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SETTING UP BUSINESS IN INDIA

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1. INDIA AT A GLANCE

India is a country of great cultural heritage and rich religious background, coupled with huge intellectual property. India has been recognized as a major market and investment destination for global players. The U.S. Department of Commerce has rated India as one of the world's top 10 "Big Emerging Markets". Over the last decade, India has emerged as a leading global player in 'Information Technology more particularly in software developments and IT enabled services.

Indian Economy

India is one of the fastest growing economies of the world.

Indian economy has been witnessing a phenomenal growth since the last decade. The country is still holding its ground in the midst of the current global financial crisis.

The growth in real Gross Domestic Product (GDP) at factor cost stood at 6.7 % in 2008-09.

Indian Economy is expected to grow over 7% in FY 2009-10 & close to 8% for the FY 2010-11.



Macroeconomic indicators

	2007-08	2008-09	2009-10*	2010-11*
GDP growth (%)	9.0	6.7	7.0	7.0-7.5
Agriculture and allied activities (%)	4.9	1.6	0.0-0.5	3.0-3.5
Industrial growth (%)	8.1	3.9	7.5-8.0	7.0-7.5
Services (%)	10.9	9.7	9.0	9.5-10.0
Fiscal deficit: centre (% of GDP)	2.5	6.2	6.8	5.5
Wholesale price inflation (% , average)	4.8	8.4	6.0-7.0	5.0-5.5
Consumer price inflation (% , average)	6.5	7.8	9.0-10.0	10.0-11.0
Current account balance (% of GDP)	(-) 1.5	(-) 2.6	(-) 1.5-2.0	(-) 1.5-2.0
Growth in exports (%)	23.1	2.4	(-) 3.0-5.0	10.0-15.0
Growth in imports (%)	27.1	12.9	8.0-10.0	15.0-20.0

% change over the corresponding period in the previous year;

Source: CSO, RBI;

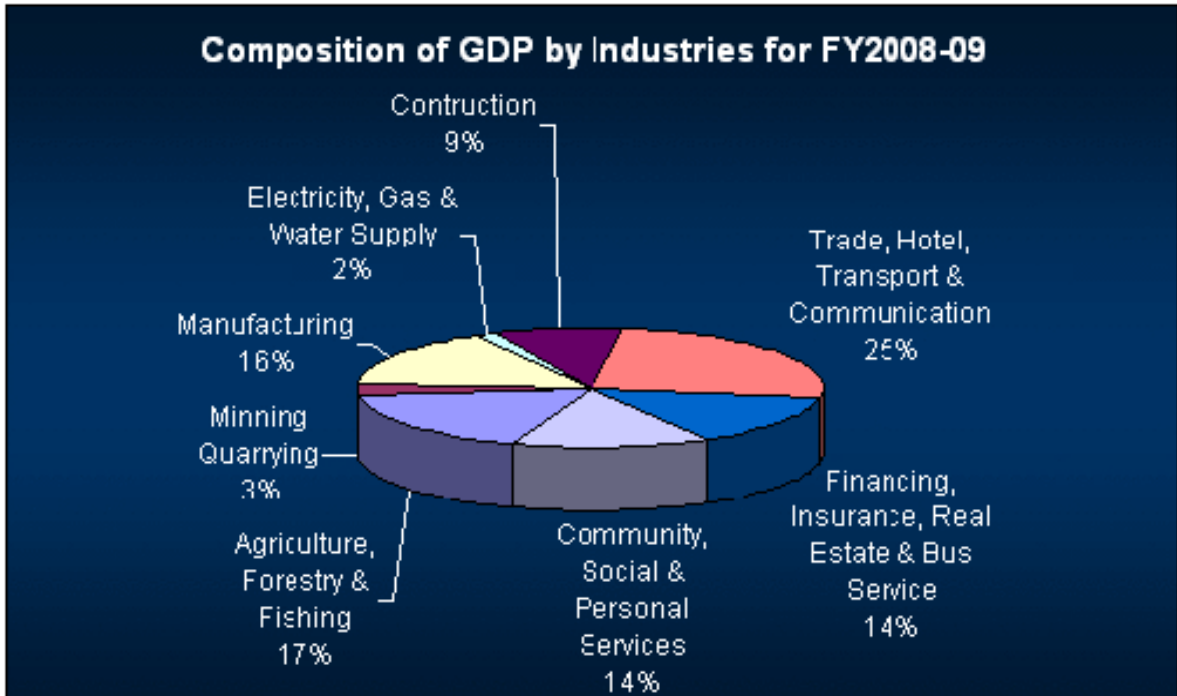
*IMA India forecasts, # including estimates of off-budget liabilities

