ROADMAP TO SUCCESSFUL ENERGY VENTURES IN INDIA:

TAXATION IN INDIA

INDVI - INDIA VENTURES INITIATIVE
In collaboration with Mukund Puranik

Metwand Chambers, Advocates, Thane (West),
Mumbai Metropolitan Region, India

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HUGH FRASER INTERNATIONAL LINES UP NEW ALLIANCE FOR INDIA ENERGY VENTURES

HFI has announced a major push to support clients on energy ventures in the burgeoning India market. A new legal network alliance partnership has been announced with **Mukund Puranik**, ex counsel with Reliance Industries, who is based in Mumbai.

The International Energy Agency's India Energy Outlook 2021 special report highlights the wide range of energy-related opportunities emerging right across the energy spectrum from the pressures to increase domestic gas production to offset energy export costs and the net zero investments needed in solar, wind, carbon capture, battery storage, electrification of transport, energy efficiency and hydrogen.

India is clearly recognised as a net zero battleground with major increases in projected emissions potentially offsetting emissions reductions in western Europe unless net zero plans are implemented without delay.

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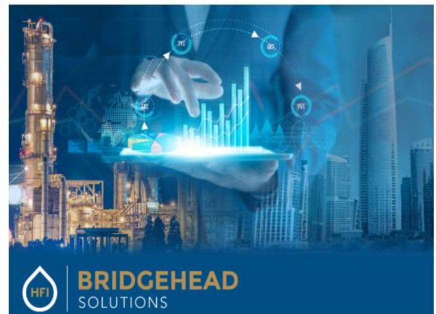
HUGH FRASER INTERNATIONAL (HFI)

HFI is a specialist professional services firm led by Hugh Fraser, a Scottish corporate/energy lawyer and member of the Scottish Development International Global Scot international trade ambassador network.

We support clients to establish, expand and divest their businesses through strategic, value-added consulting and legal services, combining specialist know-how, connections, local partners and execution expertise.

Our focus is on ventures which combine advanced energy technology and know-how with opportunities in the Middle East, East Mediterranean/North Africa, Caspian/Central Asia, East Africa, and India regional zones including new in-country businesses, joint ventures, and acquisitions.

Our clients are principally private equity-backed companies driving the energy transition and we are recognized as a trusted, market-leading boutique practice with a proven track record of over 20 years of driving international ventures.



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Our **INDIA VENTURES INITIATIVE (INDVI)** targets the key global energy transition “battleground” – recognised in the International Energy Agency’s India Energy Outlook 2021 - as we look towards the world in 2050. India’s population, energy demand and CO_2 emissions are set to increase dramatically over the next generation and with that scenario brings huge challenges.

It also brings huge net zero opportunities in solar, wind, carbon capture linked to power generation and industrial facilities, battery storage, electrification of vehicles and trains, robust electricity distribution grids, domestic natural gas production, energy efficiency, green hydrogen and electrolysers, and blue hydrogen.

Our INDVI supports all aspects in the planning, funding, implementation, acquisition and divestment of energy ventures for India including energy and environmental laws and policies, foreign investment laws, business licensing and registration, joint ventures, taxation, employment laws, intellectual property licensing and protection, investment and financing agreements, land acquisition and development for energy projects, procurement and vendor registration policies and legal compliance.

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Mukund Puranik is a corporate, commercial and projects lawyer with 24 years of experience in advising on varied corporate, commercial and project transactional and dispute resolution matters.

He is a science graduate with a major in chemistry, botany, and agricultural microbiology and plant pathology from Marathwada University, Aurangabad, Maharashtra, India as well as a law graduate from Pune University. Later he did his master's in law in corporate and commercial laws from Pune University.Initially, he worked in the chambers of leading senior advocate and designated senior advocates Mr S.K Jain in Pune District Court for a year and Mr Shekhar Naphade in Bombay High Court for about three years. During the foregoing periods, he had assisted on various commercial and civil litigation matters. Later, he worked in leading law firms of India which among others include Singhania & Co, Khaitan & Co and Amarchand Mangaldas Suresh A Shroff & Co. He had advised Reliance Industries in connection with its Hydrocarbon and Real estate Projects. He is proprietor of Metwand Chambers, Advocates having his offices in Thane (West), Mumbai Metropolitan Region.

Transactions he had advised include foreign direct investment into India, cross-border and domestic acquisitions, post-acquisition mergers, joint ventures and joint venture exits, corporate, project and structured finance, technology licensing, software licensing and maintenance, design and engineering, plant and plant and equipment purchase, catalyst supply, Engineering, Procurement & Construction (EPC), Engineering, Procurement & Construction Management (EPCM), Project Management and commercial contracts such as outsourcing, agency, licensing, distribution and franchising.

He had represented project proponents and strategic businesses, investors, lenders and other project participants in a broad range of sectors including Refinery and Petrochemicals, Chemicals, Steel and Mining, Energy (Thermal, Nuclear, and Renewable) and Infrastructure and PPP Projects such as Roads and Highway and Mixed-Use Real Estate Development. He has also represented clients in dispute resolutions, including international commercial arbitrations. He has drafted, advised and negotiated a wide array of procurement contracts with who's who of the world in hydrocarbon industry from Asia, Europe and the Americas for major and minor capex projects, revamp projects and operations and maintenance in the last decade. He thus has substantial experience in advising, structuring and negotiating private procurement contracts for downstream hydrocarbon projects as well as operation and maintenance contracts for refinery and petrochemical plants. Overall, he has transactional as well as dispute resolution experience and both these experiences help him provide clients with optimal solutions in representing transactional and dispute resolution matters

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TAXATION IN INDIA

1. **Introduction**

1.1 Taxes are the main source of revenue for any government. In India too, taxes are the main source of revenue for the Union, and State and Local Bodies (such as Municipal Corporations, Municipalities and Village Panchayats).

1.2 Taxation is one of the main considerations a company incorporated and resident outside India needs to take a note of in structuring its transactions in India.

1.3 If a company incorporated and resident outside India is trading (sale of goods and services) with Indian businesses, then it is ordinarily not necessary for such a company to establish a presence in India. However, there could be various considerations commercial, legal and tax one will have to take note of in cross-border trade as well while making investments in India.

1.4 Considerations of taxes, including the tax cost, plays a significant role in structuring domestic and cross border transactions. While tax avoidance is frowned upon by tax authorities, the Indian tax laws do permit tax planning. There could be a thin line between tax planning and tax avoidance in each case. Considerable attention needs to be given to evaluate taxation risks while structuring domestic and cross transactions.

1.5 We had seen in the first article that various business models are available for a companies' resident outside India for establishing a business presence in India. These business models could be classified into three types:

(i) having the right kind of representative office

(a) Liaison Office

(b) Branch Office

(c) Project Office

(ii) Wholly Owned Subsidiary (WOS) by incorporation, acquisition of Indian company or merger or amalgamation with Indian company.

