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 8 union territories. Since, economic liberation 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 county. 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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<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAC</td>
<td>Annual activity certificate</td>
</tr>
<tr>
<td>AAR</td>
<td>Authority for Advance Rulings</td>
</tr>
<tr>
<td>AD</td>
<td>Authorized dealer</td>
</tr>
<tr>
<td>AE</td>
<td>Associated Enterprises</td>
</tr>
<tr>
<td>ALP</td>
<td>Arm’s length price</td>
</tr>
<tr>
<td>APA</td>
<td>Advance Pricing Agreements</td>
</tr>
<tr>
<td>BCD</td>
<td>Basic Custom Duty</td>
</tr>
<tr>
<td>BCEA</td>
<td>Bilateral Comprehensive Economic Agreements</td>
</tr>
<tr>
<td>Bn</td>
<td>Billion</td>
</tr>
<tr>
<td>BO</td>
<td>Branch office</td>
</tr>
<tr>
<td>COC</td>
<td>Certificate of Coverage</td>
</tr>
<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
</tr>
<tr>
<td>CST</td>
<td>Central Sales Tax</td>
</tr>
<tr>
<td>CVD</td>
<td>Countervailing Duty</td>
</tr>
<tr>
<td>DPIIT</td>
<td>Department for promotion of industry and internal trade</td>
</tr>
<tr>
<td>DPIN</td>
<td>Designated Partnership Identification Number</td>
</tr>
<tr>
<td>DSC</td>
<td>Digital Signature Certificate</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>FIS</td>
<td>Fees for Inclusive Services</td>
</tr>
<tr>
<td>FTS</td>
<td>Fee for technical services</td>
</tr>
<tr>
<td>GoI</td>
<td>Government of India</td>
</tr>
<tr>
<td>GST</td>
<td>Goods and Service Tax</td>
</tr>
<tr>
<td>IGST</td>
<td>Integrated Goods and Service Tax</td>
</tr>
<tr>
<td>ITA</td>
<td>Income-tax Act, 1961</td>
</tr>
<tr>
<td>LLP</td>
<td>Limited Liability Partnerships</td>
</tr>
<tr>
<td>LO</td>
<td>Liaison office</td>
</tr>
<tr>
<td>M&amp;As</td>
<td>Mergers and Acquisitions</td>
</tr>
<tr>
<td>MAT</td>
<td>Minimum Alternate Tax</td>
</tr>
<tr>
<td>Mn</td>
<td>Million</td>
</tr>
<tr>
<td>MSME</td>
<td>Micro and Small Enterprises</td>
</tr>
<tr>
<td>NOR</td>
<td>Not ordinarily resident</td>
</tr>
<tr>
<td>NR</td>
<td>Non resident</td>
</tr>
<tr>
<td>PAN</td>
<td>Permanent Account Number</td>
</tr>
<tr>
<td>PO</td>
<td>Project office</td>
</tr>
<tr>
<td>R&amp;D</td>
<td>Research and development</td>
</tr>
<tr>
<td>SAD</td>
<td>Special Additional Duty of Customs</td>
</tr>
<tr>
<td>SEZ</td>
<td>Special Economic Zones</td>
</tr>
<tr>
<td>SSA</td>
<td>Social Security Agreements</td>
</tr>
<tr>
<td>TAN</td>
<td>Tax deduction account number</td>
</tr>
<tr>
<td>VAT</td>
<td>Value added tax</td>
</tr>
</tbody>
</table>
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
March 2020

Please note: 1 USD – 76 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.

<table>
<thead>
<tr>
<th>Major Central Tax</th>
<th>Major State Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Direct tax</strong></td>
<td></td>
</tr>
</tbody>
</table>
| levied on individuals and corporate entities and cannot be transferred to others | • **Income Tax**: Tax on income of a person  
  - 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 | • **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 | • **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** | • **State Good & Service tax**: Taxes on provision of services and supply of goods  
• **Value Added Tax (VAT)*** |

*Alcohol for human consumption and Petroleum products
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 - <Verify>

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.

Indian citizens not liable to tax in any other jurisdiction (by reason of his domicile or residence) shall be deemed to be resident of India

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

<table>
<thead>
<tr>
<th>Category</th>
<th>Condition for qualifying as a ‘Resident’</th>
</tr>
</thead>
</table>
| Individuals    | • Present in India for **182 days or more** in a tax year, or  
                 • Present for 60 days* or more in a tax year and for 365 days or more in past 4 tax years immediately preceding the relevant tax year |
| Companies      | • Companies incorporated in India, or  
                 • Foreign Cos. having ‘**Place of Effective Management**’ in India |
| Firm / LLP /   | • **Control and management** of its affairs is situated (wholly or partially) in India |
| Others         | |

* The duration of **60 days shall be replaced by following days**:-
  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 for 120 days or more
## Income Tax

### Residential Status

<table>
<thead>
<tr>
<th>Residential status</th>
<th>Income taxable in India</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinarily Resident</td>
<td>Global income</td>
</tr>
<tr>
<td>Not ordinarily resident*</td>
<td>• Income that arises in India, or</td>
</tr>
<tr>
<td></td>
<td>• Income that arises outside India, but from a business controlled in India or a profession set up in India</td>
</tr>
<tr>
<td>Non-resident</td>
<td>Income that arises in India</td>
</tr>
</tbody>
</table>