Contributing Sectors of GDP

Origins of GDP (Calculated at Factor Cost)	2006-07 % contribution	2007-08 % contribution	2008-09 % contribution
Agriculture and allied activities	18.5	17.8	17.0
Industry, of which	26.7	26.5	25.8
Manufacturing	15.4	15.2	14.6
Mining	2.0	2.0	1.9
Electricity	2.1	2.0	2.0
Construction	7.2	7.2	7.3
Services, of which	54.7	55.7	57.3
Trade, Hotels, Transport and Communications	26.8	28.0	28.6
Financing, Insurance, Real Estate and Business Services	14.3	14.6	14.8
Community, Social and Personal Services	13.6	13.1	13.9

Source: CSO

Graphical Representation of India's GDP Composition



Sources: World Bank, International Monetary Fund, OECD and Research done at VMW.

Indian Exports:

Cumulative value of exports for the period April- December , 2009 was US \$ 117.587 billion (Rs 5633.04 billion) as against US \$ 147.569 billion (Rs. 6529.19 billion) registering a negative growth of 20.3% in Dollar terms and 13.7% in INR terms over the same period last year.



IT-ITES Segment

The Indian software and services revenue including ITES-BPO recorded US\$ 58.8 billion in FY 2008-09, as compared to US\$ 40.3 billion in fiscal year 2007-08. Export revenues account for US\$ 46.3 billion recording a growth of 16.3% from USD 40.4 billion in FY07-08 whereas domestic segment contributed USD 12.5 billion. Export revenues in FY 09-10 are estimated at USD 50 billion & domestic revenues to grow by 15-18%.

Seven Indian cities account for 95 % of export revenues, focus on developing 43 new locations to emerge as IT-BPO hubs. Direct employment in FY 2008-09 is expected to

reach nearly 2.23 million, an addition of 226,000 employees, while indirect job creation is estimated at 8 million.

Infrastructure development in India

To support its growth plan, Indian government is targeting an investment of US\$ 20.38 billion over the next two years in the infrastructure sector. The scheme aims to take up infrastructure projects under public-private partnership (PPP) with minimal private



investment. The government has asked the Infrastructure Investment Finance Company Ltd (IIFCL) to put together a corpus of over US\$ 8.15 billion for this purpose which will include development of ports, airports, roads, railroads & rural infrastructure.

Economic Reforms

The Indian economy was a mixed economy with a socialist bend till nineties. Liberalization and privatization of the Indian economy was initiated in 1991, which has continued with accelerated pace since then. The first step in this direction was abolishment of industrial licensing regime to allow Foreign Direct Investment in various sectors of the Indian economy. Also, Foreign Institutional Investors were allowed to invest in India.

Currently, there is significant presence of foreign investments and Foreign Institutional Investors in India. Foreign investments can be made in several sectors with minimum regulatory approvals.

Foreign direct investments (FDI) into India went up from US\$ 25.1 billion in 2007 to US\$ 46.5 billion in 2008, achieving a 85.1% growth in FDI flows, the highest across countries, according to a recent study by the United Nations Conference on Trade & Development (UNCTAD).

Investment Policies

India's economic policies are designed to attract significant capital inflows on a sustained basis and to encourage technology collaboration with foreign technology providers. Policy initiatives taken have resulted in significant inflows of foreign investment in almost all areas of the Indian economy.

Key features of economic policies and incentives for foreign investments

- Automatic approval for foreign equity participation upto 100% is allowed in almost all sectors.
- The Foreign Investment Promotion Board (FIPB), a specifically empowered Board in the Ministry of Industry, grants approvals for foreign equity participation in certain other areas on a case to case.
- Free repatriation of profits and capital investment is permitted.
- Indian capital markets are open to Foreign Institutional Investors.
- Indian companies are permitted to raise funds from international capital markets.
- Extensive network of Double Tax Avoidance Agreements. Currently, India has signed comprehensive agreements for the avoidance of double taxation with as many as 83 countries.

