

Business Taxation in India



April 2020

Sr. No.	Particulars	Page No.
1	Overview	4
2	Taxable Income	4
3	Residential Status	5
4	Scope of Income	6
5	Classification of Income (Heads)	7
6	Income from House Property	7
7	Profits and Gains from Business or Profession	8
8	Capital Gains	8
9	Income from Other Sources	9
10	Tax rates	10
11	Tax Deducted at Source and Tax Collected at Source	13
12	Determination of Tax in special cases	16
13	Deductions / Adjustments	20
14	Calculation of Tax	21
15	Minimum Alternate Tax and Alternate Minimum Tax	21
16	Advance Tax	22
17	Obligations on Tax Payers	22
18	Due dates of Filing Return	24
19	Types of Income Tax Returns	24
20	Presumptive Taxation Scheme	24
21	Tax Incentives for start-ups	26
22	Set off and carry forward of losses	26
23	Transfer pricing	27
24	Limited Liability Partnerships	28
25	Assessments and Appeals	28
26	Search and Survey proceedings	29
27	Fees, Interest, Penalty and Prosecution	29

28	Measures for promoting digital economy	31
29	Grievance Redressal and Right to Information	31
30	Advance Ruling	32
31	Settlement Commission	32
32	Electronic Assessments	32
33	Vishwas to Vivad Scheme	32
34	International Taxation	33
35	Indirect Taxes	34
36	Table of abbreviations	45

1. Overview

Two largest tax incidences on businesses can be classified under two heads - Direct Taxes (Taxes on Income) and Indirect Taxes (Taxes on Sale of Goods and Services). In 2017 India undertook what is known as the largest tax reform anywhere in the world when it brought GST (Goods and Services Tax which is a value added tax) to replace 13 different taxes. In 2019 the income tax on corporate was reduced to 25% and for new entities in certain sectors it's reduced to 15%.

2. Taxable income

Which income can be taxed in India?

All incomes arising or accruing in India will be taxed in India. The taxation of income is dependent on the **type** of tax payer (assessee), **nature** of income and the **residence** of the assessee. Income is defined u/s 2(24) of the Income Tax Act, 1961 (ITA).

Income is calculated in respect of period April to March called the *previous year* (Financial Year). All taxpayers will compute the income of previous year and file the return of income in the assessment year (year following the *previous year*) in which they earned the income.

The income that will be subjected for tax is known as taxable income. This will generally be the net of income mentioned above reduced by the deductions and adjustments permitted under the tax laws. Tax will be levied on this taxable income.

Section 9 of the ITA illustrates several situations where specific types of transactions are taxable in India. It says that incomes that accrues or arises, directly or indirectly can be taxed in India. For example salary earned in India by a non resident person or royalty paid by resident to a non resident is 'deemed' to be income earned in India.

Certain incomes are placed under the category of exempt income, meaning that are income within the definition but cannot be subjected to tax. They are given in Section 10 and cannot form part of total income. An example could be agriculture income or certain amounts earned out on superannuation etc.

3. Residential Status of the Tax Payer

Since taxability depends amongst other things on residential status of a tax payer, it is important to understand what are the rules in that regard.

☞ Company

A Company is a resident if:

- It is an Indian company OR

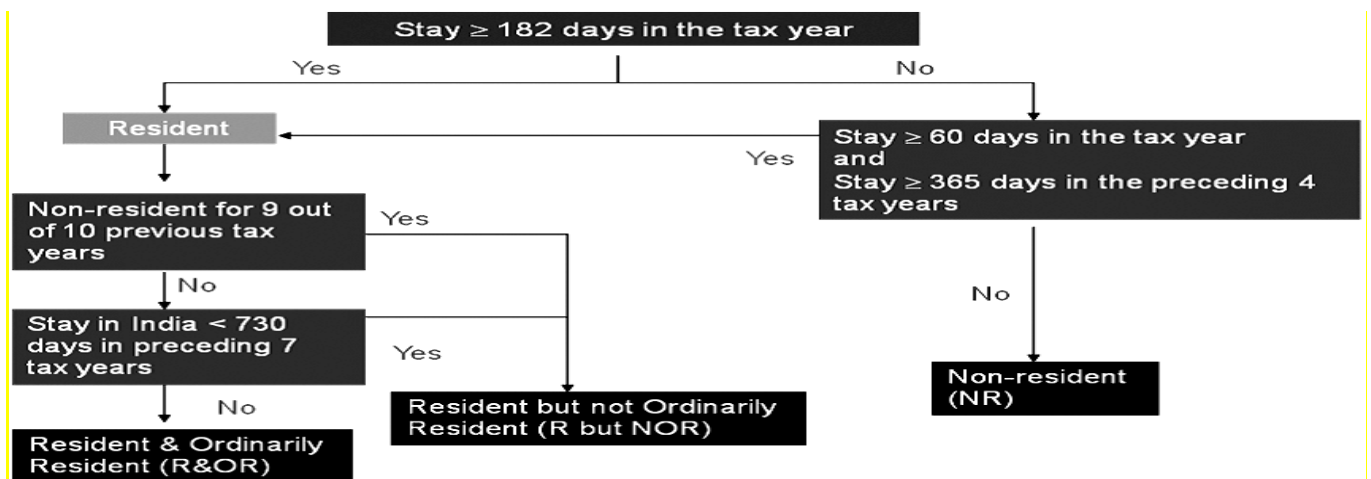
For the period up-to AY 2016-17	The control and management of its affairs is situated WHOLLY in India during the year
With effect from AY 2017-18	Its place of effective management, at any time in that year, is in India (POEM).

Note: For POEM to apply, the turnover or the gross receipts of the company should be equal to or more than Rs. 50 crores during a financial year.

☞ LLP/Firm/AOP/BOI/HUF/Any other person except an Individual & Company

Control and management of its affairs	Status
Wholly outside India	Non-Resident
Any other case	Resident

☞ Individual



** While determining the residential status of an Indian citizen or person of Indian origin, the stay in India as mentioned above as 60 days in the second limb will need to be tested as follows: -

Level of income from Indian source and/or from business/profession set up in India (even if received outside India)	If liable to pay tax in resident domiciled country
More than RS. 1.5 million	120 days
Less than RS. 1.5 million	182 days

Deemed Resident of India:

An individual who is a citizen of India or a person of Indian origin will be considered as deemed resident in India who is not liable to tax in any other country or territory by reason of domicile or residence or any other criteria of similar kind will be treated as a deemed resident. He will be liable to tax only on the income like that of a resident but not an ordinarily resident (RBNOR) as mentioned below.

4.Scope of Income

Nature of income	Taxability in India in the case of		
	ROR	RBNOR	NR
Income received or deemed to be received in India	√	√	√
Income accruing or deemed to be accrued/arising in India	√	√	√
Income from a business controlled from India or from a profession set up in India but not received or accrued in India	√	√	X
Other income (than from business controlled from India) not received or not deemed to be received in India	√	X	X
Other income (than from business controlled from India) not accruing or not deemed to be accrued in India	√	X	X

An example of income not taxable in India for RBNOR & NR:

- Income from house property earned outside India
- Income from business controlled outside India and not received in India
- Income from sale of shares of a company registered outside India having no business connection in India.

