Indian Income Tax Law - A Brief Guide

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Income tax

1. Chargeability of income tax

- Article 265 of the Constitution of India provides that "no tax shall be levied or collected except by the authority of law". Therefore, no tax can be levied or collected in India, unless it is explicitly and clearly authorised by way of legislation. The Income-tax Act, 1961 (ITA) was enacted to provide for levy and collection of tax on income earned by a person.

- According to the ITA, every person, whose total income exceeds the maximum amount not chargeable to tax, shall be chargeable to income tax at the rate or rates prescribed in the Finance Act. The ITA defines the term "person" to include an individual, an HUF, a company, a firm (including LLP), an AOP or a BOI; a local authority and every other artificial juridical person.

- The ITA provides an inclusive definition of the expression "income". Therefore, income includes not only those things which this definition explicitly declares, but also all such things as the word signifies according to its natural import.[1] Therefore, before arriving at a conclusion as to the tax implications of a receipt of money, it is imperative to determine whether or not such a receipt amounts to income under the ITA. There will be no incidence of income tax if a receipt of money does not amount to income. For instance, it is important to distinguish a capital receipt from a revenue receipt because, while all revenue receipts are taxable under the ITA, unless specifically exempted, a capital receipt cannot be taxed as income,[2] unless otherwise provided for by the statute.[3]

1 Kanga Palkhivala and Vyas, The Law and Practice of Income Tax, Ninth Edition at p. 142
2 *Padmaraje R. Kadambande v CIT* [1992] 195 ITR 877
3 For example, capital gains under s 45 of the ITA

2. Residential status

- Section 6 of the ITA defines the term "resident", and contains different criteria to determine the residence of various entities such as a company, a firm and an individual, etc. A company is regarded as resident in India if it is an Indian company; or the place of its effective management[1] is in India in the relevant financial year.[2] The expression "place of effective management" has been defined to mean a place where key management and commercial decisions that are necessary for the conduct of the busness of an entity as a whole are, in substance made.[3] An AOP, a firm or HUF is considered resident in India, except where during that financial year, the control and management of its affairs is situated wholly outside India. An individual's residential status is dependent on the duration of stay in India.

- A person resident in India is liable to tax on his global income. A non-resident is liable to tax on income which is received or is deemed to be received in India or which accrues or arises or is deemed to accrue or arise to him in India.

3. Scope of income

- The total income of an assessee is determined on the basis of his residential status in India. According to s 5 of the ITA, Indian residents [4]are liable to be taxed on their global income, whereas non-residents are taxed only on income that has its source in India.[5]

- The scope of s 5 is expanded by the legal fiction contained in s 9, which deems certain incomes to be of Indian source. Section 9 provides for circumstances when various types of incomes are deemed to be Indian sourced and hence are liable to tax in India. It specifically provides that all incomes accruing or arising, whether directly or indirectly, through or from any business connection[6] in India, or through or from any property in India, or

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1 As substituted by the Finance Act, 2015, w.e.f., 1.4.2016

2 A period of 12 months commencing on the 1st day of April

3 As defined in Explanation to s 6(3) of the ITA

4 Defined in s 6 of the ITA

5 Income is said to have its source in India if it is "income which accrues or arises in India, is deemed to accrue or arise in India or is received in India".

6 The expression "business connection" as used in this provision was not originally defined in the ITA. The Supreme Court in the case of R.D. Aggarwal [56 ITR 20] laid down the definition of the term as:

through or from any asset or source of income in India, or through the transfer of a capital asset situated in India, are deemed to be taxable in India to the extent attributable to Indian operations. It has been clarified in the ITA that an asset or capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from assets located in India. Such asset can be said to be deriving its value substantially from assets located in India, where the value of such asset exceeds Rs 10 crores (Indian Rupees Ten Million) and the same represents atleast 51% of the value of all the assets owned by the company/entity[1].

4. Tax year

- The financial year in which the income is earned is called the "Previous Year" and which is the year ending on the 31st day of March each year. The year immediately succeeding the previous year is referred to as the "assessment year". The income of the previous year is taxed in the assessment year. The term "Assessment Year" refers to a period of 12 months commencing on the 1st day of April every year and ending on 31st day of March of the following year.

5. Rates of income tax

- Applicable tax rates vary depending on the type of entity and the residential status of the taxpayer. For example, income of a resident company is taxed at

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"Business connection means something more than business. It presupposes an element of continuity between the business of the non-resident and his activity in the taxable territory, rather than a stray or isolated transaction".

The ITA was amended by the Finance Act, 2003, and an inclusive definition of the expression was inserted with effect from April 1, 2004. As per this definition, a business connection includes "any business activity carried out through a person who, acting on behalf of the nonresident, (a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or (b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or (c) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident."

