

ASA & Associates LLP

chartered accountants *(A member firm of NIS Global)*



Setting Up >>
business presence in india

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CORPORATE TAX >>

CORPORATE TAX IS PAID BY COMPANIES, BRANCHES AND PROJECT OFFICES OF OVERSEAS COMPANIES ON PROFITS AND OTHER INCOME

RATES FOR FY 2013-2014	
Company	Rate (%)
Domestic	30¹
Foreign	40²

¹ Surcharge at 5 per cent and 10 per cent where income exceeds ₹10 million and ₹100 million respectively and education cess of 3%.

² Surcharge at 2 per cent and 5 per cent where income exceeds ₹10 million and ₹100 million respectively and education cess of 3%.

CORPORATE TAX

Businesses need to determine their annual tax payment and ensure deposit under an installment plan referred as *Advance Tax* by June 15th (15%), September 15th (45%), December 15th (75%) and March 15th (100%).

TRANSFER PRICING

Businesses having cross border or domestic dealing with related concerns fall within ambit of Indian Transfer Pricing regulations, which requires maintenance of prescribed documentation and certification by an Indian firm of chartered accountants.

DOUBLE TAXATION AVOIDANCE AGREEMENT ('DTAA')

India has a network of DTAA with over 84 countries.

WITHHOLDING TAX

Businesses, including Liaison Office, need to withhold tax on specified payments viz. contractual, professional, rental, etc.

TAX AUDIT

Businesses with annual turnover exceeding INR 10 million (USD 183,553 approx) need to have accounts audited under specific provisions of the Indian income tax laws and certified by an Indian firm of chartered accountants.

PAYROLL TAX >>

EMPLOYER NEED TO WITHHOLD TAXES ON EMPLOYEE EARNINGS

RATES FOR FY 2013-2014	
Income Range	Rate (%)
Upto 2,00,000 (USD 3,671 approx) ¹	Nil
2,00,001 - 500,000 (USD 3,671 - 9,177 approx) ²	10
500,001 - 1,000,000 (USD 9,177 - 18,355 approx)	20
1,000,001 and above (above USD 18,355 approx) ³	30

¹Exemption limit for senior and very senior citizens remain at ₹ 250,000 and ₹500,000.

²For individuals earning upto ₹ 500,000, tax rebate allowed effectively enhancing threshold from ₹ 200,000 to ₹ 220,000.

³Surcharge re-introduced at 10 per cent on income exceeding ₹ 10 million.

(1 USD = 54.48 INR)

INDIRECT TAX >>

An employer is required to contribute and comply with a social security tax namely Provident Fund. There is also an Employee State Insurance cost. Both of these primarily focus on blue collared staff. Foreign nationals deputed to work in India will be taxed on the basis of tax residential status, which is linked to the number of days stayed in India. An employment/business visa is necessary, as is registration with the Foreigners Regional Registration Officer ('FRRO'). There are certain state specific regulations e.g. *Professional Tax* and *Shop and Establishment Act*, which apply in Indian states like Karnataka, Maharashtra, Haryana, Tamilnadu etc.

TAX ON GOODS AND SERVICES

India aims to adopt a comprehensive Goods & Service Tax ('GST') by 2014. In the meanwhile, the following indirect taxes apply

EXCISE DUTY

Manufacturing units need to pay an *excise duty* on goods produced in India. The duty varies by products and the manufacturing unit is required to periodically deposit the duty on removal of products from the manufacturing premises. Furthermore, these units are to maintain detailed stock records and accounts in respect of duty payable on final goods, credit claimed on inputs etc and submit annual returns. Submission dates are linked to level of operations.

CUSTOMS DUTY

Movement of goods across borders need compliance to *customs duty* regulations. The duty varies as per products. The compliance requirement includes determination and depositing of duty prior to clearance of goods by the customs authority.

SERVICE TAX

Businesses rendering services or importing service, are liable to a *service tax* at 12 per cent plus education cess on the billable value. They are required to deposit the tax collected by them monthly.

CENTRAL SALES TAX ('CST')/VALUE ADDED TAX ('VAT')

Businesses trading in goods between states are liable to charge CST where as those trading within the same state are subject to state VAT. The rate of VAT/CST varies between products and states. The businesses are required to deposit the tax collected and submit periodical returns with the sales tax authorities. Besides, certain states of India levy *entry/octroi tax* on movement of goods.

