KPMG

India Tax Profile

Produced in conjunction with the
KPMG Asia Pacific Tax Centre

Updated: July 2016

Contents

1 Corporate Income Tax

Corporate Income Tax	Income tax

Tax Rate

The basic tax rate for an Indian company is 30 percent which, with applicable surcharge and education cess, results in a rate of either 30.90, 33.06 or 34.61 percent.

Companies set-up and registered on or after 1 March 2016 engaged in the business of manufacture or production of an article or thing, may at their option be taxable at 25 per cent provided they fulfill other specific conditions and do not claim specified benefits or deductions.

Foreign companies that have a Permanent Establishment (PE) or Branch/ Project Office in India are taxable at the higher basic rate of 40 percent which, with applicable surcharge and education cess, results in a rate of either 41.20, 42.02 or 43.26 percent.

	If the total income exceeds INR 10,000,000	**If total income exceeds INR 100,000,000**	**Education Cess**
Surcharge in the case of a domestic company	7 percent on income tax	12 percent on income tax	Applicable at 3 percent on income tax (inclusive of surcharge, if any)
Surcharge in the case of a foreign company	2 percent on income tax	5 percent on income tax	Applicable at 3 percent on income tax (inclusive of surcharge, if any)

There is a Minimum Alternate Tax (MAT) regime in India. Normally, a company is liable to pay tax on the income computed in accordance with the provisions of the Income-tax Act, 1961 (the Act). However, the profit and loss account of the company is prepared as per the provisions of the Companies Act. Historically, there were a large number of companies who had book profits as per their profit and loss account but were not paying any tax because income computed as per the provisions of the Act was either nil, negative or insignificant. In such a case, although the companies were showing book profits and declaring dividends to the shareholders, they were not paying any income tax. These companies are popularly known as Zero Tax companies. MAT was introduced to ensure that no taxpayer with substantial income can avoid having a tax liability through exclusions, deductions or incentives available under the provisions of the Act.

Tax Rate (continued)	The basic MAT rate for Indian companies is 18.5 percent, with applicable surcharge and education cess (as per table above), the rates would be either 19.06, 20.39 or 21.34 percent. The rate of MAT for foreign companies is either 19.06, 19.44 or 20.01 percent with applicable surcharge and cess (as per table above). MAT is calculated on the book profit under prescribed rules and compared to the income-tax payable on the total income (according to the normal provisions of the Act). If the income tax payable is less than the MAT calculated, the book profit will be deemed total income and MAT will be levied. MAT is not applicable if a company is a resident of a country or a specified territory with which India has a DTAA or the central government has adopted any agreement and such a company does not have a permanent establishment in India In case of a foreign company which is resident of a country with whom India does not have a DTAA, MAT will not apply if such companies are not required to seek registration under any law in India. A presumptive taxation regime exists under the Act, which seeks to tax certain specified business activities in the hands of non-residents on a gross basis. The relevant business activities include: exploration, etc. of mineral oils, execution of certain turnkey contracts, and air and shipping operations. Foreign tax credit rules have been notified which specify the procedure for granting of relief or deduction, of any income-tax paid in any country or specified territory under the relevant provisions against income-tax payable under the Act.
Residence	A company is considered to be resident in India if it is incorporated in India, or if during the relevant fiscal year (1 April to 31 March), the place of effective management is in India. POEM is to be effective from the FY 2016-17. The government is to notify the income computation mechanism in case of a foreign company having a POEM in India. A resident company is taxed on its global income. A non-resident company is taxed on Indian income with an Indian nexus. The scope of Indian income is defined under the law.
Compliance requirements	Broadly, the assessment system consists of a) Self-Assessment; b) Regular/Scrutiny Assessment; c) Best Judgment Assessment; d) Income escaping Assessment. Filing due dates (unless otherwise extended under certain circumstances: i) 30 November – If the company has international transactions ii) 30 September – Any other company

Holding rules

Dividends received by an Indian Company from a specified foreign company (holding of 26 percent or more equity share) are taxable at the lower basic rate of 15 percent (subject to conditions) which, with applicable surcharge and education cess, results in a tax rate of either 15.45, 16.22 or 16.995 percent.