(iii) Incorporated Joint venture company (JVC) with an Indian Company by forming a new company or acquiring a majority, minority, or equal shareholding in the existing Indian Company.

1.6 The taxation of various business models was briefly discussed in that article. In this article, we will discuss taxation in India in little more detail. In addition, we will discuss the concept of Association of Persons (AOP) and its taxation also.

2. Taxation System and Tax Law Making Power

2.1 The Constitution of Indian by way of Article 265 does not permit levy or collection of taxation except with the authority of law.

2.2 The Constitution of India lays down the legislative competence to make laws, including tax laws.

2.3 The Parliament of India (i.e., the Union Legislature) and the Legislative Assembly (State Legislature or Provincial Legislature) have powers to make laws under the Union List, State List and Concurrent List set out in Schedule VII to the Constitution of India.

2.4 The law made by the Parliament of India applies to the whole of India. The law made by a State Legislature of a State (province) is applicable in that State.

2.5 The Union List (List I) *inter alia* sets out the taxation power of the Parliament of India under each of the entries 82 to 92, the State List (List II) sets out the taxation powers of State Legislature under each of the entries 45 to 63. However, the Concurrent (List III) does not contain any entry under which the Parliament of India and State Legislature have concurrent powers of taxation.

2.6 The Constitution of India does not provide any tax law-making powers to Local Bodies. However, the States on their own may assign any of the taxes in State List (List II) to the Local Bodies. The examples of taxes assigned to Local Bodies are property taxes, taxes on vehicles and octroi or entry tax. The octroi is now subsumed within the GST.

2.7 The taxation system in India is a three-tier system. Taxes in India are levied by Union Government (Central Government), State Government (Provincial Government) and Local Bodies (Cities, Towns and Villages) but all under the statute laws made by the legislative bodies – that is the Parliament of India and the State Legislatures.

2.8 As mentioned above, the Parliament of India and the State Legislatures drawn competence on legislating on tax laws from the Constitution of India.

2.9 Certain taxes in India are

2.9.1 Taxes on income (Income Tax) other than agricultural income under Entry No 82 of Union List.

2.9.2 Corporation Tax under Entry No 85 of Union List.

2.9.3 Wealth Tax under Entry No 86 of Union List as a tax on the capital value of the assets, exclusive of agricultural land of individuals and companies, taxes on the capital of companies

2.9.4 Customs Duty on import and exports of goods under Entry No 83 of Union List.

2.9.5 GST (Goods and Services Taxes) on supply of goods and services under Entry No 92 C of Union List.

2.9.6 Land Revenue including assessment and collection of revenue under Entry No 45 of the State List.

2.9.7 Property Tax under Entry 49 of List II of Schedule VII to the Constitution of India entitled - "Taxes on lands and buildings". The property tax is leviable by the States Governments or Local Bodies under the State Laws made under aforesaid entry.

2.9.8 Taxes on profession, trades, callings, and employments (Profession Tax) under Entry No 63 of the State List.

2.9.9 Stamp Duty.

2.9.9.1 Rates of stamp duty under Entry No 91 of the Union List on bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts; and

2.9.9.2 Rates of stamp duty under Entry No 63 of the State List in respect of documents other than those specified in the provisions of Union List.

2.9.9.3 Stamp Duties (other than duties or fees collected through judicial stamps) but not including Rate of stamp duty.

2.9.10 Taxes other than stamp duties on transactions in stock exchanges and futures markets under Entry No. 90 of the Union List. The Securities Transaction Tax (STT) is levied by making law under this entry. STT had been introduced by the Finance (No. 2) Act, 2014, which is charged effective October 01, 2014.

2.10 The above list of taxes is not exhaustive. Certain other taxes are levied, or which could be levied. For example, estate duty (inheritance tax) is not levied but the Constitution of India grants power to make laws in respect of levy of estate duty (inheritance tax). In fact, estate duty was levied under the Estate Duty Act, 1953 until it was abolished in March 1985. The Estate Duty Act, 1953 levied estate duty on “all property” which passed on the death of a person. An estate duty was levied and paid upon the net principal value of property as aggregated and ascertained and which passed on the death of a person at the rates fixed in accordance with the Estate Duty Act, 1953. Pursuant to Estate Duty (Amendment) Act, 1985 levy of estate duty in respect of property which passes on the death of any person was discontinued effective March 16, 1985.

3. Major Taxation Reforms

3.1 Elimination of Retrospective Taxation.

3.1.1 The Government of India has brought a Taxation Law Amendment Act, 2021 in the Parliament of India in August 2021 to do away with the retrospective taxation provision introduced by the Government of India and passed by the Parliament of India as law after the Indian Supreme Court's judgement in the case of Vodafone arising from Vodafone-Hutchison share purchase deal in the telecom sector.

3.1.2 The retrospective taxation provision enacted in May 2012 under Finance Act 2012 sought to tax gains arising from the transfer of shares of a foreign company that derived substantial value from the assets situated in India from April 01, 1962.

3.1.3 The tax provision provides that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

3.1.4 This retrospective taxation provision has been heavily criticised by the industry and practitioners alike within and outside India and led to litigations under the Income Tax Act, as well as under the bilateral investment treaties.

3.1.5 The Parliament of India passed the Taxation Law (Amendment) Act, 2021 and has become the law, which now taxes gains arising from the transfer of shares of a foreign company that derived substantial value from the assets situated in India prospectively from May 28, 2012.

3.1.6 The Finance Act, 2012 also provided for validation of demand, etc., under the Income Tax Act for cases relating to indirect transfer of Indian assets. The Indian Income Tax Department raised Income Tax demand in as many as seventeen cases.

3.1.7 The new enactment seeks to nullify the demands raised for indirect transfer of Indian assets made before May 28, 2012 and refund the amount of tax paid in these cases without any interest thereon conditionally. In that Income Tax demands raised will be nullified and tax paid will be refunded if the taxpayer on whom demand had been raised withdraws or furnishes an undertaking for withdrawal of pending litigation as well as that no claim for cost, damages, interest, etc., shall be filed.

3.1.8 Further, CBDT has invited public comments on the draft notification for framing rules to implement the amendments made by Taxation Law (Amendment) Act, 2021.

3.2 India has embarked upon structural tax reforms by bringing into effect the Goods and Services Tax (GST) with effect from July 01, 2017. GST is the biggest tax reform brought about in independent India after 13 years of public deliberations.