2. FOREIGN INVESTMENTS- POLICY AND FRAMEWORK

The last one-decade has witnessed gradual opening up of the Indian economy for foreign investments in India. India has substantially liberalized its policy and exchange control regulations on foreign direct investments. 'The foreign exchange regulations act 1973' has been replaced by Foreign Exchange Management Act (FEMA) which came onto effect from June 1, 2000 to facilitate foreign investments in India.

2.1 Entry options for foreign investors into India

Foreign Company* can set up its business operations in India in the following ways:

- i. By Incorporating an **Indian Company** (Limited liability)

OR

- ii. Function as such through their Liaison, Project or Branch offices depending on the need and requirements of the respective foreign companies.



Note: We have limited our discussions to the first option of setting up the operations as an Indian Company being an 100% Subsidiary of the Foreign Company as the other options, in our opinion, may not be suitable to the client.

* (A Foreign Company is one, which is incorporated outside India and conducts business in India. Such companies are required to comply with the provisions of the Companies Act, 1956)

- i. Set up an Indian Company

A Foreign company may set up its presence through an Indian Company in any of the following manners:

- As a joint venture with an Indian partner (JVC) or
- By setting up a wholly owned subsidiary (WOS)

The investment by the foreign Company could fall under the two broad categories:

- FDI under automatic approval route; and
- FDI with prior approval of the government.

The Investment in Information Technology comes under the automatic approval route and can be made without any prior government approval and would be allowed on Repatriation basis. Only intimation needs to be given to the Reserve bank of India (which is the country's Federal bank) within 30 days of making the investment along with filing of documents.

However, it should be noted that in the case of a foreign Company making an investment in a new Indian Company, they would need to have the prior approval from the Central government if they have had any previous venture or tie up in India through investment in shares or debentures or technical collaboration or a trade mark agreement or investment by whatever name called in the same or allied field in which the Indian Company issuing the shares is engaged.

The Companies Act, 1956, governs incorporation of an Indian Company. A Company structure would have the following additional basic operating abilities compared to a project office or a branch office set up:

- Borrowing and granting loans on its own account
- Making investments on its own account
- Entering into contracts in its own name
- Having limited liability
- Acquisition and disposition of immovable property.(subject to certain Conditions)

Indian Companies can be basically divided into two categories:

- Private Limited Company; and
- Public Limited Company.

A Private Company is a company which:

- Restricts the right of its members to transfer the shares
- Limits the number of its members to fifty and
- Prohibits invitation to the public to subscribe to its shares and debentures.

A Public Company is one, which does not have the above restrictions. Such a company can be listed on a recognized stock exchange in India and abroad.

2.1. Repatriation of capital and return on capital

Repatriation of Capital

Reserve Bank of India has granted general permission for remittance of net sale proceeds (net of applicable taxes) of shares sold by the foreign Company provided:

- a) the shares were held on repatriation basis
- b) shares are sold on a recognized stock exchange or the Reserve Bank of India's permission for sale of shares and remittance of sale proceeds has been obtained.

Dividend remittance

Dividend on shares including dividend on non-repatriable investments held by foreign Company is fully repatriable subject to certain conditions.

3. COMPANY FORMATION

3.1 Commencement of business and timeframe

Formation of a Company in India is governed by the Companies Act, 1956 and entails the following activities in brief:

- Obtaining Director Identification Number for the Directors.
 - Obtaining Digital Signature for at least one of the proposed Directors
 - Choice of a name and its sanction by the Registrar of Companies (ROC)
- 
- Drawing up of a Memorandum of Association – This is the document which inter se binds the Company and its shareholders, and prescribed the procedural aspects of the operations of the Company and contains the following:
 - Name of the Company
 - State in which registered office of the Company shall be situated
 - Main objects of the Company
 - Share Capital of the Company
 - Statement of liability of its members

The above along with a few other documents, viz., mentioning the office address and the names of the first directors of the company and payment of the prescribed registration fee and stamp duty would have to be submitted to the Registrar of Companies in the State where the company is intended to be registered.

In case of Foreign Companies setting up Indian Company, the documents to be filed for Incorporation have to be notarized and then attested by the Indian consulate in their respective country.

A certificate of incorporation issued by the registrar of companies, upon inspection of the papers filed is the conclusive proof of incorporation of the Company.

Timeframe : The Process of incorporating a company would take about 4-6 weeks from the date of submission of the documents to the ROC.

