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INDIAN INCOME TAX

2021-2022

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FOREWORD

Budget 2021 was finally approved by the President of India after numerous amendments in tax laws in the proposed budget for this year. Government has been making continuous attempts of transforming the compliance systems to a faceless mode to achieve fairness, adequacy, simplicity, transparency and administrative ease.

Indian Revenue Authority is aiming to create a platform which will be known as "Transparent Taxation Platform" which aims for Honouring the Honest. Though it has teething troubles but has brought more pros than cons to the taxpayers.

With a long series of amendments on year over year basis, the income tax act, as it stands today, has a very wide ambit, complex and multifarious implications. One needs to be aware, vigilant, and compliant with the plethora of obligations placed by the tax law on the taxpayer in a varied manner.

This booklet aims to give you a basic insight about the Indian Income tax law, its compliances and other important topics which relates to cross-border transactions and dispute resolution in the simplest form.

Please do get back to us in case of any clarifications or questions.

Happy Reading!!

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INDIAN INCOME TAX

Introduction of Tax Law

Income tax was introduced for the first time in 1860, by Sir James Wilson in order to meet the losses sustained by the government on account of military mutiny of 1857. In 1918, a new income tax Act passed and again it was replaced by another act which was passed in 1922. This act remained in force up to the assessment year 1961-62 with numerous amendments. In consultation with the ministry of law finally the income tax act 1961, was passed[1].

Income-tax shall be charged for any assessment year in respect of the total income of the previous year of taxpayer. However, total income is taxable as per the residential status of taxpayer in India.

Taxpayers resident in India would be liable to pay income tax on their global income, [i.e., income earned in India and outside India would be taxed]. Non-resident taxpayers in India would be liable to pay income-tax only on income earned in India or deemed to accrue or arise in India.

Total income of taxpayer is categorized under five heads of income, viz, income from salary, income from house property, income from capital gains, income from business or profession and income from other sources. Taxability of such income is given here in below:

Income from Salaries

Income under the head salaries covers all remuneration due or paid to a person in respect of services rendered by him under contract of employment. Any salary paid or earned (including arrears of salary) shall be chargeable to income tax.

Income from House Property

Income from house property (i.e., annual value of property) consisting of building and land appurtenant there to would be chargeable to income-tax. However, such property should not be used by the owner for the purpose of any business or profession carried on by him.

Income from house property would be determined as under :-

1 https://www.jagranjosh.com/general-knowledge/history-of-taxation-in-india-1481028305-1

Particulars	Amount
Gross Annual Value of Property	XXXX
Less:- Municipal Taxes	XXXX
Net Annual Value	XXXX
Less: Standard Deduction (30%)	XXXX
Less : Interest on housing loan	XXXX
Income from house property	XXXX

Income from Business or Profession

The profits and gains of any business or profession carried on by the taxpayer would be chargeable to income tax under the head income from business or profession. Certain other receipts earned during the course of carrying on business or profession would also be chargeable to income tax under this head ,viz, profit on sale of import entitlement, profit on transfer of duty entitlement pass book, receipts for not carrying out any business or profession, receipts under keyman insurance policy, etc. Further, any interest, remuneration, bonus or commission earned by partner of the firm would also be taxable under this head.

Income from Capital Gain

Any profit or gains arising from the transfer of a capital asset during the previous year would be taxable under the head capital gains. However, the following assets are excluded from the definition of capital assets:-

- Stock-in-trade, Consumable Stores or raw material held for business or profession
- Personal effects (viz, movable property including wearing apparel and furniture held for personal use)
- Agricultural land in India in rural area,
- Specified Gold Bonds/Bearer Bonds.

Income from Other Sources

Income of every kind which is taxable as per Income Tax Act, but not charged under any of the above heads of income shall be chargeable in this head. (viz, interest income, dividend income, etc.).

TAX RATES

The Finance Act 2020 has introduced new income tax slabs with lower tax rates. However, the benefit of such reduced income-tax slabs would be available only to those taxpayers who are willing to forgo certain deductions and exemptions. New income-tax slabs are optional and now taxpayers have the option to choose between old taxation regime and new taxation regime. The old tax slabs and structure would remain unchanged.

Tax rates for Individuals (Old taxation regime – Option 1)

Slab rate for individual (Resident or Non-Resident) /HUF/AOP/BOI or every artificial juridical person

Total Income	Rate Of Tax
Upto INR 2,50,000	Nil
INR 2,50,001- INR 5,00,000	5%
INR 5,00,001- INR 10,00,000	20%
Above INR 10,00,000	30%

Slab rates for resident individual above 60 years but less than 80 years (Senior Citizens)

Total Income	Rate Of Tax
Upto INR 3,00,000	Nil
INR 3,00,001- INR 5,00,000	5%
INR 5,00,001- INR 10,00,000	20%
Above INR 10,00,000	30%

Slab rates for resident individual aged 80 years or more (Super Senior Citizens)

Total Income	Rate of Tax
Upto INR 5,00,000	Nil
INR 5,00,001- INR 10,00,000	20%
Above INR 10,00,000	30%

Tax rates under new taxation regime (Option 2)

Rates for individuals (including senior citizen and super senior citizen) and HUF

Amount of Net Income	Tax Rates (A.Y. 2021-22)
Upto INR 2,50,000	Nil
INR 2,50,001 to INR 5,00,000	5%
INR 5,00,001 to INR 7,50,000	10%
INR 7,50,001 to INR 10,00,000	15%
INR 10,00,001 to INR 12,50,000	20%
INR 12,50,001 to INR 15,00,000	25%
Above INR 15,00,000	30%

- The aforesaid new option shall be exercised for every previous year where the individual or the HUF has no income from business and profession.
- Where any Individual or HUF has any income from business and profession this option once exercised for a previous year shall be valid for that previous year and all subsequent years.
- However, such option would be available only when Individual or HUF satisfy certain conditions. In other words, Individual or HUF shall compute total income:-

a. Without following exemptions / deductions
   - Leave travel concession;
   - House rent allowance;
   - Standard deduction (i.e. INR 50,000)
   - Deduction of Entertainment allowance or professional tax.
   - Interest on housing loan u/s 24(b);
   - Additional deprecation;
   - Deductions under section 32AD, 33AB, 33ABA
   - Any deduction under chapter VI-A (viz, section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc). [Deduction u/s 80CCD(2) or 80JJAA can be claimed]

b. Without set-off of unabsorbed business loss or depreciation if such loss or depreciation is attributable to any of the aforesaid deductions/exemptions.

c. Without set-off of house property loss with any other head of income.

d. by claiming the depreciation, if any, except additional depreciation determined in such manner as may be prescribed;

e. without any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being in force.