3.3 The Parliament of India in Union Budget of 2015 has significantly reduced corporate income tax for newly set up domestic companies in the manufacturing sector to further incentivise manufacturing in India. Later, this benefit is extended to power (electricity generation) to further incentivise the generation of power from renewable energy sources in India and thereby reduce the share of power generation

from fossil fuels. The "Make in India" initiative was launched on September 25, 2014. At first, the Parliament of India reduced the base corporate tax from 30 % to 25 % for the first four years. As Make in India 2.0 is taking shape, which focuses on 27 Industrial Sectors. Parliament of India has under the Taxation Laws (Amendment) Act 2019 further reduced base corporate tax from 25% to 15% for new domestic manufacturing companies set up on or after 1 October 2019, and that commences production on or before March 31, 2023. And such new manufacturing companies are also exempted from paying Minimum Alternate Tax (MAT). Parliament of India has also under the Taxation Laws (Amendment) Act 2019 reduced base corporate tax from 30% to 22% for domestic companies, (new or existing) complying with certain conditions (such as foregoing availing any exemptions or incentives under different provisions of Income Tax Act), and such companies are also exempted from paying

MAT. The Taxation Laws (Amendment) Act 2019 also reduced the MAT rate from 18.5% to 15% retrospectively from April 01, 2019.

3.4 Earlier dividends were exempt in the hands of shareholders but the domestic companies declaring dividends were required to pay dividend distribution tax (DDT) on the dividend distribution to shareholders. Now domestic companies are not required to pay DDT. The dividend received from domestic companies is now taxable in hands of their respective shareholders.

3.5 Tax litigation substantially contributes to the litigation cases in India. In the Union Budget of 2020, the Direct Tax Vivad se Vishwas Bill, 2020 was introduced (which has become law (i.e., the Direct Tax Vivad se Vishwas Act, 2020) *inter alia* to

3.5.1 reduce pending income tax litigation, by helping taxpayers to end tax disputes by paying disputed tax and get a waiver from payment of interest and penalty.

3.5.2 provide immunity to defaulting tax papers from prosecution.

3.5.3 generate timely revenue for the Government of India; and

3.5.4 provide certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process.

3.6 The enactment is a kind of an amnesty scheme for defaulting taxpayers and provide them with the benefit of peace of mind and build trust between taxpayers and the Income Tax Department.

3.7 CBDT has published answers to frequently asked questions (FAQs) regarding the provisions of the Direct Tax Vivad se Vishwas Act, 2020. The FAQs contain clarifications on scope/eligibility, calculation of disputed tax, procedure related to payment of disputed tax and consequential benefits to the declarant

3.8 The amnesty scheme was to be allowed without payment of any interest or penalty only till March 31, 2020. However, the time has been extended from time to time.

3.9 The last date for payment of the amount (with additional amount) under the amnesty scheme has been notified as October 31, 2021. It is clarified that there is no proposal to change the last date for payment of the amount (with additional amount) such under the amnesty scheme, which remains as October 31, 2021.

3.10 Faceless Assessment

The existing system of scrutiny assessments in the Income Tax Department involves a high level of personal interaction between the assessee (taxpayer) and the Income Tax Department, which leads to certain undesirable practices on the part of tax officials. To eliminate such instances, a scheme of faceless assessment in electronic mode involving no human interface has been launched in a phased manner. Faceless assessment in electronic mode brings about automation of various processes involved in the assessment of taxpayers' Income Tax returns and tax liabilities and to conduct a team-based assessment in a faceless manner with dynamic jurisdiction. Thus, faceless assessments have been initiated to assess total income or loss of the taxpayer under the Income Tax Act to impart greater efficiency, transparency and accountability by eliminating the interface between the Assessing Officer and the taxpayer in the course of proceedings to the extent technologically feasible, optimising utilisation of the resources through economies of scale and functional specialisation and introducing a team-based assessment with dynamic jurisdiction.

3.11 Wealth Tax

3.11.1 Effective April 01, 2016, the Wealth-tax Act, 1957 has been abolished.

3.11.2 The Wealth Tax Act, 1957 levied a wealth tax of 1% on the net wealth of individuals (natural persons), Hindu Undivided Families (HUFs) and companies on a valuation date – that is March 31, provided the total wealth in a financial year exceeded INR 3 million.

3.11.3 Although, the partnership firm was not liable to wealth tax, the assets of the partnership firm were charged to tax in the hands of the partners of the firm in the form of "Interest in partnership firm".

3.11.4 Instead, an additional surcharge is imposed on the tax payable by super-rich with a taxable income of over INR 10 million.

4. Further Major Tax Reform Proposed

4.1 The Direct Taxes Code Bill 2010 was introduced in Lok Sabha (the Lower House or House of People of the People) in August 2010 after circulating the same in the form of a draft after obtaining public comments, it was referred to the Standing Committee immediately in September 2010. In March 2012 the Standing Committee gave its recommendations. The intent of the Direct Taxes Code Bill 2010 was to simplify the Income Tax as well as wealth tax legislation and widening the tax base.

4.2 In November 2017 the Government of India constituted a tax force to review the Income Tax Act and to draft a new direct tax law in consonance with the economic needs of India. The Task Force had submitted its report along with the new or second draft of the Direct Tax Code. It is expected that the Government of India may bring in newly consolidated and simplified Income Tax law and wealth tax law in the form of a single law– the Direct Tax Code.

5. Annual Budget and Finance Act

5.1 The Union Government and State Government and Local Bodies present respective annual budgets for each financial year. The Union Government and State

Government make various changes or adjustments on the matters of taxation within their respective legislative competencies each financial year for ensuing financial years (or sometimes retrospectively).

5.2 As a part of the Union Government's budget proposals, the Finance Bill proposes changes in taxation for an ensuing financial year (or sometimes retrospectively)

5.3 The Finance Bill when passed by the Parliament by requisite majority becomes the Finance Act which gives effect to changes in taxation and amendments to the taxation statutes.

5.4 The rates of Income Tax and corporate taxes are available in the Finance Act passed by the Parliament of India every year.

6. Income Tax Act

6.1 Introduction

6.1.1 The Income Tax Act is the statute that consolidates and amends the law relating to Income Tax and super-tax.

6.1.2 Income Tax Act is a charging statute that provides for levy of income tax, administration, collection, and recovery of income tax the procedure thereof, remedies including appeals and revisions and penalties and prosecution. Thus, Income Tax Act is regarded as a complete code on matters relating to the taxation of income.

6.1.3 The Income Tax Act provides for taxation of income of individuals (natural persons), Hindu Undivided Families (HUF), partnership firms, limited liability partnerships, companies (corporations), societies, cooperative societies, an association of persons (AOP) or any other body corporate (BOI).

6.2 In respect of natural persons, the Income Tax Act charges the income from the following sources to income tax:

6.2.1 Salaries.

6.2.2 income from business and/or profession;

6.2.3 income from house property;

6.2.4 capital gains (both short term and long term) from transfer or relinquishment of capital assets; and

6.2.5 income from other sources.

6.3 The computation of income rules is quite complex. However, while computing income, one needs to take care of tax-exempt incomes, deductions from income and tax rebates. For businesses and professionals, what expenses are allowable as business or professional expenses is also quite complex.

6.4 In respect of business or professional organisations formed as companies, firms, limited liability partnership, an association of persons (AOP) or any other body corporate the Income Tax Act charges income from all sources mentioned above except income from salary.

