# India Tax Profile

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# 1 Corporate Income Tax

## 1.1 General Information

### Corporate Income Tax

Income tax

### Tax Rate

The basic tax rate for an Indian company is 30%, which, with applicable surcharge and education cess, results in a rate of either 31.20, 33.38 or 34.94%.

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% provided they fulfill other specific conditions and do not claim specified benefits or deductions.

In the case of Indian companies the rate of income-tax shall be 25% of the total income where the total turnover or gross receipts of financial year ('FY') 2016-2017 does not exceed INR 250 crore.

Foreign companies that have a Permanent Establishment ('PE') or Branch/ Project Office in India are taxable at the higher basic rate of 40%, which, with applicable surcharge and education cess, results in a rate of either 41.60, 42.43 or 43.68%.

| | **If the total income exceeds INR 10,000,000** | **If the total income exceeds INR 100,000,000** | **Education Cess** |
|---|---|---|---|
| **Surcharge in case of a domestic company** | 7% on income tax | 12% on income tax | Applicable at 4% on income tax (inclusive of surcharge, if any) |
| **Surcharge in case of a foreign company** | 2% on income tax | 5% on income tax | Applicable at 4% 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 could avoid having a tax liability through exclusions, deductions, or incentives available under the provisions of the Act.

The basic MAT rate for Indian companies is 18.5%, with applicable surcharge and education cess (as per table above); the rates would be either 19.24, 20.59 or 21.34%. 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.

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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 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 ('POEM') is in India.

POEM is effective from the FY 2016-17.

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.

## Basis of Taxation

The worldwide system of taxation is being followed. Residents are taxed on their worldwide income whereas non-residents are taxed on Indian-sourced income.

## Tax Losses

Unabsorbed business losses can be carried forward and set off against the business profits of any business for a maximum of 8 years. Losses from "speculation business" (as defined in the law) can be set off only against income from "speculation business" for a maximum of 4 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 8 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.

## 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). Long Term Capital Gains exceeding INR 1 lakh arising from transfer of equity shares in a company or units of an equity oriented mutual fund or units of a business trust is proposed to be taxed at the rate of 10% [only where the Securities Transaction Tax ('STT') has been paid on acquisition and transfer of equity shares and on the transaction for transfer of units of equity oriented mutual fund of a business trust] without indexation benefit for resident and without foreign currency fluctuation benefit for non-resident. However, all gains up to 31 January 2018 will be grandfathered from the previously mentioned proposed levy of capital gains tax. An unlisted share of a company would be treated as a short term-capital asset if it were 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.

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

## Transfer of 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 3 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 20.8% or 22.26% or 23.29% in case of domestic company, or 20.8%, 21.22% or 21.84% 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 the total income exceeds INR 100,000,000** | **Education Cess** |
|---|---|---|---|
| **Surcharge in case of a domestic company** | 7% on income tax | 12% on income tax | Applicable at 4% on income tax (inclusive of surcharge, if any) |
| **Surcharge in case of a foreign company** | 2% on income tax | 5% on income tax | Applicable at 4% 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.

## Capital Duty (Non-tax Planning)

NA

## CFC Rules

There is currently no CFC regime in India.

## Thin Capitalization

India has introduced thin capitalization regulations i.e. limitation on the interest deduction, applicable to all companies except banking and insurance companies. This limitation is applicable to interest paid to non-residents in excess of INR 10 million, on borrowings from one or more associated enterprise/s (AE) or on borrowings where either implicit or explicit guarantee is given by the AE/s of the taxpayer. There will be restriction on the deductibility of the interest in the hands of the taxpayer in a particular FY to the extent it is excess.

Excess interest shall mean total interest paid/payable by the taxpayer in excess of 30% of cash profits or earnings before interest, taxes, depreciation, and amortization or interest paid or payable to AEs for that previous year, whichever is less. These provisions are applicable from FY 2017-18.

## Amalgamations of Companies

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Amalgamations of companies are tax neutral under the provisions of the Act subject to fulfillment of prescribed conditions.

### General Anti-avoidance

The General Anti-Avoidance Rule ('GAAR') has been introduced in the Act and is effective from FY 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.

Prior to introduction of GAAR, the tax authorities have been following the 'substance over form' test based of the judicial precedents. With the statutory GAAR now in place, the tax authorities will adhere to the provisions of statutory GAAR.

### 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.

### 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.

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## 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. However, LLP form of presence is also gaining popularity since the Government of India ('GOI') has permitted Foreign Direct Investment ('FDI') in LLPs.

*Requirements for establishing a legal entity*

As per Foreign Direct Investment Policy, FDI is prohibited in specified sectors for example real estate business or construction of farm houses, lottery business, business of gambling and betting including casinos, etc.

Apart from the prohibited sectors, FDI is permitted in other sectors subject to sectoral cap i.e. maximum permissible limit. These limits are revised from time to time based on macro-economic situations and in most of the sectors have resulted in enhancement of the foreign investment ceiling and liberalization of the stringent conditions relating to the Approval route.

Investments in India can be made by non-residents either under the Automatic Route or under the Government Route with entry conditions. Such conditions may include norms for minimum capitalization, lock-in period, etc.

Under the Automatic Route, the non-resident investor or the Indian Investee entity does not require any approval from the GOI for the investment. Under the Government Route, prior approval of GOI is required.

Investments made are required to be reported to the Reserve Bank of India in the prescribed manner and timelines.

Besides the entry conditions on foreign investment, investors are required to comply with relevant sector specific laws, regulations, rules, security conditions etc.

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## 1.2 Determination of taxable income and deductible expenses

### 1.2.1 *Income*

#### General

Under the Act, taxable income is classified under various heads viz. income from salaries, house property, profits, and gains of business or profession, capital gains, other sources. Any income, which is not taxable under any specific head, is taxable under the head 'other sources'.