1 Refer Explanations 5, 6 and 7 in cl (i) of s 9(1) of the ITA

the rate of 30%,[1] whereas a non-resident company is taxed at the rate of 40%.[2] However, the applicable rates of income tax are amended every financial year by the corresponding Finance Act. For the tax rates applicable to the assessment year 2016-2017, please refer to **Annexure 1.**

- In computation of the income of a non-resident, the provisions of the Double Taxation Avoidance Agreement **(DTAA)** between India and the country of residence of the nonresident are required to be examined, since the ITA provides that its provisions shall be applicable only insofar as they are more beneficial to the taxpayer.[3] Thus, if the provisions of the DTAA are more beneficial as compared to the provisions of the ITA, the non-resident can opt to be taxed with reference to the provisions of the DTAA. Please refer **Annexure 2** for a list of countries with whom India has signed DTAA.

The only exception where beneficial provisions of DTAA are not available to a non-resident is in case of applicability of General Anti Avoidance Rules[4] or non-furnishing of Tax Residency Certificate by the non-resident.[5]

6. Heads of income

- Income liable to tax in the hands of a person under the ITA has been classified into five mutually exclusive heads of income, namely:
  - »» Salaries,
  - »» Income from house property,
  - »» Profits and gains from business or profession,
  - »» Capital gains, and
  - »» Income from other sources.

- The ITA details the manner of computation for each head of income. Various exemptions and deductions are provided under each head of income and the net amount (net of exemptions and deductions) is included in computing a person's total taxable income. *Ad hoc* deductions and exemptions are provided for, insofar as salaries and income from house property are concerned. No

1 exclusive of applicable surcharge and education cess
2 exclusive of applicable surcharge and education cess
3 Section 90(2) of the ITA
4 Section 90(2A) of the ITA
5 Section 90(4) of the ITA

expenditure other than as prescribed can be deducted while computing income under the head “salaries” and “income from house property”.

7. Computation of profits and gains from business or profession

- All expenditure, other than capital or personal expenditure, incurred wholly and exclusively for the purpose of business is allowed as a deduction while computing the business income of an assessee. While this is the general rule, specific deductions are prescribed for certain expenditures like rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business, repair and insurance of machinery, plant and furniture, depreciation of various capital assets, etc. The thrust is on taxing net current income and, therefore, receipts or expenditure of a capital nature are usually not taken into consideration while computing the taxable income of business or profession. However, depreciation is allowed in relation to capital expenditure incurred for obtaining a tangible or intangible asset.

- Certain additional exemptions, concessions and deductions have been provided to promote certain important industries, services or as the case may be, for the economic development of a particular geographical area. For instance, profits and gains derived by an assessee from a newly established undertaking set up in Special Economic Zone (SEZs) will not be included in the total income of the taxpayer for ten consecutive financial years from the date of commencement of operations by such an undertaking. A few such provisions have been discussed in further detail below:

Deduction in respect of newly established units in special economic zones

Section 10AA of the ITA makes special provisions in respect of newly established units in Special Economic Zones. A taxpayer setting up such a unit is entitled to exemption from income tax for a period of fifteen years from the year of commencement of operations by such a unit, in the following manner:

- 100% of profits earned from the export of goods or services for a period of first five years;
- 50% of such profits for next five years; and
- 50% of such profits for further five years subject to re-investment of profits in the business of the taxpayer in prescribed manner;

However, certain general conditions must be satisfied before a taxpayer becomes entitled to this deduction, viz.,

»» The unit should be set up in a notified Special Economic Zone;

»» The unit should not be formed by splitting up or by reconstruction of a business already in existence; and

»» The unit should not have been formed by the transfer of a new business of machinery or plant previously used for any purpose.

Deductions in respect of profits from industrial undertakings or enterprises engaged in infrastructure development, etc

- Special deduction of 100% of profits earned by a taxpayer derived from certain industrial undertakings or enterprises engaged in certain activities are allowed for 10 consecutive financial years under s 80-IA of the ITA. Such deductions are available for undertakings engaged in the following activities:

  »» Provision of infrastructure facilities;

  »» Power generation, transmission and distribution or substantial renovation and modernization of existing distribution lines; and

  »» Undertaking set up for a new power unit.