	If the total income exceeds INR 10,000,000	**If total income exceeds INR 100,000,000**	**Education Cess**
Surcharge in the case of a domestic company receiving dividends from a specified foreign company	5 percent on income tax	10 percent on income tax	Applicable at 3 percent on income tax (inclusive of surcharge, if any)

Dividends declared by an Indian company are tax free for all shareholders. However, the Indian company declaring the dividend is liable to pay dividend distribution tax (DDT) at 20.358 percent) on the dividends paid/declared/distributed. This comprises DDT of 15 percent along with a surcharge of 12 percent and education of 3 percent (inclusive of surcharge). Provisions exist to remove the cascading effect of DDT in a holding company-subsidiary relationship.

Tax Losses

Unabsorbed business losses can be carried forward and set off against the business profits of any business for a maximum of eight years. Losses from “speculation business” (as defined in the law) can be set off only against income from “speculation business” for a maximum of four years. Losses are not allowed to be carried forward unless the return of income is filed in time. Unlisted companies could lose the right to carry forward the business loss if there is a substantial change in the shareholding.

Capital losses may also be carried forward for eight years.

Unabsorbed depreciation can be carried forward for an indefinite period and can be offset against any head of income.

Carry back of losses in not permitted in India.

International Withholding Tax Rates

Dividends - No withholding tax applies on dividends; dividends declared by an Indian company are tax free for all shareholders. However, the Indian company declaring the dividend is liable to pay dividend distribution tax (DDT) at 20.358 percent (grossed up and including surcharge and education cess) on the dividends paid/declared/distributed. Provisions exist to remove the cascading effect of DDT in a holding company-subsidiary relationship.

Royalties/Fees for Technical Services - Royalties/Fees for Technical Services (FTS) paid to a non-resident are subject to a basic gross withholding tax rate of 10 percent (subject to several conditions). Taking into account the applicable surcharge and education cess, the effective withholding tax rate is either 10.30 or 10.51 or 10.82 percent in the case of a foreign company. The effective withholding tax rate is either 10.30 or 11.54 percent in case of other taxable entities, including individuals (this comprises a surcharge of 12 percent on the royalty/fees for technical services and education cess of 3 percent on income tax (including surcharge)).

	If the total income exceeds INR 10,000,000	**If total income exceeds INR 100,000,000**	**Education Cess**
Surcharge in the case of a foreign company	2 percent on income tax	5 percent on income tax	Applicable at 3 percent on income tax (inclusive of surcharge, if any)

Interest - Interest paid to a non-resident is subject to various withholding tax rates, depending on the circumstances.

The basic gross rate of withholding tax on interest on a foreign currency loan, paid by an Indian holding company to a non-resident is 20 percent which, with applicable surcharge and education cess, results in a withholding tax rate of either 20.60 or 21.01 or 22.63 percent in the case of a foreign company. The effective withholding tax rate is either 20.60 or 23.07 percent in the case of others (this comprises a surcharge of 12 percent on the interest and education cess of 3 percent on income).

The interest income earned by a non-resident may be taxed at a reduced rate of 5 percent (plus applicable surcharge and cess) in certain circumstances. The reduced rate will apply on interest paid by an Indian company to non-resident taxpayers, provided the funds are borrowed in foreign currency from a source outside India and are either:

- under a loan agreement or by way of issue of long term infrastructure bond up to 30 June 2017 or
- by way of issue of any long term bond between 1 October 2014 to 30 June 2017.

	If the total income exceeds INR 10,000,000	If total income exceeds INR 100,000,000	Education Cess
Surcharge in the case of a foreign company	2 percent on income tax	5 percent on income tax	Applicable at 3 percent on income tax (inclusive of surcharge, if any)

Tax Consolidation / Group relief

No provisions currently exist for tax consolidation/group relief.

Transfer of shares

Capital gains are taxable at the same rate as applicable to a company, or an applicable lower rate (as appropriate to the business and the period of holding of the shares). A tax exemption is available for long term capital gains arising on the sale of equity shares in a listed company held for a period of more than twelve months, when sold on a the recognised Stock Exchange and subject to Securities Transaction Tax (STT). An unlisted share of a company would be treated as a short term-capital asset if it is held for a period of 24 months or less. An unlisted security and a unit of a mutual fund (other than an equity oriented mutual fund) shall be considered as short term capital asset if held for not more than 36 months.

The transfer of shares held in physical form attracts stamp duty. However, shares held in dematerialised form do not attract stamp duty.

