

# 7. International Aspects

## 7.1. Definitions

### 7.1.1. Resident and non-resident companies

See section 1.1.5. for the definition of “resident company. A non-resident company is a company that is not resident in India.

### 7.1.2. Permanent establishment

#### 7.1.2.1. Definition under domestic law

Domestic tax law uses the concept of business connection, which is an equivalent of the concept of “permanent establishment”, but not exactly similar. Income is deemed to accrue or arise in India if it accrues or arises directly or indirectly through or from any business connection in India (section 9(1)(i) of the ITA.(Income Tax Act.1961, as amended)).

##### 7.1.2.1.1. Business connection – general

The concept of “business connection” is broader than that of permanent establishment. It has been held that a business connection is different to business; income derived through a business connection may be taxable under a head other than “income from a business” (*CIT v. Currimbhoy Ebrahim and Sons Ltd.*, 3 ITR.(Income Tax Reports.(India)) 395). Further, there is nothing to warrant the exclusion of “professional connection” from the scope of business connection (*Barendra Prasad Roy v. ITO*, 6 Taxman 19 (SC)). It was clarified in the ITA.(Income Tax Act.1961, as amended), vide the Finance Act 2012 with retrospective effect from 1 April 1962, that the term “through” means and includes “by means of”, “in consequence of” or “by reason of”.

For a finding that there is a business connection, all that is necessary is that there be a business in India, a “real and intimate” connection between its trading activities and those of a non-resident person or company, and income earned by the non-resident person or company through such connection. A stray or isolated transaction is, however, not normally considered to be a business connection (*CIT v. R.D. Aggarwal*, 56 ITR 20).

Special rules apply in relation to certain business activities:

- Where income arises from a business the operations of which are not entirely carried out in India, only that part of the income which can be reasonably attributed to the operation in India will be the amount deemed to accrue and arise in India (section 9(1)(i)(a) of the ITA).
- Income arising from any business activity carried out through a person who acts on behalf of a non-resident and has and habitually exercises in India, an authority to conclude contracts on behalf of such non-resident, is taxable in India, unless (1) his activities are limited to the purchase of goods or merchandise for such non-resident or (2) he is an independent agent and is acting in the ordinary course of his business (section 9(1)(i) – Explanation 2 of the ITA).
- No income is deemed to accrue or arise in India to a non-resident through or from operations which are confined to the purchase of goods in India for the purpose of export (section 9(1)(i)(b) of the ITA).
- No income is deemed to arise or accrue to non-residents who are involved in running a news agency, or in publishing newspapers, magazines and journals, from activities confined to collection of news and views in India for transmission out of India (section 9(1)(i)(c) of the ITA). A similar exemption applies to specified non-resident persons in respect of activities confined to shooting film in India (section 9(1)(i)(d) of the ITA). The definition of “royalty” is now modified to even include consideration received from the sale, distribution or exhibition of cinematographic films under its scope.

As the question of whether a business connection exists depends on the particular facts of each case, it is impossible to list exhaustively all instances of such connections. Some of these instances include the following:

- the maintenance in India of a branch office for the purchase and sale of goods (*Rogers Pyatt Shellac & Co. v. Secretary of State for India*, 1 ITC (Income Tax Cases (India)) 363);
- the maintenance or appointment in India of an agent for regular and systematic purchase of goods in India or for the sale of the non-resident’s goods or for transacting other business (*In re Union Jute Co. Ltd.*, 27 ITR 138). Where the agency includes other countries, profits accruing in those countries through work performed in India may be taxed in India (*Soho House v. CIT*, 31 ITR 727). Thus, profits accruing to a non-resident in a foreign territory through an agent in India whose agency territory includes the foreign territory are taxable in India; this includes profits arising indirectly from such a business connection. Income derived from transactions through independent agents such as brokers with various customers is not taxable in India;
- the maintenance in India of a factory for processing locally purchased raw materials for export (*CIT v. Steel Bros. & Co. Ltd.*, 2 ITC 119);
- the establishment of a subsidiary company in India to sell the non-resident parent company’s products (*CIT v. Remington Trust Corporation Ltd.*, 5 ITC 177);
- the maintenance of a close financial association between a resident and non-resident company (*CIT v. Bombay Trust Corporation Ltd.*, 4 ITC 312); and
- the grant to a resident of a continuous licence to exploit in India an asset belonging to a non-resident (*CIT v. Metro Goldwyn Mayer (India) Ltd.*, 71 ITR 176).

Decided cases have shown that it is possible to apportion profits from a particular transaction between those attributable to the business connection and those arising from the non-resident's own trade. The latter does not arise and accrue in India and is therefore not taxable; the apportionment is essentially a question of fact and depends on the particular circumstances of the transaction (*Hukam Chand Mills v. CIT*, 103 ITR 548). Losses arising out of a business connection may be similarly apportioned (*Harakchand Makanji & Co. v. CIT*, 22 ITR 33).

For an analysis of the established Indian case law on the meaning of "business connection" under the Indian domestic law, see also Mehta, [The Indian Version of Permanent Establishment: Business Connection](#), 20 Asia-Pacific Tax Bulletin 5 (2014), Journals IBFD.

#### **7.1.2.1.2. Business connection: particular circumstances**

*Direct purchase or sale.* Generally, income arising from a trade within India, but not income arising from a trade with India, will be treated as income accruing or arising in India. If the place of the contract of sale or purchase is in India or the title to the goods passes in India, the profits from such a sale or purchase will be subject to tax. The place where the offer is accepted is the place of contract.

*Fees for services.* The mere rendering of services outside India for remuneration to a resident of India does not establish a business connection. Thus, a commission paid to a non-resident of India in respect of purchase and supply of raw materials by him outside India from a resident manufacturer, is not subject to tax in India (*Jethabhai Javeribhai v. CIT*, 20 ITR (Income Tax Reports (India)) 33).

Fees for the provision of technical services which are incidental to the supply of equipment (e.g. installation) are not taxable as derived from a business connection (*CIT v. Hindustan Shipyards Ltd.*, 109 ITR 159). Nor does the provision of technical information (e.g. advice on plant, equipment, instructional bulletins and films sent by post from outside India) constitute a business connection (*CIT v. Carborundum Company*, 108 ITR 335).

*Consignees.* Income derived by any non-resident person from continuous and habitual trading in India through consignees will be apportioned, and the portion attributable to the "business connection" will be taxable in India (*Wilcock v. Pinto & Co. Ltd.*, 9 TC (Tax Cases (UK)) 111).

*Canvassing orders.* The mere canvassing of orders for the supply of goods without the authority to accept orders on behalf of non-resident exporters does not create a business connection between the non-resident exporters and the person canvassing the orders (*CIT v. R.D. Aggrawal & Co.*, 56 ITR 20).

*Operations not treated as business connection.* The following operations are not treated as business connection:

- where all operations of business are not carried out in India (Expl. (a) to section 9 of the ITA (~~Income Tax Act 1961, as amended~~));
- the purchase of goods by non-residents for the purpose of export (Expl. (b) to section 9 of the ITA);
- activities confined to collection of news and views in India for outward transmission (Expl. (c) to section 9 of the ITA); and
- operations confined to the shooting of any cinematograph film in India (Expl. (d) to section 9 of the ITA).

A representative office in India of a non-resident company that does not trade in India is not subject to corporation tax. Such an office might exist solely for the purpose of investigating and reporting on business conditions in India and establishing the goodwill of its head office, without actually trading. Although various Courts have upheld the non-taxability of representative offices in India, the Authority for Advance Rulings, judging by the facts in *UAE Exchange Center* (268 ITR 9), has held that a liaison office created both a permanent establishment in India and a business connection and thus is taxable in India.

In *Ishikawajima-Harima Heavy Industries Ltd.*, ((2007) 288 ITR 408), the Supreme Court observed that in order to tax the income of a non-resident taxpayer under section 9(1)(vii), relating to a fee for technical services, the income sought to be taxed must have sufficient territorial nexus with India, i.e. the fees paid for technical services provided by a non-resident may not be taxed in India unless the services were utilized in India and rendered in India.

The Finance Act 2007 clarified that such income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), is to be included in the total income of the non-resident, whether or not the non-resident has a residence, place of business or business connection in India. This is effective retrospectively from 1 June 1976.