Deductions in respect of profits from industrial undertakings other than infrastructure development undertakings

- Section 80-IB of the ITA provides for deductions of varying magnitude in respect of profits earned by a taxpayer derived from certain industrial undertakings other than infrastructural undertakings set up in specified backward areas/districts. The deductions are available for 10 consecutive financial years from the date of commencement of its operations. The deduction under the above section is also available to an enterprise engaged in the following activities:

  »» Operation of a ship;

  »» Hotels;

  »» Industrial research;

  »» Production of mineral oil;

  »» Developing and building housing projects;

  »» Business of processing, preservation and packaging of fruits or vegetables or integrated handling, storage and transportation of food grains units;

- »» Multiplex theatres;
- »» Convention centres; and
- »» Operating and maintaining a hospital in rural areas.

However, the undertakings must satisfy the following conditions in order to claim deduction under s 80-IB:

- »» It should be a new undertaking;
- »» It should not be formed by the transfer of old plant and machinery;
- »» It should not manufacture or produce non-priority sector items, as listed in the eleventh schedule to the ITA;
- »» Manufacture or production should commence within the prescribed time limit for various activities;
- »» It should employ atleast 10 (for power-assisted undertakings) or twenty (for undertakings operating without the aid of power) workers;
- »» It must file its return of income on or before the prescribed due date; and
- »» Tax holiday is also provided in respect of profits of units set up in certain specified States (s 80-IC) and business of hotels and convention centres in specified areas.

Deduction in respect of profits and gains by an undertaking or enterprise engaged in development of special economic zone

Under s 80-IAB of ITA, deduction of 100% of profits derived by a taxpayer from the business of developing or developing, operating and maintaining a notified special economic zone is available for a period of ten consecutive years out of a period of 15 years commencing from the year of notification of the special economic zone.

8. Computation of capital gains

- Any profit or gain arising from the transfer of a capital asset during a financial year is chargeable to tax under the head "capital gains". Capital assets may either be in the nature of long-term capital assets or be in the nature of short-term capital assets. A capital asset held by the taxpayer for not more than thirty six months is a short-term capital asset, while other capital assets are long-term capital assets. However, the above-mentioned period of 36 months stands reduced to twelve months in the case of security of a company listed on a recognised stock exchange and unit of equity oriented mutual funds. Therefore, equity or preference shares which are listed on recognised stock exchange held by a taxpayer will be a long-term capital asset should it be held for a period of twelve months or more.

- Long-term capital gains are taxed at a lower rate as compared to the normal rate of tax.

- Capital gains are generally computed by deducting the following amounts from the value of consideration for which the capital asset has been transferred:
  - »» all expenditure incurred wholly and exclusively in connection with the transfer of the capital asset;
  - »» cost of acquisition of the capital asset; and
  - »» any cost of improvement that may have been incurred by the taxpayer towards the capital asset.

- These costs of acquisition and improvement are taken at their absolute values for computing capital gains arising from the transfer of short-term capital assets. However, indexation benefit is allowed in case of capital gains arising from the transfer of long-term capital assets to neutralise the impact of inflation since the date of acquisition of the asset or April 1, 1981, whichever is later.

9. Transfer pricing

- Section 92 of the ITA provides that income arising from an "international transaction" shall be computed having regard to the arm's length price. The expression "international transaction" has been defined to mean a transaction between two or more "associated enterprises", either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises. Further, two enterprises are considered to be "associated enterprises" if one enterprise holds, directly or indirectly, shares carrying not less than 26% of the voting power in the other enterprise. Further, there are certain other circumstances in which two enterprises are deemed to be "associated enterprises". The Indian Transfer Pricing guidelines are to a large extent modeled on the OECD's transfer pricing guidelines and follows transfer pricing policy prevalent in the developed countries. However, transfer pricing regulations are not applicable to transactions where no tax liability arises in India under the provisions of DTAA.[1]

- The Finance Act, 2012 has extended the scope of transfer pricing provisions to specified domestic transactions. In terms of the newly inserted s 92BA of the ITA, the following transactions between two domestic enterprises shall be subject to transfer pricing provisions:
  - (i) any expenditure in respect of which payment has been made or is to be made to a person referred to in cl (b) of sub-s (2) of s 40A;
  - (ii) any transaction referred to in s 80A;
  - (iii) any transfer of goods or services referred to in sub-s (8) of s 80-IA;
  - (iv) any business transacted between the assessee and other person as referred to in sub-s (10) of s 80-IA;
  - (v) any transaction, referred to in any other section under Chapter VI-A or s 10AA, to which provisions of sub-s (8) or sub-s (10) of s 80-IA are applicable; or
  - (vi) any other transaction as may be prescribed.

    The provisions of domestic transfer pricing have been made applicable if aggregate amount of all such domestic transactions exceeds Rs 200 million in a year.

- Existing transfer pricing provisions provided arm's length range of ± 3% for determining the arm's length price. The Finance Act, 2011 has amended the ITA to provide that the percentage of variation permitted as the arm's length range would be as notified by the Central Government for the various industry sectors.