**Resident but not ordinarily resident (NOR):**

A person is said to be “not ordinarily resident” in India in any previous year, if such person is an individual who has been a non-resident in India in seven out of the ten previous years preceding that year; or

a Hindu undivided family whose manager has been a non-resident in India in seven out of the ten previous years preceding that year.
Income Tax
Residential Status & Taxability in India

- In India > or = 182 days in financial year (1 April to 31 March)
  - Yes: Resident
  - No: NR (Non-Resident)

- In India > or + 120 days in the financial year and > or +365 preceding 4 FYs
  - Yes: NR in India in 7 out of 10 preceding FYs
  - No: ROR (Resident & ordinarily Resident)

NR (Non-Resident):
- Indian income: Yes
- Foreign income: No

ROR (Resident & ordinarily Resident):
- Business in India: Yes
- Business controlled outside India: No

ROR (Resident & ordinarily Resident):
- Yes

Further Conditions:
- Yes
Under the ITA, income is classified and accordingly taxable under the following heads:

<table>
<thead>
<tr>
<th>Head of Income</th>
<th>Description of Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from salaries</td>
<td>Income arising on account of employment taxable in the hands of the employee (individual)</td>
</tr>
<tr>
<td>Income from house property</td>
<td>It is a charge on the potential of property to generate rental income not merely on the actual rent received therefrom</td>
</tr>
<tr>
<td>Profits and gains from business or profession</td>
<td>Income earned by a tax payer on exercise of a business or profession computed on net basis (revenues less allowable expenses) or presumptive basis</td>
</tr>
<tr>
<td>Capital gains</td>
<td>Capital Gain represents the profit or gain arising to a tax payer on transfer of a capital asset during a year</td>
</tr>
<tr>
<td>Income from other sources</td>
<td>It is the residual head of income covering any income which is not covered under the above heads (like dividend, interest etc.)</td>
</tr>
</tbody>
</table>
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.
- While earlier it was possible to be classified as a non-resident by staying out of the country for 183 days or about six months in a year, this has now been, in effect, enhanced to 245 days.
- Expatriates who visit India for very short term (less than 6 months) are generally eligible to avail a short-stay exemption
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.
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) verify

Normal Rates for corporates (excluding surcharge and cess) – Old Regime

- Domestic companies: Turnover in FY 2017-18 ≤ INR 4,000 Mn ($ 52.63 mn) : 25%
  - Turnover > INR 4,000 Mn ($ 52.63 mn) in FY 2017-18 or otherwise : 30%
- Foreign companies : 40%
- Firms (including LLPs) : 30%

Press Release dated 20 September 2019 changes – New Regime

- 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

<table>
<thead>
<tr>
<th>Tax Rate</th>
<th>Income (INR)</th>
<th>Income (Old Regime)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td>Up to INR 250,000</td>
<td>Up to INR 250,000</td>
</tr>
<tr>
<td>5%</td>
<td>INR 250,000 - INR 500,000</td>
<td>INR 250,001 - INR 500,000</td>
</tr>
<tr>
<td>10%</td>
<td>INR 500,000 - INR 750,000</td>
<td>-</td>
</tr>
<tr>
<td>15%</td>
<td>INR 750,000 - INR 1,000,000</td>
<td>INR 500,001 - INR 1,000,000</td>
</tr>
<tr>
<td>20%</td>
<td>INR 1,000,000 to 1,250,000</td>
<td>-</td>
</tr>
<tr>
<td>25%</td>
<td>INR 1,250,000 to 1,500,000</td>
<td>Above INR 1,000,000</td>
</tr>
<tr>
<td>30%</td>
<td>Above 1,500,000</td>
<td></td>
</tr>
</tbody>
</table>

**Budget 2019 changes under old Regime:**

- 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)

- Individuals with a net taxable income of up to Rs 5 lakh will be able to avail tax rebate of Rs 12,500 under section 87A in both, the existing and new, tax regimes. Effectively, this would mean that individual taxpayers having net taxable income of up to Rs 5 lakh will continue to pay zero tax.
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.
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)**

<table>
<thead>
<tr>
<th></th>
<th>Individuals / LLP</th>
<th>Domestic Company</th>
<th>Foreign Company</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Surcharge</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10% - If income exceeds INR 5 mn ($ 69,444.44)</td>
<td>7% - If income exceeds INR 10 mn ($ 138,888.89)</td>
<td>2% - If income exceeds INR 10 mn ($ 138,888.89)</td>
<td></td>
</tr>
<tr>
<td>15% - If income exceeds INR 10 mn ($ 138,888.89)</td>
<td>12% - if income exceeds INR 100 mn ($ 1,388,888.89)</td>
<td>5% - if income exceeds INR 100 mn ($ 1,388,888.89)</td>
<td></td>
</tr>
<tr>
<td><strong>Cess</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Marginal relief** is available i.e. a marginal relief is given to individuals whose taxable income is beyond the threshold limit after which surcharge is payable, but the net income above the threshold is less than the surcharge.
Income Tax

Taxability of Dividend

**Taxability in the hands of shareholder**

- Dividends declared between April 1, 2003, and March 31, 2020, will be subject to DDT under the old regime, while those declared after April 1, 2020, will be excluded.