5. Classification of Income (Heads)

For the computation of total income, the income is to be classified into heads of income and then charged to tax. The different heads of income are:

1. Income from Salary [Sections 15-17]
2. Income from House Property [Sections 22-27]
3. Income from Business / Profession [Sections 28-44D]
4. Income from Capital gains [Section 45-55]
5. Income from Other Sources [Residual head - Section 56(1)]

6. Income from House Property

- Income from house property refers to the monies received in the connection with renting of a house property, unless the same is used for the purpose of taxpayer's business or profession. A resident & ordinarily resident of India will be liable to house property tax regardless where the house is situated or where the rental incomes are received.
- Whereas for RBNOR and NR, will not be liable to tax in India as long as house property is outside India, regardless of the place of receipt of income.
- One house, being self-occupied, did not attract tax up to FY 2018-19 (AY 2019-20). Starting FY 2019-20 (AY 2020-21), there will be no tax on any 2 house properties owned and as per the choice of the taxpayer.
- Third house and any other residential property will attract tax, even if no rent is earned unless it is used for the purpose of business or profession in India.

- If a person is into business of construction or real estate then income earned from house property can be treated as business income.
- Deduction of interest from income from self-occupied house property [w.e.f. 01.04.2017]: Interest paid on loans which is borrowed on or after 1.4.1999 for acquiring or constructing a self-occupied house property is allowed as deduction u/s 24(b); if the house is completed within 5 years [previously 3 years] from the end of the financial year in which capital was borrowed. The amount of deduction under this clause shall not exceed **two lakh rupees**.
- Special provision for arrears of rent and unrealised rent received subsequently[w.e.f. 01.04.2017] - Section 25A
Any rent received from the tenant of a house as arrears or unrealized shall be taxed as house property income in the financial year in which that is received or realized, even if the house is not owned by the taxpayer.
- 30% of rent received/realized/ deemed received will be allowed as a standard deduction every financial year.

7. Profits and Gains from Business or Profession

- Receipts / Income must be from business or profession.
- Expenses incurred wholly and exclusively for the purpose of business are allowed as deduction.
- Specific deductions are permitted with conditions.

8. Capital Gains

Gains derived from the disposal of capital assets are subject to capital gains tax. The tax treatment of capital gains depends on whether the gains are long-term or short-term gains as per the holding period of an asset.

Capital Gains				
Short Term		Long Term		
Period of holding				
<= 12 months	<=36 months	> 12 months	> 36 months	
For equity shares or Units of equity-oriented fund	Other Securities like debentures, bonds, etc.	For equity shares or Units of equity-oriented fund	Other Securities like debentures, bonds, etc.	
Tax @ 15%	Tax as per normal slab rates	<ul style="list-style-type: none"> - Exempt u/s 10(38) up to FY 2017-18 (AY2018-19) (listed) - Tax @ 10% on gains exceeding RS. 1 lakh (listed) - Tax @ 20% (unlisted) 	Listed**: Tax @ 20% without Indexation Or Tax @ 10% without indexation Lower of the above	Unlisted: Tax @ 20% without Indexation

*** The taxpayer will prefer to pay tax at 10%, due to the benefit available in the tax rate. Debentures and bonds mentioned above do not cover Gold sovereign bonds and Capital Indexed Bonds.*

9. Income from Other Sources

Any income which is not covered under above heads will be chargeable to tax under this head. Income from Other Sources includes interest, rent from letting out plant and machinery, dividend on shares from Foreign Companies, winnings from lotteries, races, transfer of any movable or immovable property at no consideration or below fair market value as applicable etc.

10. Tax, rates and due dates

➤ Corporate Tax Rates with effect from FY 20-21 (AY 21-22)

Types of Companies	Income not exceeding Rs. 1 crore		Income exceeding Rs. 1 crore and up to Rs.10 crores		Income above Rs.10 crores	
	Effective tax rate (normal)	Effective tax rate (MAT)	Effective tax rate (normal)	Effective tax rate (MAT)	Effective tax rate (normal)	Effective tax rate (MAT)
Domestic Company with turnover up to Rs.400 crores in FY2018-19 and avails any tax incentives or exemptions or tax holiday	26%	15.60%	27.82%*	16.69%*	29.12%*	17.47%*
Other domestic company	31.20%	15.60%	33.384%*	16.69%*	34.944%*	17.47%*
Domestic Company exercising option to pay tax as per section 115BAA	25.168%**	Nil	25.168%**	Nil	25.168%**	Nil
New domestic manufacturing companies exercising option to pay tax as per section 115BAB	17.16%**	Nil	17.16%**	Nil	17.16%**	Nil
Foreign Company	41.60%^	15.60%^#	42.43%^	15.912%^#	43.68%^	16.38%^#

* Includes surcharge at the rate of 7% in case of income from Rs. 1 crore up to Rs. 10 crore and 12% in case of income above Rs. 10crore.

** Includes surcharge at the rate of 10%. It is assumed that other provisions of Chapter XII are not attracted in these cases.

^ Includes surcharge at the rate of 2% in case of income from Rs. 1 crore upto Rs. 10 crore and 5% in case of income above Rs.10crore

#If MAT is applicable to the foreign company.

➤ **Individuals/HUF Tax Rates**

Taxable Income Slabs for Individual/HUF resident or non-resident aged below 60 years	Tax Rates (Old regime)	Tax Rates (New Regime - devoid of deductions and exemptions)
1. up-to Rs. 2.5 lakhs	NIL	NIL
2. Rs. 2.5 -5 lakhs	5%	5%
3. Rs. 5 -7.5 lakhs	20%	10%
4. Rs. 7.5-10 lakhs	20%	15%
5. Rs. 10-12.5 lakhs	30%	20%
6. Rs. 12.5-15 lakhs	30%	25%
7. Above Rs. 15 lakhs	30%	30%
Taxable Income Slabs for Individual/HUF resident aged 60 years or more up-to 80 years	Tax Rates (Old regime)	Tax Rates New Regime - devoid of deductions and exemptions)
1. up-to Rs. 3 lakhs	NIL	NIL
2. Rs. 3 -5 lakhs	5%	5%
3. Rs. 5 -7.5 lakhs	20%	10%
4. Rs. 7.5-10 lakhs	20%	15%
5. Rs. 10-12.5 lakhs	30%	20%
6. Rs. 12.5-15 lakhs	30%	25%
7. Above Rs. 15 lakhs	30%	30%
Income Slabs for Individual/ HUF resident aged 80 years or more	Tax Rates (Old regime)	Tax Rates New Regime - devoid of deductions and exemptions)
1. up-to Rs. 5 lakhs	NIL	NIL
3. Rs. 5 -7.5 lakhs	20%	10%
4. Rs. 7.5-10 lakhs	20%	15%
5. Rs. 10-12.5 lakhs	30%	20%
6. Rs. 12.5-15 lakhs	30%	25%
7. Above Rs. 15 lakhs	30%	30%

- Note: Tax rebate for resident individual's u/s 87A will be available if the taxable income does not exceed Rs. 5,00,000. (10% of income tax or Rs. 12,500 whichever is less)
- The new regime can be applied by taxpayers with effect from FY 20-21 (AY 21-22).
- The taxpayer can choose to pay either under the old regime by claiming deductions and exemptions under the Income Tax OR the new regime without claiming the deductions and exemptions.
- Once the taxpayer has chosen to pay under the new regime before due date of filing of return then such an option shall apply for all subsequent financial year. But, in case the taxpayer is earning income from business or profession either of the regimes can be opted and exercised as convenient to the taxpayer in every financials year.