Anti-Avoidance Rules

- Section 94A has been inserted by the Finance Act, 2011 to deal with transactions undertaken with persons located in the notified countries or jurisdictions[2], which do not effectively exchange information with India.

- According to this provision, if a taxpayer enters into a transaction, where one of the parties to the transaction is located in a notified area, transfer pricing regulations will apply to such transaction. No deduction in respect of any

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1 *Vanenburg Group B.V. v CIT*, 289 ITR 464; *DDIT v Sun Chemicals BV*, 24 SOT 199

2 Central Government may notify any country or territory outside India as a notified jurisdictional area (notified area);

payment made to any financial institution located in a notified area will be allowed unless the taxpayer furnishes an authorisation authorising CBDT or any other income tax authority acting on its behalf, to seek relevant information from the financial institution.

- No deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified area will be allowed under any provision of the ITA unless the taxpayer maintains such other documents and furnishes the information as may be prescribed.

- If any sum is received by a taxpayer from a person located in a notified area, the onus will be on the taxpayer to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner and in case of his failure to do so, the amount will be deemed to be the income of the taxpayer.

- Sub-section (5) of s 94A of the ITA provides that where any person located in a notified area is entitled to receive any sum or income on which tax is deductible under Chapter XVII-B, tax shall be deducted act the highest of the following rates, namely,
  - rates in force; or
  - rates specified in the relevant provisions of the ITA; or
  - rate of 30%

- Vide Notification No. 86/2013 dated 01.11.2013, Cyprus has been notified as a notified jurisdictional area, for the purpose of the aforesaid section. Thus, in terms of the said provision, transactions entered with resident(s) of Cyprus are subject to the provisions of said section.

10. Withholding tax

- A person (except individuals in certain cases) is required to withhold tax from certain specified payments. Separate provisions exist in respect of tax to be deducted on specific transactions with residents and with non-residents.

- The ITA provides for withholding of taxes from payments made to non-residents, which are chargeable to tax under the ITA. Any person, whether resident or non-resident, making payment to a non-resident would be liable to withhold tax from such payment and deposit the same with the Government within the prescribed time. Moreover, prescribed returns are also required to be filed periodically with the tax authorities. The payee is entitled to adjust the taxes so withheld against his tax liability in India on production of a (tax credit) certificate to be issued by the person withholding the tax.

Rates of withholding tax

The current rates[1] for withholding tax for payment to non-residents are as follows:

Interest	20%
Interest (from a notified Infrastructure Debt Fund)	5%
Dividends (Domestic Companies)	Nil
Royalties	10%
Technical Services	10%
Any other income	Individuals : 30% Companies: 40%

The above rates are general and applicable in respect of countries with which India does not have a DTAA. If the tax rates, as per the DTAA, are more favourable, the same would apply.

However, if the non-resident payee does not have a Permanent Account Number (PAN), the rate of tax withholding shall be 20% or the rates as per the aforesaid table, whichever is higher.

11. Minimum alternative tax (MAT)

- In India, a company, alike other assessees, is liable to pay tax on the income computed in accordance with the provisions of the ITA. However, the profit and loss account of the company is prepared as per the provisions of the [Indian] Companies Act, 1956. The Government has experienced a large number of cases where the companies, though had profits as per their profit and loss account, were not paying any tax because income computed as the per provisions of the ITA was either nil or was a loss. In such cases, though the companies were showing profits in books and declaring dividends to its shareholders, yet they were not paying any income tax. To bring such companies within the income tax ambit, “Minimum Alternate Tax” was introduced on regular basis, w.e.f., the assessment year 1997-1998.

- Thus, in terms of s 115JB of the ITA, a company, is required to pay tax at the rate of 18.5%[1] plus applicable surcharge and education cess on its book profits

1 Rates mentioned are exclusive of surcharge and education cess

(as declared in the profit and loss account), if the tax on income computed as per the normal provisions of the ITA is less than the aforesaid tax on book profits.

- A new tax credit scheme was introduced by which the MAT paid could be carried forward and set off against regular tax payable during the subsequent ten -year period[2], subject to certain conditions, viz:
  - »» When a company pays tax under the MAT, the tax credit earned by it shall be an amount, which is the difference between the amount payable under the MAT and the regular tax. Regular tax in this case means the tax payable on the basis of normal computation of total income of the company.
  - »» MAT credit will be allowed to be carried forward for a period of 10* assessment years immediately succeeding the assessment year in which MAT is paid. Unabsorbed MAT credit will be allowed to be accumulated, subject to the 10-year carry-forward limit.
  - »» In the assessment year when regular tax becomes payable, the difference between the regular tax and the tax computed under the MAT for that year may be set off against the MAT credit available.
  - »» It may be noted that the credit allowed will not bear any interest.

