Business Taxation in India

April 2017

Contents

1. Overview

Corporate taxes can be covered mainly under two heads - Direct Taxes (Taxes on Income) and Indirect Taxes (Taxes on Sale of Goods and Services). The largest tax reform, probably anywhere in the world, is taking place in India, in the form of Goods and Services Tax (GST). Alongside, the government has reduced the corporate rate of tax for smaller companies to 25% from 30%, which will benefit nearly 95% of all companies.

In addition to corporate income tax, companies in India are subject to a minimum alternative tax, capital gains tax (although this forms part of Income Tax Act), and indirect taxes (which will get subsumed in GST from July 1, 2017) – such as value-added tax (VAT), service tax, excise duties and various levies of individual states and municipality taxes. The taxes that may not be subsumed are stamp duty, vehicle tax, electricity duty, entertainment tax (levied by local bodies), etc.

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. Tax is charged on income. Income is defined u/s 2(24) of the Income Tax Act, 1961. Income is always in respect of a previous year (Financial Year) starting from April and ending in March. All taxpayer 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 offered for tax is also 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.

Income deemed to accrue or arise in India – Section 9

(1) All income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through or from any money lent at interest and brought into India in cash or in kind or through the transfer of a capital asset situate in India.
(2) Income which falls under the head "Salaries", if it is earned in India.
(3) Income chargeable under the head "Salaries" payable by the Government to a citizen of India for service outside India
(4) A dividend paid by an Indian company outside India
(5) Income by way of interest payable by the Government or a person who is a resident or a person who is a non-resident

(6) Income by way of royalty payable by the Government or a person who is a resident or a person who is a non-resident
(7) Income by way of fees for technical services payable by the Government or a person who is a resident or a person who is a non-resident.

Exempt incomes [Incomes not included in total income] – Section 10

In computing the total income of a previous year of any person, any income falling within certain clauses shall not be included. These include agricultural income, share of profits from partnership firm, etc.

3. Residential Status of the Tax Payer

☞ **Company**

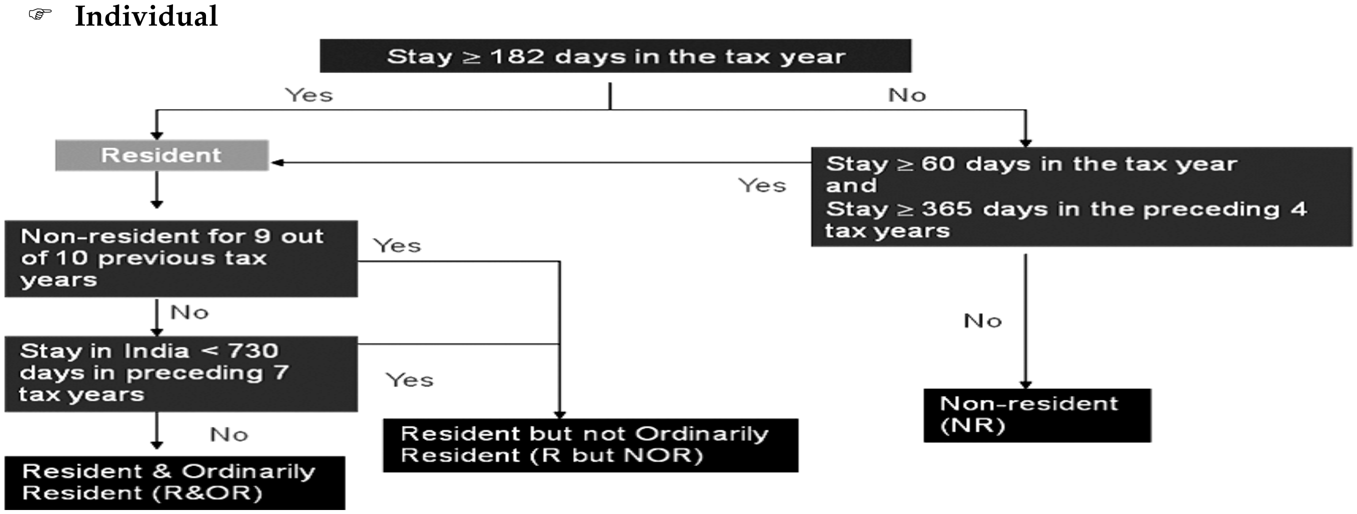
A Company is a resident if:
- It is an Indian company OR
-

