# *CEFI*
New Delhi

# Overview of Tax Compliances

April 30, 2014

pwc

# *Agenda*

# Direct Tax system - Introduction

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# *Direct Tax system - Introduction*

## Principal taxes

- Income tax is a direct tax levied on the income earned by individuals, corporations or on other forms of business entities.
- Wealth tax is a direct tax, which is charged on the net wealth of the assessee. It is a tax on the benefits derived from ownership of property.

## Scope of charge

- Entire income of residents, derived from any source, is subject to tax in India
- For non-resident, income received / deemed to be received, or which accrues /arises or is deemed to accrue / arise **in India** is taxable in India

## Payments

- Taxes are paid quarterly during the financial year
- Withholding of taxes by payer is the other method of tax collection.
- Credit of such taxes is taken while filing return of income

## Returns

- Tax year is the period from 1st April till March 31st of the next calendar year
- Corporate returns are filed by **September 30/ November 30** (if transfer pricing certification)
- Returns are preliminary processed and demands / refunds are issued to respective assessees

## Audits

- Tax audits are generally conducted for large company
- Larger companies with foreign shareholders are almost regularly audited
- Detailed reviews of the books, records and other relevant documents

## Interest and Penalties

- For non-compliances under the Act
- Generally, simple interest is levied @ 1% p.m. on delay in tax payable.
- Provisions for levy of penalty and even prosecution in case of non-compliances

## Appeals

- **Four-tier appeal system**
- First appeal, to the Commissioner of income tax (appeals) / Dispute Resolution Panel
- Second appeal, the Tax Tribunal
- Third appeal, jurisdictional High Court , only on question of law
- Final appeal to Supreme Court

## Tax rulings

- Attitude of tax authorities towards judicial rulings is extremely aggressive
- Strong positions are taken even if jurisdictional High Court has adjudicated on the issue.
- Large issues are settled only at the Supreme Court level.

## Withholding taxes

- India has an extensive system of withholding taxes in order to secure the tax revenue, e.g. income tax deducted from employees salaries
- Withholding taxes on payments to Non-residents are subject to double tax avoidance treaty with other countries.

# *Tax overview – Individuals*

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# *Taxation of individuals*

- Taxability of individuals is based on the **residential status** of such individual.
- **Residential status** of an individual is dependent upon his physical presence in India *regardless of the purpose or place of stay*.
- Income of an individual taxable under the following heads:

| S. No. | Heads of Income | Nature of receipts |
|---|---|---|
| 1. | Income from 'Salary' | – Income by virtue of employment |
| 2. | Income from 'House Property' | – Income / Deemed income from the house property |
| 3. | Income from Profit and gains of business or profession | – Profit from business/profession/trade/vocation |
| 4. | Income under the head 'Capital gains' | – Gains from transfer of 'Capital Assets' |
| 5. | Income from 'Other sources' | – All other incomes which are not covered under any other head such as Interest, Dividend , Gifts etc. |

# Tax rates for individuals

| Income Range (Rs / INR) | Tax Rate |
|---|---|
| Up to Rs 200,000 | Nil |
| 200,001 – 500,000 | 10% |
| 500,001 – 1,000,000 | 20% |
| 1,000,001 and above | 30% |

1. Surcharge @10% on above tax if income exceeds Rs 1,000,000
2. Applicable Education cess @ 3% will also be levied on the above tax rates and surcharge

# *Short stay exemptions*

- **Under the Income-tax Act, 1961**

  Remuneration received by a foreign national who is employee of a foreign enterprise for services rendered in India shall not be taxable in India, if

  - Such foreign enterprise is not engaged in any trade or business in India;
  - Stay does not exceed **90 days** in previous year; and
  - Remuneration is **not deducted from the employer's income** which is chargeable to tax in India.

- **Under the Double Taxation Avoidance Agreement between India and France**

  Remuneration derived by a French resident from his employment in India is not taxable in India, if

  - Such person is present in India for **less than 183** days in relevant "fiscal year“
  - the remuneration is **paid by**, or on behalf of, **Non-resident employer** and
  - the remuneration is **not borne by  Permanent Establishment** or a fixed base of the non-resident employer