3.2 Company Secretarial matters

Directors

- Every Director should have an unique Director Identification Number(DIN) duly approved by Ministry of Corporate Affairs (MCA), DIN Cell, Noida.
- Director signing on behalf of the Company should have Class II Digital Signature issued by Certified Authorities in India. Digital Signatures issued by Foreign Certified Authorities are not valid .
- Every Director should give Disclosure of his interest in other entities with nature of interest in Form 24AA addressed to the Board of Directors at the time of his appointment and at the end of each financial years of the Company
- Every Private Limited company should have at least TWO Directors on the Board and the number of total Directors should not exceed TWELVE
- All Directors on Board the Indian Company can be Foreign citizens/Foreign Nationals.

Board Meetings

- There should be ONE meeting to be held at each calendar quarter (ex: April 1 to June 30)

- First Board Meeting of the Company needs to be held within 30 days of Incorporation and Statutory Auditors needs to be appointed at the meeting
- Quorum for each Board meeting is TWO or 1/3rd of total strength on the Board in PERSON whichever is higher .(Directors attending through Conference call will not be considered for quorum)
- The Company can pass circular resolutions and the same needs to be ratified in next Board meeting.
- Board Meetings can be held at place outside India.

Members

Every Company should have atleast TWO Members (shareholders) and the number of total Members should not exceed FIFTY.

General Meetings

- There should be ONE Annual General Meeting to be held in each calendar year to adopt the financials of the Company.
- First Annual General Meeting should be held within 18 months from the date of incorporation or within 9 months from the closure of accounts for the first year

(For ex: Company incorporated on October 10, 2008 and closes its books by March 31, 2009, the meeting should be held on or before December 31, 2009. Subsequent Annual General Meetings can be held any time in the next calendar year with a gap of not more than 15 months between two AGM's.)
- The Company can appoint first Auditors at Extra-ordinary General Meeting, if the Board fails to appoint the First Auditors within 30 days of Incorporation.
- Quorum for each general meeting is TWO Members in person or through Proxy. (provided it is so mentioned in the Articles of Association). (Representative of a foreign entity will be considered as Member attended the Meeting, not proxy)

- AGM should be held at the place where the registered Office of the Company is situated.

Others

- Annual returns to be filed with the registrar of the Company within 60 days from the date of Annual General Meeting
- Financial Statements need to be filed with the Registrar of Company within 30 days from the date of Annual General Meeting.
- Intimations would have to be made to the Registrar of Companies of other corporate actions of the Company, in the nature of reconstitution of the Board, allotment of shares, amendment to the Memorandum of Association / Articles of Association or the kind.

4. OTHER REGISTRATION REQUIREMENTS AT THE TIME OF COMMENCEMENT OF BUSINESS

Alongwith the registrations mentioned above, the company also has to register as below:

1. Obtain Company's Permanent Account Number from the Income Tax Authority.
2. Obtain Company's Withholding Tax Number from the Income Tax Authority.
3. Register under the Sales Tax laws / VAT
4. Register under the Professional tax Laws
5. Register under the Provident fund and ESI laws(Similar to Social security tax in the US)
6. Register under the Shop and Establishment Act of the State Government
7. Registration with Software Technology Park of India(STPI schemes)



In order to provide impetus to the Software Industry and to enhance its exports STPI schemes offer package of incentives and facilities such as duty free imports and tax holiday which has been discussed earlier. The Directors at STPI accord automatic approval subject to certain conditions like;

- a. The items do not attract compulsory licensing
- b. Location is in conformity with the prescribed parameters
- c. Export obligation as laid down in the STPI scheme is fulfilled.

- d. STPI Regulations would be in existence till 31st March 2011.

Foreign investments in STPI units can be made under the automatic approval route subject to certain conditions. Proposals that do not meet the parameters for the automatic route would need Government approval.

- 8. Registration with the Director General of Foreign Trade(DGFT)

- 9. Registrations Under Service Tax Act if applicable.

Time Frame: The above registrations other than STPI registration can be Completed within a timeframe of 2-3 weeks from the date of Incorporation of the Company. STPI registration would require about 5 to 6 weeks.

5. ACCOUNTING AND AUDIT REQUIREMENTS

Accounting Requirements

Books of Account

Indian Companies are to maintain books of account in respect of their income and expenditure which are to be kept at the registered office of the company unless the Board of Directors decides otherwise. The books of account are to give a true and fair view of the state of affairs of the company.



Method of Accounting

Indian Companies are required to maintain their books of account on accrual basis and the double entry system of accounting.