- Until the financial year 2010-2011, the MAT provisions were not applicable to SEZ developers and units. However, this benefit has been dispensed with by the Finance Act, 2011. With effect from 01.04.2011, the SEZ developers and units are also required to compute (and pay) MAT on their book profits.

- Finance Act, 2015, w.e.f., 1.04.2016 has specifically excluded from the purview of MAT, any income accruing and/or arising to a foreign company under the heads capital gains arising from transactions in securities or interest, royalty or fees for technical services.

12. Alternate Minimum Tax

- A concept similar to minimum alternate tax for companies has also been introduced with effect from 01.04.2011 for all assessee, including limited liability partnerships but excluding companies, as companies are governed by

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1 With effect from assessment year 2012-2013 (as per the Finance Act, 2011)

2 Where the tax has been paid under s 115JB(1) of the ITA

MAT provisions. All assessees, other than a company, are required to compute alternate minimum tax (AMT) on their adjusted total income and pay AMT if it exceeds the tax arrived at as per the other provisions of ITA. Provisions for credit and set off (similar to those applicable to companies in case of MAT) have also been enacted.

13. Securities transaction tax

- Securities transaction tax (STT) or turnover tax, as is generally known, is a tax that is leviable on securities transaction carried through a recognized stock exchange in India. STT is leviable on the taxable securities transactions, w.e.f. October 1, 2004. Surcharge is not leviable on the STT.

- Long-term capital gains arising on the sale of shares/securities, which is carried out through the stock exchange and on which STT has been paid, are exempted from tax.

14. Dividend distribution tax

- Section 115-O of the ITA provides that any amount declared, distributed or paid by a domestic company by way of dividend shall be chargeable to dividend distribution tax (DDT). Only a domestic company (not a foreign company) is liable for DDT. Such tax on distributed profit is in addition to income tax chargeable in respect of total income. It is applicable whether the dividend is interim or otherwise and whether such dividend is paid out of the current profits or accumulated profits.

- Rate of DDT is 15% plus surcharge and education cess on dividends distributed by companies and 25% on dividends paid by money market mutual funds and liquid mutual funds to all investors.

- With a view to remove the cascading effect of DDT in multi-tier corporate structure, dividend received by any company from its subsidiary which has been subjected to DDT shall be liable to be reduced from the amount of dividend distributed by such recipient shareholder company, subject to DDT.

- Until the financial year 2010-2011, DDT provisions were not applicable to SEZ developers. However, this benefit has been taken away by the Finance

Act, 2011 with effect from 01.06.2011. So, even SEZ developers are required to pay DDT on dividends declared, distributed or paid on or after 01.06.2011.

15. Taxation of dividends received from foreign subsidiaries

Dividend received (gross) by an Indian company from its foreign subsidiary(ies) (in which the recipient Indian company holds a minimum threshold shareholding of 26%) has now been taxable at a concessional rate of 15%[1]. Until 31.03.2011, any dividend received from foreign subsidiary(ies) was taxable at the normal rates. This amendment, brought by the Finance Act, 2011, is intended to encourage inflow of passive income lying abroad to boost the economy.

Buyback of shares by the Indian company

- The Finance Act, 2013 inserted new Chapter XII-DA consisting of sections 115-QA to 115-QC, w.e.f., 1.06.2013, to provide that tax shall be payable by the company (whose shares are not listed on a recognised stock exchange) on buy back of its own shares at the rate 20% of the "distributed income".

- For the aforesaid purpose, "distributed income" is to be computed by reducing the amount received by the company on issuance of shares from the consideration paid on buyback. The said additional income tax paid by the company shall be the final tax liability and consequently, the amount/ consideration received by the shareholder(s) would be exempt from tax in their respective hands.

16. Return of income

- A person having income liable to tax in India is required to file a return of income with the income tax authorities (also referred to as the "Revenue"). The return of income must be filed before specific due dates prescribed for various kinds of entities for each financial year. Every company, including a foreign company, deriving income from India, is required to file such a return in India.

- Effective from 01.06.2011, the liaison offices of foreign companies are required to furnish a statement of its activities in prescribed form to the income-tax authorities within 60 days from the close of the financial year.

1 Section 115BBD of the ITA.

17. Books/records to be maintained and audited

- The ITA requires an assessee carrying on business or profession to maintain books of accounts if the gross receipts exceed the specified threshold. Every assessee carrying on business with gross receipts exceeding Rs 1,00,00,000 (Indian Rupees Ten Million), or profession with gross receipts exceeding Rs 50,00,000 (INR Five Million) in a financial year is statutorily required to get the books of account audited by a Chartered Accountant and furnish Tax Audit Report.