- Such option shall become invalid if the Individual or HUF fails to satisfy aforesaid conditions in any PY. In such case, option/ tax slabs available under old regime would be applicable.
- Where option II [taxation under new regime] is chosen by the Individual or HUF having business income, such option can be withdrawn only once in subsequent years and thereafter, the individual or HUF shall never be eligible to exercise option under this section, except where such individual or HUF ceases to have any business income.

Surcharge (in case of Individual, HUF, AOP and BOI)

- 10% surcharge if income is more than INR 50 lakhs (INR 5 Million) but upto INR 1 crore (INR 10 Million).
- 15% surcharge if income is more than INR 1 (INR 10 Million) crore but upto INR 2 Crore (INR 20 Million).
- 25% surcharge if income is more than INR 2 crore (INR 20 Million) but upto INR 5 Crore (INR 50 Million).
- 37% surcharge if income is more than INR 5 crore (INR 50 Million).
- The surcharge of 25% & 37%, will not be levied on capital gain from sale of listed shares and equity oriented mutual funds. Hence, the maximum rate of surcharge on tax payable on such incomes shall be 15%.

Firms and LLP	
Flat Rate of tax @ 30% shall be applicable on firm. Surcharge @ 12% of income tax shall be levied if net income exceeds INR 1 Crore. (INR 10 Million). Health and Education Cess shall be levied @ 4% over and above taxes including surcharge.	
Cooperative societies	
Total Income	**Rate of Tax F. Y 2020-21(A. Y 2021-22)**
Less than INR 10000	10%
More than INR 10001 but less than INR 20,000	INR 1000 plus 20% of total income in excess of INR 10,000
Having Total income of more than INR 20,000	INR 3,000 Plus 30% of total income in excess of INR 20,000

Note:
Surcharge @ 12% of income tax if net income exceeds INR 1 Crore (INR 10 Million) and Health and Education Cess of 4% shall be levied over and above the above taxes.

However, from the assessment year 2021-22, resident co-operative societies have an option to opt for taxation @ 22% under newly proposed section 115BAD of the Act. Such new provision has been inserted on the lines of section 115BAA.

Companies (old regime)	
Particulars	**Rates of tax FY 2020-21 (AY 2021-22)**
Domestic Company whose total turnover or gross receipts for PY 2018-19 does not exceed INR 400 Crore (INR 4,000 Million)	25%
Domestic Company whose total turnover or gross receipts for PY 2018-19 exceeds INR 400 Crore (INR 4,000 Million)	30%
In case of Foreign Company	40%
Domestic Companies Opting Section 115BA	25%

Surcharge:

In case of domestic company:

- 7% surcharge if the income is more than INR 1 crore (INR 10 Million) but less than INR 10 crore (INR 100 Million).
- 12% surcharge if the income is more than INR 10 Crores (INR 100 Million).

In case of foreign company:

- 2% surcharge if the income is more than INR 1 crore (INR 10 Million) but less than INR 10 crore (INR 100 Million).
- 5% surcharge if the income is more than INR 10 crore (INR 100 Million).

Note: Health and Education Cess of 4% shall be levied over and above taxes.

Domestic companies (New Regime – Optional)	
Particulars	**Rates of tax**
Domestic Company covered u/s 115BAA (Other than Manufacturing)	22% (plus 10% surcharge and 4% cess)
New manufacturing companies* covered u/s 115BAB	15% (plus 10% surcharge and 4% cess)

*In case of new manufacturing companies u/s 115BAB, tax rate would be different for following type of incomes:-

- Short-term capital gains in case of non-depreciable asset would be taxable @ 22% instead of 15%.
- Any income neither derived from, nor incidental to manufacturing/ production of an article or a thing would be taxable @ 22% instead of 15%.

The Taxation Laws Amendment Act, inserted section 115BAA and section 115BAB in the Act to provide domestic companies an option to be taxed at concessional tax rates provided they do not avail specified deductions and incentives. Some of the deductions prohibited are deductions under any provisions of Chapter VI-A under the heading "C. Deduction in respect of certain incomes" other than the provisions of section 80JJAA (New Employees).

Such new tax rate u/s 115BAA should be exercised by domestic company in Form No. 10-IC which shall be furnished electronically on or before due date of filing of Income Tax Return of such Company either under digital signature or

electronic verification code. Such option once exercised shall apply to subsequent assessment years unless such option has become invalid due to violation of prescribed conditions.

However, new tax rate u/s 115BAB for manufacturing companies should be exercised by domestic company in Form No. 10-ID which shall be furnished electronically on or before due date of filing of Income Tax Return of such Company either under digital signature or electronic verification code. Such option once exercised shall apply to subsequent assessment years unless such option has become invalid due to violation of prescribed conditions.

Provisions of section 115BAA and section 115BAB do not allow deduction under any provisions of Chapter VI-A other than section 80JJAA or section 80M, in case of domestic companies opting for taxation under these sections.
Further, provisions of the Taxation Laws Amendment Act, provides that following, businesses shall not be considered as manufacturing or production of article or thing in order to avail concessional tax rate of 15%:-

- Development of computer software,
- Mining,
- Conversion of marble blocks or similar items into slabs,
- Bottling of gas into cylinder,
- Printing of books or production of cinematograph film or any other business as may be notified by the Central Government.

It has been provided that manufacturing or production of an article or thing shall include generation of electricity. Thus, now companies engaged in electricity generations can also avail concessional tax rate of 15% subject to satisfaction of certain conditions.