Transfer of other assets

The transfer of capital assets will be subject to capital gains tax unless specifically exempted. Certain important exemptions can apply where a capital asset is transferred by a holding company to its subsidiary or vice versa and in the case of a capital asset transferred in an amalgamation or a demerger.

Income deemed to be accruing or arising to non-residents directly or indirectly through the transfer of a capital asset situated in India is taxable in India.

Where an asset other than shares is held for a period of more than three years, it is treated as a long term capital asset. The tax rate on long term capital gains arising on the transfer of such assets is 20.6 percent or 22.04 percent or 23.07 percent in case of domestic company, or 20.6 percent, 21.02 percent or 21.63 percent in the case of foreign companies. If the asset is held for a shorter duration, the tax arising on the transfer shall be taxed at the normal income tax rates.

	If the total income exceeds INR 10,000,000	**If total income exceeds INR 100,000,000**	**Education Cess**
Surcharge in the case of a domestic company	7 percent on income tax	12 percent on income tax	Applicable at 3 percent on income tax (inclusive of surcharge, if any)
Surcharge in the case of a foreign company	2 percent on income tax	5 percent on income tax	Applicable at 3 percent on income tax (inclusive of surcharge, if any)

The transfer of land and buildings attracts stamp duty and statutory registration fees (subject to certain exemptions).

In case the consideration for land and buildings is lower than the value adopted for stamp duty purposes, such value shall be deemed to be the consideration for computation of capital gain.

CFC rules

There is currently no CFC regime in India.

Transfer Pricing

India’s transfer pricing regime is generally in line with international transfer pricing principles and transfer pricing documentation has to be prepared before the tax filing due-date i.e. 30 November.

Safe harbour provisions and detailed rules have been introduced which are applicable for a period of five years starting with Assessment Year (AY) 2013-14 for the prescribed sectors.

India’s advanced pricing agreement (APA) programme was enacted and operative from 1 July 2012. An APA is effective for a period of up to five consecutive years.

Within the APA scheme, a roll back mechanism has also been introduced, and will be effective from 1 October 2014. The rollback of APAs can now enable taxpayers to apply the transfer prices agreed upon in an APA to be rolled back for a period not exceeding four previous years, subject to conditions. Therefore, an APA in India can now provide certainty for up to a period of nine years.

Domestic transfer pricing provisions are applicable if the aggregate value of ‘Specified Domestic Transactions’ exceeds INR 20 crores during the year.

To further align the Indian Transfer Pricing regulations with the global best practices, the concept of range has been introduced (earlier statistical concept of Arithmetic Mean was only used). Further the Indian TP regulations have been updated to make use of multiple year data mandatory.

As against erstwhile value based selection of cases for transfer pricing scrutiny assessments, the Indian Tax Authorities have now adopted a risk based approach for selection of cases.

India has adopted the three-tier Transfer Pricing documentation structure as prescribed by the OECD under BEPS Action Plan 13. These are briefly described as under:

Master File is required to be maintained and filed, however no threshold or filing deadline has been prescribed as yet. Detailed rules in this regard shall be notified in due course.

Local File related regulations already exist in the Indian Transfer Pricing regulations. However, the same regulations may continue or they may be aligned to the recommendations under Action Plan 13, Detailed rules in this regard shall be notified in due course.

Country-by-country Report (CbCR) - Parent entity of a MNE Group or an Alternate Reporting Entity (‘ARE’), resident in India, shall be required to file a CbCR in India, if the global consolidated group revenue exceeds Euro 750 mn (equivalent INR value) from FY 2016-17 onwards. This CbCR shall be filed with the Indian Tax authorities on or before the due date of filing of Return of Income i.e. 30 November 2017.

Stringent penalties provisions have also been introduced in the Indian Transfer Pricing regulations for failure to comply with the Master File and CbCR documentation requirements.

Thin Capitalisation

There is currently no thin capitalisation regime in India.