#### Branch Income

Income of Indian company's branch outside India is taxable at normal tax rate i.e. 30%.

#### Capital Gains

Tax treatment of capital gains in India depends on whether gains are long term or short term. Gains are considered as long term if the assets are held for more than 3 years (one year in case of listed shares and specified securities, and two years in case of unlisted shares). Long-term capital gains on listed shares and specified securities are taxed at the rate of 10% (without the benefit of indexation). Other long-term gains are taxable at the rate of 20% with the benefit of indexation.

Short-term capital gains on listed shares and specified securities that are subject to STT are taxable at the rate of 15%. Other short-term capital gains are taxable at normal rates.

No, capital gains on disposition of subsidiaries and branches are taxable India, in both the cases i.e. foreign subsidiaries/branch and domestic subsidiaries/branch. Section 47 of the Act provides exemption to inter-group transfer of assets for e.g. in the case of amalgamation, demerger, etc.

#### Dividend Income

Dividends received by an Indian Company from a specified foreign company (holding of 26% or more equity share) are taxable at the lower basic rate of 15% (subject to conditions) which, with applicable surcharge and education cess, results in a tax rate of either 15.6, 16.38 or 17.16%.

| | **If the total income exceeds INR 10,000,000** | **If the total income exceeds INR 100,000,000** | **Education Cess** |
|---|---|---|---|
| **Surcharge in case of a domestic company receiving dividends from a specified foreign company** | 5% on income tax | 10% on income tax | Applicable at 4% 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 20.56%) on the dividends paid/declared/distributed. This comprises DDT of 15% along with a surcharge of 12% and education of 4% (inclusive of surcharge). Provisions exist to remove the cascading effect of DDT in a holding company-subsidiary relationship.

India has no Minimum participation requirement (domestic and foreign) and Minimum holding period (domestic and foreign) for dividends.

DDT provisions also apply to deemed dividend. The company is liable to pay DDT at the rate of 30% (plus applicable surcharge and cess). However, deemed dividend is not required to be grossed up.

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### Interest Income

Interest income is generally taxable under the head 'income from other sources'. It can be taxable as business income if it is relating to the business of the taxpayer.

### Other Significant Items

NA

## 1.2.2 *Expenses*

### General

Generally, all business related expenses are deductible (except from exempt income). Specific expenses are allowed only on the payment basis and some of them are allowed only if relevant taxes are withheld. .

Specific expenses are allowed in case of income from salaries, house property income, capital gains and income from other sources.

### Minimum Taxation Requirements for the Deductibility of Losses

No minimum taxation requirement for the deductibility of losses.

### Capital Losses

Capital losses are allowed to set-off. Short-term capital loss can be set off against short-term capital gains or long-term capital gains. However, long-term capital loss can be set off only against long-term capital gains.

Depreciation on goodwill is allowed based on Supreme Court decision.

Participation exemption does not cover foreign exchange gains and losses

### Carry Forward

Capital loss can be carried forward up to 8 years. Other losses are also allowed to be carried forward in accordance with the relevant provisions of the Act.

### Carry Back

None

### Bad Debts

Bad debts are allowed as deduction subject to specified conditions.

### Depreciation/Capital Allowance

Depreciation on specified assets is allowed at specified rates.

### Double Deductions

N.A.

### Interest Expenses

Interest expenditure is allowed while calculating the taxable income. India has, however introduced thin capitalization regulations i.e. limitation on the interest deduction, applicable to all companies except banking and insurance companies. This limitation is applicable to interest paid to non-residents in excess of INR 10 million, on borrowings from one or more associated enterprise/s (AE) or on borrowings where either implicit or explicit guarantee is given by the AE/s of the taxpayer (provision explained in detail at 1.1 above).

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## Inventories

Generally, inventories are valued at cost or market value whichever is lower

## Other Significant Items

Weighted deduction is allowed on specific expenditure related to research and development.

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## 1.3 Tax Compliance

### 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

### Mandatory Electronic Filing

It is mandatory for specified taxpayers to file tax return electronically.

### Requirement to Prepare Tax Computation / Return in Functional Currency

Income-tax return is required to be filed in INR.

### Documents to File with Tax Return

No documents are required to be filed with tax return.

### Language to File Return, Computation and Supporting Documentation(s)

English.

### Filing Extension Availability and Details

The government may extend the time limits with respect to filing of returns under certain circumstances.

### Payment of Estimated Tax

Taxpayers are required to pay appropriate advance tax in instalments.

Companies – On or before 15th June – 15% of advance tax

On or before 15th September – 45% of advance tax

On or before 15th December – 75% of advance tax

On or before 15th March – 100% of advance tax

### Interim Tax Returns

NA

### Payment of Tax

If the advance tax paid and tax deducted at source are lower than the final tax payable, the taxpayer is required to pay self-assessment tax

### Penalties for Non-compliance

Penalty for late filing of income-tax return:

(i) A penalty of INR 5,000 in case returns are filed after the due date but before the 31 December of the relevant assessment year ('AY') or

(ii) INR 10,000 in case it is filed after 31 December of the relevant AY.

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However, as a relief to the taxpayers earning not more than INR 5 lakh the maximum penalty will be INR 1,000

If the taxpayer does not file the income tax return voluntarily or in pursuance to a notice issued by the tax authorities, then the taxpayer can be prosecuted under the Act

### Penalties and/or Interest for Underpayment of Taxes

The taxpayer will be liable to pay interest in case of non-payment or short payment of advance tax and deferment of advance tax.