- Prior to the abolition, dividends distributed by a domestic company weren’t included in the total taxable income of an assessee. Now, dividends will form part of the taxable income of an assessee under the head “income from other sources”.

- Income distributed by a mutual fund registered with Securities and Exchange Board of India or a specified company after April 1 will be taxable in the hands of the assessee.

- Dividend received by a business trust from a special purpose vehicle will not form part of trust’s taxable income with effect from April 1, 2021. Distribution of income by a business trust will become taxable in the hands of unitholder.

- An Indian company declaring dividends covered under Section 2 of the Income Tax Act must deduct income tax at the rate of 10 percent if the amount distributed exceeds Rs 5,000.
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:

<table>
<thead>
<tr>
<th>Type of asset</th>
<th>Holding period before sale</th>
<th>Rate, when seller is Non Resident / Foreign Co.</th>
<th>Rate, when seller is a Resident</th>
</tr>
</thead>
</table>
| Listed equity share   | + 12 month                 | • 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 STT  
  • If 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:

<table>
<thead>
<tr>
<th>Type of asset</th>
<th>Holding period before sale</th>
<th>Rate, when seller is NR / F Co.</th>
<th>Rate, when seller is a Resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>Listed equity share</td>
<td>≤ 12 month</td>
<td>• 15%, if sale has been subjected to STT</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Normal tax rate, i.e. 40% for Foreign Co.; 30% for Indian Co.;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Slab rate for Individuals (R / NR), if sale has not been subjected to STT</td>
<td></td>
</tr>
<tr>
<td>Unlisted shares</td>
<td>+ 24 month</td>
<td>10%</td>
<td>20% (or 10% with no inflation adjustment)</td>
</tr>
<tr>
<td>Unlisted shares</td>
<td>≤ 24 month</td>
<td>Normal tax rate, i.e. 40% for Foreign Co.; 30% for Indian Co.; Slab rate</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>for Individuals. (R / NR)</td>
<td></td>
</tr>
</tbody>
</table>
Income Tax

Capital Gains

Some DTAAAs 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.
Direct Taxes
Taxation of Different Entity Forms
Taxation of Business Trusts: REIT and InVIT
Minimum Alternative Tax (MAT)
Presumptive Taxation
Tax Deadlines
Vivad se Vishwas Bill, 2020
Dispute Resolution
Tax Treaties
Tax Regime
## Direct Taxes

### Taxation of Different Entity Forms

<table>
<thead>
<tr>
<th>Form of Entity</th>
<th>Taxability</th>
</tr>
</thead>
</table>
| **Liaison Office** | • 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** | • 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.  
• **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

<table>
<thead>
<tr>
<th>Form of Entity</th>
<th>Taxability</th>
</tr>
</thead>
</table>
| **LLP**       | - 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:  
  - 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)** | - 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

<table>
<thead>
<tr>
<th>Form of Entity</th>
<th>Taxability</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Company formed in India (Wholly Owned Subsidiary / Joint Venture)</strong></td>
<td><strong>Exit / Repatriations (cont.)</strong></td>
</tr>
<tr>
<td></td>
<td>• 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.</td>
</tr>
<tr>
<td></td>
<td>• 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.</td>
</tr>
<tr>
<td></td>
<td>• Upon payment of DDT, dividends can be freely repatriated outside India.</td>
</tr>
<tr>
<td></td>
<td>• 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.</td>
</tr>
<tr>
<td></td>
<td>• 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.</td>
</tr>
</tbody>
</table>

* Plus applicable surcharge and cess
### Direct Taxes

#### Taxation of Different Entity Forms

<table>
<thead>
<tr>
<th>Form of Entity</th>
<th>Taxability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company formed in India (Wholly Owned Subsidiary / Joint Venture)</td>
<td>• Exit / Repatriations (cont.)&lt;br&gt;☑ 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).&lt;br&gt;☑ 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.</td>
</tr>
</tbody>
</table>
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.

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Income Source</th>
<th>Taxability</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>REIT</td>
<td>Rental income (letting out of Real estate property)</td>
<td>Exempt</td>
<td>Taxable</td>
</tr>
<tr>
<td></td>
<td>Interest on Loans to SPV</td>
<td>Exempt</td>
<td>Taxable</td>
</tr>
<tr>
<td></td>
<td>Dividend from SPV shareholding</td>
<td>Exempt</td>
<td>Taxable</td>
</tr>
<tr>
<td></td>
<td>LTCG/STCG on property sale</td>
<td>Taxable at 10%/20%</td>
<td>Exempt</td>
</tr>
<tr>
<td></td>
<td>LTCG/STCG on sale of shares</td>
<td>LTCG u/s 10(38) – Exempt (10% if &gt; Rs. 100,000 ($1,388) ) Other LTCG – 10%/20% STCG u/s 111A – 15%</td>
<td>Exempt</td>
</tr>
<tr>
<td></td>
<td>Other Income</td>
<td>Taxable at Maximum Marginal Rate</td>
<td>Exempt</td>
</tr>
</tbody>
</table>
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.