6.5 Double Taxation Avoidance Agreements (DTAA). The Union Government is empowered to agree with the Government of other countries to grant relief in respect of Income Tax chargeable under the

6.5.1 Income Tax Act or under any corresponding law in force in that foreign country, or for the avoidance of double taxation of income under the Income Tax Act and under the corresponding law in force in that country.

6.5.2 India follows the dualist model in its legal system wherein international treaties are not automatically incorporated in domestic law but require transformation through implementing legislation.

6.5.3 Section 90 provides for making provisions for implementing the agreement by the issue of a notification in the Official Gazette. India has entered two types of tax treaties with other countries.

6.5.4 First, the comprehensive tax treaty the scope of which is to address double taxation of all sources of income, and second the limited tax treaty the scope of which is to address double taxation of only specified sources of income such as (a) income from the operation of aircraft and ships (b) estates (c) inheritance, and (d) gifts.

6.5.5 India has entered into 96 comprehensive agreements and 14 limited agreements.

6.5.6 If there is a conflict between the provisions of the Income Tax Act and DTAA, then the provision of DTAA will prevail over the provisions of the Income Tax Act.

6.5.7 Moreover, once a DTAA applies, the provisions of the Income Tax Act can only apply to the extent that they are more beneficial to the assesses and not otherwise.

6.6 Tax Residency for Individuals (Natural Persons)

6.6.1 Under the provision of the Income Tax Act, the taxation of individuals is primarily based on an individual's residential status for each financial year.

6.6.2 There are effectively three kinds of residential status based on the physical presence in India, which are resident and ordinarily resident (ROR), resident but not ordinarily resident (RNOR), Non-Resident (NR) as determined below and his such individual depending on the residential status has following tax consequences:

6.6.2.1 Resident and ordinarily resident (ROR)

(a) ROR is a person who is either (a) physically present in India for 182 days or more in a financial year; or (b) physically present in India for 60 days or more in a financial year and 365 days or more in aggregate in 4 preceding financial years.

(b) ROR is taxed on his worldwide income in India even if the income is not received in India

6.6.2.2 Resident but not ordinarily resident (RNOR)

A resident individual is treated as RNOR if

(a) Such individual has been NR in 9 out of 10 financial years preceding the financial year for which such individuals' resident status is determined; or

(b) Such an individual's physical presence is less than or equal to 729 days during financial years preceding the financial year for which such individuals' resident status is determined.

A resident individual who does not satisfy any one of the above criteria is treated as ROR.

(c) RNOR is taxed in India only in respect of the following incomes:

(i) Income that accrues or arises in India or deemed to accrue or arise in India;

(ii) Income that is received in India or deemed to be received in India;

(iii) Income from a business controlled in India or a profession set up in India.

6.6.2.3 Non-Resident (NR)

(a) If an individual does not satisfy any criteria of being a ROR or RNOR, then such an individual is considered NR.

(b) The NR is taxed in India only in respect of the following incomes:

(i) Income that accrues or arises in India or is deemed to accrue or arise in India.

(ii) Income that is received in India or deemed to be received in India.

6.6.2.4 Individuals are charged according to income slabs and according to seniority of age (called senior citizens).

(a) An Individual’s income up to INR 250,000 is not charged

(b) An Individual’s income of more than INR 250,000 and up to INR 500,000 is charged at 5%.

(c) An Individual's income of more than INR 500,000 and up to INR 1 million is charged at 20%.

(d) An Individual's income of more than INR 1 million is charged at 30%.

(e) In addition, an income slab-based surcharge and cess are levied if income exceeds the specified limit – that is INR 5 million. Thus, if the total income exceeds INR 5 million, a surcharge is levied on the amount of income tax at the following rate:

(i) 10% - taxable income above INR 5 million - up to INR 10 million

(ii) 15% - taxable income over INR 10 million - up to INR 20 million

(iii) 25% - taxable income more than INR 20 million - up to INR 50 million

(iv) 37% - If taxable income exceeds INR 50 million

(f) A Health and Education Cess is an additional 4% levied on the amount of income tax calculated as per the aforesaid tax slab and surcharge (if any).

6.7 Tax Residency for Companies

6.7.1 Under the provision of the Income Tax Act, the companies' residents in India are taxed on worldwide income.

6.7.2 Under the provision of the Income Tax Act, the companies that are not resident in India are taxed on all income accruing or arising, whether directly or indirectly, in a financial year

6.7.2.1 through or from any business connection in India, or

6.7.2.2 through or from any property in India, or

6.7.2.3 through or from any asset or source of income in India, or

6.7.2.4 through the transfer of a capital asset situate in India.

6.7.3 A company is deemed to be resident in India if it is incorporated in India or if it has a place of effective management (POEM) in India. The CBDT has issued the final guidelines for the determination of POEM of the company incorporated and resident outside India.

6.7.4 In the case of non-resident companies' tax is levied on the income which is earned from their business transactions in India or any other Indian sources depending on bilateral tax treaty i.e., Double Taxation Avoidance Agreement (DTAA) of that country.

6.7.5 A company incorporated and resident outside India while trading with Indian businesses must avoid having

6.7.5.1 permanent establishment (PE) in India.

6.7.5.2 having a place of effective management (POEM) in India; or

6.7.5.3 an income-earning business connection in India. The income-earning business connection in India is regarded as such by a deeming fiction (Business Connection).

6.7.6 The consequence of the foregoing is that such a company incorporated and resident outside India otherwise not subject to tax in India, will either be taxed in India at a tax rate higher rate than it ought to have been taxed.

6.7.7 Significant Economic Presence (SEP)

6.7.7.1 The Finance Act, 2018 introduced the concept of 'Significant Economic Presence (SEP) in the Income Tax Act for taxation of non-residents in India by amplifying the scope of the definition of "business connection".

6.7.7.2 The definition of 'business connection', was clarified by way of an explanation to provide that a non-resident's SEP in India shall constitute the "business connection" of the non-resident in India.

6.7.7.3 SEP is defined to mean (a) any transaction in respect of any goods, services or property carried out by a non-resident in India including the provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may

be prescribed – Central Board of Direct Taxes (CBDT) has after public consultation for almost 3 years by notification dated May 03, 2021, prescribed INR 20 million as revenue threshold for one or more transactions; or (b) systematic and continuous soliciting of its business activities or engaging in interaction with such number of users in India through digital means as may be prescribed – CBDT has after public consultation for almost 3 years by notification dated May 03, 2021, prescribed users threshold of 300,000.

6.7.7.4 Transactions or activities will constitute SEP in India irrespective of (a) the agreement for such transactions or activities is entered into in India or not, or (b) the non-resident has a residence or place of business in India or not; or (c) the non-resident renders services in India or not. Income attributable to transactions and activities

referred to above will also include income from all of the following: (a) Advertisements that target a customer who resides in India or who accesses an advertisement through an internet protocol (IP) address located in India; (b) Sale of data collected from a person who resides in India or who uses an IP address located in India; (c) Sale of goods or services using data collected from a person who resides in India or who uses an IP address located in India. However, it is clarified that only so much of income as is attributable to the transactions or activities referred above shall be deemed to accrue or arise in India.