Surcharge & Education Cess(for Individuals, HUFs, AOP)

Taxable Income	Rate of Surcharge on Income Tax
Up-to Rs. 50 lacs	NIL
More than Rs. 50 lacs up-to Rs. 1 crore	10%
More than Rs. 1 crore up-to Rs. 2 crores	15 %
More than Rs. 2 crores up-to 5 crores	25%
More than Rs. 5 crores	37%
Health and Education cess at 4% leviable on income tax & surcharge.	

➤ Tax Rates for Firms (including Limited Liability Partnership)

Person	Total Income (Rs.)	
	Up to Rs. 1 crore	Above Rs. 1 Crore
Firms, LLP etc.	31.2%	34.944%

The above includes surcharge and cess except that income upto Rs. 1 Cr does not include surcharge.

11. Tax Deducted at Source and Tax Collected at Source

This is an obligation cast upon those who make certain type of payment.

Present Section	Heads	Existing Threshold Limit	Revised Threshold Limit	Rate of TDS (%)
192	Salaries	Refer above slabs	Refer above slabs	As per slab rate
192A	Premature payment of PF organization from EPF Account	50,000	50,000 - Payment of accumulated balance of Provident fund which is taxable in the hands of an employee.	10%
194	Dividend income	Rs. 2,500 if dividend distribution tax is not paid by the company	5,000 - any mode other than cash Nil - Cash	10%
194A	Interest other than Interest on Securities	10,000 - Banks 5,000 - Others	40,000 - Banks 50,000 - Bank for amounts received senior citizen from Co-op society 5,000 - Others	10%
194BB	Winnings from Horse Race	10,000	10,000	30%
194C	Payments to Contractors	Single bill 30,000 Aggregate annual limit of 75,000	Single bill 30,000 Aggregate annual limit of 100,000 & for transport 75,000 plying less than 10 goods carriage	1% - Individual / HUF 2% - Others
194D	Insurance Commission	20,000	15,000	5% - Domestic Non-Corporate assessee 10% - Domestic

Present Section	Heads	Existing Threshold Limit	Revised Threshold Limit	Rate of TDS (%)
				Corporate assessee
194G	Commission of sale of lottery tickets	1,000	15,000	5%
194H	Commission or brokerage	5,000	15,000	5%
194I	Rent	1,80,000	2,40,000	2% - Plant & Machinery 10% - Others
194J	Fees for professional or technical services	30,000	30,000	10% - Others 2% - Call centre, Fees for technical services, royalty for sale distribution or exhibition of cinematographic films
194LA	Payment of Compensation on acquisitions of certain immovable property	2,00,000	2,50,000	10%
194IA	Payment on transfer of certain immovable property other than agricultural land	50,00,000	50,00,000	1%
194K	Payment of any income in respect of: a) Units of a Mutual Fund as per Section 10(23D) b) The Units from the administrator c) Units from specified company	NA -w.e.f 1.4.2020	5,000	10%
194M	Payment of commission (not being insurance commission), brokerage, contractual fee, professional fee to a resident person by an Individual or a HUF who		50,00,000	5%

Present Section	Heads	Existing Threshold Limit	Revised Threshold Limit	Rate of TDS (%)
	are not liable to deduct TDS under section 194C, 194H, or 194J			
194O	E-Commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform	NA - w.e.f 1.10.2020	5,00,000 and furnishing of PAN by receiving Individual/HUF	1%
194N	Cash withdrawals from the bank	NA - w.e.f. FY 20-21 (AY2 1-22)	1,00,00,000*	2%

*If the person, has not filed return of income (ITR) for three previous years immediately preceding the previous year in which cash is withdrawn and the due date for filing ITR under section 139(1) has expired.

The deduction of tax under this situation shall be:

@2% when the cash withdrawal in a year is more than Rs.20 lakhs but does not exceed Rs.1 crore (TDS is to be made on the amount exceeding Rs. 20 lakhs)

@5% when the cash withdrawal in a year exceeds Rs.1 crore (TDS to be made on the amount exceeding Rs.1 crore).

Tax Collected at Source		
Heads	Threshold Limit	Rate of TCS (%)
Sale of Scrap	-	1%
Sales of Jewellery	> 5,00,000 in cash	1%
Sale of Cars	> 10,00,000	1%
Sale of any goods/services	> 2,00,000 in cash	1%, 2.5%, 5%
Heads	Threshold Limit	Rate of TCS (%)
Sale of overseas tour package or foreign remittance	>7,00,000	5%
amount remitted is for the purpose of pursuing education through a loan	>7,00,000	0.5%

obtained from any financial institution, as defined in section 80E of the Income-tax Act		
Sale of goods for a value on which buyer has not deducted TDS	>50,00,000	0.1% Buyer's PAN available 1% Buyer's PAN not available

12. Determination of Tax in special cases

Tax on distributed profits on Indian Companies

Dividends:

Dividends declared out of profits by domestic companies were taxed in hands of companies in form of Dividend Distribution Tax (DDT) until 31.3.2020. Such dividends paid by domestic companies were exempt in the hands of recipients in India unless the gross receipts exceed Rs. 10,00,000.¹

Now, dividends declared by the domestic companies will not be liable to DDT and hence it will be taxed in the hands of the shareholders/recipients with effect from 1.4.2020.

Application of above Tax Rates Structure

Example 1:

The simplified example below shows the tax burden on a public company that is 40% foreign- owned. This example assumes taxable income of Rs. 10 Mln and remittance to the foreign partner of 40% of after-tax earnings as dividends:

Corporate taxation	*F.Y.: 2019-20	*F.Y.: 2020-21	**F.Y.: 2020-21
	Amount (Rs.)	Amount (Rs.)	Amount (Rs.)
Taxable income - A	1,00,00,000	1,00,00,000	1,00,00,000
Income Tax rate - B	26%	26%	25.17%
Income Tax (AxB)	26,00,000	26,00,000	25,17,000
Distributable profits	7,400,000	7,400,000	74,83,000
Dividends remitted abroad (40%) - C	2,960,000	2,960,000	29,93,200

¹10 Lakh = 1 Million

Tax on distributed dividend - D	20.56%	Nil	Nil
Dividend tax (Cx D)	608,576	0	0
Total taxes payable	3,208,576	Note 1a	Note 1b
Total tax burden as a % of taxable income for the company & investor	32.0857%	Note 1a	Note 1b

MAT is not considered in above example.

* We assume that the company did not have turnover exceeding Rs. 400 crores in FY 2017-18 while computing taxes for FY 2019-20.

**Optional rate of tax 22% + 10% surcharge + 4% Higher education cess if tax rate opted under section 115BAA

Note 1

	Investor's tax#	Total tax payable	Total tax burden
1a.	12,31,360	38,31,360	38.31%
1b.	12,45,171	37,62,171	37.62%

On an assumption that the foreign investor is a foreign company investing in India and the only income it receives is dividend from India, the tax burden on the foreign company will be on the dividend of Rs. 29,60,000 & Rs. 29,93,200 respectively at the rate of 41.6% (40% tax + 4% cess)

Example 2:

The simplified example below shows the tax burden on a public company that is 40% foreign-owned. This example assumes taxable income of Rs. 9 Cr/90 Mn and remittance to the foreign partner of 40% of after-tax earnings as dividends:

Corporate taxation	*F.Y.: 2019-20	*F.Y.: 2020-21	**F.Y.: 2020-21
	Amount (Rs.)	Amount (Rs.)	Amount (Rs.)
Taxable income - A	9,00,00,000	9,00,00,000	9,00,00,000
Income Tax rate - B	27.82%	27.82%	25.17%
Income Tax (AxB)	2,50,38,000	2,50,38,000	2,26,53,000
Distributable profits	6,49,62,000	6,49,62,000	6,73,47,000
Dividends remitted abroad (40%) - C	2,59,84,800	2,59,84,800	2,69,38,800
Tax on distributed dividend - D	20.56%	Nil	Nil

Dividend tax (Cx D)	53,42,475	0	0
Total taxes payable	3,03,80,475	Note 1a	Note 1b
Total tax burden as a % of taxable income for the company & investor	33.756%	Note 1a	Note 1b

MAT is not considered in above example.

