

Transfer of any capital assets from one person to another are generally charged to capital gains tax. However, qualified amalgamations and demergers are allowed tax neutrality by granting:

- Exemption to amalgamating company (demerged company in case of a demerger) from capital gains tax on transfer of its assets.
- Exemption to shareholders from capital gains tax on account of share swap.
- Carry forward of tax losses incurred by amalgamating company engaged in certain specified businesses, to amalgamated company. Similarly, tax losses to the extent they pertain to undertaking transferred through a demerger, are allowed to be carried forward by the resulting company.

Such exemptions are subject to various conditions such as:

- Transfer is on a going concern basis.
- All the property and liabilities of amalgamating company(s) becomes property and liabilities of the amalgamated company.
- Shareholders holding minimum 75% of value of shares in amalgamating company become shareholders of the amalgamated company.
- Amalgamated company (Resulting company in case of demerger) shall be an Indian company.
- Such restructuring shall only be made in consideration of share allotment and not for cash consideration.

Stamp Duty

- Stamp duty is a duty payable on certain specified instruments / documents. Amount payable would be subject to state-specific stamp duty laws, on any instrument or agreement effecting the transfer.

6

Transfer Pricing

Introduction

Arm's Length Price

Transfer Pricing Officer

Applicability

Transfer Pricing

Introduction

Transfer Pricing refers to the pricing of international transactions between two associated enterprises (AE). Due to the special relationship between related parties or associated entities (AE), the transfer price may be different than the price that would have been agreed between unrelated parties.

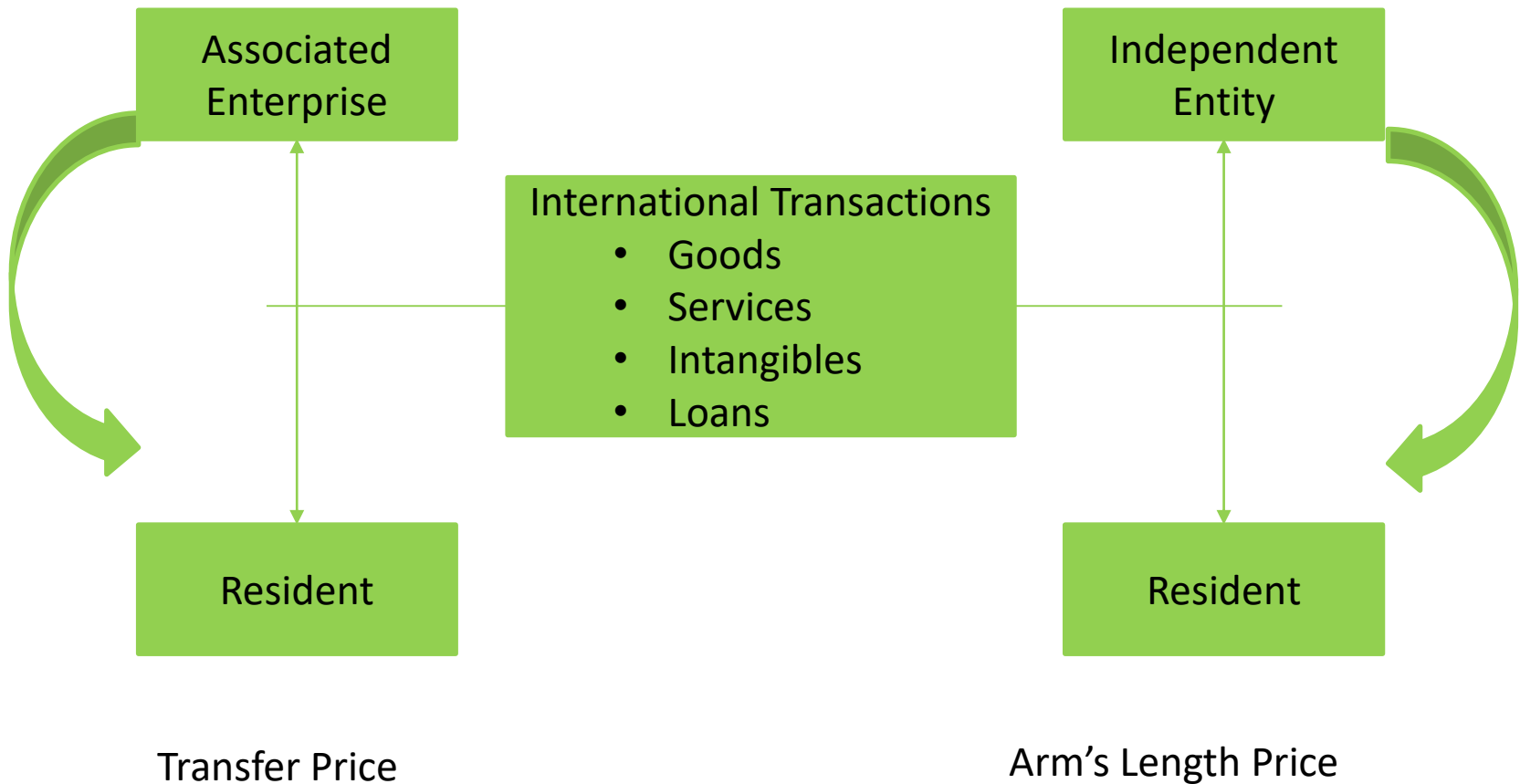
For this purpose, enterprise participating in control, management or capital of another, or having a common entity holding their control, management or capital in both, are treated as AE.