Up-to AY 2016-17	The control and management of its affairs is situated WHOLLY in India during the year
Up-to AY 2017-18	Its place of effective management, in that year, is in India

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

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

☞ **Individual**



4. Scope of Income

Nature of income	Taxability in case of		
	ROR	RBNOR	NR
Income received or deemed to be received in India	√	√	√
Income accruing or deemed to be accrued 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
Income not received or not deemed to be received in India	√	X	X
Income not accruing or not deemed to be accrued in India	√	X	X

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 [Section 15-17]
2. Income from House Property [Section 22-27]
3. Income from Business / Profession [Section 28-44C]
4. Income from Capital gains [Section 45-55A]
5. Income from Other Sources [Any income which is not chargeable to tax under above sections, will be chargeable to tax as Income from Other Sources - Section 56(1)] [Section 56-59]

6. Income from Salary

- There should be employer-employee relationship.
- Salary income chargeable to tax when it is due or paid, whichever is earlier.
- Arrears of income paid are also chargeable to tax, if it was not taxed previously.
- Salary accrues where the services are rendered, even if it is paid outside India.

7. Income from House Property

- One house, being self occupied, does not attract tax
- Second house attracts tax, even if no rent is earned
- 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 for acquiring or constructing a self occupied house property is allowed as deduction u/s 24(b) if 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**

  The amount of arrears of rent received from a tenant or the unrealised rent realised subsequently from a tenant, by an assessee shall be deemed to be the income from house property in respect of the financial year in which such rent is received or realised, and shall be included in the total income of the assessee under the head "Income from house property", whether the assessee is the owner of the property or not in that financial year.
  A sum equal to thirty per cent of the arrears of rent or the unrealised rent shall be allowed as deduction.

8. 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.

9. Capital Gains

Gains derived from the disposition 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 for Resident Individual & HUF								
Nature of Asset	**Holding Period**	**Date of Sale**	**Whether STT Paid**	**Long Term/ Short Term**	**Whether Eligible for Concessional Rate of 10%**	**Whether Indexation Permitted**	**Whether Exempt**	**Remark**
Listed Equity Shares	Less than 12 months	Prior to 10-07-14	Yes	Short term	Not Applicable	Not Applicable	No	Taxable at 15%
Listed Equity Shares	More than 12 months	Prior to 10-07-14	Yes	Long Term	Yes – Condition redundant since exempt	Yes – Condition redundant since exempt	Yes	Exempt u/s 10(38)

Nature of Asset	Holding Period	Date of Sale	Whether STT Paid	Long Term/ Short Term	Whether Eligible for Concessional Rate of 10%	Whether Indexation Permitted	Whether Exempt	Remark
Listed Equity Shares	Less than 12 months	After 10-07-14	Yes	Short Term	Not Applicable	Not Applicable	No	Taxable at 15%
Listed Equity Shares	More Than 12 months	After 10-07-14	Yes	Long Term	Yes – Condition redundant since exempt	Yes – Condition redundant since exempt	Yes	Exempt u/s 10(38)
Equity Oriented MF	Less than 12 months	Prior to 10-07-14	Yes	Short term	No	No	No	Taxable at 15%
Equity Oriented MF	More than 12 months	Prior to 10-07-14	Yes	Long Term	No	No	Yes	Exempt u/s 10(38)
Equity Oriented MF	Less than 12 months	After 10-07-14	Yes	Short Term	No	No	No	Taxable at 15%
Equity Oriented MF	More than 12 months	After 10-07-14	Yes	Long Term	No	No	Yes	Exempt u/s 10(38)
Unlisted Shares	Less than 12 months	Prior to 10-07-14	N.A.	Short term	No	No	No	Taxable at Slab Rates
Unlisted Shares	More than 12 months	Prior to 10-07-14	N.A.	Long Term	No	Yes	No	20% with indexation
Unlisted Shares	Less than 12 months	After 10-07-14	N.A.	Short Term	No	No	No	Taxable at Slab Rates
Unlisted Shares	More than 12 months	After 10-07-14	N.A.	Long Term	No	Yes	No	20% with indexation
Debt Oriented MF	Less than 12 months	Prior to 10-07-14	N.A.	Short term	No	No	No	Taxable at Slab Rates
Debt Oriented MF	More than 12 months	Prior to 10-07-14	N.A.	Long Term	Yes	Yes	No	10% / 20% with indexation
Debt Oriented MF	Less than 36 months	After 10-07-14	N.A.	Short Term	No	No	No	Taxable at Slab Rates
Debt Oriented MF	More than 36 months	After 10-07-14	N.A.	Long Term	No	Yes	No	20% with indexation