6.7.8 A PE is a fixed place of business that generally gives rise to a tax liability in a particular country other than the country in which it is incorporated and carries on business. The concept of a PE is defined in a DTAA between India and the country of a company incorporated outside India. Ordinarily, there are three types of PE, namely:

6.7.8.1 Fixed Place of Business PE

A fixed place of business in India, essentially a physical location through which the business of a company incorporated outside India is wholly or partly carried on.

6.7.8.2 Agency PE

A Indian agent who is not an independent agent and who has an authority to conclude contracts on behalf of an enterprise, and who habitually exercises that authority, will constitute an Agency PE of a foreign company in India

6.7.8.3 Service PE

If a foreign company is carrying on in India the activities mentioned in the respective rules for certain period.

6.7.9 POEM is also an internationally recognised concept. OECD also recognises the concept of POEM. The concept of POEM was made effective from Assessment Year 2017-18 replacing the concept of whole or partial management control in India to determine tax residency in India of a company incorporated outside India. POEM is defined as "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."

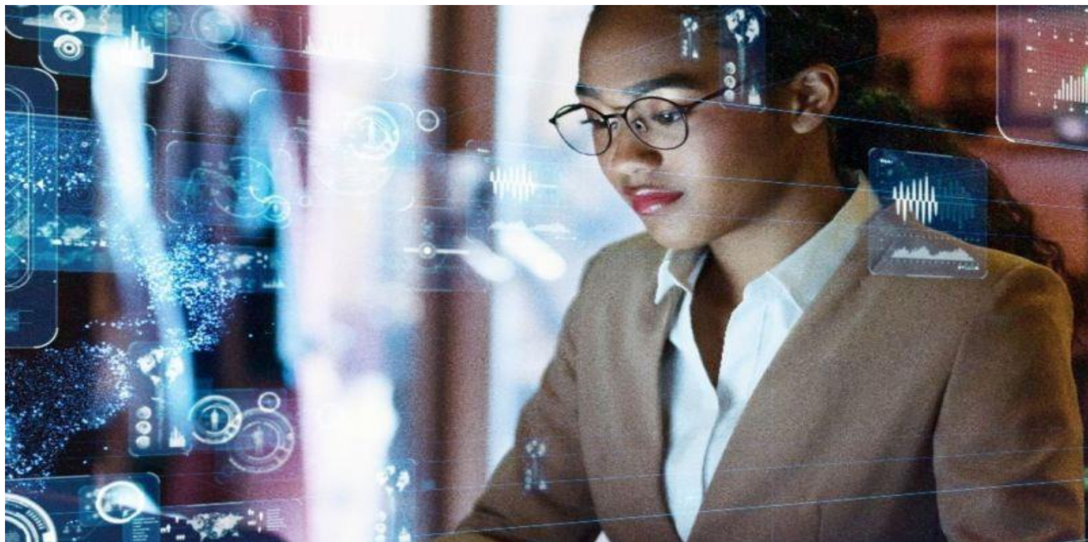
6.7.10 The CBDT has issued the final guidelines for the determination of POEM, which contain certain unique features. One of the unique features is the test of Active Business Outside India (ABOI). The guidelines prescribe that a

company shall be said to engage in ABOI if passive income is not more than 50% of its total income. Further, there are certain additional cumulative conditions to be satisfied regarding the location of total assets, employees, and payroll expenses.

6.7.11 The POEM in case of a company engaged in ABOI shall be presumed to be outside India if the majority meetings of the board of directors of the company are held outside India.

6.7.12 In cases of companies other than those that are engaged in ABOI, the determination of POEM would be a two-stage process, namely: the first stage would be identification or ascertaining the person or persons who make the key management and commercial decision for the conduct of the company's business, and the second stage would be the determination of place where these decisions are being made.

6.7.13 POEM guidelines do not apply to a company having turnover or gross receipts of INR 500 million or less in a financial year.



6.7.14 All income that, directly or indirectly, accrues or arises to a non-resident, through or from any Business Connection in India, is also chargeable to tax in India. Only so much of income that accrues or arises due to such Business Connection is deemed to be income accruing or arising from India and not the entire income of the company incorporated outside India. Business Connection is defined in the Income Tax Act.

If such a company incorporated outside India has increased trade with Indian businesses, then at some point it becomes necessary for such a company

incorporated and resident outside India to determine having a right kind of representative offices such as Liaison Office, Branch Office or Project Office or a wholly owned subsidiary. In other words, such company incorporated and resident outside India will have to determine whether it wishes to restrict itself doing business with Indian companies (do trading of goods and services) or establish a temporary presence (such as a Project Office) or establish a formal or permanent presence in India (such as a branch office or a wholly-owned subsidiary or do business in India in a joint venture with an Indian company) to mitigate tax risks by seeking tax counsel.

6.8 An association of persons (AOP) or a body of individuals (BOI), whether incorporated or not, is treated by deeming fiction as a 'person' under the Income Tax Act, whether or not, they were formed or established or incorporated with the object of deriving income, profits or gains. Two companies may join together and form an AOP for the achievement of a common objective. Joint development agreements between landowner and developer in the real estate sector are popular in India and such association between the landowner and developer could be treated as AOP. Also, domestic and foreign companies or two domestic companies enter into a memorandum of understanding (MOU) and jointly bid for Turnkey or EPC projects in India as a consortium or incorporated joint ventures. The resulting structure arising from such MOU may give rise to AOP. As such, such arrangements need to be carefully structured undertaking proper tax planning to mitigate tax risks. The CBDT has provided clarifications that provide criteria where such companies will not be treated as AOP for income tax purposes. The tax liability of AOP/BOI depends on whether shares of members of AOP/BOI are known.

6.9 Transfer Pricing

Income Tax Act provides that any income arising from an international transaction shall be computed having regard to the arm's length price. Income Tax Act further provides that if in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense

incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to anyone or more of such enterprises, then such cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

6.10 GAAR:

6.10.1 India Parliament had introduced General Anti-Avoidance Rules (GAAR) by amending the Income Tax Act after about 8 years of the consultation process. Chapter X-A of the Income Tax Act contains GAAR provisions. GAAR is made effective from April 01, 2017. GAAR provisions are applicable from the financial year 2017-2018 and assessment year 2018-2019.

6.10.2 According to GAAR, an “arrangement” entered into by a person liable to be assessed under the Income Tax Act may be declared to be an “impermissible avoidance arrangement” and the consequence concerning tax arising therefrom may be determined subject to the GAAR provisions notwithstanding anything contained in the Income Tax Act. GAAR overrides all other provisions under the Income Tax Act.

6.10.3 Tax assessments by the income tax department for the previous financial year are made in the following year, called an assessment year.