* We assume that the company did not have turnover exceeding Rs. 400 crores in FY 2017-18 while computing taxes for FY 2019-20.

** Optional rate of tax 22% + 10% surcharge + 4% Higher education cess if tax rate opted under section 115BAA.

Note 1

	Investor's tax#	Total tax payable	Total tax burden
1a.	11,025,870	36,063,870	40.07%
1b.	11,430,672	34,083,672	37.87%

On an assumption that the foreign investor is a foreign company investing in India and the only income it receives is dividend from India, the tax burden on the foreign company will be on the dividend of Rs. 2,59,84,800 & Rs. 2,69,38,800 respectively at the rate of 42.432% (40% tax+2% surcharge+4% cess).

Example 3:

One more example is shown for tax effect on a non-SME company which is 40% foreign-owned and having taxable income of Rs 20 crore/ Rs. 200 mln.

Corporate taxation	*F.Y.: 2019-20	*F.Y.: 2020-21	**F.Y.: 2020-21
	Amount (Rs.)	Amount (Rs.)	Amount (Rs.)
Taxable income - A	200,000,000	200,000,000	200,000,000
Income Tax rate - B	29.12%	29.12%	25.17%
Income Tax (AxB)	58,240,000	58,240,000	50,340,000
Distributable profits	141,760,000	141,760,000	149,660,000
Dividends remitted abroad (40%) - C	56,704,000	56,704,000	59,864,000
Tax on distributed dividend - D	20.56%	Nil	Nil

Dividend tax (Cx D)	11,658,342	0	0
Total taxes payable	69,898,342	Note 1a	Note 1b
Total tax burden as a % of taxable income for the company & investor	34.9492%	Note 1a	Note 1b

MAT is not considered in above example.

*Optional rate of tax 22% + 10% surcharge + 4% Higher education cess if tax rate opted under section 115BAA.

** We assume that the company did not have turnover exceeding Rs. 400 crores in FY 2017-18 while computing taxes for FY 2019-20.

Note 1

	Investor's Tax#	Total tax payable	Total tax burden
1a	2,47,68,307	8,30,08,307	41.50%
1b	2,61,48,595	7,64,88,595	38.244%

On an assumption that the foreign investor is a foreign company investing in India and the only income it receives is dividend from India, the tax burden on the foreign company will be on the dividend of Rs. 59,864,000 at the rate of 43.68% (40% tax+5%surcharge+4%cess).

Income	Tax %	Surcharge % (>1 cr)	Cess %	Total %
Under Section 115-O (only for foreign companies)	17.647	12	4	20.555
Buy-back of unlisted shares by domestic companies u/s 115QA	20	12	4	23.296

Buy Back of Shares

Buy-back means purchase by a company of its own shares. As per section 115QA of the Act, income distributed on account of buy back of unlisted shares by a company, is subject to the levy of additional Income tax @ 20%. Distributed income means the consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares. The tax on the distributed income by the company shall be treated as the

final payment of tax in respect of the said income and no further credit there for shall be claimed by the company or by any other person in respect of the amount of tax so paid. No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the income which has been charged to tax or the tax thereon.

This tax was also applicable from 5.7.2019 on buy back of shares by listed companies. The amount received by the shareholders shall be exempt while computing their taxes.

13. Deductions from Business Income / Adjustments to Business Income

In computing taxable income, various deductions are taken into account. No expenditure is allowable in respect of income which does not form part of total income. No deduction is allowed in case of expenditure incurred on income that is not taxable or for payments incurred for purposes which are an offence or prohibited by law. Broadly –

- Deductions are specific to each head of Income [Specific deductions]
- There are general deductions from total taxable income popularly known as deductions from Section 80C to 80U [General deductions]
- Deductions are either fixed amount, proportion / percentage of a certain value whether incurred or not [Example: Depreciation on assets]
- Some items of expenses that were actually incurred can be disallowed for calculating tax by adding them back to income.
- Deduction in respect of inter corporate dividend u/s 80M

Deduction versus Exemption

Deduction	Exemption
Income from which deductions are allowed are initially included in the calculation of Gross Total Income and are then allowed to be deducted.	Incomes that are exempt will not be included while computing total income

14. Calculation of Tax

After income from all heads is compiled and deductions have been given effect to, tax liability is to be computed as per the tax rates applicable with available rebate and relief on it.

15. Minimum Alternate Tax and Alternate Minimum Tax

Every company while computing its total income should verify whether the tax on book profits as computed in accordance with the provisions of Section 115JB is more than tax on total income as per normal provisions of the Act. Final tax payable by companies would be as per the special provisions of the Act at the rate of 15% (18.5% up to AY2019-20) plus surcharge (if the amount of book profit exceeds Rs. 1 crore) and cess at the rate 4%. Computation of book profit is as per the adjustments specified under section 115JB of the Act.

For companies opting for the new regime under section 115BAA or 115BAB the provisions of section 115JB relating to MAT are not applicable.

While Minimum Alternate tax is applicable only to companies, Alternate Minimum Tax (AMT) is applicable to every person other than companies on adjusted total income at the rate of 18.5% including surcharge (if adjusted total income exceeds Rs. 1 crore) and cess at the rate of 3%. Tax payable as per AMT is compared with regular income tax and higher of the two is the final tax payable by the assessee. Such alternate minimum tax is not applicable to a co-operative society which chooses to pay tax at a new concessional rate from AY 21-22.

AMT is applicable in case the normal income of a non corporate assessee is lower than adjusted total income as computed under section 115JC of the Income Tax Act, 1961.

16. Advance Tax

If the amount of tax payable including surcharge and cess during the financial year is Rs. 10,000 or more than taxes are to be paid in advance by such assessee on estimated income for the whole financial year. (Not applicable to Senior Citizen not deriving Income from Business or Profession).

Advance Tax installments and interest on deferment of advance tax – Section 211 and 234C

Due date of Instalment	Current provision (other than companies)	New provisions (All assesses)	Assessee opting Section 44AD or ADA
	Cumulative Advance tax		
15 th June	NIL	15%	NIL
15 th September	30%	45%	NIL
15 th December	60%	75%	NIL
15 th March	100%	100%	100%
Due date of Instalment		Advance Tax paid as below than no interest u/s 234C	
15 th June		not less than 12%	
15 th September		not less than 36%	

If an assessee fails to pay quarterly advance tax as mentioned above then simple interest is charged at the rate of one per cent on the amount of the shortfall from the due date till the payment of tax. In case advance tax has not been paid till end of financial year to the extent of 90% of tax liability, interest at the rate of one percent is charged from the first day of the next financial year until tax is paid.