# Tax overview – Corporate

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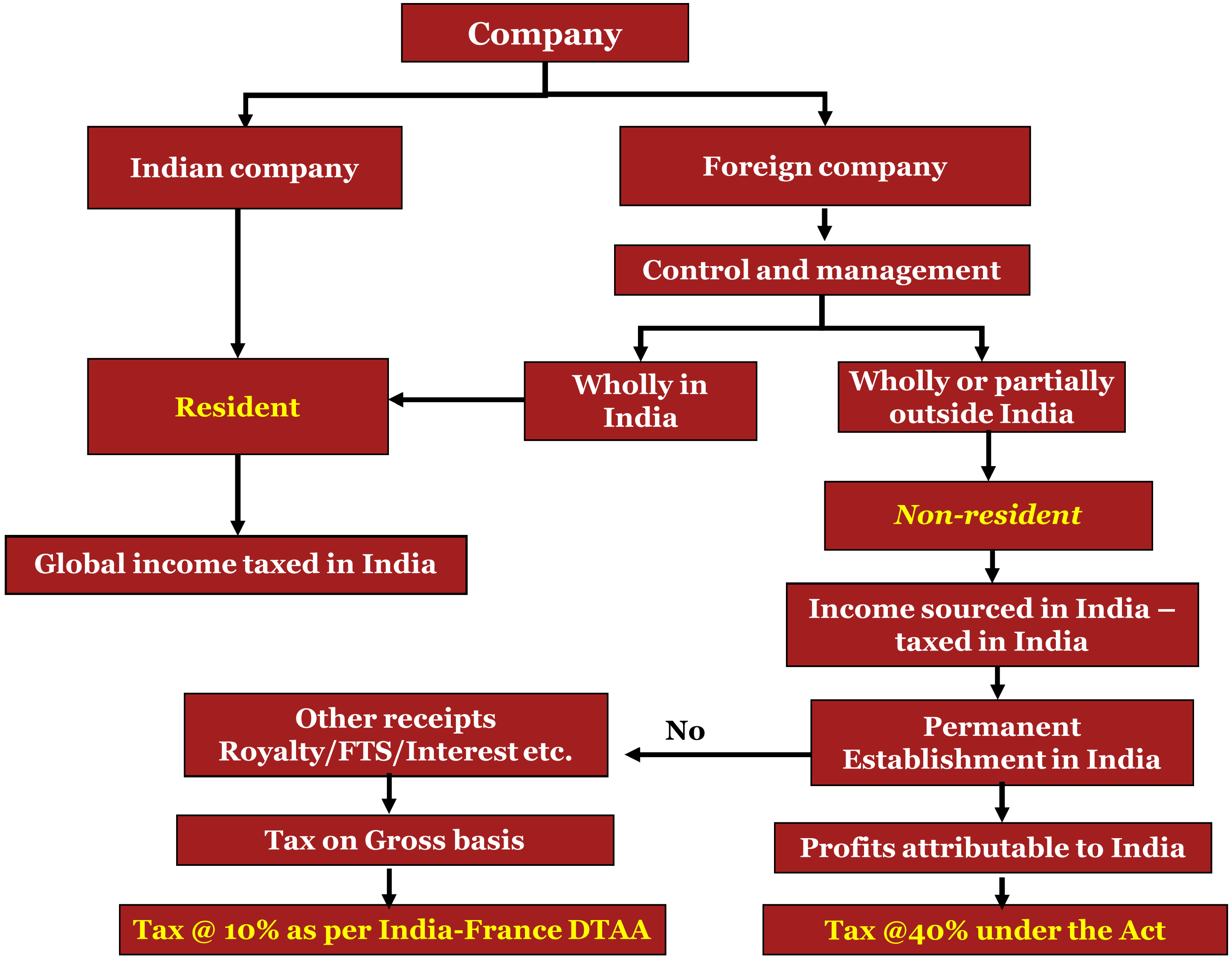
# *Taxation of companies in India*



# *Tax rates for companies*

| Type of entities / Type of taxes | Domestic Indian Company | Foreign Company |
|---|---|---|
| Income tax | 30% | 40% *(in case of PE in India)* |
| Income tax on Royalty/FTS/Interest etc. | N.A. | 10% on *Gross Basis (in case no PE in India)* |
| Capital gains tax<br>Long term / Short term** | 20%/ 30% | 20%/40% *(in case of PE in India)* |
| Dividend Distribution Tax | 15% | N/A |
| Wealth tax *** | 1% | 1% |
| Minimum Alternate Tax – To bring zero tax companies into tax net | 18.5% | 18.5% *(in case of PE in India)* |

**Additional Surcharge:**

- In case of Domestic Co., 5% , if income range from Rs 10Mns to 100Mns, and 10% for income above Rs 10Mns
- In case of Foreign Co., 2% if income range from Rs 10Mns to 100Mns, and 5% for income above Rs 10Mns

* *Applicable surcharge and education cess (@3%) will also be levied on the above tax rates.*

** *A short-term capital asset is one held for a period of not more than 36 months (not more than 12 months in the case of shares, listed securities, units of mutual funds and zero coupon bonds).*

*** *in excess of INR 3 million*

# Indian TP regulations –Overview

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# Indian TP regulations – Provisions

**Value**

| Less than INR 10 Mn | Between INR 10 Mn and INR 150 Mn | More than INR 150 Mn |
|---|---|---|

**Compliance**

| | | |
|---|---|---|
| Obtain and file Accountant's Certificate# | Obtain and file Accountant's Certificate# | Obtain and file Accountant's Certificate# |
| Supporting documents to be maintained | Compulsory Transfer Pricing documentation to be maintained | Compulsory Transfer Pricing documentation to be maintained |
| - | - | Mandatory TP audit conducted by Indian tax authorities* |

**Penalty**

| S. No. | Particulars | Penal Provisions | Section |
|---|---|---|---|
| 1. | Fails to keep and maintain prescribed documents, or<br>Fails to report such transaction; or<br>Maintains or furnishes incorrect information/document | 2% of transaction value | Section 271AA |
| 2. | For failure to furnish information/ documents during TP audit | 2% of transaction value | Section 271G |
| 3. | For failure to furnish accountant's report by due date | INR 0.1 mn | Section 271BA |