The Finance Act 2010 retrospectively amended the Explanation to section 9 of the ITA (which was inserted retrospectively only vide the Finance Act 2007) to reiterate the taxability of income by way of interest, royalties and fees for technical services under the principle of "source rule of taxation". The language of the Explanation was amended to provide that the *situs* of the rendering of services was not relevant in determining the taxability of the aforesaid income under section 9 of the Act. The Memorandum explaining the Finance Bill, 2010 specifically stated the intention of the Legislature to tax the fees from technical services which are provided from outside India (offshore services) as long as they are utilized in India. The aforesaid intention further received judicial recognition in the decisions of the ITAT (~~Income Tax Appellate Tribunal~~) in *Ashapura Minechem Limited v. ADIT* (2010) (40 DTR 42) (Tri.) and *Linklaters LLP v. ITO* (42 DTR 233) (Tri).

The Finance Act 2012 expanded the scope of the term "royalties" by including: (a) the transfer of any right for the use of a computer software (including the granting of a licence), irrespective of the medium through which such right is transferred; and (b) consideration in respect of any right, property or information (irrespective of its possession, control, use or location). In addition, the expression "process" includes "transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret".

The amendment to the ITA has retrospective effect from 1 June 1976. It is to be noted that the retrospective amendment affects only the ITA and not the treaties (see *Nokia Networks OY (Delhi HC)* (7 September 2012) and *B4U International Holdings Ltd v. DCIT* (Tax Tribunal) (29 May 2012)).

The Finance Act 2015 introduced section 9A of the ITA, which provides that an offshore fund will not constitute a business connection in India or be considered to be a person resident in India solely on account of the presence of its investment manager in India, subject to fulfilment of conditions stated therein. Further, it permits offshore funds to apply to the ~~CBDT (Central Board of Direct Taxes)~~ to seek approval regarding eligibility under section 9A of the ITA. The ~~CBDT notified Rule 10(V) under Income Tax Rules 1962 vide Not. (Notification (usually issued by the CBDT, RBI, SEBI, etc. as one of a series, e.g. as (CBDT)SQ/.....(RBI)AD/MA/.....))~~ 14/2016 of 15 March 2016, providing guidelines for the application of section 9A. The aggregate participation of Indian residents in the fund should not exceed 5% of the corpus of the fund. In addition, the ~~CBDT~~ has issued Not. 78/2017 dated 3 August 2017 which lists the countries and territories in which the investment fund should be established/incorporated/registered to be eligible under section 9A. Furthermore, Not. 77/2017 dated 3 August 2017 relaxes the following conditions in section 9A(3) for Category-I and Category-II foreign portfolio investors registered under ~~SEBI (Securities and Exchange Board of India)~~:

- the fund must have a minimum of 25 members who are, directly or indirectly, not connected persons;
- any member of the fund along with connected persons must not have any participation interest, directly or indirectly, in the fund exceeding 10%; and
- the aggregate participation interest, direct or indirect, of 10 or less members along with their connected persons in the fund, must be less than 50%.

~~Circ. (CBDT Circular (e.g. Circ./681/94 means CBDT Circular 681, issued in 1994). Circulars issued by other bodies are identified with the issuer: e.g. RBI Circ.)~~ 1 of 2021 dated 15 January 2021 amended section 9A(3)(m) read with Rule 10V so that the lower remuneration paid to fund managers for Financial Year 2020-21 requires no approval, provided that it is at arm's length.

### **7.1.2.2. Definition under treaties**

The central government is empowered to assign a meaning to any "term" used in a tax treaty by way of a notification if such term has not been defined in the tax treaty or in the ~~ITA (Income Tax Act 1961, as amended)~~. It is clarified that such notified meaning of the term will relate back to the date on which the tax treaty came into force. This amendment is effective retrospectively from 1 October 2009.

The Finance Act 2017 inserted Explanation 4 to sections 90 and 90A of the ITA, that any "term" used in a tax treaty will be assigned the meaning provided in the tax treaty, and where the term is not defined in the tax treaty but is defined in the ITA, it will be assigned the meaning as defined under the ITA or any explanation given by the central government.

The permanent establishment article in India's tax treaties generally follows the UN Model. The concept of a permanent establishment under India's tax treaties includes a construction site and installation project provided such activities last more than the specified time. For example, in article 5 of the India-

Mauritius tax treaty, “a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than nine months” will constitute a permanent establishment.

Recent tax treaties that India has concluded do not contain the “force of attraction” rule.

## 7.2. Taxation of resident companies

### 7.2.1. Taxable foreign income

#### 7.2.1.1. General principles

Residents are subject to income tax in respect of all income which (section 5 of the ~~ITA (Income Tax Act 1961, as amended)~~):

- is received or is deemed to be received in India by or on behalf of the resident;
- accrues, arises or is deemed to accrue or arise to the resident in India; or
- accrues or arises to the resident outside India.

Thus, resident companies are taxed on their worldwide income.

Dividends received by an Indian company from its foreign subsidiary are taxed at the rate of 15% (subject to surcharge and cess) on the gross amount, provided the Indian company owns at least 26% or more of the nominal value of the equity share capital of the foreign subsidiary. This beneficial provision was initially applicable until 31 March 2014, but has been extended to all subsequent assessment years.

#### 7.2.1.2. Business profits

Non-residents may deduct head office expenditure only up to specified limits. However, it has been held that the restriction applies only if the business of the non-resident is carried out both in India and abroad (*Rupenjuli Tea Co. Ltd. v. CIT*, 186 ~~JTR (Income Tax Reports (India))~~ 301). The amount allowable is the lesser of:

- 5% of the “adjusted total income” (where the total income of the taxpayer is a loss, 5% of the “average adjusted total income” of the taxpayer); or
- expenditure incurred by the taxpayer which is attributable to the business or profession carried on by the taxpayer in India (section 44C of the ~~ITA (Income Tax Act 1961, as amended)~~).

“Head office expenditure” means executive and general administration expenditure incurred by the taxpayer outside India, including expenditure in respect of:

- rent, rates, taxes, repairs or insurance of any premises outside India used for purposes of the business or profession;
- salary, wages, annuity, pension, fees, bonuses, commissions, gratuities, benefits in-kind or profits in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in or managing the affairs of any office outside India;
- travelling by any employee or other person employed in or managing the affairs of any office outside India; and
- such other matters connected with executive and general administration as may be prescribed.

“Adjusted total income” means total income computed in accordance with the provisions of the ITA, but without allowing:

- unabsorbed depreciation allowances from previous years;
- investment allowance;
- development allowance for tea;
- deduction for expenditure incurred for the purpose of promoting family planning among its employees;
- losses carried forward from previous years;
- speculation losses carried forward from previous years;
- capital losses; and
- losses in respect of horses maintained for running in horse races.

“Average adjusted total income” means:

- where the total income of the taxpayer is assessable for each of the 3 years of assessment immediately preceding the relevant assessment year, one third of the aggregate amount of the adjusted total income in respect of the accounting years relevant to the above-mentioned 3 assessment years;
- where the total income of the taxpayer is assessable for only 2 of the above-mentioned 3 assessment years, half the aggregate adjusted total income in respect of the accounting years relevant to the above-mentioned 2 assessment years; and
- where the total income of the taxpayer is assessable for only 1 of the above-mentioned 3 assessment years, the amount of the adjusted total income in respect of the previous year relevant to that assessment year.

The Bombay High Court has held that section 44C contemplates allocation of expenses amongst various entities. The expenditure which is covered by section 44C is of a common nature, which is incurred for the various branches or which is incurred for the head office and the branch. Therefore, if an expense is incurred exclusively for a branch office in India, restriction under section 44C will have no application (*CIT v. Abu Dhabi Commercial Bank Ltd.*, 262 ITR 55).

The Income Tax Appellate Tribunal held that where a foreign company is governed by a tax treaty, the restriction placed by section 44C on the deductibility of head office expenses will not apply, as it amounts to discrimination as contained in article 24 of the relevant treaty (*Metchem Canada Inc.*, 100 ITD (Income Tax Tribunal Decisions (Appellate tribunal decisions)), 251 ITAT (Income Tax Appellate Tribunal), Mumbai).

### 7.2.1.3. Dividends

An Indian company that receives dividends from foreign companies is taxable as follows:

- dividends received from a foreign company in which it holds 26% of equity share capital: taxable at 15% on a gross basis.
- dividends received from other foreign companies: taxable at 30%, subject to deduction of eligible expenses of commission or remuneration to a banker or any other person for the purpose of realizing such dividends.

Rule 115 of the IT Rules (Income Tax Rules 1962) provides for the rate of conversion of foreign currency income into Indian rupees.