### Statute of Limitation

In the case of submission of return, before the end of the relevant AY or before the completion of the assessment, whichever is earlier, and for assessment of returns, 30 months (for AY 2018-19) and 24 months (for AY 2019-2020) from the end of the relevant tax year for which the return is filed.

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## 1.4 Financial Statements/Accounting

### Details of Local Accountant Requirements

Every company in India (whether listed or unlisted) is required to prepare both separate and consolidated financial statements containing balance sheet, statement of profit and loss, statement of changes in equity, cash flow statement, accounting policies and relevant notes/disclosures to the statements. The legal framework applicable to Indian companies is governed by the Companies Act, 2013 and such financial statements have to be filed with the Ministry of Corporate Affairs within 6 months of the financial reporting year-end.

Based on the whether an entity is listed and its net worth criteria, companies in India have to follow either of the two accounting frameworks – Indian Accounting Standards (converged with IFRS) or Accounting Standards (local Indian GAAP).

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 Government has introduced has introduced Income Computation and Disclosure Standards (‘ICDS’) and the same 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.

### Fiscal Year

1 April to 31 March.

### Periodicity of Local Books to be Closed

Annually

### Retention Period for Statutory Financial Statements/Working Papers

8 FYs but can be longer period if government agencies are in the process of investigation in certain cases.

### Requirements to Retain Physical Copies Locally/Electronically Stored Data to Reside on In-country Server

Yes, books of accounts and other relevant books and papers maintained in electronic mode should remain accessible in India.

### Requirements to Prepare Financial Statements in Local Currency

Yes, financial statements have to be prepared in INR.

### What GAAP must the Financial Statements be Prepared Under?

Either Indian Accounting Standards (converged with IFRS) or Accounting Standards (local Indian GAAP)

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## Prescribed Format and Details for Financial Statements

Yes, the Companies Act, 2013 provides a format and guidelines for the presentation of the financial statements.

## Filing Due Date

Within 30 days from the date of the annual general meeting.

## Filing Format of Financial Statements

Electronic XBRL format (e-filing).

## Filing Extension Availability and Details

The government may extend time-period in certain specific circumstances.

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## 1.5 Incentives

### 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% on gross basis plus applicable surcharge and cess subject to fulfilment of the relevant conditions.

### R&D Incentives

A 100% 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 150% 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 | Quantum and period of incentive |
|---|---|
| Payment to an approved scientific research association having an objective of undertaking scientific research and certain specified institutions | • 150% from 1 April 2017 to 31 March 2020;<br>• 100% from 1 April 2020 onwards |
| Contribution to an approved scientific research company | • 100% from 1 April 2017 onwards |
| Contribution to an approved research association, university, college, other institution to be used for research in social science or statistical research | • 100% 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 program | • 150% from 1 April 2017 to 31 March 2020;<br>• 100% from 1 April 2020 onwards |
| 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) | • 150% from 1 April 2017 to 31 March 2020;<br>• 100% from 1 April 2020 onwards |

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## 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

## 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

## Other Incentives

There are special provisions with respect to start-up companies whereby the eligible start-up companies incorporated before 1 April 2019 entitled to claim 100% tax holiday for any 3 consecutive AYs out of 7 AYs from its incorporation.

The taxation regime of start-ups is as under:

- The sunset date of incorporation for eligible start-ups is 1 April 2021.
- The requirement of total turnover not to exceed INR 25 crore would apply to the year in which the deduction is claimed.
- The 'eligible business' is defined to mean innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation.

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.

— With effect from AY 2018-19, where the total income of the taxpayer includes any income from transfer of carbon credit; such income shall be taxable at the concessional rate of 10% (plus applicable surcharge and cess) on the gross amount of such income. No expenditure or allowance in respect of such income shall be allowed under the Act.

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## 1.6 International Taxation

### Double Taxation Relief

Foreign tax paid may be credited against Indian tax on the same profits, but the credit is limited to the amount of Indian tax payable on the foreign income. Specific rules exist regarding the mechanism for granting a foreign tax credit.

India has entered into DTAA with more than 90 countries. Generally, the provisions of DTAA prevail over the domestic tax provisions. However, the domestic tax provisions may apply to the extent they are more beneficial to the taxpayer.

### Foreign-exchange Controls

Foreign Exchange Management rules

India has foreign exchange control, regulated by the Foreign Exchange Management Act, 1999 ('FEMA') that aims "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. Drawl of foreign exchange for current account transactions is generally allowed up to the specified monetary ceilings, if any, while capital account transactions cannot be generally undertaken without a general or specific permission from the relevant authorities.

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## 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 20.56% (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% (subject to several conditions). Taking into account the applicable surcharge and education cess, the effective withholding tax rate is either 10.40 or 10.61 or 10.92% in the case of a foreign company. The effective withholding tax rate is either 10.40 or 11.62% in case of other taxable entities, including individuals, (this comprises a surcharge of 12% on the royalty/fees for technical services and education cess of 4% on income tax (including surcharge)).

| | If the total income exceeds INR 10,000,000 | If the total income exceeds INR 100,000,000 | Education Cess |
|---|---|---|---|
| **Surcharge in case of a foreign company** | 2% on income tax | 5% on income tax | Applicable at 4% 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%, which, with applicable surcharge and education cess, results in a withholding tax rate of either 20.80 or 21.21 or 21.84% in the case of a foreign company. The effective withholding tax rate is either 20.80% or 23.296% in the case of others (this comprises a surcharge of 12% on the interest and education cess of 4% on income).

The interest income earned by a non-resident may be taxed at a reduced rate of 5% (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 the total income exceeds INR 100,000,000 | Education Cess |
|---|---|---|---|
| **Surcharge in case of a foreign company** | 2% on income tax | 5% on income tax | Applicable at 4% on income tax (inclusive of surcharge, if any) |

Any payment made by a branch to a non-resident entity/person will be subject to withholding of tax at the prescribed rate depending upon the type of recipient non-resident entity/person.