Records

Following records needs to be maintained by Indian Companies:

- Registers of shareholders, debenture holders, directors, managers, et al.
- Register of charges detailing the assets pledged as security for specific debts
- Register of Directors shareholding
- Minutes book for 'shareholders' meetings and 'directors' meeting
- Register of Investments
- Register of contracts with specified related parties

Financial Statements

Indian Companies are required to prepare annual financial statements which would consist of the following:

- A Balance Sheet - to give a true and fair view of the state of affairs of the company as at the end of the financial year; and
- A Profit and Loss Account - to give a true and fair view of the profits or losses of the company for the financial year.

The Profit and Loss Account and the Balance Sheet are to be prepared in accordance with the Accounting Standards issued by the Institute of Chartered Accountants of India and the requirements of the Indian Companies Act, 1956.

Audit Requirements

a. Statutory Audit

Indian Companies are required to get their annual accounts audited by the Statutory Auditors appointed by the shareholders of the company.



b. Tax Audit

Tax Audit is to be conducted under the provisions of the Income Tax Act, where the total sales turnover or gross receipts of the business exceed Rs. 4 Million in the concerned financial year of the company. A tax audit report is to be submitted to the authorities along with the Return of Income of the company.

c. Internal Audit

Companies having paid up equity capital plus reserves exceeding Rs. 5 Million at the commencement of the concerned financial year or having an average annual turnover exceeding Rs. 50 Million for last three consecutive financial years, needs to have an internal audit system in place.

6. TAXATION

DIRECT TAXES: INCOME TAX

The tax year (known as 'Assessment Year') runs from April 1 to March 31, following the year in which income is earned (known as 'Previous Year'). Income of the India is basically determined based on the following criteria:

- Residential status of the tax payers; and
- The scope of the taxable income



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6.1 Tax Residential Status

Tax payers are primarily divided into the following two categories:

- Resident in India; and
- Non-Resident in India.

Residential Status of Companies:

- A company is resident in India if:
 - It is an Indian Company; or
 - The control and management of its affairs is situated wholly in India.

Foreign enterprises generally operate in India either as a Foreign Company or as an Indian Company. A Foreign Company is a company, which is not a Domestic Company. A domestic company means an Indian Company or other company, which declares and

pays dividends in India. Generally, a company registered outside India is regarded as a Foreign Company.

- A company is non-resident in India if it is not 'resident in India' applying the above criteria.

6.2 Corporate Taxation

Income Tax:

- The Corporate taxes in India is 30% Plus 3% cess. In case the profits are more than Rs 10 Million, a surcharge of 10% (for Domestic Company & 2.5% for Foreign company) on basic corporate rate of 30% effectively making the tax rate at 33.99% .
- Income from Information Technology sector enjoy complete tax exemption under section 10A/10B of the Income tax Act 1961.
- Under Section 10A of the Income tax Act 1961, Companies registered with **Software Technology Park of India (STPI)** and are engaged in the Business of producing Computer Software will be entitled to exemption from Income tax up to 100% of the Profits derived from export of computer software until 31st March 2011.
- These exemptions are allowed subject to fulfilling certain conditions such as the exports revenue to be received in India in Foreign exchange, etc.
- However they are liable to pay a Minimum Alternative Tax at the rate of 15% on Profits earned by them during the year.
- The difference between the tax payable under normal provisions of the Act and MAT is allowed as MAT credit. MAT paid can be carried forward for set-off against regular tax payable for a period of seven assessment years immediately succeeding the assessment year in which MAT is paid & without any interest.

6.3 Transfer Pricing Regulations

Transfer pricing is the price charged by one enterprise to another related or associated enterprise in respect of goods, services, know-how, et al. The concept of transfer pricing assumes importance from the viewpoint of tax authorities. Every country is interested in collecting its due share of tax revenues from economic activities carried out therein by the multinational and other entities. Transfer Pricing Regulations seek to achieve this.

The Regulations:

The Transfer Pricing Regulations prescribes that the transactions between 'associated enterprises' should be at 'arm's length price' i.e., at a price at which two unrelated parties would enter into in similar transactions. This is to ensure that each party pays tax on its real economic profits and thereby each country gets its fair share of tax revenues.

The newly introduced transfer pricing regulations prescribes the following methods for determining arm's length price:

- Comparable Uncontrolled Price Method
- Resale Price Method
- Cost Plus Method
- Price Split Method
- Transactional Net Margin method
- Any other method prescribed by the Government

The taxpayers have a choice of following any of the above methods, which is most appropriate having regard to the prescribed factors.

