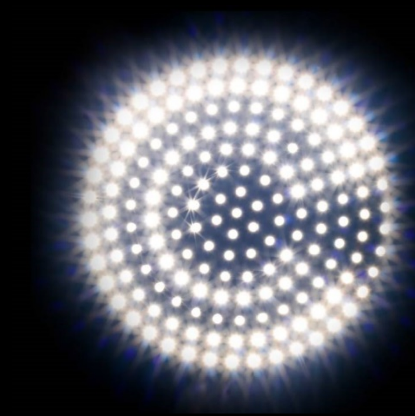
International Tax
India Highlights 2017



Investment basics:

Currency – Indian Rupee (INR)

Foreign exchange control – There is a simplified regulatory regime for foreign exchange transactions and liberalized capital account transactions. Current account transactions are permitted unless specifically prohibited and are monitored by the central bank. Foreign investment is permitted in most industries, although sector-specific caps have been set for foreign investment in certain industries, such as defense, civil aviation, telecommunications, banking, insurance, pension, retail trade, etc. The government has introduced various programs to make India an attractive hub for manufacturing and attract global investments and is taking measures to simplify the processes to set up or exit from business in India.

Accounting principles/financial statements – Accounting standards issued by the Institute of Chartered Accountants of India apply, which largely are based on IAS. India has initiated steps toward the convergence of its accounting standards with IFRS (subject to a few carve-outs); these standards are called Indian Accounting Standards (Ind AS). For accounting periods commencing on or after 1 April 2016, the Ind AS are mandatory for listed and unlisted companies meeting certain net worth thresholds, in various phases.

Principal business entities – Various forms of business entity are permitted. These include the public/private limited liability company, one-person company (owned by a resident individual), partnership firm, limited liability partnership, sole proprietorship, branch office, liaison office, project office or site office of a foreign corporation.

Corporate taxation:

Residence – A corporation is resident if it is incorporated in India or if its place of effective management, in that year, is in India.

Basis – Residents are taxed on worldwide income; nonresidents are taxed only on Indian-source income. Indian-source income may include capital gains arising from the transfer of any share or interest in a company or entity registered or incorporated outside India if the share or interest directly or indirectly derives its substantial value from assets located in India. Foreign-source income derived by a resident company is subject to corporation tax in the same way as Indian income. A branch of a foreign corporation is taxed as a foreign corporation.

Taxable income – Tax is imposed on a company's profits, which consist of business/trading income, passive income and capital gains. Income resulting from the indirect transfer of assets located in India is included. Normal business expenses, as well as other specified items, may be deducted in computing taxable income.

Taxation of dividends – Dividends paid by a domestic company are subject to dividend distribution tax (DDT) at 15% of the aggregate dividend declared, distributed or paid. The DDT payable is required to be grossed up. The effective rate is 20.3576%, including a 12% surcharge and a 3% education cess. Dividends subject to DDT generally are exempt from tax in the hands of the recipient; however, where the recipient is a resident individual, Hindu Undivided Family or firm, an additional income tax of 10% (plus the surcharge and cess) applies on dividend income received on or after 1 April 2016 if the amount of dividends received exceeds INR 1 million per annum on a gross basis.

Dividends received from a foreign company generally are subject to corporation tax, with a credit for any foreign tax paid. However, dividends received by an Indian company from a foreign company in which the Indian company holds at least 26% of the equity shares are subject to tax at a reduced base rate of 15% on the gross income. A surcharge and cess also are imposed.

Dividends paid by a domestic company that are liable to DDT may be reduced by: (1) the amount of dividends received from a domestic subsidiary company during the financial year, if the subsidiary has paid DDT; and (2) dividends received from a foreign subsidiary company, provided tax is payable on such dividend income by the domestic company at the reduced base rate of 15%.