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## Withholding Tax rates under the Income Tax Treaties

| India — Treaty Withholding Rates Table | | | | |
|---|---|---|---|---|
| | Dividends | | Interest | Royalties |
| | Individuals, companies (%) | Qualifying companies (%) | (%) | (%) |
| **Domestic Rates** | | | | |
| Companies: | 20.56/34.94[1] | 20.56 | 23.296/21.84[2] | 11.62/10.92[2] |
| Individuals: | NA | NA | 23.296/21.84[2] | 11.62/10.92[2] |
| **Treaty Rates** | | | | |
| Albania | 10 | 10 | 10 (Note 1) | 10 |
| Armenia | 10 | 10 | 10 (Note 1) | 10 |
| Australia | 15 | 15 | 15 | 10/15/20 (Note 2) |
| Austria | 10 | 10 | 10 (Note 1) | 10 |
| Azerbaijan | (Note 4) | | | |
| Bangladesh | 15 | 10[3] | 10 (Note 1) | 10 |
| Belarus | 15 | 10[4] | 10 (Note 1) | 15 |
| Belgium | 15 | 15 | 15 (10% if loan is granted by a bank) | 10 |
| Bhutan | 10 | 10 | 10 (Note 1) | 10 |
| Botswana | 10 | 7.5[5] | 10 (Note 1) | 10 |
| Brazil | 15 | 15 | 15 (Note 1) | (a) 25% for the use of trademark;<br>(b) 15% for others |
| Bulgaria | 15 | 15 | 15 (Note 1) | (a) 15% of royalty relating to literary, artistic, scientific works other than films or tapes used for radio or television broadcasting;<br>(b) 20%, in other cases |

[1] Taxability of deemed dividend in case of loans and advances shifted from recipients to the distributing domestic company and made subject to DDT at the rate of 30% (without grossing up).

[2] These rates have been explained in detail under the heading international withholding tax rates in chapter 1.6 above.

[3] If at least 10% of the capital of the company paying the dividend is held by the recipient company.

[4] If paid to a company holding 25% shares.

[5] If shareholder is a company and holds at least 25% shares in the investee-company.

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| Treaty Rates | | | | |
|---|---|---|---|---|
| **Canada** | 25 | 15[6] | 15 (Note 1) | 10/15 |
| **China (People's Rep)** | 10 | 10 | 10 (Note 1) | 10 |
| **Colombia** | 5 | 5 | 10 (Note 1) | 10 |
| **Croatia** | 15 | 5[6] | 10 (Note 1) | 10 |
| **Cyprus** | 10 | 10 | 10 (Note 1) | 10 |
| **Czech Republic** | 10 | 10 | 10 (Note 1) | 10 |
| **Denmark** | 25 | 15[7] | (a)10% if loan is granted by bank; (b) 15% for others | 20 |
| **Estonia** | 10 | 10 | 10 (Note 1) | 10 |
| **Ethiopia** | 7.5 | 7.5 | 10 (Note 1) | 10 |
| **Fiji** | 5 | 5 | 10 (Note 1) | 10 |
| **Finland** | 10 | 10 | 10 (Note 1) | 10 |
| **France** | 10 | 10 | 10 (Note 1) | 10 |
| **Georgia** | 10 | 10 | 10 (Note 1) | 10 |
| **Germany** | 10 | 10 | 10 (Note 1) | 10 |
| **Hungary** | 10 | 10 | 10 (Note 1) | 10 |
| **Iceland** | 10 | 10 | 10 (Note 1) | 10 |
| **Indonesia** | 10 | 10 | 10 (Note 1) | 10 |
| **Ireland** | 10 | 10 | 10 (Note 1) | 10 |
| **Israel** | 10 | 10 | 10 (Note 1) | 10 |
| **Italy** | 25 | 15[8] | 15 (Note 1) | 20 |
| **Japan** | 10 | 10 | 10 (Note 1) | 10 |

[6] If at least 10% of the capital of the company paying the dividend is held by the recipient company.
[7] If at least 25% of the shares of the company paying the dividend is held by the recipient company.
[8] If at least 10% of the shares of the company paying dividend is beneficially owned by the recipient company.

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| Treaty Rates | | | | |
|---|---|---|---|---|
| **Jordan** | 10 | 10 | 10 (Note 1) | 20 |
| **Kazakhstan** | 10 | 10 | 10 (Note 1) | 10 |
| **Kenya** | 10 | 10 | 10 (Note 1) | 10 |
| **Korea (Rep.)** | 15 | 15 | 10 | 10 |
| **Kuwait (Note 1)** | 10 | 10 | 10 | 10 |
| **Kyrgyzstan** | 10 | 10 | 10 (Note 1) | 15 |
| **Latvia** | 10 | 10 | 10 (Note 1) | 10 |
| **Lithuania** | 15 | 5[9] | 10 (Note 1) | 10 |
| **Luxembourg** | 10 | 10 | 10 (Note 1) | 10 |
| **Macedonia** | 10 | 10 | 10 (Note 1) | 10 |
| **Malaysia** | 5 | 5 | 10 (Note 1) | 10 |
| **Malta** | 10 | 10 | 10 (Note 1) | 10 |
| **Mauritius** | 15 | 5[10] | 7.5 (Note 5) | 15 |
| **Mexico** | 10 | 10 | 10 (Note 1) | 10 |
| **Mongolia** | 15 | 15 | 15 (Note 1) | 15 |
| **Montenegro** | 15 | 511 | 10 (Note 1) | 10 |
| **Morocco** | **10** | **10** | **10 (Note 1)** | **10** |
| **Mozambique** | 7.5 | 7.5 | 10 (Note 1) | 10 |
| **Myanmar** | 5 | 5 | 10 (Note 1) | 10 |
| **Namibia** | 10 | 10 | 10 (Note 1) | 10 |

[9] If the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.