Most Appropriate Method:

The most appropriate method is the one, which is best suited to the facts and circumstances of a transaction and which provides the most reliable measure of arm's length price.

In selecting such method, the factors which need to be taken into account include, nature and class of the international transaction; functions performed, assets employed and risks assumed by the Associated Enterprise entering into the transaction; availability, coverage and the reliability of data, et al.

Information and Documentation:

Persons entering into International Transactions are required to keep prescribed information and documents which include, ownership structure; profile of the multinational group together with particulars of Associated Enterprises with whom international transactions have been entered into; description of the business industry and the business of the concerned Associated Enterprises; particulars of International Transactions with the Associated Enterprises, et al.

Based on the available information, the tax authorities in the course of assessment proceedings, can determine the arm's length price where such price is not in accordance with the aforesaid provisions or the prescribed information is not maintained or the data used for computing such price is not reliable or the prescribed information is not furnished. However, where the arm's length price determined by a taxpayer is up to 5% less or up to 5% more than the price determined by the tax authorities, such transaction price would be accepted.

6.4 Expatriate Taxation

Residential Status:

For income tax purposes, expatriate employees can be divided in the following three categories:

- Resident in India;

- Not Ordinarily resident in India; and
- Non-Resident.

The tax liability in India basically depends upon the residential status determined as per the Income Tax Act.

Where an expatriate employee belongs to a country with which India has signed a Tax Treaty, then his Indian tax liability is determined as per the provisions of the Tax Treaty if they are more beneficial.

Taxable Income

- **Resident in India:** A person, resident in India, is subject to tax in India on his world income whether received in India or outside India.
- **Not-Ordinarily resident taxpayers:** This category of tax payers are subject to tax in India on income received or accrued in India and on income derived from business controlled or a profession set up in India.
- **Non-Resident:** A person, not resident in India, is subject to tax in India only in respect of the income received or accrued in India or deemed to be received or accrued in India.

Salary Income

Salary, allowances and other benefits/perquisites received by expatriate employees for services rendered in India are considered as income earned in India. Such income is taxable in India whether received in India or outside India and irrespective of the residential status of the expatriate employees. Similarly, salary received for the rest or leave period preceded and succeeded by services rendered in India and forming part of the employment contract is also taxable in India.

Employee Stock Options

Profits on sale of shares given to the employees by the employer under an 'Employee Stock Option Scheme' (ESOP) are taxed as long term or short term capital gains depending upon the period of holding before sale. The difference between the sales consideration and the fair market value on the date of exercise of the employee stock option, would be treated as capital gains and subject to capital gains tax. Profits from sale of shares held for more than twelve months before sale is regarded as long-term capital gains, otherwise as short-term capital gains. Long-term capital gains are taxed at a concessional rate of 20% duly indexed for inflation (Nil in case of listed companies' shares sold through recognized stock exchange) as against normal progressive tax rate with maximum rate of 15% applicable for short-term capital gains.

Exemption to Foreign Nationals and Non-Residents

Certain exemptions/ concessions, as discussed below, are available to the expatriate employees who are not citizens of India:

Stay in India not exceeding 90 days

Salary received by an employee of a foreign enterprise for services rendered in India is exempt from tax in India if the following conditions are fulfilled:

- The foreign enterprise is not engaged in any trade or business in India;
- Employee's stay in India does not exceed 90 days in the previous year; and
- Such salary is not tax deductible in computing employer's income in India.

Tax paid by the employer

Generally, the tax liability of an employee, if discharged by the employer, is regarded as a taxable perquisite in the hands of the employee.

However in case of an employee deriving income in the nature of perquisite, not provided by way of monetary payment, the tax on such income actually paid by the employer at his option is exempt under section 10(10CC) of Income Tax Act, 1961.

Allowances and Benefits

Certain special allowances/benefits granted to meet the expenses wholly, necessarily and exclusively in the performance of the duties of an office or employment for profit are exempt from tax. For instance, cost of travel on tour or on transfer; ordinary daily charges incurred by an employee on account of absence from his normal place of duty; conveyance expenses incurred in performance of official duty, et al, are exempt from tax.

Benefit under Tax Treaties:

Where expatriate employees are residents of a country with which India has signed Tax Treaties, their tax liabilities in India will be determined under the provisions of the applicable Tax Treaty if they are more beneficial as compared to the India IT Act.