Capital gains – The tax treatment depends on whether gains are long or short term. Gains are long term if the asset is held for more than three years (one year in the case of listed shares and specified securities, and two years in the case of unlisted shares). Long-term gains on listed shares and specified securities are exempt if the transaction is subject to securities transaction tax (STT). Where such gains are not subject to STT, a 10% tax applies (without the benefit of an inflation adjustment). The applicable tax rate on long-term capital gains derived by a nonresident from the sale of unlisted securities is 10% (without the benefit of foreign currency conversion or an inflation adjustment). Gains on other long-term assets are taxed at 20%, but with the benefit of an inflation adjustment.

Short-term gains on listed shares and specified securities that are subject to STT are taxed at 15%; gains from other short-term assets are taxed at the normal tax rates. A surcharge and cess are also imposed.

An unlisted domestic company is liable to pay an additional tax of 20% on income distributed to a shareholder on account of a buyback of the company's shares. The distributed income is the amount of consideration paid by the company on the buyback, reduced by the amount received by the company on account of the issue of the shares, to be determined in the prescribed manner. The shareholders will not be charged to tax on any income arising from the buyback of shares.

Losses – Business losses and capital losses may be carried forward for eight years, with short-term capital losses offsetting capital gains on both long and short-term assets, and long-term capital losses offsetting only long-term capital gains. Other than unabsorbed depreciation (which may be carried forward indefinitely), losses may be carried forward only if the tax return is filed by the due date. Unabsorbed depreciation may be offset against any income, whereas business losses may be offset only against business profits in subsequent years.

Rate – The standard rate is 30% for domestic companies and 40% for foreign companies and branches of foreign companies. Taking into account the surcharge and cess, the highest effective rate is 34.608% for domestic companies and 43.26% for foreign companies. A 25% rate, plus the surcharge and cess, may be elected by certain newly set up (incorporated on or after 1 March 2016) resident manufacturing companies, if the company does not claim certain specified deductions, incentives, etc. The rate is 29%, plus the surcharge and cess, for resident companies whose total turnover or gross receipts in the financial year 2014-15 did not exceed INR 50 million.

Surtax – A 7% surcharge applies to domestic companies if income exceeds INR 10 million (2% for foreign companies), and a 12% surcharge applies if income exceeds INR 100 million (5% for foreign companies). An additional 3% cess is payable in all cases.

Alternative minimum tax – A Minimum Alternate Tax (MAT) is imposed at 18.5% (plus any applicable surcharge and cess) on the adjusted book profits of corporations whose tax liability is less than 18.5% of their book profits. MAT does not apply to certain income of foreign companies, including capital gains on transactions involving securities, interest, royalties and fees for technical services. A credit is available for MAT paid against tax payable on normal income, which may be carried forward for offset against income tax payable in the following 10 years.

Any person other than a corporation (including an LLP) is liable to an alternate minimum tax (AMT) at 18.5% (plus any applicable surcharge and cess) of the adjusted total income where the normal income tax payable is less than the AMT. AMT also is imposed on a person eligible for investment-linked incentives. The adjusted total income is the total income before giving effect to the AMT provisions, as increased by certain deductions claimed in computing the total income, including the tax holiday claimed by units in a Special Economic Zone (SEZ). A tax credit is allowed for the AMT paid against the tax payable on normal income. The tax credit may be carried forward up to 10 years.

Foreign tax credit – Foreign tax paid may be credited against Indian tax on the same profits, but the credit is limited to the amount of Indian tax payable on the foreign income. Specific rules have been introduced regarding the mechanism for granting a foreign tax credit.

Participation exemption – No, except for DDT in some cases

Holding company regime – No

Incentives – A deduction of up to 200% (restricted to 150% as from financial year 2017-18 and 100% as from financial year 2020-21) is available in respect of capital and revenue expenditure on scientific research conducted in-house by specified industries, and for payments made to specified organizations for scientific research.

A deduction is available for 15% of the cost of new plant or machinery acquired and installed on or before 31 March 2017, where the aggregate cost of new plant or machinery acquired in a year exceeds INR 250 million. The deduction is available in addition to the normal depreciation allowance.

A deduction of 150% is available for expenditure incurred on a "notified" agricultural extension or skill development project.