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

Note: For detailed Taxation aspect in M&A, refer toolkit “Mergers and Acquisitions”
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) <verify>

#### Illustration

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Normal Tax</th>
<th>MAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit Before Tax</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Adjustments under general provisions, for computing Taxable Income</td>
<td>(90)</td>
<td>xx</td>
</tr>
<tr>
<td>Adjustments for computing ‘Book profits’ liable to MAT</td>
<td>xx</td>
<td>(10)</td>
</tr>
<tr>
<td>Taxable Income</td>
<td>110</td>
<td>xx</td>
</tr>
<tr>
<td>Book Profits</td>
<td>xx</td>
<td>190</td>
</tr>
<tr>
<td>Tax rate</td>
<td>30%</td>
<td>18.5%*</td>
</tr>
<tr>
<td>Tax Payable</td>
<td>33</td>
<td>35.15</td>
</tr>
</tbody>
</table>

*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*
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:

<table>
<thead>
<tr>
<th>S.No</th>
<th>Business</th>
<th>Presumptive income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>NR carrying on shipping activities</td>
<td>7.5% of freight received on account of carriage of passengers, livestock, mail or goods shipped at any port in/outside India</td>
</tr>
<tr>
<td>2</td>
<td>NR carrying on aviation activities</td>
<td>5% of freight received from any place in India or any place outside India</td>
</tr>
<tr>
<td>3</td>
<td>NR oilfield service providers, and Lessors for oilfield machines</td>
<td>10% of gross receipts</td>
</tr>
<tr>
<td>4</td>
<td>NR engaged in civil construction, in relation to an approved turnkey power project</td>
<td>10% of gross receipts</td>
</tr>
<tr>
<td>5</td>
<td>Small businesses (Turnover upto INR 20 mn ($ 277,777.78))</td>
<td>8% of gross receipts (6%, if received by account payee cheque / electronic mode / account payee bank draft)</td>
</tr>
<tr>
<td>6</td>
<td>Professional having a (Gross revenue upto INR 5mn ($))</td>
<td>Can offer 50% of the gross revenue as taxable and pay taxes as per the slab. Once opted, profession related expenses as a deduction cannot be claimed.</td>
</tr>
</tbody>
</table>
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 EBITDA (Earnings before Interest, Taxes, Depreciation and Amortisation); or
  
  ❑ Interest paid or payable to AE, whichever is lower
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
The Bill offers a **waiver of interest, penalty and prosecution** for settlement of these disputes. It offers a complete waiver of interest and penalty for payments made by March 31.

For payments made from April 1, an additional 10% of the disputed amount will need to be paid.

The Bill proposes to settle 4.83 lakh direct tax cases pending at various appellate forums.

The government expects to resolve 90% of the income tax disputes through this scheme.

**Timeline -**

- **Introduced**
  - Lok Sabha
  - Feb 05, 2020

- **Passed**
  - Lok Sabha
  - Mar 04, 2020

- **Passed**
  - Rajya Sabha
  - Mar 13, 2020
## Direct Taxes

### Vivad se Vishwas Bill, 2020

<table>
<thead>
<tr>
<th>Disputes relating to</th>
<th>Payable before March 31, 2020</th>
<th>Additional amount payable after March 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment of tax</td>
<td>Amount of disputed tax (any interest or penalty associated with such tax will be waived)</td>
<td>(i) 10% of the amount of disputed tax, or (ii) interest and penalty relating to that tax, whichever is lower</td>
</tr>
<tr>
<td>Payment of fee, interest, or penalty</td>
<td>25% of the amount under such dispute</td>
<td>Another 5% of the amount under such dispute</td>
</tr>
</tbody>
</table>

**Revival of disputes:** The declaration filed by an appellant will become invalid if: (i) its particulars are found to be false, (ii) he violates any of the conditions referred to in the IT Act, or (iii) he seeks any remedy or claim in relation to that dispute. Consequently, all proceedings and claims withdrawn based on the declaration will be deemed to have been revived.

**Disputes not covered:** The proposed mechanism will not cover certain disputes. These include disputes: (i) where prosecution has been initiated before the declaration is filed, (ii) which involve persons who have been convicted or are being prosecuted for offences under certain laws, or for enforcement of civil liabilities, and (iii) involving undisclosed foreign income or assets.
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.
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 96 such DTAAAs so far, to promote mutual economic relations, trade and investment. Moreover, there is a constant endeavour to evolve these DTAAAs keeping in view the changes in international tax and investment climate.

Recently, India has revised its DTAAAs with **Singapore**, **Mauritius** and **Cyprus**.
## Direct Taxes

### Tax Treaties

Snapshot of tax rates in DTAAs with certain key jurisdictions

<table>
<thead>
<tr>
<th>Income</th>
<th>ITA</th>
<th>US</th>
<th>Mauritius</th>
<th>Singapore</th>
<th>Netherlands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividend</td>
<td>Exempt</td>
<td>Not relevant, on account of exemption in the ITA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest</td>
<td>10% / 5%</td>
<td>15%**</td>
<td>7.5%*</td>
<td>15%**</td>
<td>10%</td>
</tr>
<tr>
<td>Royalty</td>
<td>10%</td>
<td>15% / 10%</td>
<td>15%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>FTS</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
</tbody>
</table>

** 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 subdivision, 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.
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.