General Anti-avoidance	The General Anti-Avoidance Rule (GAAR) has been introduced in the Act and will be effective from financial year 2017-18. The GAAR provisions have been introduced to curb impermissible avoidance arrangements entered into by a person to avoid taxes. GAAR will apply only to direct tax cases.
Anti-treaty shopping	Tax treaties concluded by India often include anti-treaty shopping provisions such as the 'Limitation of Benefits'.
Other specific anti-avoidance rules	Non-residents are required to obtain a tax residency certificate (TRC) from the tax authority in order to avail tax treaty benefits. Non-resident taxpayers shall also provide such other documents and information, as may be prescribed. The additional information is required to be furnished by non-residents along with the TRC i.e. Status, PAN, nationality/country or specified territory of incorporation or registration, taxpayer's tax identification number/unique number, period of residential status, address. The additional information prescribed may not be required to be provided if it already forms a part of the TRC.
Rulings	Non-residents or specified residents can obtain formal rulings for Indian tax issues of non-residents for any transaction undertaken, or proposed to be undertaken, and other specified cases as stipulated. This ruling is binding only on the taxpayer to whom it applies and in respect of the specific transaction in for which the ruling was sought. However, such rulings have persuasive value in determining the legal position in other cases. The Government reserves the right to publish such rulings and generally such rulings are published.
Intellectual Property Incentives	'Patent Box Regime' Income by way of royalty in respect of patent developed and registered in India to be taxed at the rate of 10 percent on gross basis plus applicable surcharge and cess subject to fulfilment of the relevant conditions. For the applicability of surcharge and cess, refer the table on Page 9 above.

R&D Incentives

A 100 percent deduction is available to Indian companies/entities for any capital expenditure (except land and building) on R&D related to the business.

Indian companies incurring expenditure on scientific research on an approved in-house R&D facility are entitled to a weighted deduction of 200 percent of the capital and revenue expenditure (excluding the cost of land and buildings).

The government will phase out following weighted deductions (expenditure) on scientific research and other eligible expenditures under various provisions

Section	Existing quantum of incentive	Phase out measure
Payment to an approved scientific research association having an objective of undertaking scientific research and certain specified institutions	175 per cent	• 150 per cent from 1 April 2017 to 31 March 2020; • 100 per cent from 1 April 2020 onwards
Contribution to an approved scientific research company Contribution to an approved research association, university, college, other institution to be used for research in social science or statistical research	125 per cent	100 per cent from 1 April 2017 onwards
Payment to a National Laboratory or a university or an Indian Institute of Technology or a specified person for the purpose of an approved scientific research programme Expenditure (other than the cost of any land or building) on scientific research in approved in-house research and development facility incurred by the company engaged in the business of biotechnology or manufacture or production of any article or thing except specified items	200 per cent	• 150 per cent from 1 April 2017 to 31 March 2020; • 100 per cent from 1 April 2020 onwards

Other incentives

In addition, Indian tax law provides various incentives for industrial growth and development to eligible undertakings/enterprises in specified areas and subject to specified conditions. For non-resident companies, incentives in the form of presumptive taxation are available in the shipping, oil exploration, aircraft, power industries, etc.

Hybrid Instruments

There are no specific tax rules targeted at the use of hybrid financial instruments. In general, the accounting treatment of such instruments will be followed for tax purposes.

Hybrid entities

No specific hybrid entities are applicable in India.

Entities which can be used as an alternative business structures in India, include:

i) Partnership firm/ Limited Liability Partnerships (LLP) - the firm is taxed as a separate entity. The share of partner's income from the firm is not included in computing the individuals' total income. Generally, the amount paid to a partner and which is allowed as deduction to the firm for. Salary, commission, etc. is taxable in the hands of the partners. Similar provisions are also applicable in the case of LLP.

ii) Trust – Income of a specified trust is exempt on satisfaction of prescribed conditions.

Special tax regimes for specific industries or sectors

Separate taxation regimes exist for the taxation of:

- non-resident Indians
- foreign institutional investors
- venture fund investments
- shipping businesses
- exploration of mineral oils
- operation of aircrafts
- civil construction
- Real Estate Investment Trusts
- Infrastructure Investment Trusts
- Alternative Investment Funds

Venture Capital Companies and Venture Capital funds

Any income of a venture capital company or venture capital fund (from investments in a venture capital undertaking) shall be exempt from tax subject to fulfilment of certain conditions.

Related Business Factors

Forms of legal entities typically used for conducting business

The most common legal entity for conducting business in India is a company.

Requirements for establishing a legal entity

As per Foreign Direct Investment (FDI) Policy, investments can be made by non-residents in an Indian Company either under the Automatic Route or under the Government Route.