A deduction of 100% is available for capital expenditure (other than expenditure incurred on the acquisition of land, goodwill or financial instruments) for specified activities, including laying and operating cross-country natural gas or crude or petroleum oil pipeline networks for distribution, among other items. A similar deduction at 150% (reduced to 100% as from financial year 2017-18) is available for setting up and operating cold chain facilities or warehousing facilities and investing in housing projects under a scheme for affordable housing, among other items. An investment-linked incentive of a 100% deduction for certain expenditure relating to new infrastructure facilities will be available as from financial year 2017-18.

Capital expenditure incurred either prior or post-commencement of business and actually paid for the right to use spectrum for telecommunication services (spectrum fees for auction of airwaves) will be allowed as deduction over the period of the right to use the spectrum.

A deduction of 100% of the profits derived by an eligible start-up from an eligible business may be elected by the taxpayer for any three consecutive assessment years out of the five years beginning from the year of incorporation (for companies set up on or after 1 April 2016 and before 1 April 2019).

A patent box regime has been introduced with effect from financial year 2016-17. A concessional tax rate of 10% (plus the surcharge and cess) is applicable on gross income arising from royalties in respect of a patent developed and registered in India by a person resident in India. No deduction is allowed for any expenditure or allowance in respect of such royalty income.

Undertakings set up in SEZs are exempt from tax on their export profits, subject to compliance with other conditions. Other tax holidays are available based on industry and region.

Withholding tax:

Dividends – Dividends are not subject to withholding tax. However, the company paying the dividends is subject to DDT.

Interest – Interest paid to a nonresident on a foreign currency borrowing or debt generally is subject to a 20% withholding tax, plus the applicable surcharge and cess. The rate may be reduced under a tax treaty.

Interest paid to a nonresident on an infrastructure debt fund set up in accordance with guidelines prescribed by the government is subject to a 5% withholding tax, plus the applicable surcharge and cess.

Interest paid to a nonresident on debt incurred under a loan agreement or through the issue of long-term bonds, including long-term infrastructure bonds issued by an Indian company in foreign currency, is subject to a 5% withholding tax, plus the applicable surcharge and cess, if the loan agreement is approved by the central government and the funds are borrowed between 1 July 2012 and 30 June 2017. The 5% withholding tax (plus applicable surcharge and cess) also is applicable to interest paid between 1 June 2013 and 30 June 2017 on a rupee-denominated bond of an Indian company, or a government security subscribed for by a foreign institutional investor or a qualified foreign investor.

If the nonresident does not have a permanent account number (PAN), i.e. a tax registration number, tax must be withheld at the higher of the applicable tax treaty rate or 20%; however, this does not apply if the payments are in the nature of interest and the foreign taxpayer furnishes the prescribed documents to the payer.

If the interest income derived by a nonresident does not fulfill certain prescribed conditions for concessional withholding tax rates, a withholding tax rate of 30% (for individuals and entities other than a foreign company) or 40% (for a foreign company), plus the applicable surcharge and cess, will apply.

Royalties – Royalties paid to a nonresident are subject to a 10% withholding tax, plus the applicable surcharge and cess. The rate may be reduced under a tax treaty.

If a treaty applies, but the nonresident does not have a PAN, tax must be withheld at the higher of the applicable tax treaty rate or 20%; however, this does not apply if the payments are in the nature of royalties and the foreign taxpayer furnishes the prescribed documents to the payer.

Technical service fees – Technical service fees paid to a nonresident are subject to a 10% withholding tax, plus the applicable surcharge and cess. The rate may be reduced under a tax treaty.

If a treaty applies, but the nonresident does not have a PAN, tax must be withheld at the higher of the applicable tax treaty rate or 20%; however, this does not apply if the payments are in the nature of technical service fees and the foreign taxpayer furnishes the prescribed documents to the payer.

Branch remittance tax – No

Other taxes on corporations:

Capital duty – No

Payroll tax – The employer is responsible for withholding tax on salary income.

Real property tax – Each state levies property tax, with rates varying from state to state.