Taxation of Foreign Companies Earning following Income from India

Type of income	Rate of Tax as per Income Tax Act
Business income connected with Permanent Establishment in India	40%
Winning from lotteries crossword puzzles	30%
Winning from horse races	30%
Short-term capital gains on listed shares u/s 111A	15%
Long-term capital on listed shares above INR 1 lakhs u/s 112A	10%
Long-term capital gains on listed shares u/s 112	10%
Other long-term capital gains	20%
Royalty income	10%
Fee for Technical Services	10%
Royalty or Fee for Technical Services connected with Permanent Establishment in India	40%
Interest income from Govt. or Indian Concern (borrowing in foreign currency)	20%
Interest received from infrastructure debt fund as referred to in section 194LB	5%
Interest income distributed by business trust to its unit holders as referred to in Section 194LBA	5%
External Commercial Borrowings as referred to in Section 194LC	5%
Interest income of FII or QFI from rupee-denominated bonds or Govt. security	5%
Dividend income	20%
Other income	40%

Exemption to Non-Residents from Filing Income Tax Returns

The existing provisions of section 115A(5)of the Income Tax Act, provides that a non-resident is not required to furnish its return of income u/s 139(1), if its total income, consists only of certain **dividend** or **interest income** and the TDS on such income has been deducted according to the provisions of Chapter XVII-B of the Act.

While, the current provisions of section 115A provide relief to non-residents from filing of return of income where the non-resident is not liable to pay tax other than the TDS which has been deducted on the dividend or interest income, the same relief has not been extended to non-residents whose total income consists only of the income by way of **royalty** or Fees For Technical Services ("FTS").

Therefore, the Finance Act 2020 has amended section 115A in order to provide that a non-resident, shall not be required to file return of income if, his or its total income consists of only

- Dividend or
- Interest income, or
- Royalty or
- FTS income; and

The TDS on such income has been deducted under the provisions of Chapter XVII-B of the Act at the rates which are not lower than the prescribed rates under sub-section (1) of section 115A.

Therefore, where aforesaid income has been paid to the non-resident on basis of tax rates provided under the tax treaties. Benefit of exemption from filing ITR will be available to non-residents only when TDS has been deducted on aforesaid passive income as per the applicable rates as per Section 115A of the Income Tax Act.

Transfer Pricing

TRANSFER PRICING

Background

The relationship among members of Multinational Enterprise (MNE) group may permit the group to establish special conditions in their intra-group relations that differ from those that would have been established had the group members been acting as independent enterprises in open market[1].

When Independent enterprises transact with each other, the price of goods or services transferred are determined by market forces. However, when relative enterprises or MNEs transact with each other, the price of goods of services are not determined by market forces. Example:- MNEs manufacturing product in high tax jurisdiction may sell products to its associated enterprise in low tax jurisdiction at low price.

Thus, the main objective of transfer pricing is that the members of MNE should transact at arm's length price so as to eliminate the effect of special conditions on the level of profits.

Methods of Computing Arm's Length Price

Arm's Length Price of the transaction should be computed by using the most appropriate method, out of the following methods :

- **Comparable uncontrolled method (CUP method):-** The CUP method compares the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances. Where it is possible to locate comparable uncontrolled transactions, the CUP method is the most direct and reliable way to apply the arm's length principle. Consequently, in such cases, the CUP method is preferable over all other methods.

- **Resale Price method:-** The resale price method begins with the price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise. The resale price is then reduced by an appropriate gross margin on this price representing the amount out of which the reseller would seek to cover its selling and other operating expenses. **Arm's Length Price = Resale Price to third Party – Resale Price Margin**

  The resale price margin of the reseller in the controlled transaction may be determined by reference to the resale price margin that the same reseller earns on items purchased and sold in comparable uncontrolled transactions ("internal comparable"). Also, the resale price margin earned by an independent enterprise in comparable uncontrolled transactions may serve as a guide ("external comparable").

- **Cost Plus Method:** Such method begins with the costs incurred by the supplier of property (or services) in a controlled transaction for property transferred or services provided to an associated purchaser. An appropriate cost-plus mark-up is then added to this cost, to make an appropriate profit in light of the functions performed and the market conditions. **Arm's Length Price = Cost incurred by supplier + appropriate mark-up**. This method probably is most useful where semi-finished goods are sold between associated parties, where

1 OECD Transfer Pricing Guidelines

associated parties have concluded joint facility agreements or long-term buy-and-supply arrangements, or where the controlled transaction is the provision of services.
The cost-plus mark-up of the supplier in the controlled transaction should ideally be established by reference to the cost-plus mark-up that the same supplier earns in comparable uncontrolled transactions ("internal comparable"). In addition, the cost plus mark-up that would have been earned in comparable transactions by an independent enterprise may serve as a guide ("external comparable").

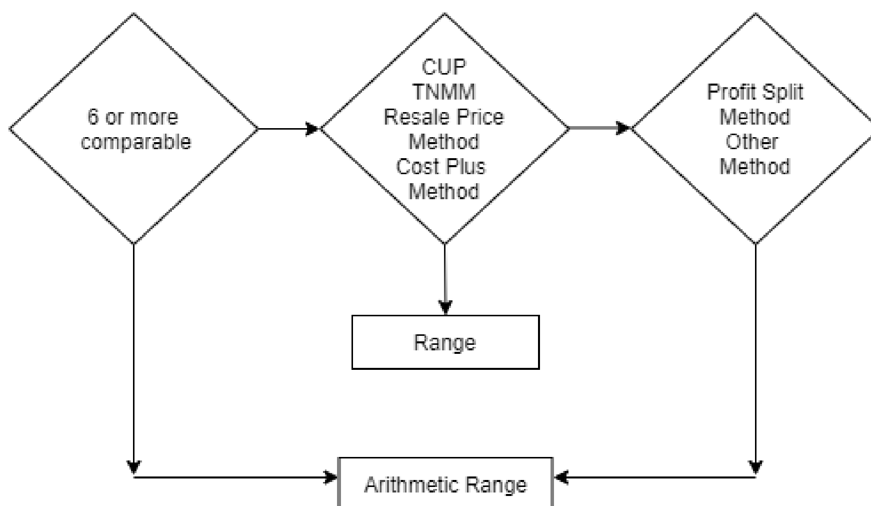
- **Profit Split Method:** The transactional profit split method first identifies the profits to be split for the associated enterprises from the controlled transactions in which the associated enterprises are engaged. It then splits those combined profits between the associated enterprises on an economically valid basis that approximates the division of profits that would have been anticipated and reflected in an agreement made at arm's length.