Tax Treaties generally provide that salary earned by resident of a contracting state from exercise of employment in India would be exempt in India if the following conditions are fulfilled:

- Expatriate's presence in India does not exceed 183 days in the relevant year;
- Salary is paid by an employer who is not a resident of India; and
- Such salary is not borne by a PE or a fixed base of the employer in India; or it is not tax deductible in computing the employer's taxable income in India.

Where salary of an expatriate employee is taxable both in India and in the home country, tax paid in India is generally allowed as a credit against the tax liability of the expatriate on such income in the home country.

6.5 Tax Assessment

Return of Income

Under the Income Tax Act, taxpayers are required to file their Returns of Income (ROI) annually for every assessment year. Different dates have been prescribed for filing of ROI by different categories of tax payers. Currently, such dates are as under:

Category of tax payers	Due date
Corporate	By September 30 following the end of the financial year
Other taxpayers (individual, partnership, et al)	By July 31 following the end of the financial year

For instance, ROI of a corporate taxpayer for the financial year ending on March 31,2009 would have to be filed by September 30, 2009 with the jurisdictional Assessing Officer. The Tax Department designates Assessing Officers, depending upon the class of taxpayers and their income level.

Consequences of non filing or delay in filing the ROI :

- Attracts penal interest.
- a Company registered under STPI Scheme and claiming benefit under section 10A/10B will not be eligible for the corporate tax exemptions.
- A company having a business loss will not be able to Carry forward the losses incurred during a year to the next assessment year.

6.6 Deduction Of Tax At Source (Withholding Taxes)

Taxpayers are required to deduct tax at source from certain specified payments at the time of making the payment or at the time of credit of such amount to the account of the payee, whichever is earlier. The tax so deducted is treated as payment of tax on behalf of the payee who can claim credit for such tax deduction against his gross tax liability. The specified payments include salaries, payment to contractors; rent for properties; fees for professional or technical services; commission et al.

While making certain specified types of payments, tax is to be withheld at the prescribed rates as under:

Nature of Payment	Withholding Tax Rates
Salaries	At the slab rate ranging from 10% to 30% on gradual income lever, plus 3% cess(10% surcharge if the salary is beyond Rs 10 lacs)
Legal/Professional fees	10% plus surcharge plus cess
Rent	10% on payment for rental of building and furniture, plant and equipment plus surcharge plus 3% cess
Payment to Contractors / Sub-Contractors	2%/1% plus surcharge plus 3% cess
Brokerage / Commission	10% plus surcharge plus 3% cess

* The above rates are applicable subject to quoting of PAN; else flat 20% will be applicable.

- Taxes withheld are to be deposited into the Indian Government Treasuring within the specific time frame.
- Annual returns of taxes withheld as above are to be filed with the tax authorities within the prescribed time frame as under:

Taxes withheld from	Return in Form No.	Due dates of filing the returns
Salary	24Q	July 15, October 15, January 15 and April 15 of next financial year for the last quarter
Non Salary payments	26Q	July 15, October 15, January 15 and April 15 of next financial year for the last quarter

INDIRECT TAXES : VAT & Service Tax

VAT:

- VAT is a system of tax in which tax is levied on the value additions, at each stage in the production-distribution with provision of set-off of tax paid on earlier stage.
- Input tax means tax paid by a registered dealer, on the purchase of any goods made from a registered dealer.
- Input tax credit shall be allowed, to registered dealers, in respect of purchase of any taxable goods made within the State from a registered dealer.

Registration:

Every manufacturer, dealer, trader fulfilling the following criteria has to register under the VAT Act

- Manufacturer of goods having annual turnover exceeding Rs. 0.2 million
- Importer of goods (i.e. dealer who brings goods into the State)

- Dealer having an annual turnover above Rs. 0.5 million
- Any person having occasional transactions in notified goods
- Any person other than a casual trader and a registered dealer carrying on business temporarily for less than 120 days
- Dealers who intend to commence or who have commenced a business may apply for voluntary registration.

A dealer can obtain registration under VAT by making an application in the prescribed form along with the prescribed documents with the authority competent to grant registration having territorial jurisdiction over the principal place of business.

Time limit: A dealer is required to get himself registered within 30 days from the date he becomes liable to pay tax under the VAT Act.