[10] If at least 10% of the capital of the company paying the dividend is held by the recipient company.

[11] If the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.

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| Treaty Rates | | | | |
|---|---|---|---|---|
| **Nepal** | 10 | 5[12] | 10 (Note 1) | 15 |
| **Netherlands** | 10 | 10 | 10 (Note 1) | 10 |
| **New Zealand** | 15 | 15 | 10 (Note 1) | 10 |
| **Norway** | 10 | 10 | 10 (Note 1) | 10 |
| **Oman** | 12.5 | 10[13] | 10 (Note 1) | 15 |
| **Philippines** | 20 | 15[14] | (a) 10% if interest is received by a financial institution or insurance company;<br>(b) 15% in other cases | 15% if it is payable in pursuance of any collaboration agreement approved by the government of India |
| **Poland** | 10 | 10 | 10 (Note 1) | 15 |
| **Portugal** | 15 | 10[15] | 10 | 10 |
| **Qatar** | 10 | 5[16] | 10 (Note 1) | 10 |
| **Romania** | 10 | 10 | 10 (Note 1) | 10 |
| **Russia** | 10 | 10 | 10 (Note 1) | 10 |
| **Saudi Arabia** | 5 | 5 | 10 (Note 1) | 10 |
| **Serbia** | 15 | 5[17] | 10 (Note 1) | 10 |

[12] If beneficial owner of shares is a company and it holds at least 10% of shares of the company paying the dividends.

[13] If at least 10% of shares are held by the recipient company.

[14] If at least 10% of the shares of the company paying the dividend is held by the recipient company.

[15] If the beneficial owner is a company that, for an uninterrupted period of two fiscal years prior to the payment of the dividend, owns directly at least 25% of the capital stock of the company paying the dividend.

[16] If at least 10% of the shares of the company paying the dividend is held by the recipient company.

[17] If recipient is company and holds 25% shares.

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| Treaty Rates | | | | |
|---|---|---|---|---|
| **Singapore** | 15 | 10[18] | (a) 10% if loan in granted by a bank or similar institute including an insurance company;<br>(b) 15%, in all other cases including an insurance company;<br>(b) 15%, in all other cases | 10 |
| **Slovak Republic** | 25 | 15[19] | 15 (Note 1) | 30 |
| **Slovenia** | 15 | 5[20] | 10 | 10 |
| **South Africa** | 10 | 10 | 10 (Note 1) | 10 |
| **Spain** | 15 | 15 | 15 (Note 1) | 10/20 (Note 3) |
| **Sri Lanka** | 7.5 | 7.5 | 10 (Note 1) | 10 |
| **Sudan** | 10 | 10 | 10 (Note 1) | 10 |
| **Sweden** | 10 | 10 | 10 (Note 1) | 10 |
| **Switzerland** | 10 | 10 | 10 (Note 1) | 10 |
| **Syria** | 10 | 5[21] | 10 (Note 1) | 10 |
| **Taiwan** | 12.5 | 12.5 | 10 | 10 |
| **Tajikistan** | 10 | 5[22] | 10 (Note 1) | 10 |
| **Tanzania** | 10 | 5[23] | 10 | 10 |
| **Thailand** | 10 | 10 | 10 (Note 1) | 10 |
| **Trinidad and Tobago** | 10 | 10 | 10 (Note 1) | 10 |
| **Turkey** | 15 | 15 | (a) 10% if loan is granted by a bank, etc.;<br>(b) 15% in other cases | 15 |

[18] if at least 25% of the shares of the company paying the dividend is held by the recipient company.

[19] If the beneficial owner is a company which owns at least 25% of the shares of company paying the dividends.

[20] If at least 10% of the shares of the company paying the dividend is held by the recipient company.

[21] If at least 10% of the shares of the company paying the dividend is held by the recipient company.

[22] If at least 25% of the shares of the company paying the dividend is held by the recipient company.

[23] If recipient company owns at least 25% share in the company paying the dividend.

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| Treaty Rates | | | | |
|---|---|---|---|---|
| **Turkmenistan** | 10 | 10 | 10 (Note 1) | 10 |
| **Uganda** | 10 | 10 | 10 (Note 1) | 10 |
| **Ukraine** | 15[24] | 10[25] | 10 (Note 1) | 10 |
| **United Arab Emirates** | 10 | 10 | (a) 5% if loan is granted by a bank/similar financial institute;<br>(b) 12.5%, in other cases | 10 |
| **United Kingdom** | 15[26] | 10[27] | (a) 10%, if interest is paid to a bank;<br>(b) 15%, in other cases<br>(Note 1) | 10/15 (Note 2) |
| **United States** | 25 | 15[28] | (a) 10% if loan is granted by a bank/similar institute including insurance company;<br>(b) 15% for others | 10/15 (Note 2) |
| **Uruguay** | 5 | 5 | 10 [Note 1] | 10 |
| **Uzbekistan** | 10 | 10 | 10 [Note 1] | 10 |
| **Vietnam** | 10 | 10 | 10 [Note 1] | 10 |
| **Zambia** | 15 | 5 | 10 [Note 1] | 10 |

**Notes:**

**Note 1:** Dividend/interest earned by the Government and certain specified institutions, inter-alia, Reserve Bank of India is exempt from taxation in the country of source (subject to certain condition).

[24] where those dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax

[25] If at least 25% of the shares of the company paying the dividend is held by the recipient company.