6.10.4 On January 27, 2017, the CBDT had issued clarifications on the implementation of GAAR provisions as contained in the Indian Income Tax Act. The most significant clarification provided by CBDT is that GAAR will be applied notwithstanding various Special Anti-Avoidance Rules (SAAR) under the Income Tax Act based on the internationally accepted rationale that SAAR

may not address all situations of abuse which justifies a need for GAAR in the domestic law.

6.11 Tax Rates of Companies.

6.11.1 Companies incorporated in India are liable to Income Tax at 30%, 25% if the turnover does not exceed INR 4 billion, 22% and 15% depending on the tax provisions applicable to them under the Income Tax Act. The terms domestic companies and foreign companies are defined under the Income Tax Act. A "domestic company" is an Indian company or any other company which, in respect of its income liable to tax under the Income Tax Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income. A "foreign company" is a company that is not a domestic company.

6.11.2 The company incorporated in India is defined as a domestic company and is deemed a company resident in India and is liable to income tax on its worldwide income.

6.11.3 As mentioned above, 15% income tax applies to new companies incorporated in India on or after October 01, 2019, for undertaking to manufacture and satisfying certain conditions, which among other include that such new companies are not formed by way of splitting or reconstruction of the existing business, use new plant and machinery and thus do not use previously used plant and machinery and have commenced production on or before March 31, 2023. The effective tax rate after surcharge and cess becomes 17.16 %. Such new manufacturing companies are exempted from paying MAT. This special dispensation is now extended to power (electricity) generation companies, which will boost power (electricity) general from renewable

energy. The reduced tax will also incentivise the production of electric vehicles (EVs), electric batteries and electric battery storage, defence equipment production, chemicals, petrochemicals, heavy equipment and machinery, software development among others.

6.11.4 Companies incorporated outside India are liable to income tax at 40% on the income received in India, or on income accrues or arises in India or income deemed to accrue or arise in India.

6.11.5 Both domestic companies, as well as foreign companies, are liable to pay MAT at the rate of 15% of book profit where the normal tax liability of the company is less than 15% of book profit. However, a foreign company will not be liable to pay MAT on the following incomes if Income Tax payable thereon under the normal provisions is at a rate less than 15%: (a) capital gains arising from transfer of securities, (b) interest, (c) royalty; (d) dividend; and (e) fees for technical services. Further, MAT provisions shall not apply to a foreign company, (i) it is a resident of a country or a specified territory with which India has DTAA or the Union Government has adopted an agreement and it does not have a permanent establishment in India; or (ii) if it is a resident of a country with which India does not have a DTAA and it is not required to seek registration under any law for the time being in force relating to companies. MAT provisions do not apply to foreign companies if their total income is solely derived from shipping business, exploration of mineral oils, the business of aircraft, civil construction in turnkey projects and income thereon is offered to tax as per specific provisions provided under the Income Tax Act.

6.11.6 If the company is in the International Financial Services Center (IFSC) and deriving income solely in convertible foreign exchange, MAT is levied at a reduced rate of 9%.

6.11.7 In addition to tax rates, a surcharge and applicable health and education cess are levied on the tax amount, which increases the effective tax rate.

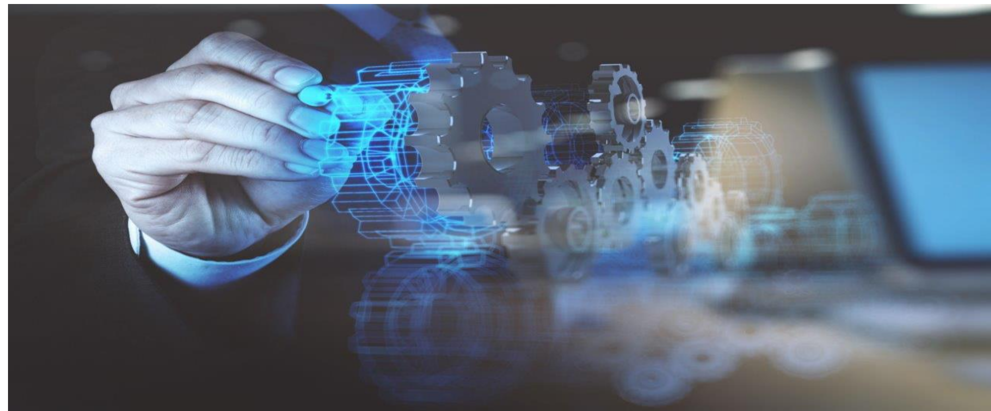
7. Income Tax Registrations

7.1.1 Permanent Account Number

7.1.1.1 Income Tax Ac prescribes various conditions under which an assessee is required to obtain a Permanent Account Number (PAN). PAN obtained once is valid for the lifetime of the holder of PAN throughout India.

7.1.1.2 PAN is not affected by the change of address. However, any change in the PAN database (i.e., details provided at the time of obtaining PAN) should be informed to the Income Tax Department by furnishing the details in the prescribed form.

7.1.1.3 An assessee needs to mention his PAN in all communications with the Income Tax Department and while entering specified financial transactions.



7.1.1.4 PAN is a ten-digit alphanumeric number, issued in the form of a laminated card, by the Income Tax Department, to any "person" who applies for it or to whom the department allots the number.

7.1.1.5 A person cannot hold more than one PAN. It is a penal offence if a person holds more than one PAN. If a person has been allotted more than one PAN, then he should immediately surrender the additional PAN to the Income Tax Department.

7.1.1.6 PAN enables the Income Tax Department to identify and/or link all transactions of a person having the PAN. These transactions include tax payments, TDS/TCS credits, returns of income, specified transactions, correspondence etc, and so on. It facilitates easy retrieval of information of a person holding a PAN and matching of various investments, borrowings, and other business activities.

7.1.1.7 Following among other persons are required to apply for and obtain PAN:

(a) Every person if his total income or the total income of any other person in respect of which he is assessable during the year exceeds the maximum amount which is not chargeable to tax.

(b) Every person who is carrying on any business or profession whose total sale, turnover, or gross receipts are or is likely to exceed INR 500,000 in any year.

(c) Every person who intends to enter specified financial transactions in which quoting of PAN is mandatory.

(d) Every non-individual resident person and persons associated with such persons shall apply for PAN if the financial transaction entered by them during the financial year exceeds Rs. 2,50,000.

7.1.1.8 Every resident individual who is eligible to obtain an Aadhaar Number is required to quote his Aadhaar Number in the PAN application and link the PAN to Aadhar Number.

7.1.1.9 It is not mandatory to file an income tax return after getting PAN. The income tax return is to be filed only if you are liable to file a return of income under the provisions of the Income Tax Act.

7.1.1.10 Income Tax Act provides for penalty in case of default in complying with the provisions relating to PAN – that is failure to obtain, quote, or authenticate PAN.