COMPANIES & LLP

Two main forms - Private Limited Company ('PVT') and Public Limited Company ('LTD'). PVT is the most common form for an international subsidiary. Entrepreneurs and professionals intending to organise a formal structure with defined limited exposure also prefer Limited Liability Partnership ('LLP').

Audited accounts are filed annually on public record with the Registrar of Companies ('RoC'), in a format set out under the Indian law and Indian Accounting Standards, within a set time scale. Companies also file an Annual Return which gives detail of shareholders and directors. Businesses are required to follow fiscal year i.e. April 1st to March 31st, for compliance under the Indian Income tax laws.

REGULATORY COMPLIANCE >>

REGULATORY MATTER		DUE DATE
Corporate Law		
Board Meeting		Quarterly (calendar year basis)
Annual General Meeting ('AGM') (adoption of financials)		Within 180 days of end of financial year
Annual Return with the ROC		Within 60 days of holding the AGM
Tax		
Corporate Tax Return		September 30th & November 30th*
Tax Audit Report		September 30th & November 30th*
Transfer Pricing Report		November 30th
TDS Returns (Tax Withholding)		Quarterly
Individual tax return		July 31st
Service tax return		Quarterly
Compliance		
Deposit of TDS		7th of every month
Deposit of Service Tax: • In case of Individuals/proprietary concerns and Partnership • In case of others		Quarterly** Monthly

* In case where the transfer pricing report is required

** 5th – deposited manually

6th – deposited electronically

KEY MATTERS >>

Restricted Sectors (FDI disallowed)

- < Gambling and Betting
- < Lottery Business
- < Atomic Energy
- < Real Estate Business

Sectoral Caps on FDI in certain industries (illustrative list)

- < Defence Production (**26%**)
- < Insurance (**49%**)
- < Telecommunication (**74%**)
- < Print Media (**26%**)
i.e. publishing of newspapers and magazines dealing with news and current affairs
- < Civil Aviation - Domestic Airlines Sector (**49%**)
- < Single brand trading (**100%**)
- < Multi brand trading (**51%**)

In case of a LTD company, where paid up capital exceeds (USD 9,17,740 approx)

Appointment of a Managing Director mandatory

In case paid up capital exceeds INR 50,000,000 (USD 9,17,740 approx)

Company Secretary involvement

Environment Protection Act

Local state laws applicable

Restrictions on hours worked by employees

48 hours per week maximum

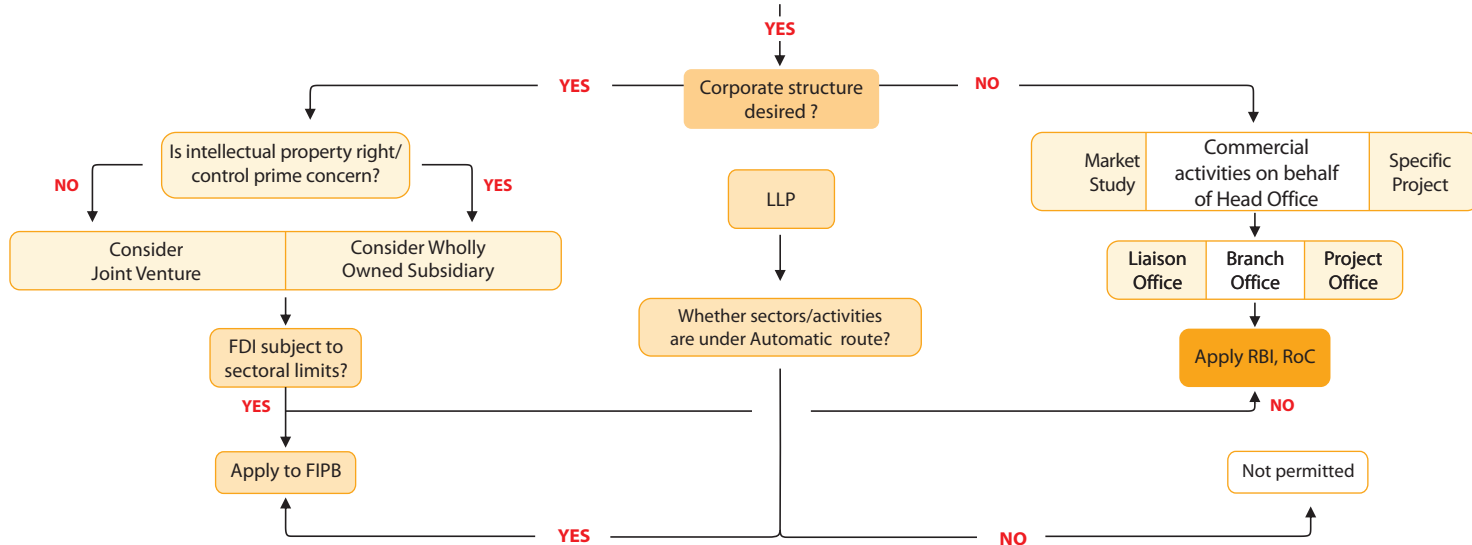
Number of Indian employees which triggers employer obligation to provide employees state insurance (manufacturing units) 10