<table>
<thead>
<tr>
<th>Quantum of deduction for SEZ unit</th>
<th>Period of Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% of export profits</td>
<td>First 5 years</td>
</tr>
<tr>
<td>50% of export profits</td>
<td>Next 5 years</td>
</tr>
<tr>
<td>50% of export profits</td>
<td>Next 5 years, provided an equal amount of profit is retained or transferred to a special reserve in the books of accounts.</td>
</tr>
</tbody>
</table>
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.
- Companies may choose not to claim the tax holiday and avail of the concessional corporate tax rate of 15% without any MAT implications. Existing entities operating in SEZs have an option to take benefit of the reduced corporate tax rate of 22%, without availing of any tax holiday. Even otherwise, if such concessional tax regime is not opted, the tax burden could come down as the rate of MAT has been reduced to 15% from 18.5%.

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.
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

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.

Assesse 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

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.

Tax concessions to companies in IFSC

- Capital Gains
- Minimum Alternate Tax
- Dividend Distribution Tax
- Alternate Minimum Tax

Income from Transaction undertaken in foreign currency on a recognised Stock exchange

- Company located in IFSC, income derived solely in Foreign currency – MAT shall be at 9%
- Company located in IFSC, income derived solely in Foreign currency - DDT exempt
- AMT to be charged @ 9%

STT waived

- LTCG exempt
- STCG @ 15%

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
Research & Development (R&D)

In-house R&D
• To incentivize R&D in certain sectors, such as bio-tech, manufacturing, etc., a 200%* weighted deductible 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 & thereafter, it will be phased out to 100 per cent only

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

For other conditions, refer sec 35(2AB)
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
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 assesse 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

• If an individual is allotted a residential unit in the project, no other unit should be allotted to the:
  - same individual
  - spouse of the individual
  - minor children of such individual

• 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 Mumba
  – 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 10 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
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

Central Taxes

- Central Excise Duty (CENVAT)
- Additional Excise Duties and the Excise Duty levied under the Medicinal and Toiletries Preparations Act, 1955
- Service Tax
- Additional Customs Duty (CVD)
- Special Additional Duty of Customs (SAD)
- Surcharges and Cesses levied by the Centre
- Central Sales Tax

State Taxes

- VAT/ sales tax
- Octroi and Entry Tax
- Purchase Tax
- Luxury tax
- Taxes on lottery, gambling and betting
- Entertainment tax (unless levied by the local bodies)
- Surcharges & State Cesses (related to the supply of goods and services)

Pre GST

Post GST

<table>
<thead>
<tr>
<th>Central Taxes</th>
<th>CGST</th>
<th>IGST</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Taxes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

VAT/ sales tax
Octroi and Entry Tax
Purchase Tax
Luxury tax
Taxes on lottery, gambling and betting
Entertainment tax (unless levied by the local bodies)
Surcharges & State Cesses (related to the supply of goods and services)
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:

<table>
<thead>
<tr>
<th>Rates</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%</td>
<td>Essential items including food &amp; certain services</td>
</tr>
<tr>
<td>5%</td>
<td>Common use items including goods and services</td>
</tr>
<tr>
<td>12%</td>
<td>Standard rate for goods and services (currently tax on abated rates)</td>
</tr>
<tr>
<td>18%</td>
<td>Standard rate</td>
</tr>
<tr>
<td>28%</td>
<td>Luxury and Sin goods such as tobacco, high-end luxury cars</td>
</tr>
</tbody>
</table>
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:

<table>
<thead>
<tr>
<th>Entity</th>
<th>CGST</th>
<th>SGST</th>
<th>Total Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturers &amp; Traders of Goods</td>
<td>0.5%</td>
<td>0.5%</td>
<td>1%</td>
</tr>
<tr>
<td>Restaurants not serving Alcohol</td>
<td>2.5%</td>
<td>2.5%</td>
<td>5%</td>
</tr>
<tr>
<td>Other Service Providers</td>
<td>3%</td>
<td>3%</td>
<td>6%</td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th>Name</th>
<th>About</th>
</tr>
</thead>
<tbody>
<tr>
<td>Merchandise Exports from India Scheme (MEIS)</td>
<td>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. MEIS incentives are available at 2, 3 and 5 per cent of the FOB value of exports <strong>Major product groups covered under MEIS are:</strong> Agricultural products, Fruits, Flowers, vegetables, Tea Coffee, Spices, Value added and packaged products, Handicraft, Handloom, Jute products etc..</td>
</tr>
<tr>
<td>Services Exports from India Scheme (SEIS)</td>
<td>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’.</td>
</tr>
</tbody>
</table>
# Indirect Taxes

## Customs and Incentives

<table>
<thead>
<tr>
<th>Incentives and Schemes</th>
<th>Name</th>
<th>About</th>
</tr>
</thead>
</table>
|                        | Services covered under SEIS are as follows:          | • 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 allows duty free import of inputs along with   | 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 |
| Scheme                 | 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 |
| Duty Free Import       | Duty Free Import Authorization (DFIA) Scheme is      | 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 |
| Authorization (DFIA)    | 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 |
| Schemes for Gems &     | 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: |
| Jewellery Sector       |                                                        | • 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

