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Income Tax Perspective

on doing Business in India &
Recent developments

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Corporate Taxation
Rewarding Foreign Partners – Traditional approaches

SNo.	Nature of Income to Non-Resident: Payment by Indian company	Tax rate under Income Tax Act	Tax rate under Double Tax Avoidance Agreement
1	Interest	• General rate: 20% • Rupee denominated bond: 5%	10% on Gross income (Recipient is beneficial owner)
2	Dividend	20% on Gross income*	10% (Recipient is beneficial owner)
3	Royalty & fee for technical services (including fees towards Brand use)	10% on Gross income	10% on Gross income
4	Any Other Income – E.g. Management services rendered to an Indian Co; Business income, etc.	40% on Net income	Business profits (Attributable to PE)
5	Short term and long term gains	15% and 20% (10% in specified circumstances) respectively	Shares –Taxed in Source country

Note 1: You can choose the most beneficial rate

Note 2: Normally no tax on reimbursement of expenses

New Tax Provisions

01. Dividends taxable in hands of recipient with withholding tax provisions.

02. Concessional withholding tax rates of 5% on monies borrowed in foreign currency from outside sources / payable on bonds by Indian Company.

03. Faceless assessments and appeals in Income Tax.

04. Eligible Start-up engaged in eligible business: 100% tax holiday for 3 years within a period of 10 years from incorporation of Co.

05. Sovereign Wealth Funds investing in priority sectors- (Infrastructure and other notified sectors) - 100% Tax exemption for, **(i) Dividends; (ii) Interest; & (ii) Capital Gains**

Conditions on Investments:

- To be made before 31 March 2024
- Lock-in Period: 3 years.

Tax rates in India (Domestic companies)

Nature of business	New tax rate*	Conditions
New manufacturing co. set up & registered after 1st October 2019 but before 31st March 2023; Including co's engaged in electricity generation	**15%**	• All business expenses and normal depreciation as per prescribed rates will be allowed. • Tax holiday benefits and certain specified deductions may not be allowable; • Once the option is exercised, the same cannot be withdrawn for any subsequent year. No book profit tax (MAT).
Other corporates (Old & New)	22%	• More or less same conditions as above are applicable here. • No Book profit Tax; Option once exercised cannot be withdrawn.
Old Companies ▪ Less than INR 400 Cr (INR 4 Billion) of Turnover/gross annual receipts	25%	• Concessional rate. No restriction and no need to give up any tax concessions / benefits; Carry forward loss set off is allowed. • Book Profits Tax is applicable if the income is below the threshold limit of book profits. New Rate of Book profit Tax is 15%.
▪ Large/Other companies	30%	

Taxation of Limited **Liability Partnership**

Subject to limits on the allowability of interest and remuneration to partners, firms are taxed at lower rate (than corporates) at a flat rate.

Tax rate: 30% (Basic rate) plus surcharge and cess.

Alternate Minimum Tax (AMT) under section 115JC is applicable in certain circumstances.

Partner's share of profit is not taxable in India. Interest and remuneration- taxable for partner- if allowed, in other case it is not taxable.

Taxation of Unincorporated Joint Venture

Joint Venture ("JV') is a contractual arrangement whereby two or more parties undertake an economic activity which is subject to Joint Control. Types of JVs:

- Jointly controlled operations
- Jointly Owned Assets
- Jointly Owned entities

JV's are operated through special Purpose Vehicles (SPVs)- they can take any of the form as stated above

JV partner's share of profits

How it is assessed?

- Individual share- Assessed separately or
- By aggregating all shares of JV partners and treating them as Association Of Persons (AOP) – As a single entity

In a Japanese case, AAR Ruled that there was no AOP considering the following :

- Clauses in the Agreement
- Different tasks performed in each country carried out independently

The tax incidence is closely linked to obligations and rights of parties as contained in JV Agreement.

AOP Tax rate is same as applicable to the highest tax rate of the individuals and the surcharge and cess at the maximum rate of 42.74%

Indian Taxation Laws

- Tax incidence is both Source and Resident based.
- Taxation of income earned from April to March (Financial year) is taxed in following Assessment Year (12 months ending with 01st April of every year).
- Tax changes are usually amended by Budget on 01st February every year.
- Apex body (Central Board of Direct Taxes – "CBDT") administering tax is receptive to suggestions and issues beneficial clarifications periodically.
- Well-defined procedures for redressal including advance rulings from tax authorities - Authority for Advance Ruling ("AAR").
- Well-established hierarchical systems of contesting for legal remedies till the Supreme Court.
- Payment of taxes through withholding mechanism as well as through advance payment of tax and other modes.
- General Anti Avoidance Rules (GAAR) applicable.

International Tax

Transfer Pricing

- Determination of Arms Length Price (ALP) between Related Parties
- Advance pricing arrangements approved by CBDT to avoid Transfer Pricing disputes
- Limit on interest deduction (not exceeding 30% EBITDA) paid to a Non-Resident Associate

New Equalisation Levy (EL)

- 2% on Non- Residents directly selling goods/service through digital platform without establishing PE or entities in India
- No credit for EL under treaties
- Compliances need to be done by Non-Residents
- EL is not applicable if services are otherwise taxable as Royalty or Fee for Technical Services (FTS)

Multilateral Instrument ("MLI")

Indo-Japan Treaty modification through BEPS Action Plan
Modified through the acceptance of synthesised text for application of Japan–India DTAA

Preamble Of treaty also modified through MLI

- No treaty shopping
- Double non-taxation avoided
- Treaty cannot be used for tax avoidance measures

Changes through MLI

Japan:

- New withholding taxes in Japan – effective from 01st January 2020;
- Other taxes effective from 01st April 2020

India:

- New withholding taxes effective from 01st April 2020
- All other taxes with effective from Assessment Year 2021-22

Thank you

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