Social security – The employer generally contributes 12% of eligible wages per month to the provident fund—8.33% of the wages (up to INR 15,000) is applied to the pension fund, with the balance paid to the provident fund (except in the case of "international workers," where the pension contribution by the employer is 8.33% of the wages). For employees joining the provident fund on or after 1 September 2014, the entire employer contribution (12% of wages) is applied to the provident fund.

Stamp duty – Specified instruments, transfers of shares in an Indian company, transactions involving real property and other specified transactions (including a court order for an amalgamation/demerger) in India attract stamp duties that are levied under the Indian Stamp Act and the stamp acts of the various states (with rates varying significantly between states).

Transfer tax – STT is levied on the purchase or sale of equity shares, derivatives, units in an equity-oriented fund or units of a business trust listed on a recognized stock exchange in India.

Other – As from 1 June 2016, an equalization levy of 6% on the amount of consideration for specified services received by a nonresident without a permanent establishment (PE) in India must be withheld by a resident payer or a nonresident payer with a PE in India. "Specified services" includes online advertising or any provision for digital advertising space, other related facilities or services or any other service that may be notified by the central government. The income subject to levy will not be taxed in the hands of the recipient.

Customs duty is levied on the import of goods into India, although certain exported goods are also liable to customs duties. The general rate of basic customs is 10%. However, the aggregate customs duty including additional duties and cess is 29.44%. India has entered into free trade agreements with the several countries, which may result in a reduction of the customs tariff. Imports from related parties are subject to assessment by the Special Valuation Branch to ensure that the imports are made at an arm's length price.

Anti-avoidance rules:

Transfer pricing – The transfer pricing regime is influenced by OECD norms, although the penalty provisions in India are stringent compared to those in certain other countries. The definition of "associated enterprise" extends beyond a shareholding or management relationship, since it includes some deeming clauses. The transfer pricing provisions also cover "specified domestic transactions" (including payments to related parties) if the aggregate value of those transactions exceeds INR 200 million in one year.

The pricing of these transactions must be determined with regard to arm's length principles, using methods prescribed under India's transfer pricing rules, which are similar to the methods prescribed in the OECD guidelines, with an additional sixth method, i.e. an "other method." The arm's length price is determined based on multiple-year data, and based on a range or the arithmetic mean (depending on certain prescribed conditions).

The taxpayer is required to maintain detailed information and transfer pricing documents substantiating the arm's length nature of related-party transactions. Companies are also required to submit a certificate to the tax authorities (in a prescribed format) from a practicing chartered accountant that sets out the details of associated enterprises, international transactions, etc., along with the methods used to determine an arm's length price. The certificate must be filed by the due date of filing the annual tax return, i.e. 30 November of each year.

The Indian transfer pricing documentation requirements have been updated to incorporate the specific reporting regime in respect of country-by-country reporting and the master file provided for under the OECD/G20 BEPS project.

Where the application of the arm's length price would reduce the income chargeable to tax in India or increase a loss, no adjustment will be made to the income or loss. If a taxpayer that benefits from a tax holiday is subject to a transfer pricing adjustment, the benefit will be denied to the extent of the adjustment. The allowable variation in computing the arm's length price will be as provided by the government. (See "Other" below, for application of the transfer pricing rules to transactions involving jurisdictions that do not effectively exchange information with India.)

Safe harbor rules provide for the automatic acceptance of a taxpayer's transfer price that equals or exceeds specified amounts.

A taxpayer also may enter into an advance pricing agreement (APA).

Thin capitalization – No

Controlled foreign companies – No

Disclosure requirements – A nonresident with a liaison office in India is required to prepare financial statements, annual activity certificates, etc. on its activities and submit this information to the Indian tax officer within 60 days from the end of the financial year.

Other – To discourage transactions with persons located in jurisdictions that do not effectively exchange information with India, transactions with persons situated in certain jurisdictions designated by the government will be subject to the Indian transfer pricing rules and income paid to persons in those jurisdictions will be subject to a minimum withholding tax of 30%.