10. 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, etc.

11. Tax rates and due dates

- **Corporate Tax Rates**

Tax Rates for Domestic Companies:

Assessment Year	Tax %	Surcharge	Cess %	Total % Up-to 1cr[1] / >1cr - 10cr / >10cr
2016-17	30	0/7/10	3	30.90 / 33.063 / 34.608
2017-18#	25	0/7/12	3	29.87 / 31.9609 / 33.454*
2017-18	30	0/7/12	3	30.90 / 33.063 / 34.608

Notes:

1. #In case of Domestic companies with total turnover / gross receipts in F.Y. 2014-15 not exceeding Rs. 5 crore. Domestic Companies newly set up on or after 1st March, 2016 engaged in Manufacturing or Production subject to conditions provided in section 115BA.
2. *Total income in some exceptional cases may exceed Rs. 10 crore on account of Capital Gains etc.
3. Marginal relief available.

Tax Rates for foreign companies:

Assessment Year	Tax %	Surcharge	Cess %	Total % Up-to 1cr / >1cr - 10cr / >10cr
2016-17	40	0/2/5	3	41.20 / 42.024 / 43.26
2017-18	40	0/2/5	3	41.20 / 42.024 / 43.26

Notes:

1. Marginal relief available.
2. Tax rate for income other than royalty/FTS

[1] 1 Crore = 10 Million

- **Individuals Tax Rates (Assessment Year 2018-19 Financial Year Ending 31-03-2018)**

Income Slabs for Individual resident aged below 60 years	**Tax Rates**
1. Taxable Income up-to Rs. 250,000	NIL
2. Taxable income between Rs. 250,000 to Rs. 500,000	10% Less : Tax Credit u/s 87A for taxable income up-to Rs. 350,000 (10% of taxable income or Rs. 2,500)
3. Taxable income between Rs. 500,000 to Rs. 10,00,000	Rs. 25,000 + 20% of amount exceeding Rs. 500,000
4. Taxable income exceeding Rs. 10,00,000	Rs. 1,25,000 + 30% of amount exceeding Rs. 10,00,000
Income Slabs for Individual resident aged 60 years or more up-to 80 years	**Tax Rates**
1. Taxable Income up-to Rs. 300,000	NIL
2. Taxable income between Rs. 300,000 to Rs. 500,000	10% Less : Tax Credit u/s 87A for taxable income up-to Rs. 350,000 (10% of taxable income or Rs. 3,000)
3. Taxable income between Rs. 500,000 to Rs. 10,00,000	Rs. 20,000 + 20% of amount exceeding Rs. 500,000
4. Taxable income exceeding Rs. 10,00,000	Rs. 120,000 + 30% of amount exceeding Rs. 10,00,000
Income Slabs for Individual resident aged 80 years or more	**Tax Rates**
1. Taxable Income up-to Rs. 500,000	NIL
2. Taxable income between Rs. 500,000 to Rs. 10,00,000	20% of amount exceeding Rs. 500,000
3. Taxable income exceeding Rs. 10,00,000	Rs. 100,000 + 30% of amount exceeding Rs. 10,00,000

Surcharge & Education Cess (for Individuals, HUFs, AOP)	
Taxable Income	**Rate of Surcharge**
1. Up-to Rs. 50 lacs	NIL
2. More than Rs. 50 lacs up-to Rs. 1 crore	10% of the Income Tax
3. More than Rs. 1 crore	15 % of the Income Tax
Education Cess @ 2% and Secondary and Higher Education Cess @ 1% leviable on tax	