  The main strength of the transactional profit split method is that it can offer a solution for highly integrated operations for which a one-sided method would not be appropriate. Profit split method may also be found to be the most appropriate method in cases where both parties to a transaction make unique and valuable contributions (e.g. contribute unique intangibles) to the transaction, because in such a case independent parties might wish to share the profits of the transaction in proportion to their respective contributions and a two-sided method might be more appropriate in these circumstances than a one-sided method.

- **Transactional net margin method:** The transactional net margin method examines the net profit relative to an appropriate base (e.g. costs, sales, assets) that a taxpayer realises from a controlled transaction. This means the net profit indicator of the taxpayer from the controlled transaction should ideally be established by reference to the net profit indicator that the same taxpayer earns in comparable uncontrolled transactions, [i.e. "internal comparable"]. Where this is not possible, the net margin that would have been earned in comparable transactions by an independent enterprise ("external comparable") may serve as a guide.

HOW TO DETERMINE ARM'S LENGTH PRICE WHERE MORE THAN ONE PRICE IS DETERMINED BY APPLICATION OF ANY TRANSFER PRICING METHOD?

Where more than one price is determined by the application of the most appropriate transfer pricing method then arm's length price of the transaction shall be determined by either Range or Arithmetic Mean Method. Applicability of Range or Arithmetic Mean could be understand with the help of following flowchart:-



Where the actual price of international transaction between associated enterprise is within the limits of Range or Arithmetic Mean method then such actual price shall be considered as Arm's Length Price under transfer pricing.

Note: Transfer pricing provisions would not be applicable where there is decrease in income or increase in losses due to application of Arm's Length Price under transfer pricing.

Safe Harbour Rules

In order to curb the transfer pricing disputes in India, the Central Board of Direct Taxes had notified Safe Harbor Rules ("SHRs") which prescribe circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

Such SHRs are applicable for certain international transactions between associated enterprises viz, software development services, ITES, KPO services, intra-group loan, corporate guarantee, contract R&D for software development/generic pharmaceutical drug, manufacture and export of core/non-core auto components and receipt of low value adding intra-group services. SHRs prescribe minimum return/price for aforesaid list of intra-group transactions. Where actual transaction price of such international transactions is as per such minimum return/price then such price shall be considered as arm's length price.

Note :- Such provisions of SHRs for international transactions are applicable for AY 2017-18, 2018-19, 2019-20 and 2020-21.

The Central Board of Direct Taxes has also prescribed SHRs for certain specified domestic transactions undertaken by –

- Government companies engaged in generation, supply, transmission or distribution of electricity
- Co-operative societies engaged in procuring and marketing milk and milk products

Currently, non-residents having PE in India will have to face litigation and uncertainty in order to determine the profits attributable to PE in India. Now the Finance Act 2020 has made changes in the Income Tax Act, in order to allow non-residents to have access to safe harbor Rules and Advance Pricing Agreements in order to determine the profits attributable to PE in India.

GAAR – GENERAL ANTI AVOIDANCE RULES

Background

General Anti-Avoidance Rule (GAAR) is applicable from Assessment Year 2018-19. It would be applicable to an impermissible avoidance arrangement.

An impermissible avoidance arrangement means an arrangement, the main purpose of which is to obtain a tax benefit, and it

- creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;
- results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;
- lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or
- is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

Non-applicability of GAAR

The provisions of GAAR shall not apply to:-

1. An arrangement where the tax benefit arising, in aggregate, to all the parties to the arrangement does not exceed INR 3 crores.
2. A Foreign Institutional Investor
    - who is an assessee under the Act;
    - who has not taken benefit of a Double Taxation Avoidance Agreement; and
    - who has invested in listed securities, or unlisted securities, with the prior permission of the competent authority, in accordance with the SEBI (Foreign Institutional Investor) Regulations, 1995 and such other regulations as may be applicable, in relation to such investments;
3. A person, being a non-resident, in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly, in a Foreign Institutional Investor;
4. Any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from the transfer of investments made before the [1st day of April, 2017] by such person.

Approval of Commissioner in GAAR

Where the AO, at any stage of the assessment or reassessment proceedings considers that it is necessary to declare an arrangement as an impermissible avoidance arrangement, then, he may make a reference to the Principal Commissioner or Commissioner. Section 144BA of the Income Tax Act prescribes detailed procedure for obtaining approval of Commissioner for invoking provisions of GAAR.

POEM – PLACE OF EFFECTIVE MANAGEMENT

Background of POEM

The provisions of section 6 of the Income Tax Act, provided that a company was said to be resident in India in any previous year, if -

- It is an Indian company; or
- During that year, the control and management of its affairs are situated wholly in India.

Due to the requirement that the whole of control and management should be situated in India and that too for whole of the year, the condition has been rendered to be practically inapplicable. A company can easily avoid becoming a resident by simply holding a board meeting outside India. This facilitates creation of shell companies that are incorporated outside but controlled from India.

In view of the above, the Finance Act, 2015 has amended the provisions of section 6 to provide that a person being a company shall be said to be resident in India in any previous year, if -

- It is an Indian company; or
- Its Place of Effective Management ("POEM"), at any time in that year, is in India.