### 7.2.1.4. Interest, royalties and other income

The ITA (Income Tax Act 1961, as amended) does not provide for a specific tax exemption or a specific concessional tax rate in respect of interest, royalties, fees and other income sourced outside India. Accordingly, the normal computational mechanism and the normal corporate tax rate applies. Rule 115 of the IT Rules (Income Tax Rules 1962) provides for the rate of conversion of foreign currency income into Indian rupees.

### 7.2.1.5. Capital gains

The ITA (Income Tax Act 1961, as amended) does not provide for a specific tax exemption or a specific concessional tax rate in respect of the transfer of capital assets outside India. Accordingly, the normal computational mechanism and the normal capital gains tax rates apply. Rule 115 of the IT Rules (Income Tax Rules 1962) provides for the rate of conversion of foreign currency income into Indian rupees.

### 7.2.2. Foreign losses

The ITA (Income Tax Act 1961, as amended) does not have any provision on foreign losses. They can usually be deducted when computing business income.

### 7.2.3. Other taxes on income

The ITA (Income Tax Act 1961, as amended) provides for unilateral relief in respect of foreign income subject to double taxation (see [section 7.2.6.](#)).

### 7.2.4. Taxes on foreign capital

The ITA (Income Tax Act 1961, as amended) provides for unilateral relief in respect of foreign-situs capital subject to double taxation (see section 7.2.6.).

### 7.2.5. Emigration

There are no specific provisions.

### 7.2.6. Double taxation relief

#### 7.2.6.1. Business profits

Relief from double taxation may be provided in two ways, namely unilateral measures and bilateral measures. See section 7.4.1.2. for bilateral treaty relief.

Unilateral relief is given via the credit method in respect of income derived from a country with which India does not have an applicable treaty for the avoidance of double taxation (section 91 of the ITA (Income Tax Act 1961, as amended)). This provision is interpreted strictly, so that unilateral relief is denied in respect of income from a country which has only a limited tax treaty with India, such as a treaty dealing only with income from shipping or air transport.

Unilateral relief is available to residents of India in respect of foreign income tax on income which accrues or arises outside India and is not deemed to accrue or arise in India. Foreign income tax for this purpose includes any excess profits tax or business profits tax charged on profits by the government of any part of the country concerned or by a local authority in that country.

The credit allowed against Indian income tax is given at the Indian or foreign rate of tax, whichever is lower. The Indian rate of tax means the average rate of tax over the total income, after deduction of any relief due under the ITA, other than double taxation relief. The foreign rate of tax means income tax and super-tax actually paid in the foreign country after the deduction of all relief due, but before any double taxation relief due in that country, averaged over the whole amount of income assessed in the foreign country.

The Finance Act 2015 with effect from 1 June 2015 amended section 295 of the ITA, empowering the ~~CBDT (Central Board of Direct Taxes)~~ to make rules to provide the procedure for granting relief or deduction, as the case may be, of any income tax paid in any country or specified territory outside India, under section 90 or under section 90A (bilateral relief), or under section 91, against the income tax payable under the ITA.

Accordingly, the CBDT issued ~~Not. (Notification (usually issued by the CBDT, RBI, SEBI, etc. as one of a series, e.g. as (CBDT)SO/....(RBI)AD/MA/....))~~ 54/2016 of 27 June 2016, wherein the following rules were notified for the purpose of granting relief in the form of foreign tax credit (FTC):

- FTC is to be allowed in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India;
- foreign taxes are taxes as defined under the relevant tax treaty and in its absence, taxes paid in the other country of the same nature as that under the ITA;
- credit for disputed taxes will be allowed for the year in which such income is offered to tax or assessed to tax in India if the taxpayer, within 6 months from the end of the month in which the dispute is finally settled, furnishes evidence of settlement of the dispute and evidence to the effect that the liability for payment of such foreign tax has been discharged by him, and furnishes an undertaking that no refund in respect of such amount has directly or indirectly been or will be claimed;
- FTC will not be available against any interest, fee or penalty or against foreign tax which is disputed by the taxpayer;
- FTC is computed separately for each source of income arising from a particular country. The FTC is the lower of Indian tax or foreign tax paid on such income;
- the foreign tax paid will be converted at the telegraphic transfer buying rate on the date on which such tax has been paid or deducted; and
- FTC can be set off against MAT (Minimum alternate tax), but if the FTC exceeds the amount of tax credit available under normal provisions, such excess shall be lost.

FTC will not be allowed unless the following documents are furnished:

- a statement of income from the country outside India which is offered for tax for the previous year and of foreign tax deducted or paid on such income, in Form 67 and verified in the manner specified therein; and
- a certificate specifying the nature of income and the amount of tax deducted therefrom or paid by the taxpayer, from the tax authority or from the person responsible for deduction of such tax or signed by the taxpayer.

The statement furnished by the taxpayer will be valid if it is accompanied by an acknowledgment of online payment of tax and/or proof of deduction. The statement of income and certificate in Form 67 must be furnished on or before the due date specified for furnishing the return of income. Form 67 must also be furnished where the carry-back of losses of the current year results in a refund of foreign tax for which credit has been claimed in any earlier previous year(s).

The Finance Act 2017 introduced section 155(14A) of the ITA to enable the taxpayer to claim FTC in cases of taxes paid under dispute, within 6 months from the end of the month in which the dispute is settled. The taxpayer must furnish evidence of settlement of the dispute and evidence of payment of such tax along with an undertaking that no credit in respect of such amount has directly or indirectly been claimed or will be claimed for any other assessment year. It is further provided that the credit of tax which was under dispute will be allowed for the year in which such income is offered to tax or assessed to tax in India.

In the case of *DCIT v. Elitecore Technologies Private Limited* (ITA No.197 and 508/Ahd/2016) dated 31 March 2017, the taxpayer, after claiming relief from double taxation, intended to claim a deduction in respect of unrelieved foreign tax credit as business expenses. The JTAT (Income Tax Appellate Tribunal) held that the excess foreign tax credit would not be allowed as business expenses under section 37 of ITA.

## Example

*X Ltd* is a software company which undertakes projects both in India and abroad. During 2012/13, *X Ltd* received taxable Indian income of INR 500,000, and foreign taxable income of the equivalent of INR 100,000 which is subject to a final withholding tax in the foreign country at 20%. If there is no applicable income tax treaty between India and the foreign country, the unilateral relief will be allowed as follows:

	(INR)
Indian income	500,000
Foreign income	100,000
Total income taxable in India	600,000
Tax on 600,000 (including education cess)	185,400
Unilateral relief allowable on 100,000 at 20%, being the lower of the two tax rates below	(20,000)
Tax payable in India	165,400

Computation of unilateral relief:	
Indian rate of tax (185,400/600,000)	30.9%
Foreign rate of tax (20,000/100,000)	20%
Rate of unilateral credit allowed	20%
Double-taxed income	100,000

Tax credit: 20% of INR 100,000	20,000
--------------------------------	--------

### 7.2.6.2. Dividends

The normal provisions of double taxation relief apply (see section 7.2.6.1.), even against the concessional tax rate of 15% on a gross basis.

### 7.2.6.3. Interest, royalties and other income

The normal provisions of double taxation relief apply (see section 7.2.6.1.).

### 7.2.6.4. Capital gains

The normal provisions of double taxation relief apply (see section 7.2.6.1.).

## 7.3. Taxation of non-resident companies

### 7.3.1. General

For definitions of “non-resident company” and “permanent establishment of non-resident company”, see sections 7.1.1. and 7.1.2. An entity established under a foreign law and a permanent establishment of the foreign company are also treated as taxable persons under the ITA (Income Tax Act 1961, as amended).

Section 115A provides relief from the filing of tax returns in cases of non-residents receiving only interest or dividend or royalty or fees for technical service, where tax has been deducted at source at the prescribed rates.

The Finance Act 2020 amended section 115A, inter alia, to extend the exemption from return filing compliance to royalty and fees for technical services as well. However, the condition for exemption was modified to provide that exemption shall be applicable only in cases where the tax deductible at source under the provisions of the Act has been deducted from such income and the rate of deduction is not less than the rates of tax specified in section 115A. This implies that if the TDS (Tax deducted at source) rate is as per lower rate provided in a tax treaty, the exemption from return filing compliance will not apply.

### 7.3.2. Immigration

There is no concept of immigration under the ITA (Income Tax Act 1961, as amended). If a non-resident company, i.e. a company incorporated under foreign law, wishes to immigrate and become an Indian company, it must be re-established under the Companies Act 1956.