<table>
<thead>
<tr>
<th>Incentives and Schemes</th>
<th>About</th>
</tr>
</thead>
<tbody>
<tr>
<td>Niryat Bandhu Scheme</td>
<td>The objective of the Scheme is to reach out to new and potential exporters and mentor (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. 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.</td>
</tr>
</tbody>
</table>
| Interest Equalization Scheme on Pre & Post Shipment Rupee Export Credit | 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

<table>
<thead>
<tr>
<th>Name</th>
<th>About</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Advance Authorization Scheme for export of articles for apparel and clothing accessories</td>
<td>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</td>
</tr>
<tr>
<td>Export Promotion of Capital Goods (EPCG) Scheme:</td>
<td>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</td>
</tr>
</tbody>
</table>

**Note**: Refer FTP toolkit for detailed schemes
Changes w.r.t. COVID-19

Income Tax
GST/ Indirect Tax
Customs & Financial Services
Income Tax

• Extend last date for income tax returns for (FY 18-19) from 31st March, 2020 to 30th June, 2020.
• Aadhaar-PAN linking date to be extended from 31st March, 2020 to 30th June, 2020.
• Vivad se Vishwas scheme – no additional 10% amount, if payment made by June 30, 2020.
• Due dates for issue of notice, intimation, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents and time limit for completion of proceedings by the authority and any compliance by the taxpayer including investment in saving instruments or investments for roll over benefit of capital gains under Income Tax Act, Wealth Tax Act, Prohibition of Benami Property Transaction Act, Black Money Act, STT law, CTT Law, Equalization Levy law, Vivad Se Vishwas law where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020.
• For delayed payments of advanced tax, self-assessment tax, regular tax, TDS, TCS, equalization levy, STT, CTT made between 20th March 2020 and 30th June 2020, reduced interest rate at 9% instead of 12%/18% per annum (i.e. 0.75% per month instead of 1/1.5 percent per month) will be charged for this period. No late fee/penalty shall be charged for delay relating to this period.
• Necessary legal circulars and legislative amendments for giving effect to the aforesaid relief shall be issued in due course

Note: For detailed Taxation aspect in M&A, refer toolkit “Mergers and Acquisitions”
GST/Indirect Tax

• Those having aggregate annual turnover less than Rs. 5 Crore Last date can file GSTR-3B due in March, April and May 2020 by the last week of June, 2020. No interest, late fee, and penalty to be charged.

• Others can file returns due in March, April and May 2020 by last week of June 2020 but the same would attract reduced rate of interest @9 % per annum from 15 days after due date (current interest rate is 18 % per annum). No late fee and penalty to be charged, if complied before till 30th June 2020.

• Date for opting for composition scheme is extended till the last week of June, 2020. Further, the last date for making payments for the quarter ending 31st March, 2020 and filing of return for 2019-20 by the composition dealers will be extended till the last week of June, 2020.

• Date for filing GST annual returns of FY 18-19, which is due on 31st March, 2020 is extended till the last week of June 2020.

• Due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents, time limit for any compliance under the GST laws where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020.

• Necessary legal circulars and legislative amendments to give effect to the aforesaid GST relief shall follow with the approval of GST Council.

• Payment date under Sabka Vishwas Scheme shall be extended to 30th June, 2020. No interest for this period shall be charged if paid by 30th June, 2020.

Note: For detailed Taxation aspect in M&A, refer toolkit “Mergers and Acquisitions”
Customs & Financial Services

Customs -

• 24X7 Custom clearance till end of 30th June, 2020
• Due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing applications, reports, any other documents etc., time limit for any compliance under the Customs Act and other allied Laws where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020.

Financial Services -

• Relaxations for 3 months
• Debit cardholders to withdraw cash for free from any other banks’ ATM for 3 months
• Waiver of minimum balance fee
• Reduced bank charges for digital trade transactions for all trade finance consumers

Note: For detailed Taxation aspect in M&A, refer toolkit “Mergers and Acquisitions”
Taxation and Other Laws (Relaxation & Amendment) Bill, 2020

Key Highlights
• The Taxation & Other Laws (Relaxation & Amendment of Certain Provisions) Bill, 2020 introduced in Lok Sabha, seeks to replace the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 [introduced in March, 2020 to provide relaxation in timelines amid Covid-19 pandemic]
• The Bill proposes to legislate the Faceless Assessment Scheme by bringing in new Sections and proposing amendments in various sections
• Also, the Bill proposes various amendments to the Income-tax Act including the Direct Tax Vivad se Viswas Act, 2020 to extend the date for payment without additional amount to 31st December, 2020
• It also proposes to amend the Finance Act, 2020 to clarify regarding capping of surcharge at 15% on dividend income of the FPIs

Faceless Assessment Scheme
• Effective from 1st November 2020
• All functions including assessments, rectification, appeal effect, collection & recovery, transfer pricing, DRP, approvals / registrations will become faceless
Taxation and Other Laws (Relaxation & Amendment) Bill, 2020