Definition of POEM

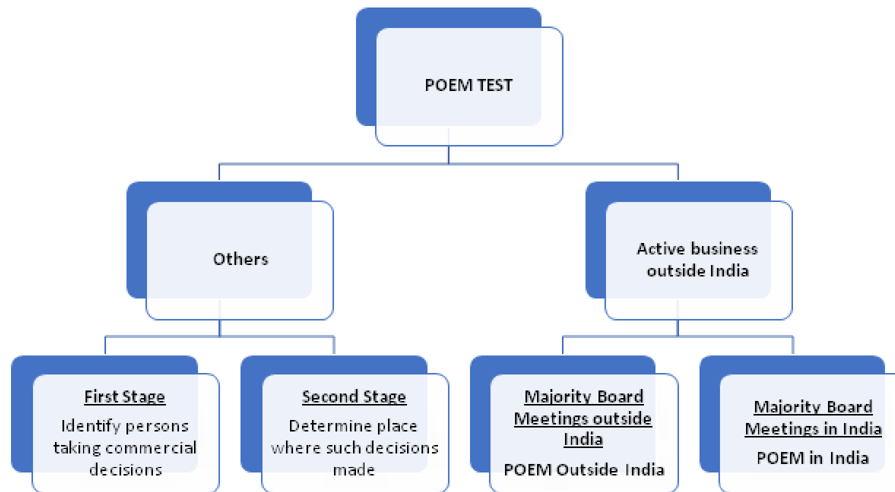
POEM means a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made.

Applicability of POEM

Existing provisions of POEM shall not apply to a company having turnover or gross receipts of INR 50 crores or less in a financial year.[1]

1 CIRCULAR NO.8 OF 2017, dated 23-02-2017

Guideline Principle for Determination of POEM



Test of Active Business Outside India

A company shall be said to be engaged in "active business outside India" if the passive income is not more than 50% of its total income; and

1. less than 50% of its total assets are situated in India; and
2. less than 50% of total number of employees are situated in India or are resident in India; and
3. the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

TAX AUDIT

Sr. No.	Particulars	Condition
1	Business or profession	Total sales or turnover exceeds: • INR 1 Crore • INR 10 crores (if receipts and expenditure in cash does not exceed 5% of the said amount).
2	Notified profession (viz, lawyers, CA, CS, Doctors, Engineers, Film artist (Cameraman, director, singer)	Gross receipts above INR 50 lakhs.
3	Presumptive income of business u/s 44AE, 44 BB, 44 BBB	Income of business lower than deemed profits.
4	Presumptive income of profession u/s 44ADA	Income lower than 50% of the gross receipt of the profession[1].
5	Presumptive income of profession u/s 44AD	Where assessee opts the presumptive taxation and declares at least - • 8% profit (in case of cash receipts)or • 6% of profit (in case of other than cash receipts) in one year and less than 8%/6% profit in any of 5 subsequent years[2].

1 His income should exceed maximum amount not chargeable to tax
2 whose income exceeds maximum amount which is not chargeable to tax

TAX DEADLINES

Due date of filing income tax forms

Companies Firm/Individual/AOP/BOI liable for transfer pricing audit in Form 3CEB u/s 92E	30th November of AY
Other companies	31st October of AY
Any Firm/Individual/AOP/BOI liable for tax audit u/s 44AB	31st October of AY
Any Firm/Individual/AOP/BOI not liable for tax audit u/s 44AB	31st July of AY
Any working/non-working partner of firm when such firm is liable for tax audit	31st October of AY
Any working/non-working partner of firm when such firm is liable for transfer pricing audit in Form 3CEB u/s 92E	30th November of AY
Filing of Revised or Belated Return	31st December of AY
Due Date of Transfer Pricing Report (Form 3CEB)	31st October of AY
Master file in Form 3CEAA Part A – **To be filed even if constituent entity not liable for Transfer pricing audit in Form 3CEB** Part B – To be filed when prescribed threshold limit exceeds	Due Date of ITR of the Assessee
CbC report by parent entity or alternate reporting entity in Form 3CEAD	Within 12 months from end of reporting account year
Intimation by constituent entity resident in India in Form 3CEAC	Two months prior to due date of furnishing Form 3CEAD as aforesaid
SFT in Form 61A/61B	31st May of AY
Due date of filing tax audit	30th September of AY
Due date of filing tax audit in case of transfer pricing audit	31st October of AY
Due date for Form 29B and other certifications related to ITR	30th September of AY
Due date for Form 29B and other certifications related to ITRin case of transfer pricing audit	31st October of AY
Intimation in Form 3CEAB by an entity which is designated by International group to file master file in form 3CEAB [In case of more than one constituent entity in India]	31st October of AY

Due date of issuance of TDS/TCS Certificates

Form 16 to be issued by employer deducting TDS from salary u/s 192	15th June of AY
Form 16B to be issued by a person deducting TDS on purchase of immovable property u/s 194-IA	Within 15 days from due date of furnishing of Form 26QB
Form 16C to be issued by a tenant deducting TDS on rental payments of immovable property u/s 194-IB	Within 15 days from due date of furnishing of Form 26QC

Form 16A to be issued by a person deducting TDS on payments (other than aforesaid payments) TDS period – April- June July – Sep Oct - Dec Jan – March	 15th August 15th November 15th February 15th June

Due date of furnishing of TDS returns

April – June	31st July
July – Sep	31st October
Oct – Dec	31st January
Jan – March	31st May

Due date of furnishing of TCS returns

April – June	15th July
July – Sep	15th October
Oct – Dec	15th January
Jan – March	15th May

Due date of payment of advance tax

15% of advance tax	On or before 15th June
45% of advance tax	On or before 15th September
75% of advance tax	On or before 15th December
100% of advance tax	On or before 15th March

MULTILATERAL INSTRUMENT

Abuse of tax treaties is an important source of Base Erosion and Profit Shifting (BEPS). The Multilateral Instrument("MLI") helps the fight against BEPS by implementing the tax treaty-related measures developed through the BEPS project in existing bilateral tax treaties in a synchronized and efficient manner. These measures will prevent treaty abuse, improve dispute resolution, prevent the artificial avoidance of PE status and neutralized the effect of hybrid mismatch arrangements[1].