### 7.3.3. Taxable domestic income

#### 7.3.3.1. General

Generally, non-residents are assessed on income derived from a permanent establishment in India or from a business connection with India, or income sourced in India. The concept of “income arising and accruing in India” determines the extent of liability to tax in India. Income arising through or from a business connection in India or from any property, asset or other source of income in India is deemed to arise and accrue in India (see section 7.3.3.5.).

The concept of a business connection is broader than a permanent establishment and includes, for example, the granting to a resident of a licence to exploit an asset belonging to a non-resident (see further section 7.1.2.1.).

In general, non-resident companies and branches are taxed at 40%, plus a 2% surcharge (if net income exceeds INR 10 million but is less than INR 100 million) or a 5% surcharge (if net income exceeds INR 100 million) and health and education cess of 4% (see section 1.6.1.), resulting in an effective rate of 41.6% (up to INR 10 million); 42.432% (up to INR 100 million); and 43.68% (exceeding INR 100 million).

If a company's tax liability is below 15% (previously 18.5%) of its book profits, the book profits are deemed to be its taxable income and subject to minimum alternate tax (~~MAT. (Minimum alternate tax)~~) at the effective rate of 20.58%, including surcharge (if applicable) and health and education cess (see further section 1.10.1.7.). However, the Finance Act 2016 confirms that MAT will not apply to a foreign company if it is a resident of a country with which India has signed a tax treaty and it does not have a permanent establishment in India. Further, MAT will also not apply to a foreign company if it is a resident of a country with which India has not signed a tax treaty and it is not required to register under any law applicable to companies. Finance Act 2018 introduces Explanation 4A to clarify that MAT would not apply to foreign companies opting for presumptive scheme of taxation. This amendment is applicable retrospectively with effect from assessment year 2001/02.

#### 7.3.3.2. Business profits

Permanent establishments are allowed a limited deduction for the administrative expenses of their head office, subject to a limit of 5% of income for the year. The treaty definition of “permanent establishment” applies if there is a tax treaty; otherwise income of a non-resident from a business connection with India (see section 7.1.2.1.) is subject to tax. Finance Act 2018 has introduced a new concept of significant economic presence (SEP), extending the scope of business connection to “transaction carried out by a non-resident in India” for an amount exceeding the local sales threshold or “systematic soliciting and engaging in interaction” with user base exceeding the user threshold. It is any one of the conditions that when satisfied, would lead to constituting a business connection, in lieu of SEP. The physical presence is not mandated and the proviso further provides that the SEP would be established irrespective of the fact that the non-resident has no place of business in India or has entered into contract outside India or has performed and rendered services outside India. Only the profits to the extent they are attributable to the transaction(s) so carried out or to activity of systematic soliciting or engaging in interaction with a number of users in India (Explanation 2A to the section 9(1)(i)), shall be deemed to accrue or arise in India. The ~~CBDT. (Central Board of Direct Taxes)~~ is yet to arrive at the local sales threshold and user threshold. Finance Act 2020 has deferred SEP to 1 April 2021. Further, a new Explanation 3A is inserted to clarify that the income attributable to the operations carried out in India, as referred in Explanation 1 to section 9(1), shall include:

- income from advertisement that targets a customer who resides in India or a customer who accesses the advertisement through an Internet protocol address located in India;
- income from the sale of data collected from a person who resides in India or who accesses the data through an Internet protocol address located in India; and
- income from the sale of goods and services using data collected from a person who resides in India or from a person who uses an Internet protocol address located in India.

Further, to align with the Multilateral Instrument text in respect of a dependent agent permanent establishment, the Finance Act 2018 has brought about an amendment in Explanation 2 to section 9(1) (i). Accordingly, the agent playing a principal role leading to the conclusion of contracts would be constituting a “dependent agent” business connection, such as contracts that results in the rendering of services by that non-resident or the transfer of ownership or the granting of right to use property owned by that non-resident.

The exemption for constituting business connection in the case of mere purchasing function has been withdrawn. However, as per the revised Explanation 2(a) read with the existing Explanation 1(b), the income from purchasing function for the purposes of export would not be attributed to a business connection, even if established as per the revised Explanation 2(a).

A special presumptive taxation applies to non-residents carrying on shipping or air transport, turnkey projects or an equipment-letting business, whereby a specified rate between 5% and 10% is applied to total receipts.

A deemed tax of 10% of payments is levied on payments for prospecting or extracting mineral oil, constructing plant and machinery for approved projects by non-residents. The tax may be final at the option of the non-resident.

The Finance Act 2016 exempts income of a foreign company on account of storage of crude oil in a facility in India and sale thereof to an Indian resident, if it is pursuant to an agreement/arrangement entered into or approved and notified by the central government.

The Finance Act 2016 exempts income of a foreign company engaged in the business of mining of diamonds, where no income is deemed to accrue or arise in India to it through or from the activities which are confined to the display of uncut or unassorted diamonds in a special zone notified by the central government.

Recently, the Authority for Advance Rulings in *MasterCard Asia Pacific Pte. Ltd* ((AAR (Authority on Advance Rulings) No. 1573 of 2014) issued its ruling that the fully-automated Mastercard Interface Processor (MIP) equipment constitutes a PE of the Singapore company. The network of Mastercard with banks to provide transaction processing services to its customers in India also becomes the factor to constitute a PE. The Singapore company is carrying on the business of facilitating the authorization of the transaction through such MIPs and the network, which is situated in India and is at the disposal of the applicant.

### **7.3.3.3. Dividends, interest and royalties**

Dividends are now taxable in the hands of the shareholder at 20%. Accordingly, the company distributing dividends is required to withhold taxes at 20%. The shareholder can avail of tax treaty benefits and if available, can claim a lower withholding tax rate.

Foreign companies deriving royalty income from the government or an Indian concern under agreements made before 1 April 1976 are allowed deductions up to 20% of the gross amount of the royalty or fees for technical services other than lump-sum amounts in respect of assets transferred or information imparted outside India (sections 44D and 58 of the ITA. (Income Tax Act. 1961, as amended)).

Where a foreign company derives income from royalties or technical fees under an agreement with the government or an Indian concern made after 1 April 1976, and the agreement provides that the government or Indian concern will pay the tax thereon, the amount of tax paid will not form part of the total income of the foreign company, provided that the agreement is in accordance with the Industrial Policy or is approved by the central government.

Foreign companies are not entitled to any deductions in respect of income from royalties under the general deductions available in the computation of profits and gains of a business (sections 28-44C of the ITA) and income from other sources (section 57 of the ITA), where the income is chargeable under the provisions of section 115A of the ITA (section 115A(3) of the ITA).

Section 44DA provides that a royalty may be computed on a net basis by deducting expenditure incurred wholly and exclusively for the business of a permanent establishment or fixed place of profession if:

- the royalty is received by a non-resident (whether corporate or non-corporate) from the government of India or from an Indian concern pursuant to an agreement made on or after 1 April 2003;
- the non-resident is carrying on business in India through a permanent establishment or performs professional services from a fixed place of profession in India; and
- the right, property or contract in respect of which such royalty is paid is "effectively connected" with such permanent establishment or fixed place of profession.

To qualify for net basis taxation, the non-resident must maintain its books of account in India and they must be audited by a chartered accountant. The audit report must be filed with the tax return.

Any deductions available against total income will not be available against dividend income of a foreign company (section 115A(4) of the ITA).

#### **7.3.3.4. Other income**

Payments for services, use of equipment and after-sales services which are rendered or utilized in India are subject to withholding taxes under section 195 of the ITA. (Income Tax Act. 1961, as amended) if the non-resident beneficiary company is located in a country without a tax treaty with India.

If the beneficiary company is located in a tax treaty country, the treaty (in most cases) characterizes the payment either as a royalty and subjects it to the applicable reduced rate, or as operating income (business income) exempt from Indian tax in the absence of a permanent establishment.

The scope of taxation is given in section 5 (accrual and receipt) and section 9 (deemed accrual and receipt) of the ITA. Section 9 was amended to introduce section 9(1)(viii) to provide for deemed income in the hands of a non-resident person on receiving money by way of gift, unless exempted from tax in accordance with section 56(2)(x) (such as receipt from relative or under will or family trust, etc.).

### **7.3.3.5. Capital gains**

Generally, gains derived by a non-resident from the alienation of assets situated in India are liable to tax in India. All types of capital gains may be taxable in the hands of a non-resident with a permanent establishment in India, including capital gains on shares in resident companies.