- **Faceless Assessment Scheme**
- Following new sections are added/amended:
  - Proposes to insert new sub-section 3D to Sec.143 providing that provisions of Sec. 143(3A) and (3B) shall not apply to the assessment made u/s. 143(3) & 144 on or after the 1st day of April, 2021.
  - The Bill proposes to insert new Sec.144B legislating the faceless assessment scheme notified on 13th August 2020. The new section details the faceless assessment process through National Faceless Assessment Centre [Erstwhile NeAC] and Regional Faceless Assessment Centre [erstwhile ReAC] as notified in CBDT notification 60 and 61 of 2020
  - Additionally specifies the procedure for faceless assessment in transfer pricing cases where reference is made to DRP [Clauses xxvii to xxxi], refer section 92 CA (8)
  - Proposes setting up of National Faceless Assessment Centre, Regional Faceless Assessment Centre and other units (Assessment Unit, Technical Unit, Verification Unit and Review Unit) under Sec.144B(3)
  - Proposed Sec.144B(7) dealing with electronic communication provides that any notice/order or any other communication shall be by way of:
    - Placing an authenticated copy thereof in the assessee's registered account; or
    - sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or
    - uploading an authenticated copy on the assessee's Mobile App [application software of the Income-tax Department], and followed by a real time alert;
Other Amendments Proposed

Section 35 - Expenditure on Scientific Research:

• Rationalization of provisions u/s, which was to be effective from 1.6.2020 has now been made applicable from 1.4.2021

• Further, the addition of the 5th and 6th provison [will now be effective from 1.4.2021 as against 1.6.2020] requiring research associations, university colleges, scientific research companies and other institutions to make an intimation in the prescribed manner within 3 months of such a provision coming into effect and that the notification will remain valid for a period of 5 AYs commencing on/after 1 April 2022

Section 56(2) - Income from other sources :

• The exemption for application of Sec 56(2) for any sum of money/ property received from any trust or institution registered u/s 12AB [Procedure for fresh registration] shall be effective from 1.4.2021 [as against 1.6.2020] in line with applicability of Sec 12AB

Section 80G - Deduction in respect of donations to certain funds, charitable institutions, etc

• Stipulates the donee to prepare and file such statement setting forth particulars of donations received within specified timelines and furnishing certificates to the donors, effective from 1.4.2021 [as against 1.6.2020]
Other Amendments Proposed
Section 115AD - Tax on income of Foreign Institutional Investors (FII) from securities or capital gains arising from their transfer

• The rate income tax on income in respect of securities w.e.f. 1 April 2020 will be as follows:
  • 20% in case of FII; and
  • 10% in case of specified fund.
• In case of specified fund, it is clarified that the provision will apply only to the extent of income that is attributable to units held by non-resident (not being a permanent establishment of a non-resident in India) calculated in the prescribed manner.
• Proposes Sec.197B and Sec.206C(10A) to legislate the reduction of TDS/TCS by 25% w.e.f 14th May 2020
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 ($74,626.87), or turnover of less than INR 20 mn ($2,98,507.46), 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.

Note: For detailed Taxation aspect in M&A, refer toolkit “Mergers and Acquisitions”
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

- Associated Enterprise
- Independent Entity
- International Transactions
  - Goods
  - Services
  - Intangibles
  - Loans
- Resident
- Transfer Price
- 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. Taxpayer may apply any of the above methods that is considered most appropriate for a transaction.

<table>
<thead>
<tr>
<th>Traditional Transaction Methods</th>
<th>Transactional Profit Methods</th>
<th>Other Methods</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Comparable Uncontrolled Price</td>
<td>• Profit Split Method</td>
<td>• As Prescribed</td>
</tr>
<tr>
<td>• Resale Price Method</td>
<td>• Transactional Net Margin Method</td>
<td></td>
</tr>
<tr>
<td>• Cost Plus Method</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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
Annexure

Other Budgetary changes (Budget 2020)
Other incentives
Other interim budget 2020 changes

- **Taxation of real estate transaction**
  
  **Enhanced safe harbour limit for deemed taxation** - Under the current regime, for computing the income arising from transfer of land or building or both under the head business or profession, capital gains and income from other sources, the consideration for such transfer is deemed to be the value adopted for stamp duty purposes, if the sale consideration is less than the stamp duty valuation. The deeming provisions to substitute actual consideration with stamp duty valuation are not applicable, if the difference between actual sale consideration and stamp duty valuation does not exceed a safe harbour of 5 percent. It is now proposed to expand the harbour of 5 percent to 10 percent by amending the provisions of Section 43CA, Section 50C and Section 56(2)(x).

- **Capital Gain**
  
  **Capping the “fair market value” of land or building (acquired before 1 April 2001) at its “stamp duty value” as on 1 April 2001**
  
  Currently, (under section 55(2)(b)(i) and (ii) of the Act), an assessee can opt to take the “cost of acquisition” of a capital asset (acquired before 1 April 2001) at either its actual cost of acquisition or “fair market value” as on 1 April 2001.
  
  Where the capital asset is land or building, it is now proposed to cap the “fair market value” of the capital asset at its “stamp duty value” as on 1 April 2001.

- **Withholding Tax**
  
  **Withholding tax rate reduced to 2% on fees for technical services paid to residents (Section 194J)** - Currently, the withholding tax rate applicable to fees for technical services payable to residents (except residents who are engaged only in the business of operating a call center) is 10 percent. It is now proposed to reduce the withholding tax rate on applicable to fees for technical services (excluding fees for professional services) to 2 percent.