Currently, there is a list of more than 3000 bilateral treaties and if changes were to be made to each treaty individually, it would be a very time-consuming process. MLI enables all tax treaties to be modified without a need to modify each tax treaty individually.

Tax Treaties (i.e. DTAA) of India with other Countries

Sr. No.	Country Name	MFN Clause	LOB Clause
1	Mauritius	No	Yes
2	South Africa	No	No
3	Albania	No	Yes
4	Armenia	No	Yes
5	Australia	No	No
6	Austria	No	No
7	Bangladesh	No	No
8	Belarus	No	No
9	Belgium	Yes	No
10	Bhutan	No	Yes
11	Botswana	No	No
12	Brazil	No	No
13	Bulgaria	No	No
14	Canada	No	No
15	China	No	Yes
16	Colombia	No	Yes
17	Croatia	No	No
18	Cyprus	No	No
19	Czech Republic	No	No
20	Denmark	No	No
21	Estonia	No	Yes
22	Ethiopia	No	Yes
23	Fiji	No	Yes
24	Finland	Yes	Yes
25	France	Yes	No
26	Georgia	No	Yes
27	Germany	No	No

1 https://www.oecd.org/tax/treaties/MLI-frequently-asked-questions.pdf

28	Greece	No	No
29	Hashemite Kingdom Of Jordan	No	No
30	Hong Kong	No	No
31	Hungary	Yes	No
32	Iceland	No	Yes
33	Ireland	No	No
34	Israel	Yes	Yes
35	Italy	No	No
36	Japan	No	No
37	Kazakhstan	Yes	Yes
38	Kenya	No	Yes
39	Korea	No	Yes
40	Kuwait	No	Yes
41	Kyrgyz Republic	No	No
42	Latvia	No	Yes
43	Libya	No	No
44	Lithuania	No	Yes
45	Luxembourg	No	Yes
46	Malaysia	No	Yes
47	Marshall Islands	No	No
48	Mongolia	No	No
49	Montenegro	No	No
50	Morocco	No	No
51	Mozambique	No	Yes
52	Myanmar	No	Yes
53	Malta	No	Yes
54	Namibia	No	Yes
55	Nepal	No	Yes
56	Netherlands	No	No
57	New Zealand	No	No
58	Norway	No	Yes
59	OECD Member Countries	No	No
60	Oman	No	No
61	Oriental Republic of Uruguay	No	Yes
62	Poland	No	Yes
63	Philippines	No	Yes
64	Portuguese Republic	No	No
65	Qatar	No	No
66	Romania	No	Yes
67	Russia	No	No
68	Indonesia	No	Yes
69	Macedonia	No	Yes

70	Saudi Arabia	No	No
71	Serbia	No	No
72	Singapore	No	Yes
73	Slovak Republic	No	No
74	Slovenia	No	No
75	Spain	Yes	Yes
76	Sri Lanka	No	Yes
77	Sudan	No	No
78	Sweden	Yes	No
79	Swiss Confederation	Yes	No
80	Syrian Arab Republic	No	Yes
81	Tajikistan	No	Yes
82	Tanzania	No	Yes
83	Thailand	No	Yes
84	Trinidad and Tobago	No	No
85	Turkey	NO	No
86	Turkmenistan	No	No
87	UAE	No	Yes
88	UAR (Egypt)	No	No
89	UK	No	Yes
90	USA	No	Yes
91	Uganda	No	No
92	Ukraine	No	No
93	United Mexican States	No	Yes
94	Uzbekistan	No	Yes
95	Vietnam	No	No
96	Zambia	No	No

PENALTIES

Section	Type of Default	Amount of Penalty
221	Default in making payment of tax	Such amount as Assessing Officer may impose but not exceeding amount of tax in arrears
234E	Failure to file TDS/TCS returns	INR 200 per day but not exceeding tax deductible/collectible
234F	Default in furnishing Income Tax Return within due date	INR 5,000[1](if return is furnished on or before 31 December of A.Y.)
270A	Under-reporting of income	50% of tax payable on under-reported income
270A	Misreporting of income	200% of tax payable on under-reported income
271A	Failure to keep, maintain books of account as required under section 44AA	INR 25,000
271AA(1)	• Failure to maintain transfer pricing information or documentation • Failure to report transactions in Form 3CEB • Furnishes incorrect information in Form 3CEB	2% of value of each international transaction
271AA(2)	Failure to furnish transfer pricing master file in Form 3CEAA	INR 5,00,000
271AAB(IA)	Where search has been initiated on or after 15-12-2016 and undisclosed income found	30% of undisclosed income – • Where assessee admits undisclosed income; • Substantiate manner of deriving income and • Pays taxes with interest. 60% of undisclosed income – Other cases
271AAD	• false entry in books of account or • any entry relevant for computation of total income of such person has been omitted to evade tax liability	Aggregate amount of false entries or omitted entry (Applicable from April 1, 2020)
271AAD	Who causes any person to make or cause to make a false entry or omits or causes to omit any entry	Aggregate amount of false entries or omitted entry (Applicable from April 1, 2020)
234H	Intimation of Aadhaar number to Income Tax	INR 1000