A general anti-avoidance rule is expected to apply to investments made after 1 April 2017.

Compliance for corporations:

Tax year – The tax year is the fiscal year (1 April to 31 March).

Consolidated returns – Consolidated returns are not permitted; each company must file a separate return.

Filing requirements – Taxes on income in a fiscal year usually are paid in the next fiscal year ("assessment" year). Companies must submit a final return by 30 September (30 November for companies required to file a certificate on international transactions (see "Transfer pricing," above)) of the assessment year, stating income, expenses, taxes paid and taxes due for the preceding tax year. Returns for noncorporate taxpayers that are required by law to have their accounts audited also are due on 30 September. All other taxpayers must submit a return by 31 July. Taxpayers claiming tax holidays or carrying forward tax losses must file their returns on or before the due date.

Companies must make four advance payments of their income tax liabilities during the accounting year, on 15 June (15% of total tax payable); 15 September (30% of total tax payable); 15 December (30% of total tax payable); and 15 March (25% of total tax payable).

Penalties – Penalties apply for failure to file a return and certificate of international transactions, failure to comply with withholding tax obligations and under-reporting and misreporting of income.

Rulings – The Authority for Advance Rulings (AAR) issues rulings on the tax consequences of transactions or proposed transactions with nonresidents. It also is able to issue rulings in relation to the tax liability of residents in prescribed cases, and on whether an arrangement is an impermissible avoidance arrangement. Rulings are binding on the applicant and the tax authorities for the specific transaction(s). APAs also are possible.

Personal taxation:

Basis – An individual who is resident and ordinarily resident in India normally is taxed on worldwide income, subject to the provisions of a relevant tax treaty. A person who is not ordinarily resident generally does not pay tax on income earned outside India unless it is derived from a business or profession controlled or established in India, or the income is accrued or received in India or deemed to have accrued or been received in India. A nonresident is subject to tax only on Indian-source income.

Residence – An individual is resident in India if he/she spends at least 182 days in the country in a given year, or at least 60 days if the individual has spent at least 365 days in India in the preceding four years. For an Indian citizen leaving India for the purpose of employment or as a member of the crew of an Indian ship, and for an Indian citizen/person of Indian origin working abroad who visits India while on vacation, the threshold is 182 days in the given year, instead of 60 days. An individual is "not ordinarily resident" if he/she has been a nonresident in nine out of the 10 preceding years, or has been in India for less than 730 days during the preceding seven years.

Filing status – Each taxpayer must file a return; the concept of joint filing does not exist in India.

Taxable income – Income from employment, including most employment benefits, is fully taxable after considering applicable exemptions. Profits derived by an individual from carrying on a trade or profession generally are taxed in the hands of the individual, after applying available tax exemptions and tax-free thresholds (see "Rates" below). See under "Corporate taxation" regarding the taxation of dividends.

Capital gains – See under "Corporate taxation."

Deductions and allowances – Deductions are available in respect of certain payments and investments, such as contributions to the provident fund, pension funds, medical insurance or life assurance policies and some savings schemes, etc., subject to applicable limits.

Rates – Rates are progressive up to 30%, plus the applicable cess. A 15% surcharge applies if income exceeds INR 10 million, subject to applicable marginal relief. The first INR 300,000 is exempt for resident senior citizens (aged 60 years or over, but under 80 years), and INR 500,000 is exempt for very senior citizens (at least 80 years of age); for all others, the first INR 250,000 is exempt. A tax rebate up to INR 5,000 is allowed for individuals with taxable income of up to INR 500,000.

Other – See under "Corporate taxation" regarding the AMT. AMT is not applicable to individuals, associations of persons and bodies of individuals if their adjusted total income does not exceed INR 2 million.

Other taxes on individuals:

Capital duty – No

Stamp duty – Specified instruments and transactions in India attract stamp duties that are levied under the Indian Stamp Act and the stamp acts of the various states (with rates varying significantly between states).

Capital acquisitions tax – No

Real property tax – Each state levies property tax, with rates varying between states.