- **Widening the applicability of tax deducted at source (TDS)** - TDS on e-commerce transactions i.e., payment by e-commerce operator to e-commerce participant for sale of goods or provision of services facilitated by it, has been proposed to be introduced (New section 194-O). The main features of this section are as follows:
  
  - E-commerce operator would deduct TDS @1% on gross amount of sales or services or both made by e-commerce participant (who sells goods or provides services through electronic facility).
  - TDS needs to be deducted at the time of credit or payment (whichever is earlier) of such amount to the account of e-commerce participant. This would also be the case where payment is made directly by the purchaser to the e-commerce participant.
Other interim budget 2020 changes

• **TDS on income in respect of units** - Income distributed by mutual funds to its unitholders is currently subject to additional income tax in the hands of mutual funds. It is now proposed to shift the incidence of tax on income from mutual funds to unit holders. Therefore a new section 194K has been proposed to be inserted to levy TDS on such distributions. This section provides that any person responsible for paying to a resident unit holder, any income in respect of units of a Mutual Fund specified under clause (23D) of section 10 or units from the administrator of the specified undertaking or units from the specified company, shall withhold tax at the rate of 10 percent, if the such income exceeds INR 5,000 ($ 65.89) in a financial year.

• **Extension of scope of deduction of TDS (section 194A)** - Currently, a cooperative society is not required to deduct tax on payment of interest by cooperative society to its member or another cooperative society. Also, the society not engaged in the business of banking is not required to deduct tax on payment of interest on deposit taken by it.

• It is now proposed that tax will be deducted at the rate of 10 percent by cooperative societies whose turnover exceeds INR 500 mn ($ 65,78,947.37) during the immediately preceding FY and the payment of interest to person concerned exceeds INR 0.04 mn ($ 5,263,16) (INR 0.05 mn ($ 6,578.95) in case of a senior citizen)

**Widening the applicability of TCS under section 206C:**
To widen the tax net, it is proposed to amend section 206C to levy TCS on overseas remittance and overseas tour package as under:

• Authorized dealer (dealing in foreign exchange) receiving an amount of INR 0.7 mn ($ 9,210.53) or more in financial year for remittance under LRS of RBI, shall be liable to collect TCS at the rate of 5 percent on sum received from a buyer remitting such amount out of India

• A seller of an overseas tour package shall be liable to collect TCS at the rate of 5 percent on any amount received from buyer of such package

• In both the above cases, if the buyer does not have PAN/Aadhar, the rate of applicable TCS shall be 10 percent

**It is proposed to amend section 206C to levy TCS on sale of goods above specified limit stated below:**

• A seller, whose turnover from business exceeds INR 100 mn ($ 13,15,789.47) during the immediately preceding financial year, shall be liable to collect TCS at the rate of 0.1 percent on consideration received from a buyer in excess of INR 5 mn ($ 65,789.47). In non-PAN/Aadhar cases, the rate shall be 1 percent

• The above TCS provision shall not be applicable on certain buyers, such as government authorities and other buyers notified by the Government

• The above amendment will take effect from 1 April 2020
Other Major Initiatives

• **E-Appeal Scheme proposed (Section 250)** - An appeal to CIT(A) can be filed online through a registered account on the e-filing portal

• **Proposed amendment in provision of section 253** - Section 253(1) of the Act provides for the orders that are appealable before the Income Tax Appellate Tribunal. This section is proposed to be amended to include reference to the newly inserted section 12AB (regarding registration or cancellation of trust) in addition to the existing section 12AA

• **Proposed insertion of new section 271AAD** - To deal with the issue of fake and fraudulent invoices under GST regime, it is proposed to introduce a new section to provide for a levy of penalty equal to the aggregate amount of false entries or omitted entry on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a:
  i. false entry or
  ii. any entry relevant for computation of total income of such person has been omitted to evade tax liability

• **Approval of survey operation under section 133A of the Act** - Currently, an income-tax authority (below the rank of joint director or joint commissioner of income-tax) can conduct a survey (section 133A) after taking prior approval of a joint director/joint commissioner. These provisions have now been amended so that a higher level of income-tax authority is involved in approving such a survey. Accordingly, a survey (133A) is now proposed to be conducted by a subordinate income-tax authority only with prior approval of the higher authority, i.e., commissioner/director of income tax.

• **Expansion in the scope of DRP scheme (section 144C)** - Currently, under the DRP Scheme, an AO has to forward a draft assessment order to the assessee, if he/she proposes to make any variation in the income or loss returned by the assessee. In such a case, the assessee may file an objection to the DRP. It is proposed that if the AO proposes any change, which is prejudicial to the interest of the assessee (even if such change does not affect the income/loss returned), such draft order will also be sent to the assessee. The assessee can take up this order before the DRP

• **Scope of the e-assessment scheme expanded (section 143)** - Currently, the e-assessment scheme covers only the assessment under section 143(3) of the Act. The scheme shall now be extended to “best judgment assessment” passed under section 144 of the Act
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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.cbic.gov.in/htdocs-cbic/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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