[26] where dividends are paid out of income (including gains) derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax

[27](a) 15% of the gross amount of the dividends where those dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax;

(b) 10% of the gross amount of the dividends, in all other cases

[28] If at least 10% of the voting stock of the company paying the dividend is held by the recipient company

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**Note 2:** Royalties and fees for technical services would be taxable in the country of source at the rates prescribed for different categories of royalties and fees for technical services. These rates shall be subject to various conditions and nature of services/royalty for which payment is made. For detailed conditions, refer to relevant tax treaties.

**Note 3:** Royalties and fees for technical services would be taxable in the country of source at the following rates:

**a.** 10% in case of royalties relating to the payments for the use of, or the right to use, industrial, commercial or scientific equipment;

b. 20% in case of other royalties

Note 4: India is in negotiation with regard to the tax treaty with Azerbaijan. The position regarding the applicability of the U.S.S.R. treaty remains unclear: Currently there is no statement from India regarding the applicability of the U.S.S.R. treaty of 20 November 1988 in relations with Azerbaijan. In practice Azerbaijan generally does not apply the former conventions. Source IBFD

Note 5:

(i) Interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by:

(a) the Government or a local authority of the other Contracting State

(b) any agency or entity created or organised by the Government of the other Contracting State

(ii) Interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by any bank resident of the other Contracting State carrying on bona fide banking business. However, this exemption shall apply only if such interest arises from debt-claims existing on or before 31 March 2017.

(iii) Interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person [other than a person referred to in paragraph (3)] who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

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## Other Agreements

India has signed:

(c) Limited Agreements (dealing with airline or shipping profits)

| Afghanistan | Lebanon | Pakistan |
|---|---|---|
| Iran | Maldives | Yemen |

(d) Limited Multilateral Agreements (entered with a group of countries) with South Asian Association for Regional Cooperation (SAARC) countries and the Organization 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.

(e) Specified Associations Agreement with Taipei.

Limited Agreement with Maldives on specified matters

## Income Tax Treaties for the Avoidance of Double Taxation (Negotiated, not yet in Force at time of publication)

India-Hong Kong tax treaty, India-Iran tax treaty.

## Agreements for the Exchange of Information

India has Tax Information Exchange Agreements with:

| Argentina | British Virgin Islands | Jersey | Monaco |
|---|---|---|---|
| Bahamas | Cayman Islands | Liberia | San Marino |
| Bahrain | Gibraltar | Liechtenstein | Saint Kitts and Nevis |
| Belize | Guernsey | Macau | Seychelles |
| Bermuda | Isle of man | Maldives | |

## Indirect Offshore Disposal Rules

All income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India or through the transfer of a capital asset situated in India, shall be deemed to accrue or arise in India.

The government has issued clarifications dealing with the prescribed manner of computation of fair market value of assets of foreign company and the reporting requirement by Indian concern

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# 2 Transfer Pricing

## Requirements

India's transfer pricing regulations ('TP') are 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.

The existing Safe harbor provisions under the TP regulations are applicable for a period of 5 years starting with AY 2013-14 to AY 2017-18 for certain prescribed sectors. These safe harbor provisions have already been revised and extended for a further period. The revise provisions will now be applicable from AY 2017-18 to AY 2019-20. Most of the safe harbor rates have been rationalized and safe harbor provisions for receipt of low value adding intra-group services have also been introduced.

India's advanced pricing agreement ('APA') program was enacted and operative from 1 July 2012. An APA is effective for a period of up to 5 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 9 years.

Domestic transfer pricing provisions are applicable if the aggregate value of 'Specified Domestic Transactions' exceeds INR 20 crores during the year. The applicability of domestic TP provisions has been restricted only to those taxpayers who claim some kind of a tax exemption or tax holiday in India.

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.

Provisions relating to secondary adjustments were introduced in India in 2017 and are applicable in respect of primary transfer pricing adjustments made in respect of FY 2016-17 and subsequent years.

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 3-tier Transfer Pricing documentation structure as prescribed by the OECD under BEPS Action 13.

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

## Country-by-Country Reporting

Parent entity of a MNE Group or an Alternate Reporting Entity ('ARE'), resident in India, shall be subject to file CbCR in India, if the total consolidated group revenue of the international group exceeds INR 5,500 crore from FY 2016-17 onwards. A Constituent Entity (CE), of an international group resident in India, shall be required to file a CbCR in India, if the parent entity is not obligated to file the CbCR in its country or if there is no agreement for exchange of CbCR between India and the country of the parent entity or there has been a systemic failure by that country. This CbCR shall be filed with the Indian Tax authorities within a period of twelve months from the end of the reporting accounting year.

A Constituent Entity (CE), of an international group resident in India, shall be required to file a CbCR in India, if the parent entity is not obligated to file the CbCR in its country or if there is no agreement for exchange of CbCR between India and the country of the parent entity or there has been a systemic failure by that country. In this case, the due date for furnishing of CbCR is yet to be prescribed by the Indian Tax authorities.

Notification:

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Further, every CE resident in India, if its parent entity is not resident in India, shall be required to file CbCR notification. The CbCR notification is to be filed at least two months prior to the due date of furnishing of CbCR.

If the Indian CE is required to file the CbCR in India and there is more than one CEs resident in India, the group may opt to designate a CE, wherein the CbCR has to be filed only by the designated CE and the notification of the same is required to be filed by the designated CE.