Under the Automatic Route, the non-resident investor or the Indian Company does not require any approval from the Government of India (GOI) for the investment. Under the Government Route, prior approval of GOI is required. Besides the entry conditions on foreign investment, investors are required to comply with all relevant sectorial laws, regulations, rules, security conditions etc.

Post facto reports are required to be filed with Reserve Bank of India after an investment has been made.

FDI is prohibited in specified sectors for example real estate business, lottery business and business of gambling and betting.

Recently, ceiling limits in most of the sectors have been revised resulting in an increase in the limits and the stringent conditions relating to the approval route have been liberalised.

Foreign Exchange Management rules

India has foreign exchange control requirements, regulated by the Foreign Exchange Management Act (FEMA), a 1999 Indian Act "to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India”. Under FEMA, foreign exchange transactions are divided into two broad categories: current account transactions and capital account transactions, and different rules apply to each.

Accounting and reporting

Each listed company would prepare a summary of accounting methods used in its statements. This summary would be formally approved by the firm's board of directors, would be filed with the exchange, and would be available on request to any stockholder.

Every company in India (whether listed or unlisted) is required to prepare set of financial statements containing balance sheet, statement of profit and loss, cash flow statement, brief on accounting policies and relevant notes/disclosures to the statement's. These statements are to be prepared either in accordance with Indian Accounting Standards (Indian IFRS equivalent) or in line with local Indian GAAP. Based on the net worth of companies, either of the two accounting frameworks are applied. Such financial statements are required in accordance with the provisions of the Companies Act, 2013 and are to be filed with the Ministry of Corporate Affairs within six months of the financial reporting year end.

The Act requires every person to maintain the books of accounts and other documents for the purpose of computation of taxable income. Further the specified category of persons are also required to get the accounts audited and furnish the audit report in the prescribed form where the total sales/turnover/gross receipts exceeds the specified limits.

The Income Computation and Disclosure Standards (ICDS) have been introduced by the Government of India which will apply while computing the taxable income under the Act. The ICDS are applicable on and from the previous year 2016-17 (Assessment Year 2017-18)

Prescribed financial information pertaining to the taxpayer has to be submitted to the income-tax authorities in the specified format given in the income-tax return.

2 Income Tax Treaties for the Avoidance of Double Taxation

In Force (Treaties for income and capital tax)

Armenia
Albania
Australia
Austria
Bangladesh
Belarus
Belgium
Bhutan
Botswana
Brazil
Bulgaria
Canada
China
Colombia
Croatia
Cyprus
Czech Republic
Denmark
Egypt
Estonia
Ethiopia
Fiji
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Indonesia
Ireland
Israel
Italy
Japan
Jordan
Kazakhstan
Kenya
Korea (Republic)
Kuwait
Kyrgyz Republic
Latvia
Libya
Lithuania
Luxembourg
Macedonia
Malaysia
Malta
Mauritius
Mexico
Mongolia
Montenegro
Morocco
Mozambique
Myanmar
Namibia
Nepal
Netherlands
New Zealand
Norway
Oman
Philippines
Poland
Portugal
Qatar
Romania
Russia
Saudi Arabia
Serbia
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syria
Taiwan
Tajikistan
Tanzania
Thailand
Trinidad and Tobago
Turkey
Turkmenistan
Uganda
Ukraine
United Arab Emirates
United Kingdom
United States
Uruguay
Uzbekistan
Vietnam
Zambia

Other Agreements

India has signed:

(a) Limited Agreements (dealing with airline or shipping profits) with Afghanistan, Iran, Lebanon, Maldives, Pakistan and the People's Democratic Republic of Yemen, Yemen Arab Republic.

(b) Limited Multilateral Agreements (entered with a group of countries) with South Asian Association for Regional Cooperation (SAARC) countries and the Organisation for Economic Co-operation and Development (OECD) member countries. Such treaties largely provide additional provisions for cooperation between the countries in the administration of taxes such as exchange of information, assistance in the collection of unpaid taxes etc.

(c) Specified Associations Agreement with Taipei.

(d) Tax Information Exchange Agreements with Argentina, Bahamas, Bahrain, Belize, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Guernsey, Isle of Man, Jersey Liberia. Macau, Monaco and Principality of Liechtenstein, San Marino.