1 Fee payable/penalty u/s 234F should be INR 1,000 if total income does not exceed INR 5 lakhs.

271B	Failure to get the books audited u/s 44AB	0.5% of total sales/turnover/gross receipts or INR 1,50,000, whichever is less
271BA	Fails to furnish transfer pricing report in Form 3CEB as per section 92E	INR 1,00,000
271C	Failure to deduct TDS under sections 192 to 196D	Amount equal to tax not deducted or paid
271CA	Failure to collect TCS	Amount equal to tax not collected
271D	Taking or accepting any loan or deposit or specified sum in contravention of the provisions of Section 269SS	Amount equal to loan or deposit or specified sum so taken or accepted
271DA	Cash receipt of INR 2 lakh or more in contravention of provisions of Section 269ST	Amount equal to such receipt
271DB	Failure to provide facility for accepting payment through electronic modes of payment, (viz, BHIM UPI, UPI-QR Code, Aadhaar Pay, certain Debit cards, NEFT and RTGS)	INR 5,000 per day
271E	Repayment of any loan or deposit or specified advance otherwise than in accordance with Section 269T	Amount equal to loan or deposit or specified advance so repaid
271FA	Failure to furnish SFT in Form 61A/61B	INR 500 per day INR 1,000 per day (after expiry of period specified in notice for furnishing SFT)
271FAA	Furnishing of inaccurate information in SFT in Form 61A/61B	INR 50,000
271G	Failure to furnish any transfer pricing information or document as required by AO or Commissioner (Appeals) during income tax assessment	2% of the value of the international transaction/specified domestic
271GB	Failure to furnish CbC report in Form 3CEAD	INR 5,000 per day (upto 30 days) INR 15,000 per day (after expiry of 30 days) INR 50,000 per day (failure continues after receipt of penalty order)
271-I	Failure to furnish Form 15CA and 15CB	INR 1,00,000
271K	Default in furnishing statement by University, College, Research Associated claiming exemption u/s 35	INR 10,000 – INR 1,00,000 (Applicable from June 1, 2020)

Dispute Resolution Measures in India

1. Introduction

Indian Tax authorities are under increasing pressure to generate revenue, which results in more investigations, larger adjustments, and increased potential for penalties and interest. Accordingly, it's important to approach your tax matters proactively and be ready to respond if and when a local tax investigation begins.

2. Dispute Resolution Measures

The litigation process in India is highlighted as under:-

- Commissioner Appeals
- Income Tax Appellate Tribunal
- High Court
- Supreme Court

Commissioner appeals

Commissioner appeals are the first dispute resolution authority where a taxpayer can appeal after receiving an adverse order from an Assessing Officer. An appeal shall be presented before Commissioner appeals within 30 days of service of notice of demand relating to income-tax assessment or penalty. Government has notified the faceless appellate scheme, accordingly all the appeals before CIT(A) will be conducted as per the faceless appellate scheme.

Income Tax Appellate Tribunal

If the taxpayer does not get a favorable order from either from Dispute Resolution Panel or commissioner appeals, he can further appeal to Income Tax Appellate Tribunal ('ITAT'). ITAT is the final fact-finding authority in income tax appellate process. Appeal to ITAT is to be filed within a period of 60 days from the date on which order sought to be appealed against is communicated to the taxpayer.

High Court

In case the taxpayer gets an adverse order from ITAT, which involves a question of law, then he can further appeal to jurisdiction High Court. Such appeal may be admitted by the High Court if it is satisfied that it involves a substantial question of law. Appeal shall be filed before the High Court within 120 days from the date on which the order appealed against is received by the assessee. High Court can admit an appeal after the expiry of the said period of 120 days if it is satisfied that there was sufficient cause for not filing the appeal within the said period.

Supreme Court

Taxpayer final appeal or appeal of income-tax department against any adverse order of High court lies with the Indian Supreme Court. The decision of Supreme Court is treated equivalent to the law of the land and is finally binding on both the taxpayer and the revenue authorities.

3. Other Dispute Resolution Measures

A taxpayer may also take the following measures in order to avoid certain type of income tax disputes in India:

Dispute Resolution Mechanism	Who can avail?
Dispute Resolution Panel	Foreign company or any person in whose case transfer pricing adjustment has been made
Advance Pricing Agreement	Any taxpayer liable for transfer pricing audit
Mutual Agreement Procedure	Any person for elimination of double taxation (either juridical or economic)
Safe Harbour Rules	Any person liable for transfer pricing audit
Advance Ruling	Resident or non-resident taxpayer

Dispute Resolution Panel

A foreign company or taxpayer in whose case transfer pricing adjustment has been made can approach Dispute resolution Panel (DRP). The provisions of Dispute resolution Panels (DRP) was introduced in Finance Act, 2009 which provides for dispute resolution mechanism for the purpose of speedy disposal of objections raised by the eligible assessee against the original decision made by the tax department, i.e., Assessing Officer. DRP bench comprised of three Commissioners of Income Tax constituted by the Central Board of Direct Taxes.

Advance Pricing Agreements

In India, Transfer pricing has emerged as the major controversy for Multinational Corporations ('MNCs') lately. The level of controversies in India can be evidenced by the number of assessments which were scrutinised and the volume of adjustments made in the past few years. Following measures can be adopted in order to avoid transfer pricing disputes in India:-

a. **Unilateral APA:-** Unilateral APA is another proactive measure to mitigate disputes. Indian unilateral APAs are agreements where only the taxpayer and the tax administration are involved. Unilateral APAs are considered to be simpler than Bilateral/Multilateral APA since the latter involves the competent authorities of foreign countries. The risk of double taxation continues to exist in the case of Unilateral APAs since they are not recognized by foreign tax authorities and the taxpayers are prone to litigious Indian TP environment. Generally, once Unilateral APAs is entered into, double tax relief under MAP is not available. Taxpayers are required to provide information and explanations and reasons for not considering Bilateral/Multilateral APA, while applying for unilateral APA in the context of international transactions with an entity located in jurisdiction with which India has a Double taxation avoidance agreement. As compared to Bilateral/Multilateral APA, the unilateral APAs are easier to coordinate and complete and requires less time and efforts. The APA rules provide for appropriate time frames for timely

consideration and disposal of Unilateral APA applications. Currently in Indian APA program the transactions covered are Investment Advisory Services, IT/ ITeS, Corporate guarantee, Contract manufacturing etc.

b. **Multilateral and Bilateral APAs:-** Multilateral and bilateral APA's are the foremost multilateral pro-active dispute avoidance measures. Multilateral and Bilateral APAs are an agreement between the taxpayer, the tax administration and one (Bilateral) or more (multilateral) foreign tax jurisdictions. The request for bilateral/multilateral APA can be accepted by the Indian competent authority where

- a DTAA exists between India and other countries containing an article on Mutual Agreement Procedure (MAP).
- In case of international transactions leading to double taxation arising out of TP adjustments, the said tax treaty contains provisions of "Associated enterprises" and the corresponding APA program exists in the other country.