18. Assessment and dispute resolution

- Detailed provisions exist in the ITA for assessing the income of a taxpayer for any previous financial year. Normally, the assessment of income is made on the basis of the return of income filed by the assessee. However, there may be cases where the Revenue may call for certain details in order to make a correct assessment of the taxpayer's income. The income tax law in India also provides for reopening of assessments in cases where income chargeable to tax had escaped assessment. The Commissioner of Income Tax (CIT) has wide powers to revise an assessment if the order is erroneous or prejudicial to the interest of Revenue.

19. Dispute resolution panel

In order to facilitate expeditious disposal of disputes, a new dispute resolution mechanism has been introduced. In case of specified assessee (an Indian company, in whose case, a Transfer Pricing adjustment is proposed, and a foreign company), it has been provided that prior to passing of final assessment order, the assessing officer should serve a copy of draft order to the assessee, to enable the assessee to record his objections to the draft order before the Dispute Resolution Panel (DRP). The DRP is a panel consisting of three senior Revenue officers, who have been given the powers to review the objections of the assessee and issue necessary directions to the Revenue officer to pass the assessment order in accordance with such directions. An appeal against the order passed by the Revenue officer in accordance with the directions of the DRP can be preferred directly before the second appellate authority, the Income Tax Appellate Tribunal (**ITAT**). This mechanism is optional and the assessee may decide not to avail of this resolution mechanism and take the traditional approach and prefer an appeal before the first appellate authority, the CIT(A) against the assessment order passed by the Revenue officer. The advantage of opting for the DRP route is that there is no demand raised until the final order is passed by the assessing officer after considering the directions of DRP. Also, the assessee can approach the ITAT for stay of demand raised by the assessing officer as per the final order, after filing appeal to the ITAT against such order.

20. Appeals: Administrative, Quasi-Judicial and Judicial Hierarchy

- The ITA makes detailed provisions for appeals and revisions. Any assessee aggrieved by an assessment order made by the Revenue may prefer an appeal against the order to a Commissioner of Income Tax (Appeals) (CIT(A)), who is a senior revenue officer and a quasi-judicial authority. The assessee can only approach the CIT to seek revision of the order, if it is prejudicial to him.

- The taxpayer as well as the Revenue has a right to prefer an appeal against the order of the CIT(A) before the ITAT. The order of the ITAT may further be appealed against before the appropriate High Court, if a substantial question of law is involved. The order of the High Court is appealable before the Supreme Court.

21. Advance ruling

- With as many as four statutory appellate forums, assessees often find themselves caught in long-drawn and expensive litigations against the Revenue and, in the process, face a great deal of uncertainty regarding their tax liability. To address this situation, the ITA provides for advance rulings for certain eligible applicants. The Authority for Advance Rulings (AAR) is required by statute to issue its ruling within six months of receiving an application from an eligible applicant. These rulings are binding on taxpayers as well as the Revenue.

22. Closure of business

- When any business or profession is discontinued in a year, the Revenue has the power to tax the income for the period starting from the 1st day of April of that year up to the date of discontinuance as if such income was that of the immediately preceding financial year. The intimation should be given to the Revenue in the event that a business or profession in India is discontinued.

Such intimation is required to be given within a period of fifteen days from the date of discontinuance of the business.

- Discontinuation of an entity carrying on business has tax consequences. The winding up of the business and distribution of the assets to the constituent members may entail tax liabilities arising from transfer of the assets to the constituent members. In the case of a company, money or assets received by a shareholder on liquidation in lieu of the share capital contributed by him, would result in capital gains in his hands depending upon the amount/value of assets received vis-à-vis the cost of acquisition of the shares. Further, to the extent the company in liquidation has accumulated profits the amount distributed is liable to dividend distribution tax. In the case of dissolution of a partnership firm or AOP, the firm would be liable to tax on capital gains on the assets distributed to its partners on the basis of the market value of the asset on the date of distribution. The partners are not, however, liable to tax on the assets so received.

- In the case of a partnership firm or an AOP where the business is discontinued or the firm/AOP is dissolved, the members of such AOP at the time of discontinuance/ dissolution and their legal representatives shall be jointly and severally liable for the tax liabilities of such dissolved firm/AOP.

- In the case of a company, which goes into liquidation, the liquidator is required to give a notice to the tax authorities of his appointment as such liquidator. The tax authorities are empowered to require the liquidator to keep aside a sum, which the authorities consider sufficient to provide for the existing and future tax liabilities of the company in liquidation.