## Master and Local Files Reporting

Master File consists of Part A and Part B. Part A is required to be filed by every CE of an international group whether or not it satisfies the dual thresholds specified below and Part B is required to be filed only by those CEs which satisfy both of the thresholds mentioned in the table below

| Particulars | Dual thresholds |
|---|---|
| 1. Consolidated group revenue of the International Group for the accounting year exceeds | INR 500 crore (USD 80 million) |
| And | |
| 2. Aggregate value of international transaction<br>a. During the accounting year, as per books of accounts exceeds<br>Or<br>b. In respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds | INR50 crore (USD 8 million)<br>Or<br>INR 10 crore (USD 1.6 million) |

The Master File shall be filed with the Indian Tax authorities before 31 March 2018 for FY 2016-17 and for subsequent years, shall be filed on or before the due date of filing of Return of Income.

In case there is more than one CEs resident in India, the group may opt to designate a CE, wherein the Master File has to be filed only by the designated CE and the notification of the same is required to be filed by the designated CE. The said notification is to be filed at least 30 days prior to the due date of furnishing of Master File.

Local File related regulations already exist in the Indian Transfer Pricing regulations and may continue. Separate rules in this regard have not been notified.

## Common Reporting Standard

India is a signatory to the Multilateral Competent Authority Agreement on the Exchange of CbCR (the "CbCR MCAA"). In view of the same, various bilateral exchange relationships are currently in place for the automatic exchange of CbCR between tax authorities. As per the full list of automatic exchange relationships (over 1,500 bilateral relationships) that are now in place, available on the OECD website29, currently India has over 50 activated bilateral exchange relationships.

[29] http://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm

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# 3 Indirect Tax

## Indirect Tax

The introduction of Goods & Service Tax (GST) with effect from 1st July 2017 is characterized by a marked shift from present origin-based taxation to that of consumption-based taxation. GST subsumed majority of indirect taxes levied by Central Government and State Governments such as Value Added Tax (VAT) / Central Sales Tax (CST)) / Entry Tax/ Purchase Tax// Octroi / Local Body Tax (LBT) / Excise Duty / Service Tax. It is a tax levied across all goods and services on PAN India basis except Alcohol and few Petroleum products, which are excluded. On these goods erstwhile excise and VAT levy continues. Levy of Custom Duty on Import of Goods Continues.

## Structure

India, being a federal country, is divided into various states. Indirect taxes are levied at two levels - Central Government and State Government GST is levied both on Goods and Services simultaneously by Central Government as CGST and by State Governments as SGST or by Union Territories as UTGST for Intra State transactions. For Inter-state transaction, Central Government levies Tax as Integrated GST or IGST that is sum total of CGST & SGST/UTGST. Imports of goods are treated as inter-state supply of goods and IGST is levied on the same, besides Custom Duly. GST Registered person is entitled to claim credit of input tax (ITC) charged to him by his suppliers on supply of goods and services or both.

Government has also introduced Compensation Cess to be levied on intra-state and inter-state transactions of goods and services, to compensate the revenue losses occurred to states on implementation of GST

## Standard Rate

GST is levied both on Goods and on Services simultaneously by Central Government as CGST and by State Governments as SGST or by Union Territories as UTGST for Intra State transactions. For Inter-state transaction, Central Government levies Tax as Integrated GST or IGST that is sum total of CGST & SGST/UTGST. Imports of goods are treated as inter-state supply of goods and IGST is levied on the same, besides Custom Duly. GST Registered person is entitled to claim credit of input tax (ITC) charged to him by his suppliers on supply of goods and services or both.

Government has also introduced Compensation Cess to be levied on intra-state and inter-state transactions of goods and services, to compensate the revenue losses occurred to states on implementation of GST.

## Further Information

For more detailed indirect tax information, refer to:

KPMG's 2017 Asia Pacific Indirect Tax Country Guide

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# 4 Personal Taxation

## Income Tax

### Top Rate

Income Tax

Personal income tax rates are applied on a progressive basis:

| Income during the FY | Tax Rates  FY 2017-18 |
|---|---|
| Up to INR 250,000 (a)(b) | Nil |
| INR 250,001 to 500,000 | 5% of tax on excess of INR 250,000 |
| INR 500,001 to 1,000,000(c)(d) | INR 12,500 + 20% of tax on excess of INR 500,000 |
| INR 1,000,001 and above (c)(d) | INR 112,500 + 30% of tax on excess of INR 1,000,000 |

Education cess is applicable @ 3% on income tax (inclusive of surcharge, if any) for the FY 2017-18; proposed Health and Education Cess @ 4% on income tax (inclusive of surcharge, if any) replace Education cess from the FY 2018-19 onwards.

a. In case of a resident individual of the age of 60 years or above, the limit of non-taxable income is INR 300,000
b. In case of a resident individual of the age of 80 years or above, the limit of non-taxable income is INR 500,000
c. Surcharge @ 10% is applicable if the total income exceeds INR 5000,000. Marginal Relief is available for borderline cases.
d. Surcharge @ 15% is applicable 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 350,000, he would be eligible for a rebate of INR 2,500 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% each on the prescribed salary, subject to specified conditions under the **Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF Act)**. Since November 2008, non-Indian passport holders working for a covered establishment (as per the EPF Act) are considered as International Workers (IWs) and required to contribute to Indian Social Security schemes PF and Pension schemes). The employer and employee are required to contribute towards Social Security as per the provisions of the EPF Act. Further, the employer is also required to contribute towards the Employees' Deposit Linked Insurance Scheme and administrative charges as per the provisions of the EPF Act. IWs include expatriates working for an employer in India to which the EPF Act applies and Indian employees working in a country with which India has entered into a Social Security Agreement (SSA). Accordingly, all the expatriates holding foreign passports will qualify as IWs in India. Consequently, all employees who fall within the definition of IWs are required to become members of the Schemes under the EPF Act unless they qualify as 'excluded employees'.