Arm's length price (ALP) of transactions between AE is determined in accordance with prescribed rules, that are in line with globally accepted best practices.

In order to achieve long term finality on TP matters, taxpayers may enter into Advance Pricing Agreements (APAs) with tax authorities. These agreements may be unilateral or bilateral. APAs provide certainty for up to 9 years i.e. upcoming 5 future years and past 4 years.

Transfer Pricing

Introduction



Transfer Pricing

Arm's Length Price

In respect of International transactions between Associated Enterprises (AE) and certain specified domestic transactions), the ITA requires that their taxable income shall be determined on an Arm's length basis. A price between unrelated entities operating in their respective best interests, is known as the Arm's Length Price (ALP).

The ITA provides 6 methods for determination of ALP clustered under three different sub-heads.

Tax payer may apply any of the above methods that is considered most appropriate for a transaction.

Traditional Transaction Methods

- Comparable Uncontrolled Price
- Resale Price Method
- Cost Plus Method

Transactional Profit Methods

- Profit Split Method
- Transactional Net Margin Method

Other Methods

- As Prescribed

Transfer Pricing

Transfer Pricing Officer

Section 92CA states that, where any person, being the Assessee, has entered into an international transaction or specified domestic transaction in any previous year, and the Assessing Officer may, with the previous approval of the Principal Commissioner or Commissioner, refer the computation of the arm's length price in relation to the said international transaction or specified domestic transaction under section 92C to the Transfer Pricing Officer.

"Transfer Pricing Officer" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons.

The Transfer Pricing Officer shall serve a notice on the Assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the Assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction or specified domestic transaction.

Transfer Pricing

Applicability

The provisions of Section 92 to 92F of the Act are applicable only if:

- There are two or more enterprises (defined in Sec 92F)
- The enterprises are Associated enterprises (defined in Sec 92A)
- The enterprises enter into a transaction (defined in Sec 92F)
- The transaction is an International transaction (defined in Sec 92B)
- Provisions do not apply in certain cases (Section 92(3)). Under it the provisions are not intended to be applied in case determination of arm's length price reduces the income chargeable to tax or increases the loss as the case may be.
- Transfer Pricing provisions shall also apply to specified domestic transactions (SDT) (defined in Sec 92BA)

Consequences of these provisions:

- Computation of income/ expenses having regard to the Arm's length price (Section 92(1). Any income (or expense or interest) arising from an international transaction shall be computed having regard to the arm's length price.
- Maintenance of prescribed Documentation (Section 92D read with Rule 10D)
- Obtaining of Accountant's report under Form 3CEB as mentioned in Section 92E
- To ensure compliance with the arm's length principle, stringent penalties have been prescribed



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Annexure

Other Budgetary changes (Budget 2019)

Other interim budget 2019 changes

- **Income from House Property**

Currently, in the case where a taxpayer holds more than one house, the tax exemption can be claimed for any one property as self-occupied, at the option of the taxpayer. For any other houses, the taxpayer is required to pay tax, (even if it is not let out, on notional rent treating the property as being deemed to be let out). It is proposed that the exemption be extended for two properties instead of one.

It further seeks to provide relief to the taxpayers, where the property is treated as inventory, and the same remains unsold. It is proposed that the notional rent in respect of such unsold inventory will not be considered as taxable for up to two years, (instead of the current one year), from the end of the financial year in which the certificate of completion is obtained from the competent authority.

Currently, a deduction of up to INR 200,000 (\$ 2,777) is allowed towards interest on borrowing for acquisition or construction of self-occupied house property.

With the proposed amendment of treating two properties as self-occupied, it has been clarified that the above deduction is an aggregate amount of deduction available for all self occupied properties.

- **Exemption from Capital Gain**

At present, an exemption from capital gains arising from the sale of a residential house can be claimed if the taxpayer invests in another residential house. This exemption is restricted to investment by way of purchase or construction of **only one** residential house. The Finance Bill proposes a **one-time relief to taxpayers for capital gains** arising from the sale of residential property (not exceeding INR 20 million (\$ 277,777)) to utilize the amount for purchase or construction of **two residential houses instead of one**.

- **Withholding Tax**

Intending to provide relief to the small depositors/taxpayers and also reducing compliance burden, Finance Bill 2019 proposes to amend Section 194A and Section 194I of the Act and increase the threshold limits.

Section 194A requires every banking company, co-operative society and post office to withhold tax @ 10% on payment of income by way of interest other than "Interest on securities," if the same exceeds INR 10,000 (\$ 138). Finance Bill, 2019 proposes to increase this threshold limit from INR 10,000 (\$ 138) to INR 40,000 (\$ 555).

Section 194-I of the Act, requires every person (subject to certain exceptions) to withhold tax @ 2% or 10% on payment of income by way of rent, in excess of INR 180,000 (\$ 2,500). Finance Bill, 2019 proposes to increase such threshold limit from INR 180,000 (\$ 2,500) to INR 240,000 (\$ 3,333).

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Contacts / URL for Clarification

For clarification on tax related queries

Central Board of Direct Taxes:

<http://www.incometaxindia.gov.in/Pages/default.aspx>

Goods and Service Tax:

<http://www.gstcouncil.gov.in/>

<http://www.cbec.gov.in/htdocs-cbec/gst/index>

Dispute Resolution Scheme:

<https://www.incometaxindia.gov.in/Pages/dispute-resolution-scheme.aspx>

Transfer Pricing:

<https://www.incometaxindia.gov.in/Pages/international-taxation/transfer-pricing.aspx>

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