*# The company is required to file such certificate with tax authorities on or before November 30 following the respective financial year*

* *CBDT, has proposed to scrap R15-crore threshold for referring international transaction for Transfer Pricing audit*

# *Indian TP regulations – Overview*

- Mechanism to prevent abuse of low tax jurisdiction by structuring transactions between related or associated enterprises
- Law prescribes that international transactions between related parties should be undertaken at "Arm's length price" following internationally accepted TP Principles
- Indian TP regulations ➔ not significantly codified unlike US TP Regulations; ATO guidelines ➔ Generally based on OECD guidelines
- Indian TP regulations expressly deviates from OECD/ global practices in two major aspects -
  - use of arithmetic mean, *instead of inter quartile range*, for computing ALP
  - use of **single year data** for tested party, instead of multiple year data
- Initially applicable only to cross border transactions ➔ extended to domestic specified transactions in the union budget 2012

# *Tax Returns Filing – Procedure*

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# *Tax Return Filing – Procedural aspects*

- Filing Income-tax return is mandatory if a person earns income in India
- Return is to be filed even if only Royalty / FTS is earned (without its PE) and applicable taxes have been withheld by the payer.
- Exemption to Foreign Companies if:
  - ❖ Only interest is earned in India, and
  - ❖ Tax has been withheld at applicable rates
- Due dates of filing tax returns for the Companies
  - ❖ 30th September following the end of tax year
  - ❖ November 30th, if TP report from Accountant is to be filed
- Return to be signed by:
  - ❖ Managing Director or Director
  - ❖ Power of Attorney holder *(in case of Foreign company only)*.
- Return can be filed belatedly, within two years from the end of the tax year

# *Non-filing of Tax Return– Implications*

- Issue of notice seeking to file tax return - **7 years** from the relevant tax year
- Interest maybe levied on the shortfall in taxes, for delay in filing return
- Penalty for non filing of return– INR 5,000
- Penalty proceeding may be initiated for concealment of income
  - ❖ Exposure ~ 100% to 300% of the tax sought to be evaded
- Prosecution proceedings may be initiated for default in filing the return
  - ❖ Exposure ~ Imprisonment of three months to seven years and fine
- Penalty for failure to furnish Accountant's (TP) report - INR 100,000
- Indian company can be treated as **representative assessee** of overseas company, subject to certain conditions.

# Withholding Tax – Procedure

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# *Withholding Tax – Procedure*

- Chapter XVII prescribes that any person responsible for making specified payments to a resident or any payment to a non-resident, shall withhold tax at prescribed rates at the time of credit or payment of such amount, whichever is earlier.
- Person deducting tax is required to obtain Tax deduction Account Number ('TAN') from Income tax authorities.
- Tax so withheld is required to be deposit with the Government Exchequer before 7th of the next month *(except for tax withheld during March for which due date of deposit is 30th April).*
- Tax is required to be deposited with the Government Exchequer thru online banking facilities of specified banks

# Withholding Tax – Procedure

- Every Person withholding such tax shall be required to file statement of tax deduction at source, within prescribed time in prescribed manner
- The due date of filing of statement is as under:

| Period | Due date |
|---|---|
| April – June | 15th July |
| July – September | 15th October |
| October – December | 15th January |
| January – March | 15th May |

- Such person shall all be required to issue Certificate of tax deduction at source (in Form 16/16A) within prescribed time

# *Withholding Tax Rates*

| Type of Income | Withholding Rate* for Non-Resident under domestic law | Withholding Rate for Non-Resident under India France DTAA |
|---|---|---|
| Interest | 20% of the amount paid | 10% of the amount paid |
| Royalties | 25% of the amount paid | 10% of the amount paid |
| Fee for Technical Services | 25% of the amount paid | 10% of the amount paid |

** Applicable surcharge and education cess will also be levied on the above tax rates.*

Key Points

- Tax Treaty benefit available
- Higher withholding rate in absence of PAN
- TRC provisions notified for tax treaty benefits (Form 10F)
- Non-withholding attracts interest, penalty and disallowance of expenses

# *Withholding Tax – Implications of non compliance*

- **Interest** for non-deduction of withholding tax : **1% per month** or a part of the month
- **Interest** for failure to deposit the tax withheld : **1.5% per month** or a part of the month
- **Penalty** for non compliance of withholding tax provisions : Upto tax amount
- **Penalty** for non-filing of TDS returns or issuance of TDS certificate : **Rs. 100 per day** during which failure continues, but limited to maximum amount of tax withheld
- **Penalty** for non-quoting or incorrect PAN of the deductee : Rs 10,000
- **Prosecution proceeding** may be initiated for non-deposition of withholding tax
  - ❖ Exposure ~ Imprisonment from 3 months to 7 years, with fine
- If tax is not withheld, corresponding expenses cannot be allowed as deduction to the payer.

# *Thank You*