17. Obligations on Tax Payers

- Mandatory Maintenance of Books of Accounts
- Requirement to file Return & payment of taxes

Maintenance of accounts by certain persons carrying on business or profession and their audit [Section 44AA and 44AB]

If income from business or profession exceeds two lakh fifty thousand OR total sales, turnover or gross receipts as the case may be exceeds twenty five lakh rupees in any one of the three years immediately preceding the previous year then such persons shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute the total income. Any person carrying on profession is required to get the accounts audited if gross professional receipts exceed Rs. 50 lakhs. [Previously Rs. 25 lakhs].

For business the limit to get accounts audited is Rs. 1 Cr. This is not applicable to a taxpayer who declared his business income on presumptive taxation and the gross receipts are less than Rs 2 crores.

Starting FY 19-20 (AY 20-21); for business the limit to get accounts audited is Rs. 5 Cr in case the taxpayer meets the following both the conditions:

- i. Cash receipts are not more than 5% of the total receipts in that FY
- ii. Cash payments are not more than 5% of total payments in that FY

Requirement to file Return

Beneficial owner or beneficiary of foreign assets will be mandatorily required to file return, even if there is no taxable income.

Section 285A casts a reporting obligation on the Indian concern whose shares are substantially held directly or indirectly by a company or entity registered or incorporated outside India. Penalty will be levied if Indian entity fails to furnish the same at 2% of the value of the transaction or Rs. 5,000 in any other case.

18. Due dates of Filing Return

Sr. No.	Assessee	Due Date
1	Every assessee, who is required to furnish a report u/s 92E (Transfer Pricing)	30 th November of the AY
2	Every Company (where 92E report is not applicable)	31 st October of the AY
3	Every person whose books of accounts are required to be audited under any law	
4	Every person who is a "working partner" of a firm, where firm's books of accounts are required to be audited under any law	
5	For every other person other than above	31 st July of the AY

19. Types of Income Tax Returns

ITR Forms	Description
ITR 1	For resident Individuals having Income from Salaries, one house property, other sources (Interest etc.) and having total income up-to Rs.50 lakh
ITR 2	For Individuals and HUFs not carrying out business or profession under any proprietorship
ITR 3	For individuals and HUFs having income from a proprietary business or profession
ITR 4 SUGAM	For Presumptive Income from Business and Profession
ITR 5	For persons other than, (i) individual, (ii) HUF, (iii) company and (iv) person filing Form ITR-7
ITR 6	For Companies other than companies claiming exemption under section 11
ITR 7	For persons including companies required to furnish return under sections 139(4A) or 139(4B) or 139(4C) or 139(4D) or 139(4E) or 139(4F)

20. Presumptive Taxation Scheme

Section 44AD	Section 44ADA
In case of an eligible assessee (individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership	In case of an assessee, being a resident in India, who is engaged in a profession as per section 44AA(1) (and whose total gross

<p>firm) engaged in an eligible business (any business except the business of plying, hiring or leasing goods carriages whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees), a sum equal to 8% for cash and 6% for non-cash of the total turnover or gross receipts of the assessee in the previous year on account of such business shall be deemed to be the profits and gains of such business chargeable to tax and no other deduction will be allowed. Provisions shall not apply to -</p> <ul style="list-style-type: none"> ➤ a person carrying on profession as per section 44AA(1) ➤ a person earning income in the nature of commission or brokerage ➤ a person carrying on any agency business 	<p>receipts do not exceed fifty lakh rupees in a previous year, a sum equal to fifty per cent of the total gross receipts of the assessee in the previous year on account of such profession shall be deemed to be the profits and gains of such profession chargeable to tax and no other deduction shall be allowed. Professions specified under section 44AA(1) as per Rule 6F are:</p> <ul style="list-style-type: none"> ➤ Legal ➤ Medical ➤ Engineering ➤ Architectural ➤ Accountancy ➤ Technical Consultancy ➤ Interior Decoration ➤ Film artist ➤ Authorised Representative
<p>An assessee who claims that his profits and gains lower than the profits and gains specified above and whose total income exceeds the maximum amount which is not chargeable to tax, shall be required to keep and maintain such books of account and other documents, get them audited and furnish an audit report audit as required under section 44AB.</p>	

21. Tax Incentives for start-ups - Section 80IAC

New section is inserted to provide a deduction of 100% of the profits and gains derived by an eligible start - up from a business involving innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property. Deduction is available for any three consecutive assessment years out of 5 years starting from the year of its incorporation.

Tax Incentive for employment generation - Section 80JJAA

Deduction under Section 80JJAA is proposed to be allowed to all assesses who are required to get their accounts audited. The deduction will be 30% of emoluments paid to employees on provided emolument per employee per month is less than or equal to Rs.25,000. However, no deduction is available where Government is paying for EPF of such employees. Also, where an employee is employed during the previous year for a period of less than two hundred and forty days or one hundred and fifty days, as the case may be, but is employed for a period of two hundred and forty days or one hundred and fifty days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of this section shall apply.

22. Set off and carry forward of losses

Section	Nature of loss to be carried forward	Income against which brought forward loss can be set off in subsequent years	Maximum permissible period [from the end of the relevant AY] for carry forward of losses
71B	Unabsorbed loss from house property	Income from House Property	8 AY
72	Unabsorbed business loss (non- speculative) *	Profit and gains from business or profession (non- speculative)	8 AY
73	Loss from speculation business	Income from speculation business	4AY
73A	Loss from specified business under section 35AD	Profit from specified business under section 35AD	Indefinite period
74	Long-term capital loss	Long-term capital gains	8 AY
74	Short-term capital loss	Short/Long-term capital gains	8 AY
74A	Loss from the activity of owning and maintaining race horses	Income from the activity of owning and maintaining race horses.	4AY

Note: A taxpayer who opts for taxation under the new regime being an Individual or HUF will not be allowed to set off or carry forward losses.

Any domestic corporate assessee opting for taxation at 22% or 15% income tax as the case may be will only be allowed to carry forward and set off losses to the extent they are allowed as mentioned in the guiding sections.

*Unabsorbed depreciation can be carried forward for an indefinite period and can be set off against any other income (other than salary). This loss can be set off against any other income after first setting it off against business income. The unabsorbed depreciation can be carried forward even if the business related to such depreciation has been dis-continued.

23. Transfer pricing

India introduced a transfer-pricing regime in 2002. The regime is influenced by OECD norms, although the penalties are much more stringent. It defines terms such as “international transaction”, “associated enterprise” and “arm’s-length price”. The transfer-pricing law requires the assessee to maintain certain information and documents and obtain a certificate (in a prescribed format) from a chartered accountant furnishing the details of international transactions with associated enterprises.

Domestic Transfer Pricing

The Government has extended the provisions of Transfer Pricing to specified domestic transaction. Any allowance or expenditure or interest or allocation of any cost or expense or any income in relation to any specified domestic transaction shall be computed having regard to the Arm’s length price. It also provides for covering mutual cost allocation or contribution agreements or arrangements between “associated enterprises”. If aggregate of transactions entered into by the assessee in the previous year exceeds a sum of twenty crore rupees then the same needs to be reported in Form 3CEB issued by a Chartered Accountant.

24. Limited Liability Partnerships [LLP]

A limited liability partnership (LLP) is a partnership in which some or all partners have limited liabilities. LLP's are taxed in the same form as Partnership Firms and no tax is levied on conversion of Partnership Firms into LLP. Share of profit earned by partners is tax free.