- < Number of Indian employees which triggers employer obligation under provident fund scheme, bonus act **20**
- < Minimum bonus to be paid to an employee drawing INR 10,000 or less **8.33%** of basic wage

On retrenchment / lay off / closure

Compensation is provided to employee

SET UP BUSINESS IN INDIA



* FIPB - Foreign Investment Promotion Board

* FDI - Foreign Direct Investment

* RoC - Registrar of Companies

* RoLLP - Registrar of Limited Liability Partnership

* RBI - Reserve Bank of India

* I-T - Income Tax Authorities

INDIA SUBSIDIARY... >>

...OR BRANCH OFFICE OR...

	WHOLLY OWNED SUBSIDIARY	JOINT VENTURE COMPANY	LIAISON OFFICE	PROJECT OFFICE	BRANCH OFFICE	Limited Liability partnership
Characteristic	Company with entire share capital owned by the foreign investor	Company when two or more parties jointly hold the share capital	Representative office with no right to undertake commercial activites in India	Temporary site office for specific project only	Commercial activities on behalf of the Head Office	Corporate structure with benefits of Limited Liability & flexibility of partnership
Ownership	Foreign company directly or through holding company structures	Joint ownership with other partners	Is part of overseas company	Is part of overseas company	Is part of overseas company	Foreign owned LLP are permitted with prior government approval
Control	Controlled by its Board of Directors	Joint Control determined as per shareholders agreement	Controlled by Parent	Controlled by Parent	Controlled by Parent	Controlled by Partners
Corporate Liability	Parent not generally liable. Liability is limited to share capital of subsidiary unless Permanent Establishment is determined	Liability of investors limited to share holding	Parent is fully liable	Parent is fully liable	Parent is fully liable	Liability of each Partner is limited to agreed contribution
Set-up Requirements	FIPB approval/ automatic route	FIPB approval/ automatic route	Prior approval from RBI	Automatic route/ Prior	Prior approval from RBI	Prior approval from FIPB & RoLLP
	Indian Office Address					
	Appoint Directors		Intimate RoC			LLP Agreement
	Filing of incorporation documents					Filling of incorporation documents
	Issue shares to parent	Issue of fresh shares				2 Person nominated as designated partners & 1 should be resident in India
On-going legal obligations	Maintain books of accounts & secretarial records		Maintain books of accounts			Maintain books of accounts & secretarial records
	Register changes to constitution/ directors/ shareholders					
	Annual Audit					
	Annual Return to RoC, I-T		Annual Return to Roc, I-T and Police			Annual Return to RoC, I-T
	Not required		Annual accounts of parent company			Not required
Closure	Application to RoC & court		Application to RBI, ROC & I-T			Application to RoLLP & Court
Repatriation of money	After court order		After RBI permission subject to tax clearance			After court order

* FIPB - Foreign Investment Promotion Board | * RBI - Reserve Bank of India | * I-T - Income Tax Authorities

* RoC - Registrar of Companies | * RoLLP - Registrar of Limited Liability Partnership

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Prepared by Corporate Catalyst India Pvt. Ltd., a joint venture with SCS Global
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A member firm of NIS Global)

National Affiliates

Chandigarh, Kolkata, Pune

International Affiliates

Australia, Austria, Belgium, Canada, China, Denmark, Egypt, France, Finland, Germany, Hongkong, Hungary, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, Malaysia, Mauritius, Myanmar, Netherlands, Norway, Philippines, Poland, Portugal, Russia, South Korea, Singapore, Slovenia, Spain, Switzerland, Sweden, Thailand, Turkey, UAE, UK, USA, Vietnam

* This document has been prepared as a service to the clients. We recommend that you seek professional advice prior to initiating action on specific issues.