For non-resident persons, long-term capital gains arising from the sale of unlisted securities are taxed at 20% if the indexation benefit has been claimed and at 10% if the indexation benefit has not been claimed. The Finance Act 2016 confirms the position that long-term capital gains arising to a non-resident (not being a company) or a foreign company from the transfer of capital assets, being shares of unlisted companies and shares in a company which is not a company in which the public is substantially interested, are chargeable to tax at the rate of 10% without indexation.

The Finance Act 2016 provides for capital gains of a non-resident investor to be exempt from tax in the case of a transfer of rupee-denominated bonds issued by Indian companies outside India to the extent the gains are due to the appreciation of the rupee between the date of issue and the date of redemption of such bonds. The Finance Act 2017 amends this provision to include even the rupee-denominated bonds "held" by the non-resident investors.

There have been precedents in recent years whereby tax authorities have attempted to tax capital gains arising on the transfer of shares of a foreign holding company of an Indian subsidiary, on the basis that such transfer involves an indirect change in the controlling interest of the Indian subsidiary.

### **Vodafone case**

The Supreme Court (SC) on 20 January 2012 delivered a ruling setting aside the controversial ruling of the Bombay High Court in the case of *Vodafone International Holdings B.V.* Vodafone had appealed to the SC challenging the Bombay High Court judgement which held that the Indian tax department had jurisdiction over the transaction. The SC concluded that the offshore sale transaction between Hutchinson Telecommunications International Limited (HTIL) and Vodafone International B.V. for the sale of shares of CGP (Holdings) Limited, a Cayman Islands company, was outside the tax jurisdiction of Indian tax authorities and thus not subject to any withholding tax in India.

The following are the salient features of the SC ruling:

- section 9(1)(i) of the ITA (~~Income Tax Act 1961, as amended~~) is not wide enough to cover indirect transfers of Indian shares. If an indirect transfer of a capital asset is read into section 9(1)(i) by adopting a “look through” approach, the words “capital asset situated in India” would be rendered redundant. Thus:
  - the words “directly” or “indirectly” as appearing in section 9 of the ITA must be read together with “income” and not with the phrase “transfer of a capital asset”;
  - section 9(1)(i) cannot be expanded by a process of interpretation to cover indirect transfers of capital assets/property situated in India, which is not expressly or implicitly provided in the section;
  - section 9, therefore, covers only income arising from a transfer of a capital asset situated in India and it does not purport to cover income arising from the indirect transfer of a capital asset in India; and
  - in the absence of a “look-through” provision in section 9, and considering the fact that the offshore transaction was a bona fide structured foreign investment into India, the same was outside India’s territorial tax jurisdiction and hence not taxable in India;
- the structure of the Vodafone transaction was a genuine holding company structure which had been in existence for a long period and was not a device for tax avoidance. The SC held that in order to find out whether a given transaction evidences a pre-ordained transaction or investment to participate, one must take into account various factors such as:
  - the duration of time for which the holding structure existed;
  - the period of business operations in India;
  - generation of taxable revenues in India during the period of business operations in India;
  - the timing of exit; and
  - the continuity of business on such exit, etc.;
- the SC held that one of the tests to examine the genuineness of a structure is the “timing test”, i.e. the timing of incorporation of the entities in the structure from where the ultimate exit takes place. Structures created for genuine business reasons are those which are generally created or acquired at the time when the investment was made, or when further investments are being made, or at the time of restructuring or consolidation, etc.;
- the SC held that “controlling interest” in a company is not a separate, identifiable or distinct capital asset independent of the holding of shares. A “controlling interest” is an incidence of ownership of shares, i.e. which flows out of the holding of shares. Thus, “controlling interest” is not a separate asset in itself which attracts tax in India;
- the SC rejected the contention of the tax authorities that the *Azadi Bachao Andolan* decision (263 ITR (~~Income Tax Reports (India)~~), 706) on the India-Mauritius tax treaty (1982) in relation to tax planning versus tax evasion needs reconsideration. The SC reiterated that a taxpayer is well within

his right to carry out genuine tax planning to minimize his tax cost. Bona fide tax planning is a right of the taxpayer, although in deserving cases it is open to the tax authorities to investigate and to look at the real nature of the transactions for tax purposes;

- the SC emphasized the need for “clarity” and “certainty” in tax matters and tax policy for taxpayers and international investors, noting that certainty and stability form the basic foundation of any fiscal system;
- the third SC judge also made a noteworthy observation concerning the non-applicability of withholding tax provisions in India when both the parties are non-residents; and
- the SC observed that the introduction of a “limitation of benefits” article in a tax treaty, or an express provision to levy tax on an indirect transfer of shares of an Indian company in the ITA, are policy matters to be decided by the government and cannot be introduced by a process of judicial interpretation.

### **Taxation of capital gains arising on the transfer of shares of an offshore company**

In order to counter the principles laid down by the SC decision in *Vodafone*, several amendments were made in the ITA vide the Finance Act 2012 as a result of which any transfer of shares or interest in an offshore company, where such shares or interest derive its value (directly or indirectly) substantially from Indian assets, would be brought under the Indian tax net.

It was clarified in the ITA that, with retrospective effect from 1 April 1962, “an asset or 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 assets located in India”. Further, the term “property” was amended with retrospective effect from 1 April 1962 to include “any rights in an Indian company including rights of management or control or any rights whatsoever”.

The term “transfer” was also amended with retrospective effect from 1 April 1962 to include disposing of or parting with an asset or any interest, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside) notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

Various apprehensions were expressed about the applicability of the explanation to transactions not resulting, directly or indirectly, in any transfer of assets situated in India. It was also pointed out that such an extended application of the provisions of the explanation may result in the taxation of dividend income declared by a foreign company outside India. This could cause unintended double taxation and would be contrary to the generally accepted principles of the source rule as well as the object and purpose of the amendment by the Finance Act 2012.

The government formed an Expert Committee on General Anti-Avoidance Rules on 13 July 2012 to undertake stakeholders consultations and finalize the general anti-avoidance rules guidelines as well as provide a roadmap for implementation, and subsequently for considering the retrospective amendment in relation to indirect transfers. The Expert Committee submitted its final report on 9 October 2012, which

was available for public discussion until 19 October 2012. The Finance Act 2015 contains various amendments to the indirect transfer provisions in the ITA in line with the recommendations made by the Expert Committee. The revised indirect transfer provisions in the ITA contain the following amendments:

- the definition of "substantial value": the share or interest of a foreign company or entity will be deemed to derive its value "substantially" from assets (whether tangible or intangible) located in India if, on the specified date, the value of the Indian assets:
  - exceeds the amount of INR 100 million; and
  - represents at least 50% of the value of all the assets owned by the company or entity;
- the value of an asset will mean the fair market value (FMV. (Fair market value.)) of such asset without reduction of liabilities, if any, in respect of the asset;
- the specified date for valuation will be the last day of the accounting period of the foreign company immediately preceding the date of transfer (cut-off date). However, if the book value of the assets of the foreign company on the date of transfer exceeds the book value of the assets on the cut-off date by 15% or more, the cut-off date will be the date of transfer itself;
- the manner of determination of FMV: the manner of determination of the FMV of the Indian assets vis-à-vis the global assets of the foreign company is specified in section [1.3.6.](#);
- gains to be taxed on a proportionate basis: the taxation of gains arising on a transfer of a share or interest deriving, directly or indirectly, its value substantially from assets located in India will be on a proportional basis. The method for determination of proportionality is specified in section [1.3.6.](#);
- income will not accrue or arise to a non-resident in the case of a transfer of any share or interest in a foreign entity which directly owns the assets situated in India (i.e. a direct holding company), if the non-resident along with its related parties at any time during the 12 months preceding the date of transfer:
  - does not hold the right of control or management; and
  - holds less than or equal to 5% of the voting power and share capital in the foreign direct holding company;
- income will not accrue or arise to a non-resident in the case of a transfer of any share or interest in a foreign entity which indirectly owns the assets situated in India (indirect holding company), if the non-resident along with its related parties at any time during the 12 months preceding the date of transfer:
  - does not hold the right of management or control in relation to the indirect holding company; and
  - does not hold any rights in the indirect holding company which would entitle it to either exercise control or management of the direct holding company or entitle it to voting power exceeding 5% in the direct holding company;
- additionally, the following transfers of a capital asset (subject to certain conditions) will not be regarded as a transfer for the purpose of charging capital gains tax:

- in a scheme of amalgamation, the transfer of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company; and
- in a scheme of demerger, the transfer of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the shares of an Indian company, held by the demerged foreign company to the resulting foreign company;
- there will be a reporting obligation on the Indian entity through or in which the Indian assets are held by the foreign company or the entity. The Indian entity will be obligated to furnish information relating to the offshore transaction which has the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity. In the case of any failure on the part of the Indian entity in this regard, the penalty will be leviable:
  - a sum equal to 2% of the value of the transaction in respect of which such failure has taken place where such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; or
  - a sum of INR 0.5 million in any other case.