Generally, multilateral APAs are preferred over Unilateral APAs due to more certainty and for avoiding double taxation through an early dispute resolution process that is most efficient from both taxpayer and government perspectives. Proper evaluation is required to be done before opting for Bilateral/Multilateral APA both from the point of view of Cost-benefit analysis and the extent of sharing of information with the Tax Authorities. The current APA process does not have any firewall provision, so it is important to analyze all repercussions of sharing the information in both the scenarios of either successful APA or withdrawal of APA.

The time involved in seeking a Bilateral/Multilateral APA depends upon the relationship between the competent authorities of various countries and the materiality of the transactions.

Mutual agreement procedure:- The alternative method for the settlement of disputes is Mutual Agreement Procedure (MAP) provided under various double taxation avoidance treaties entered by India. This dispute resolution mechanism can be pursued simultaneously in addition with dispute resolution procedures and appellate options available under Indian domestic regulations. It is a mechanism through which tax administration of two countries resolves disputes of double taxation (legal and economic) such as adjustment arising from transfer pricing assessment.

Positive aspects of MAP:

- Takes comparatively lesser time as compared to appeal procedure under domestic laws
- Appeal can be filed simultaneously under domestic law
- Risk of economic double taxation mitigated
- Right to withdraw is available to the Taxpayer

The application for MAP can be filed by the taxpayer in its country of residence, and it should be filed within time stipulated in the relevant tax treaty.

Safe Harbour Rules: In order to mitigate the increasing number of transfer pricing audits and prolonged disputes, Indian government has also introduced the Safe Harbour rules in September 2013 for certain eligible international transactions.

Safe harbour means circumstances in which Income tax authorities will accept the transfer price declared by the taxpayer, and for the purpose of the same, Safe harbour rules have been laid down under law which obliges Income tax authorities to accept the transfer price declared by the taxpayer.

Positive aspects of Indian Safe Harbour Rules:

- Reduced transfer pricing disputes
- Provides long term certainty and greater flexibility to taxpayers

The Idea of safe harbour is to effectively reduce the probability of transfer pricing disputes.

Such Safe Harbour Rules ('SHRs') are applicable for certain international transactions between associated enterprises viz, software development services, ITES, KPO services, intra-group loan, corporate guarantee, contract R&D for software development/generic pharmaceutical drug, manufacture and export of core/non-core auto components and receipt of low value-adding intra-group services. SHRs prescribe minimum return/price for aforesaid list of intra-group transactions. Where actual transaction price of such international transactions is as per such minimum return/price then such price shall be considered as arm's length price.

Note:- Such provisions of SHRs for international transactions are applicable for AY 2017-18, 2018-19, 2019-20 and 2020-21.
The Central Board of Direct Taxes has also prescribed SHRs for certain specified domestic transactions undertaken by –

- Government companies engaged in generation, supply, transmission or distribution of electricity
- Co-operative societies engaged in procuring and marketing milk and milk products.

Where any non-resident has Permanent Establishment ('PE') in India, profits attributable to such PE shall be chargeable to tax under the Income Tax Act. However, attribution of profits to the PE of a non-resident results in avoidable disputes in a number of cases. In order to provide certainty, the Finance Bill 2020 has provided that the attribution of income in case of a non-resident person to the PE is also required to be covered under the provisions of the SHR and the APA.

Advance Ruling:-

The Authority for Advance Rulings (AAR) is a quasi-judicial body set-up to ascertain the income-tax/withholding tax liability on transactions in advance. Thus, it provides certainty and avoids protracted litigation.
Following persons may approach AAR:-

A non-resident applicant	In relation to a transaction undertaken or proposed to be undertaken by a non-resident applicant
A resident	In relation to the tax liability of a non-resident arising out of a transaction undertaken or proposed to be undertaken by a resident applicant with such non-resident
A resident	in relation to the tax liability of a resident applicant, arising out of a transaction undertaken or proposed to be undertaken by such applicant. Such determination shall include the determination of any question of law or of fact specified in the application
A resident or non-resident	In relation to an arrangement to decide the applicability of GAAR
A resident	In relation to tax liability arising out of one or more transactions of INR 100 crore or more

Rulings of the AAR are binding -

- On taxpayer (i.e. the Applicant);
- In respect of the transaction in relation to which the ruling had been sought; and
- The tax authorities in respect of the transaction for which the ruling is sought.

However, ruling of AAR may be challenged before the High Court, and eventually the Supreme Court at the instance of either party.

4. Conclusion

Experts and lawmakers in India feel that India should amend its tax treaties and introduce arbitration clause as an alternative dispute resolution mechanism.

In few recent instances, taxpayers have also explored the option to initiate arbitration under bilateral investment protection agreements (BIPA).

Most of the tax treaties do not contain a provision of arbitration and, thus, BEPS Action Plan 14 has provided for mandatory arbitration if a case cannot be resolved through MAP. Thus, Multilateral Instrument contains a separate chapter for arbitration. Provisions of MLI would be effective from April 1, 2020 for India's bilateral tax treaties. However, India has opted not to apply arbitration provisions to resolve disputes that cannot be resolved through MAP.

ABOUT JPC

JPC is a professional services firm based in Noida- National Capital Region and New Delhi, India. We were established in the year 1974 with the aim to create value for our clients by delivering quality, comprehensive, timely, practical and innovative services. We offer a comprehensive range of services, including taxation services, regulatory services, transaction advisory services, financial & management consultancy services, assurance & risk services, and outsourcing services. Over the past several decades, we have established significant competitive presence in the country. Our vast and diversified client base includes Multinational enterprises, domestic companies, high net worth individuals, government companies and institutions in all leading industry verticals. We are a team of distinguished Chartered Accountants, Management Accountants, Corporate Financial Advisors and Tax Consultants. Our team has the requisite skills and experience to provide complex business, financial, assurance, tax and regulatory services to our clients. Our strength lies in our timely performance-based, industry-tailored and technology-enabled services which are delivered by some of the most talented professionals in the country. For more information about JPC's service offerings, visit www.jpc.co.in

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