7.1.2 Tax-deduction Account Number/ Tax-collection Account Number (TAN)

7.1.2.1 Tax-deduction Account Number or Tax-collection Account Number (TAN) is a 10 -digit alpha-numeric number issued by the Income Tax Department. TAN is to be obtained by all persons who are responsible for deducting tax at source (TDS) or who are required to collect tax at source (TCS).

7.1.2.2 It is mandatory to it mandatory to quote TAN in the following documents:

(a) TDS statements or return, (b) TCS statements i.e., return; (c) Statement of financial transactions or reportable accounts; (d)

(b) Challans for payment of TDS/TCS; (e) TDS/TCS certificates; and (f) Other documents as may be prescribed.

7.1.2.3 Failure to apply for and obtain TAN or failure to quote TAN attracts a penalty prescribed under the Income Tax Act.

7.1.2.4 Applications to Income Tax Department for obtaining TAN can be made in prescribed forms either physically offline or electronically online.

7.1.3 Payment of Advance Tax

7.1.3.1 Every person liable to income tax under the Income Tax Act is required to calculate income tax based on the expected tax liability of the financial year and pay income tax in advance in instalments. Such Income Tax payable or paid in advance is called Advance Tax. The Advance Tax is to be calculated and paid instalments as given below:

(a) At least to 15 per cent – On or before 15th June of a financial year

(b) At least to 45 per cent – On or before 15th September of a financial year

(c) At least to 75 per cent – On or before 15th December of a financial year

(d) At least to 100 per cent – On or before 15th March, which is the last month of a financial year

7.1.3.2 Payment of Advance Tax is compliance and non-payment, or short payment of Advance Tax attracts interest at prescribed rates.

7.1.4 Tax Audit

7.1.4.1 There are various types of audits prescribed under different Indian laws like company law requires a company to have a statutory audit under the company law, where the auditor opines primarily on truthfulness and fairness of the financial statements, cost accounting law requires a cost audit.

7.1.4.2 The Income Tax Act requires specified persons to get the audit of the accounts of their business or profession under the provisions of the Income Tax Act and furnish the Tax Audit Report in the prescribed form.

7.1.4.3 The tax audit is required to be conducted by a chartered accountant. The chartered accountant conducting the Tax Audit is required to give his findings, observation, etc., in the audit report.

7.1.4.4 The Tax Audit aims to ascertain the compliance of various provisions of the Income Tax Act. A proper audit for tax purposes is aimed to ensure that

(a) the books of account and underlying records are properly maintained,

(b) the books of accounts and underlying records truly reflect the income of the taxpayer and claims for deduction are correctly made by him,

(c) checking fraudulent practices; and

(d) facilitate the administration of tax laws by a proper presentation of accounts before the Income Tax Department and considerably save the time of Assessing Officers in carrying out routine verifications, like checking the correctness of totals and verifying whether purchases and sales are properly vouched for or not and ensure that the time of Assessing Officers saved could be utilised for attending to more important and investigational aspects of a given case.

7.1.4.5 If a specified person fails to get his accounts audited in respect of any year or years as required under the Income Tax Act or fails to furnish the Tax Audit Report to the Income Tax Department, then such non-compliance attracts a penalty.

7.1.5 Income-tax Return (ITR)

7.1.5.1 Every person who has taxable income, or loss to be carried forward or otherwise liable to be assessed under the Income Tax Act is required to file an Income Tax Return (ITR).

7.1.5.2 ITR is a self-declaration and communication to the Income-tax Department of particulars of income earned by a person in a financial year and taxes paid on such income are.

7.1.5.3 The Income Tax Act prescribes due dates for each person for filing ITR. Delay in filing the ITR attracts interest on tax liability.

7.1.5.4 Further, ITR also allows carry-forward of loss and claim a refund from the income tax department. Any loss suffered in a financial year, which is otherwise permitted to be carried forward for a specified number of years and set off against income of a specified number of future financial years, cannot be carried forward if the Income Tax return is not filed within the due date.

8. Customs Duties

8.1 As mentioned above, Customs Duty is chargeable under the Customs Act, 1962 on the imports of goods into India and exports of goods from India.

8.2 The duty rates and duty exemptions are covered in the Customs Tariff Act, 1988. Customs duty is levied on the transaction value of the imported or exported goods.

8.3 In case the goods are imported from related parties, the transaction value must be at arm's length for computation of customs duty.

8.4 The Customs Act, 1962 is the law relating to amending and consolidating the law relating to customs and as such a complete code in respect of the subject matter of customs.

8.5 The purposes and objectives of the Customs Act, 1962 are, apart from levy of customs duty as aforesaid, to regulate the entry and exit of different categories of vessels, aircraft, goods, passengers into India as well outside India from India, import and export of goods in and from India, protection of Indian industry, conservation of foreign exchange reserves and prevent smuggling.

8.6 Under the Customs Act, 1962 rulemaking power is delegated to the Union Government (Central Government) and the regulation-making power is delegated to the Central Board of Excise and Customs (CBEC).

8.7 The imported goods are subject to various kinds of Customs Duty – that is – Basic Customs Duty, Additional Customs Duties, Safeguard Duty, Transitional Product Safeguard Duty, Countervailing Duty, Anti-Dumping Duty, Social Welfare Surcharge, Integrated Goods and Services Tax, Goods and Services Tax Compensation Cess among other duties and cess under various provisions of the Customs Laws as well as other laws.

8.8 It must be noted that importation of goods may be subject to apart from Customs Act, 1962 and Customs Tariff Act, 1988 various other statute laws such as Foreign Trade (Development and Regulation) Act, 1992, Foreign Exchange Management Act, 1999, Special Economic Zones Act, 2005, Finance Act.

8.9 India has entered into 15 free trade agreements (FTAs), and one unilateral DFTP (Duty-Free Tariff Preference) Scheme. Out of 15 FTAs, five are regional free trade agreements and 10 are bilateral free trade agreements. FTAs provide tariff concessions. Undue tariff concessions are frowned upon by the Indian Government as it affects the domestic industry, including foreign investors who have established manufacturing facilities for domestic consumption.

9. Goods and Services Tax (GST)

9.1 Effective July 01, 2017, the Parliament of India embarked upon the journey of levy of a simplified single indirect tax (consumption tax) by making the necessary amendment to the Constitution of India.

9.2 GST is a single tax on the supply of goods and services, right from the manufacturer to the consumer. GST is based on the concept of Value Added Tax (VAT) whereby the cascading effect of taxation is eliminated by way of the Input Tax Credit (ITC) mechanism and passing the ultimate burden of GST on the consumer of Goods and Services. GST is also a consumption-based tax system and departs from the earlier system of origin of sale or manufacture based tax system.

9.3 At the Union (Central) level, the following taxes that were levied are now subsumed within GST: (a) Central Excise Duty, (b) Additional Excise Duty, (c) Service Tax, (d) Additional Customs Duty commonly known as Countervailing Duty, and (e) Special Additional Duty of Customs.