These amendments will take effect from 1 April 2016 and will, accordingly, apply in relation to the assessment year 2016/17 (i.e. financial year 2015/16) and subsequent assessment years.

Pursuant to the amendments made by the Finance Act 2012, a number of representations were received by the CBDT (Central Board of Direct Taxes) stating that the purpose of the introduction of explanation 5 to section 9(1)(i) of the ITA was to clarify the legislative intent regarding the taxation of income accruing or arising through a transfer of a capital asset situated in India.

Circ. 4 of 26 March 2015 issued by the CBDT clarifies that explanation 5 to section 9(1)(i) of the ITA would be applicable in relation to deeming any income arising outside India from any transaction in respect of any share or interest in a foreign company or entity which has the effect of transferring, directly or indirectly, the underlying assets located in India as income accruing or arising in India.

The declaration of dividends by such a foreign company outside India does not have the effect of transferring any underlying assets located in India. Thus, dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would not be deemed to be income accruing or arising in India by virtue of the provisions of explanation 5 to section 9(1)(i) of the ITA.

The Finance Act 2017 exempts Category I and II foreign portfolio investors (e.g. foreign central banks, sovereign wealth funds and government agencies, and pension funds) from the indirect transfer provisions.

~~Circ. (CBDT Circular (e.g. Circ./681/94 means CBDT Circular 681 issued in 1994). Circulars issued by other bodies are identified with the issuer: e.g. RBI Circ.)~~ 28/2017 of 7 November 2017 clarifies that the indirect transfer provisions will not apply in respect of income accruing or arising to a non-resident on account of a redemption or buyback of its share or interest held indirectly (i.e. through upstream entities registered or incorporated outside India) in multi-tiered investment structures such as investment funds, venture capital companies or venture capital funds, if such income accrues or arises from, or in

consequence of, a transfer of shares or securities held in India by the specified funds and such income is chargeable to tax in India. This eliminates the potential multiple taxation of the same income that would otherwise have resulted from the application of the indirect transfer provisions. However, the above benefit is applicable only where the proceeds of the redemption or buyback arising to the non-resident do not exceed the pro-rata share of the non-resident in the total consideration realized by the specified funds from the said transfer of shares or securities in India.

### **7.3.4. Withholding taxes**

It was clarified vide the Finance Act 2012 that the obligation to withhold tax from payments to a non-resident is applicable to all persons including a non-resident, irrespective of whether the non-resident payer has a residence, business connection or other presence in India.

#### **7.3.4.1. Dividends**

Dividends are subject to tax in the hands of a non-resident shareholder at 20%. Accordingly, the company distributing dividends is required to withhold taxes at 20%.

Therefore, the domestic company is required to deduct tax at “rates in force” on dividend payment which, as per the definition, is the rate specified in the annual Finance Act or in the tax treaty, whichever is more beneficial. CBDT Not. 54/2020, dated 24 July 2020, amends Rule 37BC to provide dividend payment in the list of payments prescribed for which higher deduction of tax at 20% will not apply in the absence of a PAN (Permanent account number) on the furnishing of a tax residency certificate (TRC) and other specified information.

#### **7.3.4.2. Interest**

Payment of interest to a non-resident on amounts borrowed in foreign currency attracts tax withholding at 20% (effective rate of 21.01% where surcharge is 2%, or 21.63% where surcharge is 5%) (section 195 of the ITA (Income Tax Act 1961, as amended)). However, reduced rates may apply under a tax treaty.

With effect from 1 October 2014, any interest paid by an Indian company or a business trust (see section 11.6.1.7.) to a non-resident in respect of borrowings made in foreign currency from sources outside India,

- under a loan agreement at any time on or after 1 July 2012, but before 1 July 2017; or
- by way of issue of long-term infrastructure bonds at any time on or after 1 July 2012 but before 1 October 2014 or by way of issue of any long-term bonds including long-term infrastructure bonds at any time on or after 1 October 2014 but before 1 July 2020 (extended from 1 July 2017),

is taxable at the rate of 5% (plus applicable surcharge and cess), subject to specified conditions (section 194LC of the ITA).

The Finance Act 2013 with effect from 1 June 2013 extended the concessional rate of withholding tax on interest payments to foreign institutional investors (FIIs) and qualified foreign investors (QFIs) on investments in government securities and rupee-denominated government corporate bonds (section 194LD of the ITA). The income by way of interest should be the interest payable on or after 1 June 2013 but before 1 July 2020. On 29 September 2015, the Reserve Bank of India issued Circ. (CBDT Circular (e.g. Circ./681/94 means CBDT Circular 681 issued in 1994). Circulars issued by other bodies are

identified with the issuer: e.g. RBI Circ.) 17 allowing Indian companies to issue rupee-denominated bonds outside India. The concessional withholding tax rate of 5% also applies on interest payments on such rupee-denominated bonds issued outside India.

The Finance Act 2017 extended the concessional withholding tax rate to rupee-denominated bonds. The Finance Act 2019 provides that any interest from subscription to rupee-denominated bonds issued outside India by Indian companies and issued during the period of 17 September 2018 to 31 March 2019 would be exempt from tax (previously, a 5% withholding tax applied). Finance Act 2020 includes interest on municipal debt securities issued after 1 April 2020 but before 30 June 2023.

~~IFSC (International financial services centre)~~ banking units are exempted from withholding tax on payments of interest to non-residents or persons who are not ordinary residents in India, in respect of borrowings or deposits made on or after 1 April 2005 (Circ. 26/2016).

The ~~CBDT (Central Board of Direct Taxes)~~ issued Circ. 7 of 2012 on 21 September 2012, in relation to foreign borrowings by Indian companies. Previously, the approval of the central government was required in respect of the borrowings and the rate of interest to be paid on such borrowings. With the issuance of this circular, the central government provides automatic approval (i.e. no specific approval is required) for all borrowings that satisfy the following conditions:

- in respect of borrowings under a loan agreement:
  - the loan should take place on or after 1 July 2012;
  - the loan should be in compliance with the External Commercial Borrowings (ECB) Regulations issued by the ~~RBI (Reserve Bank of India)~~ and should be for the entire term of the loan agreement;
  - the loan agreement should not be a restructuring of an existing agreement to avail of the benefit of a lower withholding tax rate; and
  - the borrowing Indian company should have obtained a Loan Registration Number (LRN) issued by the RBI;
- in respect of the issue of long-term infrastructure bonds:
  - it should be authorized under ECB regulations;
  - it should have an original maturity term of 3 years or more;
  - the end use of the proceeds of such bond issue should be for the infrastructure sector as defined under the ECB regulations; and
  - the issuing Indian company should have an LRN issued by the RBI.

Further, the central government provides automatic approval for interest rates which are within all-in-cost ceilings specified under the ECB regulations. In respect of borrowings that do not satisfy the above conditions, approval for the benefit of section 194LC of the ITA would be provided by the central government on a case-by-case basis.

In order to avoid the compliance burden on the borrower/issuer of bonds, the CBDT, with the approval of the central government, via Circ. 15/2014 (F.No.133/50/2014-TPL) of 17 October 2014, has provided for automatic approval of the central government in respect of the issue of long-term bonds including long-term infrastructure bonds by Indian companies or business trusts which satisfy the following conditions:

- the bond issue occurs on or after 1 October 2014 but before 1 July 2017;
- the bond issue by the Indian company should comply with the ECB regulations;
- the bond issue should have a loan registration number issued by the RBI; and
- "long-term" means that the bond to be issued should have an original maturity term of 3 years or more.

The circular also clarifies that consequent to the amendment to section 194LC of the ITA, the approval of the central government contained in Circ. 7/2012 of 21 September 2012, insofar as it applies to borrowings by way of a loan agreement, is valid for borrowings made on or before 30 June 2017 instead of 30 June 2015.

Finance Act 2020 has introduced a new sub-section 194LC(2) to include interest on monies borrowed by an Indian company from a source outside India by way of the issue of a long-term bond or rupee-denominated bond on or after 1 April 2020 but before 1 July 2023. The bond must be listed only on a recognized stock exchange located in any IFSC. In this case, the rate of withholding tax would be 4% (as against 5% in other cases).