(e) Social Security Agreements - (for the benefit of international workers and their employers) with Belgium, Czech Republic, Denmark, Finland, France, Hungary, Germany, Luxembourg, Netherlands, Norway, Republic of Korea, Switzerland and Sweden.

(f) Limited Agreement with Maldives on specified matters

Negotiated, not yet in force at time of publication

Tax treaties are currently in negotiation with Azerbaijan, Chile, Cuba, Ecuador, Hong Kong, Iran, Nigeria, Senegal and Venezuela. Further, a Protocol to the tax treaty with Kazakhstan was signed on 10 April 2014 and it is pending authorisation.

New TIEAs are being negotiated with countries/jurisdictions, viz. Costa Rica, Marshall Islands, Panama, Maldives, Seychelles, Andorra, Anguilla, Antigua and Barbuda, Aruba, Barbados, Brunei Darussalam, Cook Islands, Curacao, Dominica, Dominican Republic, Faroe Islands, Greenland, Grenada, Honduras, Jamaica, Montserrat, Peru, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saint Maarten, Turks and Caicos and Vanuatu.

Source: IBFD and http://law.incometaxindia.gov.in, www.taxmann.com

3 Indirect Tax (e.g. VAT/GST)

Indirect Tax(es)	Value Added Tax (VAT) / Central Sales Tax (CST)) / Entry Tax / Octroi / Local Body Tax (LBT) / Excise Duty / Service Tax The Government of India is currently developing plans to introduce a comprehensive Goods and Services Tax (GST) in order to replace VAT, CST, Excise Duty and Service Tax.
Structure	India, being a federal country, is divided into various states. Indirect taxes are levied at two levels - Central Government and State Government. VAT is levied by State Governments and is applicable on the intrastate sale of goods. CST is levied by the Central Government and is applicable on interstate sale of goods. Entry tax is levied by some State Governments on entry of certain goods into the states. Octroi / LBT is levied by Municipals on entry of certain goods into municipal limits of city. Service Tax is levied by Central Government on all services except the services covered under negative list and services specifically exempted. Excise Duty is levied by the Central Government on manufacture of excisable goods in India.
Standard Rates	The standard rate of VAT ranges between 4 percent to 15 percent. Reduced rates, additional surcharge / tax and exemptions apply and vary between states. The standard rate of CST is 2 percent against a specific declaration form. The rate of Entry Tax and Octroi / LBT varies from state to state and product to product. The standard rate of Service Tax is 15 percent. The standard rate of Excise Duty is 12.5 percent. Certain exemptions and reductions are also available.
Further information	For more detailed indirect tax information, refer to the KPMG's 2016 Asia Pacific Indirect Tax Guide

4 Personal taxation

Income Tax

Income Tax

Tax Rates

Personal income tax rates are applied on a progressive basis:

Income during the FY	Tax Rates ** FY 2016-17
Up to INR 250,000 (a)(b)	Nil
INR 250,001 to 500,000	10 Percent of tax on excess of INR 250,000
INR 500,001 to 1,000,000	INR 25,000 + 20 Percent of tax on excess of INR 500,000
INR 1,000,001 and above(c)	INR 125,000 + 30 Percent of tax on excess of INR 1,000,000

**Education cess is applicable @ 3 percent on income tax (inclusive of surcharge, if any)

(a) In case of a resident individual of the age of sixty years or above, the limit of non-taxable income is INR 300,000

(b) In case of a resident individual of the age of eighty years or above, the limit of non-taxable income is INR 500,000

(c) Surcharge @ 15 percent is applicable for the FY 2016-17 if the total income exceeds INR 10,000,000. Marginal Relief is available for borderline cases.

Further, as per Indian domestic tax laws, if a resident individual's annual income does not exceed INR 500,000, he would be eligible for a rebate of INR 5,000 from his/ her Indian taxes.

Social Security

In India, broadly speaking, both the employer and the employee are required to make contributions to the Indian Social Security Fund i.e. Provident Fund (PF) at 12 percent each on the prescribed salary, subject to specified conditions under the Indian PF law. International Workers (IW) (other than excluded employees) and their employers are also required to make the contributions.

Foreign and Indian nationals who obtain a Certificate of Coverage (COC), as per the effective Social Security Agreements (SSAs) between India and the respective home country are exempt from contributing to the Indian PF or the host country social security fund respectively.