Inheritance/estate tax – No

Net wealth/net worth tax – No

Social security – All employees (including "international workers" but not "excluded employees," as defined in the Provident Fund Act) contribute 12% of eligible wages per month to the provident fund, with a matching 12% contribution by the employer. However, where India has entered into social security agreement (SSA) with the relevant overseas country, the international worker (subject to certain conditions) is not liable to contribute to the provident fund in India. An international worker may be either: (1) a foreign employee working for an establishment in India to which the Provident Fund Act applies; or (2) an Indian employee seconded to a country with which India has entered into an SSA and who has not obtained a "certificate of coverage" and is eligible for SSA benefits.

Other – Customs duty is levied on the import of goods into India, although certain exported goods also are liable to customs duties.

The general rate of basic customs duty is 10%. However, the aggregate customs duty, including additional duties and the cess is 29.44%.

Compliance for individuals:

Tax year – The tax year is the fiscal year (1 April to 31 March).

Filing and payment – The employer withholds tax on salary income. All individual taxpayers are required to file an individual tax return. Individuals must prepay 100% of the final tax due by the end of the fiscal year, either via withholding at source or by making advance payments in four installments (with interest payable on underpayments). Returns are due by 31 July (30 September for specified individuals) of the assessment year. Electronic filing of tax returns is mandatory if: (1) taxable income exceeds INR 500,000; (2) the individual has foreign assets (including a financial interest in any entity or signing authority for any account); (3) the individual is claiming any relief for foreign taxes; or (4) any refund is claimed in the return.

Penalties – Penalties apply for failure to file a return, failure to comply with withholding tax obligations and concealment of income.

Value added tax:

Taxable transactions – All Indian states impose a "consumption-type destination-based VAT," driven by the invoice tax credit method, on the sale of most types of movable goods and specified intangible goods (barring a few exempt goods), the list of which varies from state to state.

Sales involving the movement of goods from one state to another are governed by the Central Sales Tax (CST).

Rates – The standard VAT rate in the various states ranges from 12.5% to 15%, depending on the state, with reduced rates of 1% and 5% in most states. Commodities like liquor and motor spirits attract a higher rate in the range of 20% to 30%.

The CST rate is 2% against the submission of specified forms or the applicable local VAT rate.

Registration – The turnover limit for compulsory registration for businesses is INR 1 million, although this may vary by state. State VAT laws also specify monetary amounts of sales and/or purchases required for registration.

Filing and payment – VAT returns must be filed and payments made monthly, quarterly or half yearly, based on the tax liability. The filing and payment deadlines may vary from state to state.

Other – Central excise duty is levied on the manufacture of excisable goods in India. Excise duty payments and returns are due monthly. Duty rates are based on the transaction value, except where such value is not available or has to be otherwise established or where duty is payable based on the retail sales price (in case of consumer goods). The standard rate of central excise duty is 12.5%. The rates vary depending on the classification of goods under the Central Excise Tariff Act, 1985. Credit for excise duty suffered on inputs and capital goods and for service tax on input services used in the production of excisable goods is available, subject to specific conditions.

The effective rate of service tax is 15% (including the relevant cess), which is payable on the provision of all taxable services that are not included on the negative list of services. No service tax is payable on services that are specifically exempted by notifications issued by the tax authorities. Service providers having an aggregate value of taxable services up to INR 1 million are outside the scope of service tax, subject to certain conditions. Credit is available for excise duty suffered on inputs and capital goods and for service tax on input services used in the provision of taxable output services, subject to specific conditions.

The Indian government has proposed introducing a comprehensive goods and services tax (GST) involving a single taxable event of "supply," instead of the present regime involving multiple taxes on multiple taxable events. GST is expected to be implemented in 2017.

Source of tax law: Income-tax Act; Annual Finance Acts; Customs Act; Central Excise Act; Finance Act, 1994; Foreign Trade Policy 2015-2020; State VAT and Central Sales Tax laws

Tax treaties: India has comprehensive tax treaties with more than 95 countries.

Tax authorities: Income Tax Department, Authority for Advance Rulings