#### **7.3.4.3. Royalties**

Payment of royalties to a non-resident attracts tax withholding at the rates prescribed under the ITA (Income Tax Act 1961, as amended) (section 195 of the ITA), i.e. at the rate of 10% (effective rate of 10.2% where surcharge is 2% or 10.5% where surcharge is 5%). However, reduced rates may apply under a tax treaty.

#### **7.3.4.4. Other income**

Generally, payments for services, use of equipment and after-sales services which are rendered or utilized in India are subject to withholding taxes under section 195 of the ITA (Income Tax Act 1961, as amended) if the non-resident beneficiary company is located in a country without a tax treaty with India. Such payments are generally categorized as fees for technical services or royalties subject to a tax withholding of 10% (effective rate of 10.2% where surcharge is 2% or 10.5% where surcharge is 5%).

If the beneficiary company is located in a tax treaty country, the treaty in most cases characterizes the payment either as a royalty and subjects it to the applicable reduced rate, or as operating income (business income) exempt from Indian tax in the absence of a permanent establishment.

#### **7.3.4.5. Withholding procedure**

Every person responsible for paying any income to a non-resident taxable under the ITA (Income Tax Act 1961, as amended) must withhold tax at source at the rates prescribed under section 195 of the ITA. The requirements of providing a tax withholding certificate and payment of tax withheld are similar to those

applicable to payments to residents (see section 1.11.4.2.).

The CBDT (Central Board of Direct Taxes), vide Instruction 2/2014, states that in cases where the taxpayer fails to deduct tax at source on payments made to non-residents under the ITA, the AO (Assessing Officer) will determine the appropriate proportion of the sum chargeable to tax and ascertain the tax liability on which the deductor will be deemed to be a "taxpayer in default". The appropriate portion of the sum will depend on the facts and circumstances of each case, taking into account the nature of remittances, income components therein or any other facts relevant in determining such appropriate proportion.

The rates applicable to deduction of tax on payments to non-residents who are eligible for benefits under an applicable Indian income tax treaty are the rates specified in the treaty or the domestic rate, whichever is more favourable to the taxpayer (Circ. (CBDT Circular (e.g. Circ./681/94 means CBDT Circular 681, issued in 1994). Circulars issued by other bodies are identified with the issuer: e.g. RBI Circ.) 728/1995). The ITA requires the taxpayer to furnish a tax residency certificate in order for him to avail of the beneficial provisions of the tax treaty (see section 7.4.1.2.).

Furthermore, under section 206AA, the ITA requires the recipient of income to furnish a PAN (Permanent account number) (see section 1.11.1.6.) to the payer; otherwise, the payer is obliged to deduct taxes at the highest of the following:

- the tax rate prescribed in the ITA;
- the tax rate provided in the tax treaty; or
- 20%.

The provision does not apply in respect of payments of interest on long-term bonds to a non-resident by an Indian company or a business trust.

The CBDT notified Rule 37BC vide Not. (Notification (usually issued by the CBDT, RBI, SEBI, etc. as one of a series, e.g. as (CBDT)SO/..... (RBI)AD/MA/.....)) 53/2016 of 24 June 2016, which provides that withholding tax at the higher rate will not apply in the case of a non-resident (not being a company) or a foreign company that does not have a PAN, in respect of payments to the non-resident in the nature of interest, royalty, fees for technical services and payments on transfer of any capital assets, provided the non-resident furnishes the prescribed details and documents to the payer (such as a tax residency certificate and tax identification number or unique identification number issued by the government in the country of residence). Accordingly, a non-resident company is not required to obtain a PAN to avail of the reduced withholding tax rate under the ITA or applicable tax treaty.

Rule 37BC is amended to provide dividend payment in the list of payments prescribed for which higher deduction of tax at 20% will not apply in the absence of a PAN on the furnishing of a TRC and other specified information.

Section 195 of the ITA requires that the person responsible for making payments to a non-resident (not being a company) or to a foreign company provides specified information in respect of the payments in the prescribed forms, whether or not the payments are chargeable to tax.

However, certain payments are exempt from this requirement. The CBDT issued Not. 93/2015 of 16 December 2015 amending the rules regarding the furnishing of information for payments made to non-residents. Part D of Form 15CA lists details of specified transactions the payments for which are not

subject to withholding tax under the ITA (remittance free from withholding tax), and for which no information is required to be furnished. Through the notification, the CBDT increased the list from 28 transactions to 33 transactions by adding the following:

- advance payments against imports;
- payments towards imports – settlement of invoices;
- intermediary trades;
- imports below INR 500,000; and
- payments for imports by diplomatic missions.

### **7.3.5. Branch tax**

Indian branches of non-resident companies are subject to corporate income tax at the rate of 40% on Indian-source income earned by or attributed to them.

There is no branch tax in addition to the normal corporate income tax.

### **7.3.6. Other taxes on income**

There are no other taxes on income.

### **7.3.7. Taxes on capital**

There is no capital tax. However, India levies a net wealth tax on the specified property of a non-resident (see section 5.).

### **7.3.8. Closure of branch/permanent establishment**

The closure of the only Indian branch of a non-resident company generally results in the cessation of Indian trading activity, as a result of which the company ceases to be subject to corporation tax.

A non-resident trading in India through a branch or agency is taxable on the profit derived on the sale of assets of such branch or agency on closure.

### **7.3.9. Administration**

Non-resident companies that are subject to corporation tax self-assess their liability under the self-assessment system (see section 1.11.2.). The AAR (Authority on Advance Rulings) in the case of *Dow AgroSciences Agricultural Products Ltd* (AAR No. 1123/2011) dated 11 January 2016 held that if there is no tax liability in India, there is no requirement to file a return of income, irrespective of the fact that the non-taxability is by virtue of tax treaty benefits. A similar judgement was made by the AAR in *FactSet Research Systems Inc.* (317 ITR (Income Tax Reports (India)), 169) and *Vanenburg Group B.V.* (AAR No.727/2006).

## 7.4. Tax treaties and other agreements

### 7.4.1. Tax treaties

#### 7.4.1.1. Treaty policy

Being a capital importing country, India generally follows the approach of the UN Model, especially with regard to developed countries. See section 7.4.1.6.1. for the policy regarding limitation on benefits articles and section 7.4.1.6.2. for the policy on tax sparing credits.

#### 7.4.1.2. Treaty relief from double taxation

Section 90 of the ITA (Income Tax Act 1961, as amended) empowers the government to enter into an agreement with the government of any country outside India in order to grant double taxation relief in respect of income, to avoid the double taxation of income, to provide for the exchange of information in order to prevent or investigate evasion or avoidance with regard to income tax, or to provide for the recovery of income tax, even in those cases where property is not located in India but the non-resident defaulter has become resident in India. Similarly, it provides for recovery mechanism for taxes levied in India in respect of non-residents. India has concluded a number of comprehensive income treaties for the avoidance of double taxation, as well as some limited agreements concerning income from shipping and air transport (see section 7.4.3.). Where the provisions of the ITA are more favourable to a taxpayer than the provisions under a tax treaty, the provisions of the ITA will apply (section 90(2) of the ITA). The Finance Act 2013 inserted subsection 2A in section 90 which states that the general anti-avoidance provisions will still apply to the taxpayer even if such provisions are not beneficial. This is with effect from 1 April 2016.

The Finance Act 2015 with effect from 1 June 2015 amended section 295 of the ITA, empowering the ~~CBDT (Central Board of Direct Taxes)~~ to make rules to provide the procedure for granting relief or deduction, as the case may be, of any income tax paid in any country or specified territory outside India, under section 90 or under section 90A, or under section 91 (unilateral relief, see section 7.2.6.), against the income tax payable under the ITA. Under the Finance Act 2020, section 90(1)(b) and section 90A(1)(b) are amended to incorporate the language of the Preamble of the ~~MLI (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting)~~, as follows: “without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country or territory)”.

A tax relief will be granted under a treaty to a non-resident only upon the production of a tax residency certificate (TRC). Further, the non-resident may be required to furnish such other information or documents as may be prescribed in the TRC. The CBDT issued ~~Not. (Notification (usually issued by the CBDT, RBI, SEBI, etc. as one of a series, e.g. as (CBDT)SO/..., (RBI)AD/MA/...))~~ 39/2012 on 17 September 2012, introducing a rule in the Income Tax Rules 1962 in relation to a TRC, which prescribes the manner in which a non-resident can present a TRC in order to claim relief under an applicable tax treaty. The TRC obtained by a non-resident from its resident country should contain the information prescribed in the rule, and apart from the general information, the rule requires the TRC to also mention the residential status of the taxpayer for the purposes of tax, the period for which the TRC is applicable and the address of the

taxpayer for that period. The rule also prescribes a format for Indian residents to make an application to the tax authorities for the purpose of obtaining a TRC and a format in which the TRC can be issued by the tax authorities.