International workers coming from SSA countries can withdraw the accumulated PF balance on cessation of employment in India. However, IWs coming from non SSA countries can withdraw the accumulated PF balance only on retirement from service after attaining 58 years of age or subject to other prescribed conditions.

Social Security Agreements (SSA)

India has bilateral SSAs in place with the following countries:

- Australia
- Austria
- Belgium
- Canada
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Hungary
- Republic of Korea
- Luxembourg
- Netherland
- Sweden
- Switzerland
- Norway

Social Security Agreements (SSA) continued

Other agreements that have been signed, but at the time of writing are not yet effective:

- Japan
- Quebec
- Portugal

Source: Employees' Provident Fund Organization

Visa

The type of visa for a foreign national would depend upon their intention and purpose of visit: The different types of visas have been illustrated below for reference:

- Employment Visa (EV)
- X Visa (Dependent Visa)
- Business Visa (BV)
- Project Visa – for foreign national employed in the power and steel sector
- Conference Visa
- Tourist Visa
- e-Tourist Visa (eTV)

A foreign national on secondment / assignment to India should obtain an EV. One of the important conditions for obtaining an EV in India is that the salary (including monetary and non-monetary perquisites) of the foreign national should be in excess of USD 25,000 per annum. However, the said salary threshold is not applicable to foreign nationals employed in India as ethnic cooks, language (other than English) teachers/translators and staff working for a high commission/consulate in India.

The Government of India merged the Person of Indian (PIO) card and Overseas Citizen of India (OCI) card schemes through the Citizenship (Amendment) Act, 2015. Under the new regime PIO card holders are deemed to be OCI card holders and are entitled to benefits such as lifelong visas and exemptions from police registration.

Further information

For more detailed personal taxation information, refer to:

KPMG's Thinking Beyond Borders

5 Other Taxes

Customs duty	Customs duties are levied on the import of most goods into India and on the export of specific goods from India. The applicable rates are specified in the Customs Tariff Act, 1975. The Customs Act, 1962 is the primary law that regulates customs duties in India. The effective rates of customs duties may vary pursuant to general and/or specific exemption or concession notifications issued by the Government or on the basis of Free Trade Agreements which have been agreed and are in force at the time of import/export (refer to Section 6 below).
Excise duty	Excise duty is levied on goods manufactured and produced in India. The standard rate of excise duty is 12.5 percent. Certain exemptions and reductions are also available. The duty is generally levied on the basis of value ("transaction value") of the excisable goods. For particular goods, duty is applicable on the Retail Sale Price of the product less specified abatement. Excise duty is applicable on most goods; the schedule on which it is applicable is similar to customs Harmonised System of Nomenclature (HSN) list.
Stamp duty	Stamp Duty is imposed on the execution of specified instruments such as sale deeds, indemnity bonds, Memorandum of Association of a company and partnership deeds. The levy is governed by the Indian Stamp Act 1899 or the State Stamp Acts. Some states have enacted separate legislation, whereas some have adopted the Indian Stamp Act with or without modifications. The rates vary from state to state.
R&D Cess	Applicable at five percent of all payment made towards the importation of technology directly, or through deputation of foreign technical personnel under a foreign collaboration.
Property tax	Property tax is payable under local municipal laws on commercial and residential property.
Inheritance / gift tax	There is no inheritance or gift tax in India.
Wealth tax	Wealth tax has been abolished with effect from Financial year 2015-16.
Black Money (Undisclosed Foreign Income and Assets) and imposition of Tax Act, 2015	The purpose of the Act is to set out an unequivocal regime that makes it easier for taxpayers to disclose previously undisclosed income which is held overseas, e.g., in foreign financial accounts and other foreign assets. It seeks to check the black money menace with stringent provisions for those stashing illegal wealth abroad. The Act provides for separate taxation of any undisclosed income in relation to foreign income and assets.

Securities transaction tax (STT)

STT is levied on the value of taxable securities transactions at specified rates. The taxable securities transactions are:

- Purchase/sale of equity shares in a company or a derivative or a unit of an equity-oriented fund entered into a recognised stock exchange or a unit of a business trust;
- Sale of a unit of an equity-oriented fund to the mutual fund;

Sale of unlisted units of business trust under an initial offer.