- In the case of a private limited company, the undischarged tax liabilities can be recovered from its directors, even after the company is liquidated, unless the director proves that the non-recovery of the taxes from the company cannot be attributed to any gross negligence or misfeasance on its part. It may be difficult to wind up a company if there are tax liabilities outstanding against the company or litigation is pending with the tax department till an arrangement is made to the satisfaction of the tax department as regards security for the estimated amounts which the company may be liable to pay.

23. Corporate restructuring: Tax implications

The growing need for restructuring of business enterprises on account of increasing competition and globalisation, by ensuring preservation of tax benefits and simplifying procedural requirements, has been recognised in the provisions under the ITA.

Amalgamation

Under the ITA, in the case of amalgamation of companies, which is approved by the Court, the benefit of unabsorbed tax allowances of an amalgamating company owning an industrial undertaking or carrying on certain other specified business is available to the amalgamated company without the necessity of obtaining any formal approvals, subject only to fulfillment of the conditions prescribed therein. The conditions which are required to be fulfilled are as under:

»» The book value of the assets of the amalgamating company as on the date of amalgamation should not be less than 75% of the book value of the assets held two years prior to the date of amalgamation;

»» The business in which losses have been incurred by the amalgamating company should have carried on for a period of at least three years prior to the date of amalgamation;

»» The amalgamated company should hold continuously for a minimum period of five years from the date of amalgamation, at least 75% of the book value of the fixed assets of the amalgamating company;

»» The amalgamated company should continue the business of the amalgamating company for a minimum period of five years from the date of amalgamation;

»» The amalgamated company should achieve production of at least 50% of the installed capacity of the undertaking of the amalgamating company before the end of four years from the date of amalgamation and should continue to maintain such capacity utilisation till the end of five years from the date of amalgamation; and

»» The amalgamated company must furnish a certificate in the prescribed form, to be issued from a chartered accountant, to the Revenue.

The transfer of assets of the amalgamating company to the amalgamated company pursuant to the amalgamation does not attract any capital gains tax. Similarly, issue of shares of the amalgamated company to the shareholders of amalgamating company in lieu of their shares in the amalgamating company does not attract any capital gains tax. The amalgamated company is also entitled to claim depreciation on the fixed assets of the amalgamating company to the same extent as the amalgamating company was entitled to as if no amalgamation had taken place.

Demerger

Demerger in the context of the Indian tax laws signifies a transfer of the division/ undertaking of a company to another company under a scheme of arrangement approved by the Court. Provisions exist in the current laws to maintain tax neutrality in respect of the assets transferred by the demerged company to the resulting company through a scheme of demerger. The provisions are broadly on the same lines as those in the case of an amalgamation. The losses identifiable to the unit/division to be demerged or in the absence of such identifiability, proportionate losses of the demerged company can be availed of by the resulting company. Under the present provisions, however, the condition regarding the continuation of business, holding of the minimum percentage of assets etc., as applicable to an amalgamation, do not apply in the case of a demerger.

Conversion of proprietorship or partnership firm into a company

Tax neutrality exists where a sole proprietorship or partnership firm is converted into a company, subject to fulfillment of some specified conditions.

Conversion of private or unlisted public company into limited liability partnership

Tax neutrality exists where private or unlisted public company (not having gross receipts from business of more than INR 6 million in the preceding three years) is converted into Limited Liability Partnership, subject to fulfillment of specified conditions.

24. Administration

The Income Tax Act is administered by the Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, Government of India. The CBDT, from time to time, comes out with Circulars/Notifications clarifying the provisions of law, framing rules, etc, in connection with effective implementation of the provisions of the ITA.

25. Registration number of assesse

The registration number of dealer is expected to be passed on income tax PAN number. PAN is a 10-digit number. Further 3 to 5 digits will be added. Thus, each dealer will have 13/15 digit PAN-based registration number and each will have to obtain state wide registration.

26. Value for purpose of GST

Provision for valuation is expected to be on same line as per present Central Sales Tax/State Vat laws. However, it is envisaged that SGST and IGST will be on same 'value' and there will be no 'tax on tax' as at present, ie, SGST will be payable on 'net value' without addition of CGST in the 'value'.

27. Electronic returns

The returns will be filed by dealer (on monthly basis). The return will contain details of invoices made on customers with their Tax Registration Numbers and tax paid. The return has to be filed along with payment of taxes.

28. Administration of taxes

CGST and IGST will be administered by the Central Government while SGST will be administered by respective State Governments. There will be separate returns, separate payment of taxes, separate assessments and may be even separate appeals.