- **Tax Rates for Firms (including Limited Liability Partnership)**

Assessment Year	Tax %	Surcharge %	Cess %	Total % Up-to 1cr / > 1cr
2016-17	30	0/12	3	30.90 / 34.608
2017-18	30	0/12	3	30.90/ 34.608

12. Tax Deducted at Source and Tax Collected at Source

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

Tax Deducted at Source				
Section	**Heads**	**Existing Threshold Limit**	**Revised Threshold Limit**	**Rate of TDS (%)**
194A	Interest other than Interest on Securities	5,000 – Banks 10,000 - Others	5,000 – Banks 10,000 - Others	10%
194BB	Winnings from Horse Race	5,000	10,000	30%
194C	Payments to Contractors	Aggregate annual limit of 75,000	Aggregate annual limit of 100,000	1% - Individual / HUF 2% - Others
194D	Insurance Commission	20,000	15,000	10% - Non Corporate assessee 20% - Corporate assessee
194G	Commission of sale of lottery tickets	1,000	15,000	5%
194H	Commission or brokerage	5,000	15,000	5%

Section	Heads	Existing Threshold Limit	Revised Threshold Limit	Rate of TDS (%)
194I	Rent	1,80,000	1,80,000	2% - Plant & Machinery 10% - Others
194J	Fees for professional or technical services	30,000	30,000	10% - Others 2% - Call centre
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%

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%

13. Determination of Tax in special cases

Tax on distributed profits on Indian Companies

Dividends:
Dividends declared out of profits by companies are taxed in hands of companies in form of Dividend Distribution Tax (DDT). Such dividends paid by domestic companies are exempt in the hands of recipients in India unless the Dividend receipt exceeds Rs. 10,00,000.[2]

Income	Tax %	Surcharge % (>1 cr)	Cess %	Total %
Under Section 115-O	17.647	12	3	20.3576
Buy-back of unlisted shares by domestic companies u/s 115QA	20	12	3	23.072

[2] 10 Lakh = 1 Million

Application of above Tax Rates Structure

Examples 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 Mn and remittance to the foreign partner of 40% of after-tax earnings as dividends:

Corporate taxation	**F.Y.: 2016-17**	**F.Y.: 2017-18**
Taxable income	Rs.1,00,00,000	Rs.1,00,00,000
Total income tax **(30.90%)**	Rs. 30,90,000	Rs. 30,90,000
Distributable profits	Rs. 69,10,000	Rs. 69,10,000
Dividends remitted abroad (40%)	Rs. 27,64,000	Rs. 27,64,000
Tax on distributed dividends (20.3576%)	Rs. 5,62,685	Rs. 5,62,685
Total taxes payable	Rs. 36,52,685	Rs. 36,52,685
Total tax burden as a % of taxable income	36.5269%	36.5269%

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. 11 Mn and remittance to the foreign partner of 40% of after-tax earnings as dividends:

Corporate taxation	**F.Y.: 2016-17**	**F.Y.: 2017-18**
Taxable income	Rs. 1,10,00,000	Rs. 1,10,00,000
Total income tax **(33.063%)**	Rs. 36,36,930	Rs. 36,36,930
Distributable profits	Rs. 73,63,070	Rs. 73,63,070
Dividends remitted abroad	Rs. 29,45,228	Rs. 29,45,228
Tax on distributed dividends (20.3576%)	Rs. 599,577	Rs. 599,577
Total taxes payable	Rs. 42,36,507	Rs. 42,36,507
Total tax burden as a % of taxable income	38.5137%	38.5137%

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.

Corporate taxation	**F.Y.: 2016-17**	**F.Y.: 2017-18**
Taxable income	Rs. 20,00,00,000	Rs. 20,00,00,000
Total income tax **(34.608%)**	Rs. 6,92,16,000	Rs. 6,92,16,000
Distributable profits	Rs. 13,07,84,000	Rs. 13,07,84,000
Dividends remitted abroad	Rs. 5,23,13,600	Rs. 5,23,13,600
Tax on distributed dividends (20.3576%)	Rs. 1,06,49,793	Rs. 1,06,49,793
Total taxes payable	Rs. 7,98,65,793	Rs. 7,98,65,793
Total tax burden as a % of taxable income	39.9329%	39.9329%

Buy Back of 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%. Buy-back means purchase by a company of its own shares. 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.