9.4 At the State (Provincial) level, the following taxes that were levied are now subsumed within GSTR: (a) State Value Added Tax/Sales Tax; (b) Entertainment Tax (other than the tax levied by the Local Bodies); (c) Central Sales Tax (levied by the Centre and collected by the States); (c) Octroi and Entry Tax; (d) Purchase Tax; (e) Luxury Tax; and (f) Taxes on lottery, betting and gambling.

9.5 Thus, GST Law comprises of about five statutes which subsume various indirect taxes and cesses levied by the Union and the State Governments except for in few states.

9.6 GST is a comprehensive, multistage destination-based tax with five different tax slabs for collection of tax - 0%, 5%, 12%, 18% and 28%. There are special rates for certain commodities. The standard rate of GST is 18%. However, certain goods and services are eligible for a lower rate of GST at 5% or 12%. A higher rate of GST at 28% is levied on luxury goods (such as motor vehicles, aircraft, yachts for personal use) or sin goods (such as cigarettes, cigars, carbonated beverages)

9.7 Few items such as petroleum products, alcoholic beverages and electricity are not taxed under the GST Law.

9.8 Unless a supply of goods or services is exempt GST is levied both on intra-state supply of Goods and Services and inter-state supply of Goods and Services. Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) is levied on the intra-state supply of Goods and Services. Integrated Goods and Services Tax (IGST) is levied on the inter-state supply of Goods and Services. Import of Goods and Services

are deemed as intra-state supply of Goods and thus, Integrated Goods and Services Tax is charged on imported Goods and Services.

9.9 Export of Goods and Services, as well as supplies of Goods and Services to a unit in Special Economic Zone or a developer of Special Economic Zone, are treated as "Zero-rated" supplies. Except in cases of reverse charge mechanism, the obligation to collect GST from the recipient (purchaser) of goods and services and depositing it with government treasury is on the supplier of goods and services.

9.10 Every supplier of Goods whose aggregate turnover in a financial year exceeds Indian National Rupees (INR) 4 million and every supplier of Services whose aggregate turnover in a financial year exceeds INR 2 million is liable to be registered under the GST Laws. However, certain specified categories of persons are compulsorily required to be registered under GST Laws irrespective of the turnover threshold. Among these include persons exporting goods outside India, persons making the inter-state supply of goods within India or recipients of goods and services who are liable to pay GST under the reverse charge mechanism.

9.11 All registered suppliers and taxpayers are required to file specified returns under the GST Law within the specified timelines.

10. Securities Transaction Tax (STT)

10.1 Securities Transaction Tax (STT) is a tax being levied on taxable securities transactions.

10.2 The “taxable securities transaction” is set out below:

10.2.1 purchase or sale of an equity share in a company or a derivative or a unit of an equity-oriented fund or a unit of a business trust entered into in recognised stock exchange;

10.2.2 sale of unlisted equity shares by any holder of such shares under an offer for sale to the public included in an initial public offer and where such shares are subsequently listed on a recognised stock exchange;

10.2.3 sale of unlisted units of a business trust by any holder of such units which were acquired in consideration of a transfer referred to in clause (xvii) of Section 47 of the Income Tax Act under an offer for sale to the public included in an initial offer and where such units are subsequently listed on a recognised stock exchange.

10.2.4 sale of a unit of an equity-oriented fund to the Mutual Fund;

10.2.5 sale or surrender or redemption of a unit of an equity-oriented fund to an insurance company, on maturity or partial withdrawal, concerning the unit-linked insurance policy issued by such insurance company on or after the 1st day of February 2021.

10.3 The Foreign Portfolio Investors and the acquirers of Indian Listed Companies must be aware of the STT as a transaction cost.

11. Profession Tax

11.1 Profession tax is like Income Tax except for the fact that Income Tax is collected by the Union Government under the Income Tax Act, the law made by the Parliament of India and the Professional Tax is collected by the State Government under the law made by the State Legislature.

11.2 Article 276 of the Constitution of India provides that law imposing Profession tax is not invalid on the ground that it relates to tax on income notwithstanding Article 246 of Constitution of India. Article 246 confers upon the Parliament of India exclusive power to make laws, including tax laws on matters mentioned in the Union List, including any residuary matter under Entry 97 of the Union List – that is in respect of matters not mentioned in the Concurrent List or State List. Thus, Article 276 gives State Legislatures thus have an overriding constitutional power to levy the Profession Tax in their respective States.

11.3 Companies' residents outside India setting up a business presence in India must be aware of the cost and liability of their wholly owned subsidiaries or joint venture companies in India to pay the Profession Tax.

12. Stamp Duty

12.1 Under the provisions of the Indian Stamp Act, 1899 and the State Stamp Statute (for example Maharashtra Stamp Act, 1958) Stamp Duty is levied on a document and an instrument executed in respect of a transaction.

12.2 Stamp Duty is a type of tax that is liable to be paid to the State Government on the execution of a document as well as an instrument by one or more parties in respect of a transaction.

12.3 Stamp duty is not levied on a transaction. Stamp duty is levied on a document or an instrument.

12.4 The example of documents that are liable to stamp duty under Indian Stamp Act, 1899 are bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies, and receipts.

12.5 Companies' resident outside India entering a contract with Indian businesses as well as Companies resident outside India setting up a business presence in India must be aware of the cost and liability of their wholly owned subsidiaries or joint venture companies in India to pay stamp duty on the documents and instruments executed by them, including on land conveyances, leases, mortgage or hypothecation deeds, bank guarantees, all types of written contracts, among other documents.

13. Property Tax

13.1 Property Tax is leviable mostly by the local authority under the municipal laws enacted by the State Legislative Assemblies.

13.2 The rules regarding the levy of Property Tax are contained in the municipal laws enacted by the Legislative Assemblies of each State.

13.3 The annual letting value or annual rateable value of the property is considered as the base on which the property tax is levied.

13.4 Companies' resident outside India setting up a business presence in India must be aware of the cost and liability of their wholly owned subsidiaries or joint venture companies in India to pay Property Tax in respect of immovable property purchased

and leased by them in India to the jurisdictional Local Body within whose jurisdiction such immovable property is situated

14. Land Revenue

14.1 Levy and collection of land revenues are governed by the provisions of the State Land Revenue Statute and the Rules made thereunder by the State Government. For example, under the Maharashtra Land Revenue Code, 1966, land revenue is assessed concerning the use of land such as agricultural, residential, commercial or any other purpose.

14.2 Land held or assessed for one purpose cannot be used for another purpose without obtaining the permission of the Collector.

14.3 When land assessed to agriculture is used for non-agricultural (NA) purpose or vice versa or being assessed for one non-agricultural use is used for another non-agricultural purpose, then the assessment is liable to be altered and conversion tax becomes payable at about five times the assessment.

14.4 Companies' resident outside India setting up a business presence in India must be aware of the cost and liability of their wholly owned subsidiaries or joint venture Companies in India to pay the Land Revenue in respect of the land acquired by them for projects, including manufacturing units or factory premises.