Penalty:

For failure to Register: Rs. 1000 for failure to register within the prescribed time and in the prescribed manner.

Time frame for payment of tax by a dealer is as under:

Category	Time limit for payment of VAT
Dealers with annual gross turnover of Rs. 100 million and above in the year preceding to the current year.	By 20th day of the month in respect of tax charged or collected up to 15th day of the month and for the tax charged or collected from 16th day of the month to the end of the month, shall be deposited within seven days from the close of the month.
Dealers whose annual gross turnover was	Monthly- within fourteen days from the

less than Rs. 100 million	close of each month
Dealers who had obtained new registration	Monthly- within fourteen days from the close of each month
Dealers dealing in all kinds of stone in all their forms, whether used as building material or otherwise, including marble, granite etc.	Immediately on completion of transaction of sale or purchase where such goods pass through check post or otherwise.
Dealers not covered by clauses (a), (b), (c) and (d) above	Quarterly – within 14 days from the close of each quarter

Returns:

A dealer is required to file quarterly returns in the prescribed form within 30 days of the close of each quarter .

Penalty:

Any dealer who without reasonable cause, fails to furnish pre scribed returns within the time allowed, shall be liable to pay by way of penalty:

(i) in case the dealer is required to pay tax every month, a sum equal to Rs. 10 per day for the period during which the default in furnishing such return continues, but not exceeding in aggregate 20% of the tax so assessed.

(ii) in all other cases, a sum equal to Rs. 5 per day subject to a maximum limit of Rs. 500 , for the period during which the default in furnishing of such return continued.

Service Tax:

- Service Tax is payable by the service provider on certain services specified under the Indian Finance Act, 1994. The same is recovered by the payer from the recipient of services.
- Currently the rate of Service Tax is 10.30% (10% Plus 3% cess)
- If taxable services are provided by foreign service providers with no establishment in India , the recipient of such services in India is liable to pay Service Tax.



Registration:

- Every provider of taxable service should apply for registration with the Service Tax office in form ST-1 within 30 days from the date of commencement of business.
- Every person who has provided a taxable service of value exceeding Rs. 1 million, in the preceding financial year, is required to register with the Service Tax office having jurisdiction over the premises or office of such service provider.
- In case a recipient is liable to pay service tax he also has to obtain registration

Timeframe : The registration certificate would take about **seven days** from the date of submission of the application ST-1 along with all relevant details/documents. In case the registration certificate is not issued within seven days, the registration applied for is deemed to have been granted

Penalty:

Failure of registration may attract a penalty upto Rs. 5000/- or Rs. 200/- for every day during which such failure continues, whichever is higher.

Payment of Service Tax:

Persons liable to pay service tax are required to deposit the service tax collected at the designated banks or electronically by the following specified due dates:

Category of tax payers	Due date
Individuals, Proprietary Firms & Partnership Firms	<p>Quarterly: By 5th of the month immediately following the quarter in which payments are received towards the value of taxable services. (6th in case of e-payment)</p> <p>However, in case of March, the payment should be made before 31st March.</p>
Others (e.g. Companies, Societies, Trusts etc.)	<p>Monthly- by 5th of the month immediately following the month in which payments are received towards the value of taxable services. (6th in case of e-payment)</p> <p>However, in case of March, the payment should be made before 31st March.</p>

Penalty:

For delay in payment:

If payment of tax is delayed, interest is payable @ 13% p.a. for the period from the first day after the due date till the date of payment of any defaulted service Tax amount.

For failure to pay/ delay in payment

Penalty which shall not be less than Rs. 200/- for every day during which such failure continues or @2% of such tax per month, whichever is higher.

- Small service providers up to 1 million are exempt.
- Export of service is exempt from service tax provided services are rendered outside India & payment received in foreign currency.
- CENVAT credit is available of inputs, input services and capital goods used for providing taxable output services

Filing of Returns

Assessee has to submit half yearly return in form ST -3 in triplicate within 25 days of close of half year

e.g. Return for half year ending 30th September 2009 and 31st March 2010 are required to be filed by 25th October 2009 and 25th April 2010, respectively.

Penal clauses are attracted in case of non-filing/ late filing of service tax return.

DISCLAIMER:

Pierian does not assume any liability or responsibility for the information discussed above and is only intended to be provide the reader with an overview of Regulation in India. The reader is advised to seek Professional advice on matters discussed in this document and the information discussed above are based on existing laws and regulations and would be subject to change from time to time.