14. 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 versus Exemption

Deduction	Exemption
Incomes 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

15. 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.

16. 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 if more than tax on total income as per normal provisions of the Act than final tax payable by companies would as per the special provisions of the Act at the rate of 18.5% plus surcharge (if the amount of book profit exceeds Rs. 1 crore) and cess at the rate 3%. Computation of book profit is as per the adjustments specified under section 115JB of the Act.

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.

17. Advance Tax

If the amount of tax payable including surcharge and cess during the financial year is Rs. 10,000 or more and the person is not a senior citizen and derives income from business or profession then taxes are to be paid in advance by such assessee on estimated income for the whole financial year.

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

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

If an assessee fails to pay advance tax than simple interest at the rate of one per cent on the amount of the shortfall from the tax due on the returned income

18. Obligations on Tax Payers

- Mandatory Maintenance of Books of Accounts and their audit
- Requirement to file Return

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 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 lakh. [Previously Rs. 25 lakh]

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 Rs. 5,000/- or 2% of the value of the transaction.

Liaison Office

Non-residents having liaison office in India, set up in accordance with the RBI guidelines, will have to submit prescribed annual statement of the activities of their liaison office within sixty days from the end of every financial year to the Income Tax Department.

19. Due dates of Filing Return

<table>
<tr><th>Sr. No.</th><th>Assessee</th><th>Due Date</th></tr>
<tr><td>1</td><td>Every assessee, who is required to furnish a report u/s 92E (Transfer Pricing)</td><td>30^{th} November of the AY</td></tr>
<tr><td>2</td><td>Every Company (where 92E report is not applicable)</td><td rowspan="3">30^{th} September of the AY</td></tr>
<tr><td>3</td><td>Every person whose books of accounts are required to be audited under any law</td></tr>
<tr><td>4</td><td>Every person who is a “working partner” of a firm, where firm’s books of accounts are required to be audited under any law</td></tr>
<tr><td>5</td><td>For every other person other than above</td><td>31^{st} July of the AY</td></tr>
</table>

20. Types of Income Tax Returns

ITR Forms	Description
ITR 1	For 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)
ITR V	Acknowledgement

21. 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 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 – ➢ 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	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 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: ➢ Legal ➢ Medical ➢ Engineering ➢ Architectural ➢ Accountancy ➢ Technical Consultancy ➢ Interior Decoration ➢ Film artist ➢ Authorised Representative

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.

22. 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. It is further proposed to reduce the minimum number of days of employment in a financial year from 300 days to 240 days and also the condition of 10% increase in number of employees every year is proposed to be withdrawn.

23. 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]
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 activity of owning and maintaining race horses	Income from the activity of owing and maintaining race horses.	4AY
32(2)	Unabsorbed depreciation	Profit and gains from business or profession	Indefinite period

24. 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.

25. Charitable Trusts

Entire income of a registered Public Charitable or Religious Trust / Institution in India will be exempt from tax if a trust applies 85% of income towards approved objects of the trusts or accumulates as per Section 11(2) of the Act. The term 'Charitable' includes:

- Relief of poor
- Education
- Yoga
- Medical Relief
- Preservation of environment and places of historic interest
- Advancement of any other object of general public utility (carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to such activities and the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts)

They have to file return as per section 139(4A) either on 31st July or 30th September if books are auditable (if income exceeds basic exemption limit) and furnish a report of a Chartered Accountant in Form 10B.

26. 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.

27. 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 : 2017-18	AY : 2018-19	AY : 2019-20
Order of assessment shall be made under section 143 or section 144	21 months	18 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	9 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

28. 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.

29. Fees, Interest, Penalty and Prosecution

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

Interest

For default in filing return	For default in payment of Advance Tax		For Excessive refund paid	For demand raised
Section 234A	Section 234B	Section 234C	Section 234D	Section 220(2)
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

Prosecution

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

30. 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]

31. 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. (http://pgportal.gov.in/cpgoffice/)

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.

32. 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.

33. 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.

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.

Exclusion of accumulated balance from income – Fourth schedule Part A – Rule 6 & Rule 8

Presently, contribution by the employer in excess of 12% of the employee’s salary is chargeable to tax.