25. Assessments and Appeals

Type of Assessment	Section	Main features
Summary	143(1)	Preliminary check - For arithmetical errors and incorrect claims
Scrutiny	143(3)	Detailed check - Correctness and genuineness of return
Best Judgement / ex-parte	144	If the tax payer doesn't file a return or doesn't comply with the Notice for inquiry
Income Escaping Assessment	147	If the AO has reason to BELIEVE that income has escaped assessment
Assessment or Re-assessment of search cases	153A	If a search is conducted or a requisition is made in respect of any person
Assessment or Re-assessment of another person	153C	During search, if books of other person are seized or requisitioned

Time limit for completion of assessment, reassessment and re-computation - Section 153

Particulars	AY : 2018-19	AY : 2019-20	AY : 2020-21
Order of assessment shall be made under section 143 or section 144	18 months	12 months	12 months
	from the end of the assessment year in which the income was first assessable		
Order of assessment, reassessment or re-computation	9 months	12 months	12 months
	from the end of the financial year in which the notice under section 148 was served		

Type of Appeal	Section	Main features	Time limit (in days) From the date of receipt of a copy of order sought to be appealed against
CIT (Appeals)	246A	Can be filed only by assessee and not by department in Form 35	30
ITAT	252	Can be filed by both assessee and department in Form 36	60
High Court	260A	Only if it involves a 'Substantial Question of Law'	120
Supreme Court	261	If high court has certified it to be a fit case.	90

26. Search and Survey proceedings

Search - Section 132	Survey - Section 133A
A search can be authorized only if an authorized officer, in consequence of information has reason to believe that any person to whom summons has been issued has failed to produce books of accounts or documents or is in possession of any money, bullion, jewellery or any other valuable article or thing which has not been disclosed for the purposes of IT Act.	An Income Tax Authority can enter any place after sunrise but before sunset, where business or profession is carried out by the assessee and can check or verify or require any person to furnish the information demanded.

27. Fees, Interest, Penalty and Prosecution

Fees for late filing of Income Tax Return	Date of filing
Rs. 5,000	Before 31 st December of relevant AY
Rs. 10,000	After 31 st December of relevant AY
Rs. 1,000	Total Income < Rs. 500,000

Interest

For default in filing return Section 234A	For default in payment of Advance Tax		For Excessive refund paid Section 234D	For demand raised Section 220(2)
	Section 234B	Section 234C		
Simple interest at the rate of 1% for every month or part of a month immediately following the due date of filing the return of income.	Simple interest at the rate of 1% for every month or part of a month from the 1st day of April next following such financial year for non payment of 90% of advance tax.	Simple interest at the rate of 1% per month for a period of three months on the amount of the shortfall of advance tax due in that quarter.	Simple interest of 1.5% on the whole or the excess amount so refunded, for every month or part of a month from the date of grant of refund to the date of the regular assessment.	Interest on non payment of Demand raised in Notice of Demand u/s 156 then a simple interest at 1% for every month or part of a month from 31st day onwards till the demand is paid.

Penalty

Section	Nature of default	Penalty leviable
270A(1)	Under-reporting and misreporting of income	Under reported income - 50% Misreported income - 200% [of amount of tax payable on under-reported income]
271A	Failure to keep, maintain, or retain books of account, documents, etc., as required under section 44AA	Rs. 25,000
271B	Failure to get accounts audited or furnish a report of audit as required under section 44AB	1.5% of total sales, turnover or gross receipts, etc., or Rs. 1,50,000, which-ever is less
271F	Failure to furnish return as required by section 139(1) or by its provisos before the end of the relevant assessment year	Rs. 5,000
271AAD	False entry in books	A sum equal to the aggregate amount of such false or omitted entry.

Section	Nature of default	Punishment (rigorous imprisonment)	Fine
276B	TDS Defaults [failure to pay tax to Central Government]	3 months to 7 years	No limit

28. Measures to curb cash payments and for promoting digital economy

1. No person shall receive an amount of two lakh rupees or more – [Section 269ST]
 - a) in aggregate from a person in a day; or
 - b) in respect of a single transaction; or
 - c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account

Exceptions: Government/any banking company, post office savings bank or co-operative bank
2. Cash expense exceeding Rs. 10,000 with respect to payments made to a person in a day to be disallowed. [Section 40A(3)]
3. Donation exceeding Rs. 2,000 otherwise than by an account payee cheque or draft or electronic clearing system is prohibited. [Section 13A]

29. Grievance Redressal and Right to Information

When tax payers are aggrieved by the officers of the Department, to attend to such grievances Grievance Cells at different level has been set up.

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government and contain corruption. Information can be obtained by filing the prescribed Form no. 8 and following the prescribed procedure.

30. Advance Ruling

A Non-Resident assessee can make an application to Authority for Advance Ruling (AAR) seeking clarifications about the tax liability and other connected aspects arising out of any past or future transactions undertaken or proposed to be undertaken in India.

31. Settlement Commission

In order to raise revenue there should some room for compromise and settlement, with this objective, Income Tax Settlement Commission (ITSC) was set up. Settlement is possible only if assessee approaches the ITSC by way of making an application in prescribed form and conditions.

32. Electronic assessments:

- Income tax department launched the e assessment proceedings where the submission of the documents to the Income tax authorities is required to be made online using email or the Income tax website in vide E Assessment Scheme 2019.
- In September 2019, the Income Tax department has introduced faceless assessment where the notices will be sent to the taxpayers from nationalized central office & the details of the jurisdictional officer will not be available.
- The department will be notifying a scheme for conducting penalty & CIT Appeals like e assessment.

33. VivadSe Vishwas Scheme

It is proposed to bring a scheme for settling existing direct tax litigation. Under the scheme, it is proposed that taxpayers would be required to pay the **amount of the disputed taxes only** where tax arrears include disputed tax, disputed interest and disputed penalty. There will be complete waiver of interest and penalty where payment of disputed taxes is made by 30.06.2020 instead of earlier 31.03.2020. No additional 10% is required to be paid if the payment of disputed tax is made before 30.06.2020.

Particulars	On or before 31 March 2020 – this has now been extended to 30 June 2020
Search cases	125 percent of disputed tax*
Other than search cases	100 percent of disputed tax*
Cases related only to interest, penalty, or levy	25 percent of disputed interest, penalty or fee
Search cases	62.5 percent of disputed tax*
Other than search cases	50 percent of disputed tax*
Cases related only to interest, penalty, or levy	12.5 percent of disputed interest, penalty, or fee

*Interest and penalty waived

34. International Taxation

Country by Country (CbC) Reporting as per Base erosion and profit shifting (BEPS) Action Plan

The Organization for economic Co - operation and Development (OECD) report on Action 13 of Base Erosion and Profit Shifting (BEPS) provides for revised standards for transfer pricing documentation and a template for country by country reporting of income, earnings, taxes paid and certain measure of economic activity.

Equalization Levy - Chapter VIII of the Finance Act

“Equalization levy” means tax leviable on consideration received or receivable for any specified service, for e-commerce supply or services and on specified circumstances.

“Specified Service” means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and to include any other service as may be notified by the central government.

“E-commerce supply or services” means online sale of goods owned by the e-commerce operator; or online provision of services provided by the e-commerce operator; or online sale of goods or provision of services or both, facilitated by the e-commerce operator; or any combination of activities listed above.

“Specified circumstances” means sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and) sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India.

“Online” means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network.

Charge of Equalization Levy

Equalization levy @ 6% (2% in case of specified circumstances) of amount of consideration received or receivable by a Non-Resident for any consideration received or receivable for e-commerce supply or services, from:

- A person resident in India, and carrying business or profession; or
- A non - resident having permanent establishment in India.