ANNEXURE 1

Rates of Income Tax

I. Individuals (Resident as well as Non-resident)

The rates for income tax for individuals for the assessment year 2016-17 are as follows:

Income Range(INR)	Tax rate (%)
Upto 2,50,000	Nil
2,50,000 - 5,00,000	10%
5,00,000 – 10,00,000	20%
Above 10,00,000	30%

»» Where an individual, being resident in India, whose total income/taxable income does not exceed INR 5,00,000 shall be entitled to deduction from the amount of income tax equal to 100% of his income tax or Rs. 2000 whichever is less[1].

- Senior citizens (above 65 years but less than 80 years being resident in India) with income up to INR 300,000 are exempted from income tax.
- Very senior citizens (80 years or above being resident in India) with income upto INR 5,00,000 are exempted from tax.
- Surcharge of 12% is applicable in cases with where taxable income is more than INR 1 crore (Ten Million) (Marginal relief applicable).
- Education cess of 2% and Secondary and higher education cess of 1% is leviable on the amount of income tax and surcharge .

II. Companies

		Company/Tax	Tax rate (Inclusive of applicable surcharge and cess)
A. Domestic Company			
	(i)	**Regular Tax**	
		(a) Where total income is equal to or less than INR 10 million	30.90%
		(b) Where total income is more than INR 10 million but does not exceed 100 million	33.063%[2]
		(c) Where total income is more than INR 100 million	34.608%[3]
	(ii)	**Minimum Alternate Tax**	
		(a) Where total income is equal to or less than INR 10 million	**19.055%**
		(b) Where total income is more than INR 10 million but less than 100 million	20.388%
		(b) Where total income is equal to or more than INR 100 million	21.341%
	(iii)	**Dividend Distribution Tax**	**20.358%**
B. Foreign Company			
	(i)	**Regular Tax**	
		(a) Where total income is equal to or less than INR 10 million	**41.20%**
		(b) Where total income is more than INR 10 million but less than 100 million	42.024%[4]
		(c) Where total income is equal to or more than INR 100 million	43.26%[5]
	(ii)	**Minimum Alternate Tax (inclusive of cess)**	
		(a) Where total income is equal to or less than INR 10	**19.06%**

1 Section 87A of the ITA
2 inclusive of surcharge @ 7% - marginal relief applicable & cess
3 inclusive of surcharge @ 12% - marginal relief applicable & cess
4 inclusive of surcharge @ 2% - marginal relief applicable & cess
5 inclusive of surcharge@ 5% - marginal relief applicable & cess

Company/Tax		Tax rate (Inclusive of applicable surcharge and cess)
	million	
	(b) Where total income is more than INR 10 million and less than 100 million	19.436%%
	(c) Where total income is equal to or more than INR 100 million	20.007%

ANNEXURE 2

Name of the Country	Name of the Country	Name of the Country
▪ Aden ▪ Armenia ▪ Australia ▪ Austria ▪ Albania ▪ Afghanistan ▪ Bangladesh ▪ Belarus ▪ Belgium ▪ Brazil ▪ Bulgaria ▪ Bhutan ▪ Bostwana ▪ Colombia ▪ Croatia ▪ Canada ▪ China ▪ Cyprus ▪ Czech Republic ▪ Denmark ▪ Estonia ▪ Ethiopia ▪ Fiji ▪ Finland ▪ France ▪ Georgia ▪ Germany ▪ Greece ▪ Hungary ▪ Iceland ▪ Indonesia ▪ Iran ▪ Israel ▪ Ireland ▪ Italy ▪ Japan ▪ Jordan	▪ Kazakhstan ▪ Kenya ▪ Korea ▪ Kuwait ▪ Kyrgyz Republic ▪ Libya ▪ Lithuania ▪ Luxembourg ▪ Malaysia ▪ Malta ▪ Mauritius ▪ Mongolia ▪ Montenegro ▪ Morocco ▪ Mozambique ▪ Myanmar ▪ Namibia ▪ Nepal ▪ Netherlands ▪ New Zealand ▪ Norway ▪ Oman ▪ Pakistan ▪ Philippines ▪ Poland ▪ Portuguese Republic ▪ Qatar ▪ Romania ▪ Russia ▪ Saudi Arabia ▪ Singapore	▪ Slovenia ▪ Serbia ▪ South Africa ▪ Sudan ▪ Spain ▪ Sri Lanka ▪ Sweden ▪ Swiss Confederation ▪ Syria ▪ Tanzania ▪ Tajikstan ▪ Thailand ▪ Trinidad and Tobago ▪ Turkey ▪ Turkmenistan ▪ United Arab Emirates ▪ Uganda ▪ United Kingdom ▪ United States of America ▪ Ukraine ▪ Uzbekistan ▪ Vietnam ▪ United Mexican States ▪ Yemen Arab Republic ▪ Zambia

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