Fourth schedule of the Act has been amended to effectively provide that only lower of Rs 1,50,000 or 12% of salary shall be exempt in the hands of employee in respect of employer’s contribution to recognized provident fund.

Equalization Levy – Chapter VIII of the Finance Bill

"Equalization levy" means tax Leviable on consideration received or receivable for any specified service.

"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.

"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% of amount of consideration received or receivable by a Non Resident for any specified service, 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, 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 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.

Sr. No.	Eligible International Transactional	Circumstances / Ceilings
1	Provision of software development services	The operating profit margin declared in relation to operating expense incurred is - (i) 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 (ii) not less than 22 %, where the aggregate value of such transactions entered into during the previous year exceeds a sum of 500 crore.
2	Provision of information technology enabled services	The operating profit margin declared in relation to operating expense is - (i) not less than 20 %, where the aggregate value of such transactions entered into during the previous year does not exceed a sum of Rs. 500 crore or (ii) not less than 22 %, where the aggregate value of such transactions entered into during the previous year exceeds a sum of Rs. 500 crore.

Sr. No.	Eligible International Transactional	Circumstances / Ceilings
3	Provision of knowledge process outsourcing services	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 25 %.
4	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 30th June of the relevant previous year plus 150 basis points.
5	Advancing of intra-group loans where the amount of loan exceeds 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 30th June of the relevant previous year plus 300 basis points.
6	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.
7	Providing corporate guarantee	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.
8	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.
9	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 29 per cent.
10	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.
11	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.

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 will come into effect from 1st April, 2017, and will accordingly apply with effect from Assessment Year 2017-2018

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.

Place of Effective Management [PoEM]

"PoEM" has been defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made. The Finance Act, 2015 provides that a company is said to be resident in India if:

- It is an Indian company;
- Its place of effective management in that year is in India

PoEM at any time of the year situated in India will make company tax resident in India.

Likely trigger of PoEM	
Tax payers likely to be affected by PoEM	**Activities likely to trigger PoEM**
Foreign companies having Indian branches (fixed place of business)	Board meeting in India
Foreign subsidiaries of Indian parents	Decisions taken by a Director, Executive Committee, Key Management Personnel in India Delegation of authority from India
Foreign company having global reporting structure with an India Connection	Regional roles e.g. Group CEOs / CFOs sitting in India and approving decisions for foreign affiliates
Regional headquarters	Functions carried on in India e.g. Global Procurement Cell of foreign companies

35. Indirect Taxes

Value-added tax (VAT)

The VAT is a broad-based "consumption–type destination-based VAT", driven by the invoice tax credit method. VAT is charged on different commodities at different rates. VST is charged on goods purchased and sold within the state. However when goods are purchased and sold between the states then Central Sales Tax is charged.

Service tax

Service Tax Rate - 15% [14% rate of service tax, 0.5% Swachh Bharat Cess, 0.5% Krishi Kalyan Cess w.e.f. 01.06.2016]

Service tax is payable on those services which are in the Negative List of services as well covered in mega exemption notification but is payable on those services which are specifically covered in the declared services. Basic exemption limit is Rs. 10 lakh.

Excise Duty

Excise duty is charged on goods manufactured in India. Excise duty is imposed primarily on the price actually paid or payable for a product, but it is sometimes levied on the basis of the maximum retail price or transaction value. A three-tiered excise duty structure of 12%, 14% and 24% applies.

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]

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 will have wide and overreaching 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 currently taxed at more than 30%

4. The GST is aimed to be rolled out from 01-07-2017.
5. GST will operate at two levels – Taxation powers lie with both the States and the centre to tax goods and services. Intra-state goods and services will be taxed under State GST and Central GST. There will also be tax on interstate supply of goods and services.
6. The GSTN (GST Network) will primarily to provide IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders for implementation of the Goods and Services Tax (GST). It is in the process of building and testing of the user interface for taxpayers and data functionality for the government.
7. Both centre and State will have GST legislations and also frame place of supply provisions. This will have to be coherent and uniform. GST Rules are also being drafted and on completion will be put up for stakeholder feedback.
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 to be done away with. This would mainly affect 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 [STT]**

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

Important Note:
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.