Equalization levy not to be charged where:

- The non - resident providing specified services has a permanent establishment in India and the specified service is effectively connected with the permanent establishment.
- The aggregate amount of consideration received or receivable in a previous year by the non - resident from the person resident in India and carrying business or profession or non - resident having permanent establishment in India does not exceed Rs 1 Lakh.
- Payment made for specified service and/or e-commerce supply or services, is not for the purpose of carrying out business or profession.

Every resident service receiver and non - resident having permanent establishment to deduct the equalization levy @6% if the consideration for specified services exceed Rs 1 lakh in a previous year.

The Equalization levy so deducted during the calendar month to be deposited with the Central Government by 7th of the immediately following calendar month.

Advance Pricing Agreement (APA)& Roll Back Provisions in APA

The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person. The agreement shall be valid for such period not exceeding five consecutive previous years. The advance pricing agreement entered into shall be binding—

- (a) on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and
- (b) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.

The agreement shall not be binding if there is a change in law or facts having bearing on the agreement so entered. The Board may, with the approval of the Central Government, by an order, declare an agreement to be void ab initio, if it finds that the agreement has been obtained by fraud or misrepresentation of facts. The agreement may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous years, and the arm's length price of such international transaction shall be determined in accordance with the said agreement.

Safe Harbour

A "safe harbour" is defined in the ITL as circumstances in which the Tax Authority shall accept the transfer price, income deemed to accrue or arise as per section 9(1)(i) as declared by the taxpayer. The safe harbour provisions would be available only if the taxpayer satisfies the eligibility conditions provided in the rules and in respect of such international transactions which are eligible for safe harbour as provided in the rules. It also covers the transactions which are business incomes deemed to accrue and arise in India w.e.f 1.4.2020.

Sr. No.	Eligible International Transactional	Circumstances / Ceilings from AY 2013-14 to AY 2017-18	Circumstances / Ceilings from AY 2017-18 to AY 2019-20
1	Provision of software development services and provision of information technology enabled services	<p>The operating profit margin declared in relation to operating expense incurred is -</p> <p>(38) not less than 20 %, where the aggregate value of such transactions entered into during the previous year does not exceed a sum of 500 crore or</p> <p>(ii) not less than 22 %, where the aggregate value of such transactions entered into during the previous year exceeds a sum of 500 crore.</p>	<p>The operating profit margin declared in relation to operating expense incurred is-</p> <p>(i) Where the aggregate value of such transactions \leq RS. 100 crore-not less than 17 %</p> <p>(ii) Where the aggregate value of such transactions $>$ RS. 100 crore but $<$ 200 crore-not less than 18 %</p>
2	Provision of knowledge process outsourcing services	<p>The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 25 %.</p>	<p>The value of international transaction \leq RS. 200 crore and the operating profit margin to operating expense is-</p> <p>(i) Not less than 24 per cent, if the employee cost to operating expense is atleast 60 per cent</p> <p>(ii) Not less than 21 per cent, if the employee cost to operating expense is greater than 40 per cent or more but less than 60 per cent</p> <p>(iii) Not less than 18 per cent, if the employee cost to operating expense does not exceed 40 per cent</p>

Sr. No.	Eligible International Transactional	Circumstances / Ceilings from AY 2013-14 to AY 2017-18	Circumstances / Ceilings from AY 2017-18 to AY 2019-20
3	Advancing of intra-group loans where the amount of loan does not exceed 50 crore.	The Interest rate declared in relation to the eligible international transaction is not less than the base rate of State Bank of India as on 30 th June of the relevant previous year plus 150 basis points.	The threshold of RS. 50 crore has been removed. Different safe harbor rates have been prescribed for <ul style="list-style-type: none"> • Loan denominated in Indian Rupees (RS.) • Loan denominated in foreign currency
		The Interest rate declared in relation to the eligible international transaction is not less than the base rate of State Bank of India as on 30 th June of the relevant previous year plus 300 basis points.	
4	Providing corporate guarantee	The commission or fee declared in relation to the eligible international transaction is at the rate not less than 2 per cent per annum on the amount guaranteed.	The differential rates of 2 per cent and 1.75 per cent have been moderated down to a standard rate of 1 per cent irrespective of the amount guaranteed.
5		The commission or fee declared in relation to the eligible international transaction is at the rate not less than 1.75 per cent. Per annum on the amount guaranteed.	However, the requirement for the credit rating of the borrower to be certified by a SEBI registered agency and such credit rating be of adequate to highest safety still remains for amount guaranteed Rs. 100 crores.
6	Provision of contract research and development services wholly or partly relating to software development	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 30 per cent.	The operating profit margin to operating expense not less than 24 per cent, where the value of the international transaction is Rs. 200 crores.
7	Provision of contract research and development services wholly or partly relating	The operating profit margin declared by the eligible assessee from the eligible international transaction in	The operating profit margin to operating expense not less than 24 per cent, where the value of the international

Sr. No.	Eligible International Transactional	Circumstances / Ceilings from AY 2013-14 to AY 2017-18	Circumstances / Ceilings from AY 2017-18 to AY 2019-20
	to generic pharmaceutical drugs	relation to operating expense incurred is not less than 29 per cent.	transaction is Rs. 200 crores.
8	Manufacture and export of core auto components	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 12 per cent.	No change
9	Manufacture and export of non-core auto components	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 8.5 per cent.	No change
10	Manufacture and export of non-core auto components	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 8.5 per cent.	No change
11	Receipt of low value-adding intra group services		Aggregate value of such transactions (including a mark-up not exceeding 5 per cent), does not exceed RS. 10 crore Method of cost pooling, exclusion of shareholder costs and duplicate costs from cost pool and the reasonableness of the allocation keys used for allocation of costs to be certified by an accountant

Taxation of Foreign Banks

In case of Interest payable by branch/ permanent establishment of the foreign bank in India to its head office or any other foreign branch/ PE or any other part of such foreign bank situated outside India shall be chargeable to tax in India in addition to any income attributable to the PE in India.

The Indian branch of the foreign bank to be obligated to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc. of the non-resident outside India.

Foreign income and tax treaties

India has comprehensive double-taxation avoidance agreements in force with many countries. Agreements limited to aircraft profits and shipping profits also exist.

Most of India's agreements grant relief from double taxation by the credit method or by a combination of the credit and exemption methods.

Withholding tax rates under India's tax treaties			
Country	Dividends	Interest*	Royalties
Australia	15 ⁽⁴⁾	15	10/15/20
Brazil	15 ⁽⁴⁾	15	15/25
China	10 ⁽⁴⁾	10	10
Cyprus	10/15 ⁽⁴⁾	10	10/15
France	10 ⁽⁴⁾	10	10
Germany	10 ⁽⁴⁾	10	10
Japan	15 ⁽⁴⁾	10/15	20
Kenya	15 ⁽⁴⁾	15	20
Russia	10 ⁽⁴⁾	10	10
Mauritius	5/15 ⁽⁴⁾	20.91 ⁽⁴⁾	15
Singapore	10/15 ⁽⁴⁾	10/15	10
Sri Lanka	15 ⁽⁴⁾	10	10
UAE	5/15 ⁽⁴⁾	5/12.5	10
UK	0/15 ⁽⁴⁾	10/15	10/15/20
US	15/25 ⁽⁴⁾	10/15	10/15/20
*Interest earned by the government and certain institutions is generally exempt from taxation in the source country.			