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IWs are excluded from contributing towards PF if:

- They are contributing to social security in their country of origin and obtained a Certificate of Coverage (CoC) under the relevant SSA; 'OR'
- Deputed from a country with which India has entered into a bilateral comprehensive economic agreement before 1 October 2008. (Currently with Singapore only) ; 'OR'
- They are Nepalese national because of Treaty of Peace and Friendship of 1950 and the workers who are Bhutanese national on account of India-Bhutan Friendship Treaty of 2007, shall be deemed to be Indian workers.

*Withdrawal conditions*

Withdrawal from PF scheme is possible at the end of assignment/ employment in India, if individual comes from a country with which India has an effective SSA or is faced with certain contingencies (death/ specified illnesses/ incapacitation). Otherwise, no withdrawal is possible from PF scheme until 58 years of age.
In relation to pension withdrawal, the lump sum refund will be available only to those employees who are covered under an SSA in force and who have not completed the eligible service of 10 years even after including the totalization of service under the respective SSAs. Employees not covered under an SSA will not get the lump sum refund. In case of employees (both from SSA as well as Non-SSA countries) having 10 years or more contributory service, they would be eligible to receive a monthly pension as the provisions under the EPF Act.

In case an individual renders less than 5 years of continuous services and the accumulated balance is more than INR 50,000, then withholding tax by the PF authorities, at the rate of 10% on the accumulated balance would be applicable at the time of withdrawal. The balance tax liability, if any, would need to be discharged by the individual.

## International Social Security Agreements

The countries with which India has an effective SSAs are as follows:

| | | | |
|---|---|---|---|
| Australia | Czech Republic | Germany | Norway |
| Austria | Denmark | Hungary | Netherlands |
| Belgium | Finland | Republic of Korea | Sweden |
| Canada | France | Luxembourg | Switzerland |
| Japan | Portugal | | |

Other agreements that have been signed, but are not effective yet are: Brazil and Quebec

## Visa Requirements

The type of visa for a foreign national would depend upon their intention and purpose of visit: The illustrative list of different types of visa granted by India have been listed below for reference:

- Employment Visa (EV)
- Entry X Visa (Dependent Visa)
- Business Visa (BV)
- Project Visa – for foreign national employed in the power and steel sector
- Intern visa
- Conference Visa
- Tourist Visa
- e-Visa (e-Tourist Visa, e-Business Visa, e-Medical Visa)
- Student Visa
- Journalist Visa

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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 INR 1.625 million per annum. However, the said salary threshold is not applicable to visa like Project visa and certain foreign nationals employed as ethnic cooks (by foreign missions), language teachers *(other than English language teachers)*, translators, etc. A reduced salary threshold of INR .910 million and INR .78 million per annum is prescribed for certain categories of foreign nationals and intern visa respectively.

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 cardholders are deemed to be OCI cardholders 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

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# 5 Other Taxes

## 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

R & D Cess has been abolished on introduction of GST.

## Property Taxes

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 FY 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 that 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 recognized 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.

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# 6 Trade & Customs

## 6.1 Customs

### 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 because of Free Trade Agreements, which have been agreed and are in force at the time of import/export.

### Excise Duty

Excise duty has been subsumed in GST.

## 6.2 Free Trade Agreements (FTA)

In Force

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

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

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

Asia Pacific Trade Agreement (APTA)

| | | | |
|---|---|---|---|
| Bangladesh | Korea (Republic of) | Laos | Sri Lanka |
| China | | | |

Association of South-East Asian Nations (ASEAN)

| | | | |
|---|---|---|---|
| Brunei Darussalam | Laos | Philippines | Thailand |
| Cambodia | Malaysia | Singapore | Vietnam |
| Indonesia | Myanmar | | |

Mercosur

| | | | |
|---|---|---|---|
| Argentina | Brazil | Paraguay | Uruguay |

South Asian Association for Regional Cooperation (SAARC)

| | | | |
|---|---|---|---|
| Afghanistan | Bhutan | Nepal | Sri Lanka |
| Bangladesh | Maldives | Pakistan | |

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### Concluded / Signed (pending Domestic Ratification)

There is no FTA pending for ratification at the date of publication.

### In Negotiation

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

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

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

- APTA – Bangladesh, China, Korea (Republic of), Lao PDR and Sri Lanka
- 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 - 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 – Iceland, Liechtenstein, Norway and Switzerland
- European Union – 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 - Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates
- Mercosur - Argentina, Brazil, Paraguay and Uruguay
- South African Customs Union – Botswana, Lesotho, Namibia, South Africa and Swaziland

Source: *Government of India – Ministry of Commerce and Industry*

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# 7 Tax Authority

## Tax Authority

- Income Tax Department
- Central Board of Direct Tax ('CBDT')
- Central Board of Excise and Customs
- State GST/VAT Departments (for each state, there is a separate GST/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 either can be 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.

Recently, the government has introduced faceless assessment by eliminating an interface between the taxpayer and tax authorities and brings in team-based assessments. The provision to take effect from AY 2018-19.

Pursuantly, CBDT issued a revised format of scrutiny notice(s) stating that assessment proceedings in cases selected for scrutiny would be conducted electronically in 'E-Proceeding' facility through taxpayer's account in e-filing website of the income-tax department. It has been further stated that except for search related assessments proceedings, in other pending scrutiny assessment, cases shall be conducted only through the 'E-Proceeding' functionality.

Regular assessments in relation to income tax for FY 2017-18 should be completed within 30 months of the end of the FY. However, from AY 2019-20 the regular assessments in relation to income tax should be completed within 24 months of the end of the FY. 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.

Indirect taxation covers various laws and regulations. Under SGST/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.

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## 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.

## Current Topics for Focus by Tax Authorities

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

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

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