6 Free Trade Agreements

In force

India has agreed bilateral Trade Agreements of various forms with the following countries:

- Afghanistan
- Bhutan
- Chile
- Finland
- Japan
- Korea (Republic of)
- Malaysia
- Nepal
- Singapore
- Sri Lanka

Additionally, India has agreed a number of multi-lateral trade agreements of various forms:

- Asia Pacific Trade Agreement (APTA) – Bangladesh, China, Korea (Republic of), Lao PDR and Sri Lanka
- Association of South-East Asian Nations (ASEAN) - Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam
- Mercosur - Argentina, Brazil, Paraguay and Uruguay
- South Asian Association for Regional Cooperation (SAARC) - Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka

In negotiation

New or revised bilateral free trade agreements are currently being negotiated with:

- Australia
- Canada
- Chile
- Indonesia
- Malaysia
- New Zealand
- Singapore
- Sri Lanka
- Thailand

In negotiation (continued)

New or revised multi-lateral free trade agreements are currently being negotiated with:

- Asia Pacific Trade Agreement (APTA) – Bangladesh, China, Korea (Republic of), Lao PDR and Sri Lanka
- Association of South-East Asian Nations (ASEAN) - Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam
- BIMSTEC – Bangladesh, Sri Lanka and Thailand
- Common Market for East and Southern Africa (COMESA) - Burundi, Comoros, DR Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Swaziland, Sudan, Uganda, Zambia and Zimbabwe
- European Free Trade Association (EFTA) – Iceland, Liechtenstein, Norway and Switzerland
- European Union (EU) – Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom
- Gulf Cooperation Council (GCC) - Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates
- Mercosur - Argentina, Brazil, Paraguay and Uruguay
- South African Customs Union (SACU) – Botswana, Lesotho, Namibia, South Africa and Swaziland

Source: Government of India – Ministry of Commerce and Industry

7 Tax Authorities

Tax Authorities

- Income Tax Department
- Central Board of Direct Tax
- Central Board of Excise and Customs
- State VAT Departments (for each state, there is a separate VAT department)

Tax audit activity

A tax audit may be opened on any tax return filed.

A typical tax audit commences with a questionnaire / letter requesting provision of supplementary analysis or information. The tax authority's approach to tax audits can be either the more traditional manual style, or may include the use of modern data analysis technologies, depending on the circumstances. Most tax audits will typically involve some detailed consideration of invoices and key documents.

Regular assessments in relation to income-tax should be completed within 33 months of the end of the financial year. If a referral is made to a Transfer Pricing Officer (TPO) then the time limit is extended by 12 months. There are different timelines for passing reassessment orders, rectification orders, etc.

Key focus areas for the tax authority in tax audits conducted in recent years have included:

- Transfer pricing
- International transactions, including tax withholding provisions.

Indirect taxation covers various laws and regulations. Under VAT laws of various states, an audit report has to be submitted, the date and form for filing such an audit report varies from State to State. The assessment and appeal procedures applicable for indirect tax processes are similar to those described for direct tax purposes.

Under Excise and Service tax legislation, the tax authorities can also carry out audits of business operations.

Appeals	An appeal against an income tax assessment order issued by the Assessing Officer (AO) can be filed with the Commissioner (Appeals). An appeal on any order of a Commissioner (Appeals) is referred to the relevant Income-tax Appellate Tribunal, by either the taxpayer or the tax department. A question of law may be further appealed with the High Court and then finally with the Supreme Court of India. Foreign companies, or any taxpayer whose case relates to an order of a TPO, may alternatively approach the Dispute Resolution Panel to seek a resolution of a draft assessment order issued by an AO. For Indirect taxation, an appeal can be filed by the assesse if they are aggrieved by the order passed by the AO. The Authority with whom the appeal will be filed would be governed by the relevant Act and rules.
Tax governance	The Indian tax Authorities do not currently offer any particular schemes or incentives to promote tax governance. All businesses are advised to periodically assess their tax environment, risks, governance and controls relating to their various tax obligations both domestically and internationally, as appropriate to their size, complexity and overall risk governance framework.

Contact us:

Girish Vanvari
Co-National Head of Tax
T +91 (22) 3090 1910
E gvanvari@kpmg.com

www.kpmg.com/tax

This profile was provided by professionals from KPMG's member firm in India.