- i. Dividend/interest earned by the government and certain specified institutions, is exempt from taxation in the country of source (subject to certain condition).
- ii. Royalties and fees for technical services would be taxable in the country of source at the rates prescribed for different categories. These rates shall be subject to various conditions and nature of services/royalty for which payment is made. For detailed condition, relevant DTAA to be referred.

General Anti-avoidance Rule (GAAR)

Tax planning leading to abuse or misuse of law, government targets these planning by amending Income Tax Act from time to time [Section 40A(2), 80-IA(8), 92 to 92F, 2(22)(e), 43(1)]

With the introduction of GAAR provision in Income Tax Act, it empowers the tax department to declare an arrangement entered into by the person to be an 'Impermissible Avoidance Agreement' (IAA) resulting into denial of tax benefit either under the tax Act or DTAA. It will also consider any step in or a part of arrangement to be considered as IAA.

GAAR provisions are into effect from AY 2018-19 and subsequent years.

Multilateral Instruments (MLI) and CTA (Covered Tax Agreements)

The Base Erosion and Profit Shift ("BEPS") programme, initiated by OECD, had recommended a host of action plans, which could be implemented by making changes to the international tax treaties mentioned above. However, there are more than 3000 bilateral tax treaties entered into by contracting countries and it would have taken years to amend them. To solve this problem, over 100 jurisdictions negotiated and concluded a multi-lateral instrument ("MLI") in November 2016.

Countries that agreed to change their tax treaties were required to sign and notify the OECD Secretariat. India was amongst the first few signatories to the MLI in 2017 and ratified(gave consent) it on 25.6.2019. Thus, its network of bilateral tax treaties would be impacted by the

provisions of the MLI where its treaty partner is also a signatory. It will be, therefore, necessary now to read the applicable tax treaty with MLI, based on the treaty partner's position and reservations on the provisions of the MLI.

The potential impact of MLI on some of the key jurisdictions through which investments into India are made are as under:-

Sr. No	Tax Treaty	Covered under MLI	Ratification	Entry into effect [1]
1	India-Netherlands	Yes	29.3.2019	1.4.2020
2	India-Singapore	Yes	21.12.2018	1.4.2020
3	India-Cyprus	Yes	23.1.2020	1.11.2020
4	India-Luxembourg	Yes	9.4.2019	1.4.2020

[1] For tax deduction at source in India, the MLI shall be effective with respect to respective tax treaty, from the beginning of financial year immediately after 3 months from latest of the deposit of instrument of ratification by India or its Treaty partner.

Controlled foreign companies

India currently does not have anti-haven (CFC) rules. Presently Arm's Length Price (ALP) for an International Transaction between Associated Enterprises has to be computed by applying the Most Appropriate Method. If by applying the Most Appropriate Method, more than one ALPs are determined, an arithmetical mean of the ALPs is considered as the ALP. If the actual price at which the Associated Enterprises have carried out their transactions varies by up to 5% of the arithmetical mean of the ALPs, then the actual price is considered as the ALP. In other words, in such cases, no adjustment is required to be carried out to the income.

36. Indirect Taxes

Custom duty

Customs duty is levied by the central government on imports and exports as prescribed in the Customs Tariff Act. The peak rate of basic duty is 10%, but this excludes agricultural, dairy and other selected products.

Goods and Service Tax

GST is the largest tax reform ever, because it is really an economic integration in a federal democracy like India. While the state laws taxing goods (VAT) don't talk to the central laws on production (excise) and services (service tax), we can now expect that the UNION will work like one - a union in both letter and spirit. Finally, India will have ONE TAX CODE for goods and services. The salient features are:

1. GST is a destination-based tax
2. GST Council

All the major decisions are to be taken by the Council (GSTC). GSTC is made up of States and centre both. They have had and will have an overarching powers to take major decisions.

3. Rates of GST

5%	Essential Supplies
12%	Standard rate for goods and services
18%	Standard rate for goods and services
28%	Expected for goods which was taxed at more than 30%

4. The GST is applicable w.e.f 1.7.2017
5. GST operates at two levels - Taxation powers lie with both the States and the centre to tax goods and services. Intra-state goods and services are taxed under State GST and Central GST. There is tax on interstate supply of goods and services.

6. The GSTN (GST Network) primarily provides IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders for implementation of the Goods and Services Tax (GST).
7. Both centre and State have GST legislations and also frame place of supply provisions. This have to be coherent and uniform. GST Rules are notified by Central Board of Indirect Taxes and Customs (CBEC).
8. Benefits - removal of multiplicity of taxes and their cascading effect including input tax credits available between goods and services, single registration and one IT network for compliances, most other small laws at state level are subsumed within GST (such as entry taxes), wider tax base and incentive to comply, and so on.
9. Area based exemptions which were available under Excise is done away with. This would should have affected industries such as FMCG, pharmaceuticals and automobiles, unless benefits are introduced to these industries in other forms.
10. The Customs duty will not be covered under the ambit of GST. Imports will be subjected to GST.

Under the Goods and Services Tax, each manufacturer/service provider needs to pay a GST, which is the difference of his 'output tax' and 'input tax'. Hence, it can be said, GST is a comprehensive value added tax levied on goods and services. In a GST regime, goods and services are not differentiated as they move through the supply chain.

Other taxes

- **Securities Transaction tax**

Securities transaction tax is imposed on the purchase/sale of shares in a company where the transaction takes place on a recognised stock exchange in India. Rates of the tax are revised with effect from 1st June, 2013, which are as follows:

Sr. No.	Nature of taxable securities transaction	Payable by	New rate from 01.06.2016
1	Sale of an option in securities	Seller	0.05%
2	Sale of an option in securities, where option is exercised	Purchaser	0.125%
3	Sale of a futures in securities	Seller	0.01%

The securities transaction tax paid is allowed as an expense in case of securities transactions taxed as business profits.

- **Stamp duty**

Financial instruments and transactions in India attract stamp duties that are levied under the Indian Stamp Act and the stamp acts of the various states; the rates vary significantly from state to state. The transfer of specified securities to and from a depository is not liable for stamp duty.

- **Real estate duty**

Owners of real estate are liable to various taxes imposed by the State and municipal authorities. These taxes vary from state to state.

- **Profession tax**

Profession tax is a local tax levied on salaried employees and persons carrying on a profession or trade. The rates of profession tax vary from state to state.

- **R&D cess**

The Research & Development Act, 1986 provides for a levy of 5% on all payments made for the import of "technology", which includes import of designs, drawings, publications and services of technical personnel.

- **Motor Vehicle tax**

India's states levy moderate taxes on motor vehicles and freight traffic; the municipalities charge taxes on services and levy professional fees.

- **Commodities Transaction Tax**

Commodities Transaction Tax on the transactions executed on the Exchange shall be charged at the rate mentioned below:

Sr. No.	Taxable commodities transaction	Rate	Payable by	Payable on
1	Sale of futures in commodities (except exempted agricultural commodities)	0.01%	Seller	Trade value

37. Table of abbreviations

ROR	Resident & ordinarily resident
RBNOR	Resident but not ordinarily resident
NR	Non resident
LLP	Limited Liability Partnership
HUF	Hindu undivided Family
AOP	Association of Persons
BOI	Body of Individuals
TDS	Tax Deducted at Source
POEM	Place of Effective Management
CbyC	Country by Country
TP	Transfer Pricing
R&D	Research & Development
GST	Goods & Service Tax

This communication is intended to provide a general guide to the subject matter and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.