The CBDT vide Not. 57/2013 of 1 August 2013 amended the above rule, whereby a non-resident taxpayer must provide the following information in Form 10F together with the TRC in order to claim the benefits under a tax treaty:

- status;
- country or specified territory of incorporation or registration;
- tax identification number in the country or specified territory of residence or, if there is no such number, a unique number on the basis of which the taxpayer is identified by the government of the country or the specified territory of which the taxpayer claims to be a resident;
- the period for which the residential status as mentioned in the TRC is applicable; and
- address of the taxpayer in the country or specified territory outside India during the period for which the TRC is applicable.

The taxpayer is not required to provide the above information if it is already contained in the TRC. The taxpayer is required to maintain such documents as are necessary to substantiate the information provided in Form 10F, which may be required by the tax authorities for validating any treaty benefit claim made by the taxpayer.

#### 7.4.1.3. Tax treaties in force

Country	Scope	Date of signature	Date of entry into force	Effective date
Albania	Income and Capital	8 July 2013	n/a	1 Jan. 2014 (AL) 1 Apr. 2014 (IN)
Multilateral Instrument	Income and Capital	7 June 2017	1 Jan. 2021	n/a
Armenia	Income	31 Oct. 2003	n/a	1 Jan. 2005 (AM) 1 Apr. 2005 (IN)
Protocol	Income	27 Jan. 2016	14 June 2017	14 June 2017
Australia	Income	25 July 1991	n/a	1 Apr. 1992 (IN) 1 July 1992 (AU)
Multilateral Instrument	Income	7 June 2017	1 Jan. 2019	n/a

Country	Scope	Date of signature	Date of entry into force	Effective date
Protocol	Income	16 Dec. 2011	2 Apr. 2013	2 Apr. 2013 1 July 2013 (AU) 18 July 2013 1 Apr. 2014 (IN)
MLI Synthesized Text	Income	25 July 1991	30 Dec. 1991	1 Apr. 1992 (IN) 1 July 1992 (AU)
Austria	Income	8 Nov. 1999	n/a	1 Jan. 2002 (AT) 1 Apr. 2002 (IN)
Multilateral Instrument	Income	7 June 2017	1 July 2018	n/a
Protocol	Income	6 Feb. 2017	1 May 2020	1 Jan. 2021
MLI Synthesized Text	Income	8 Nov. 1999	5 Sep. 2001	1 Jan. 2002 (AT) 1 Apr. 2002 (IN)
Azerbaijan	Income	20 Nov. 1988	n/a	1 Jan. 1990 (U3) 1 Apr. 1990 (IN)
Bangladesh	Income and Mutual Assistance	13 Nov. 2005	n/a	1 Apr. 2011 1 Apr. 2011 1 July 2011 1 July 2011 1 July 2011 16 July 2011 1 Jan. 2012
Bangladesh	Income	27 Aug. 1991	n/a	1 Apr. 1993 (IN) 1 July 1993 (BD)
Protocol	Income	16 Feb. 2013	13 June 2013	13 June 2013
Belarus	Income and Capital	27 Sep. 1997	n/a	1 Apr. 1999 (IN) 1 Jan. 1999 (BY)
Protocol	Income and Capital	3 June 2015	19 Nov. 2015	19 Nov. 2015
Belgium	Income	26 Apr. 1993	n/a	1 Jan. 1998 (BE) 1 Apr. 1998 (IN)
Multilateral Instrument	Income	7 June 2017	1 Oct. 2019	n/a

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
<a href="#">MLI Synthesized Text</a>	Income	26 Apr. 1993	1 Oct. 1997	1 Jan. 1998 (BE) 1 Apr. 1998 (IN)
<a href="#">Bhutan</a>	Income	4 Mar. 2013	n/a	1 Jan. 2015 (BT) 1 Apr. 2015 (IN)
<a href="#">Bhutan</a>	Income and Mutual Assistance	13 Nov. 2005	n/a	1 Apr. 2011 1 Apr. 2011 1 July 2011 1 July 2011 1 July 2011 16 July 2011 1 Jan. 2012
<a href="#">Botswana</a>	Income	8 Dec. 2006	n/a	1 Apr. 2008 (IN) 1 July 2009 (BW)
<a href="#">Brazil</a>	Income	26 Apr. 1988	n/a	1 Apr. 1993 (IN) 1 Jan. 1993 (BR)
<a href="#">Protocol</a>	Income	15 Oct. 2013	6 Aug. 2017	6 Aug. 2017
<a href="#">Bulgaria</a>	Income and Capital	26 May 1994	n/a	1 Jan. 1996 (BG) 1 Apr. 1996 (IN)
<a href="#">Canada</a>	Income and Capital	11 Jan. 1996	n/a	1 Jan. 1998 (CA) 1 Apr. 1998 (IN)
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017	1 Dec. 2019	n/a
<a href="#">MLI Synthesized Text</a>	Income and Capital	11 Jan. 1996	6 May 1997	1 Jan. 1998 (CA) 1 Apr. 1998 (IN)
<a href="#">China (People's Rep.)</a>	Income	18 July 1994	n/a	1 Jan. 1995 (CN) 1 Apr. 1995 (IN)
<a href="#">Protocol</a>	Income	26 Nov. 2018	5 June 2019	1 Jan. 2020 (CN) 1 Apr. 2020 (IN)
<a href="#">Chinese Taipei</a>	Income	12 July 2011	n/a	1 Jan. 2012 (TW) 1 Apr. 2012 (IN)

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
Colombia	Income	13 May 2011	n/a	7 July 2014 1 Jan. 2015 (CO) 1 Apr. 2015 (IN)
Croatia	Income	12 Feb. 2014	n/a	1 Jan. 2016 (HR) 1 Apr. 2016 (IN)
Multilateral Instrument	Income	7 June 2017	1 June 2021	n/a
Cyprus	Income	18 Nov. 2016	n/a	1 Jan. 2017 (CY) 1 Apr. 2017 (IN)
Multilateral Instrument	Income	7 June 2017	1 May 2020	n/a
MLI Synthesized Text	Income	18 Nov. 2016	14 Dec. 2016	1 Jan. 2017 (CY) 1 Apr. 2017 (IN)
Czech Republic	Income and Capital	1 Oct. 1998	n/a	1 Jan. 2000 (CZ) 1 Apr. 2000 (IN)
Multilateral Instrument	Income and Capital	7 June 2017	1 Sep. 2020	n/a
MLI Synthesized Text	Income and Capital	1 Oct. 1998	27 Sep. 1999	1 Jan. 2000 (CZ) 1 Apr. 2000 (IN)
Denmark	Income and Capital	8 Mar. 1989	n/a	1 Jan. 1990
Multilateral Instrument	Income and Capital	7 June 2017	1 Jan. 2020	n/a
Protocol	Income and Capital	10 Oct. 2013	1 Feb. 2015	1 Feb. 2015
Egypt	Income	20 Feb. 1969	n/a	30 Sep. 1969 (EG) 1 Jan. 1969 (IN)
Multilateral Instrument	Income	7 June 2017	1 Jan. 2021	n/a
MLI Synthesized Text	Income	20 Feb. 1969	30 Sep. 1969	30 Sep. 1969 (EG) 1 Jan. 1969 (IN)

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
Estonia	Income	19 Sep. 2011	n/a	1 Jan. 2013 (EE) 1 Apr. 2013 (IN)
Multilateral Instrument	Income	7 June 2017	1 May 2021	n/a
Ethiopia	Income	25 May 2011	n/a	1 Apr. 2013 (IN) 8 July 2013 (ET)
Faroe Islands	Income and Capital	8 Mar. 1989	n/a	1 Jan. 1990
Fiji	Income	30 Jan. 2014	n/a	1 Jan. 2015 (FJ) 1 Apr. 2015 (IN)
Finland	Income	15 Jan. 2010	n/a	1 Jan. 2011 (FI) 1 Apr. 2011 (IN)
Multilateral Instrument	Income	7 June 2017	1 June 2019	n/a
MLI Synthesized Text	Income	15 Jan. 2010	19 Apr. 2010	1 Jan. 2011 (FI) 1 Apr. 2011 (IN)
France	Income and Capital	29 Sep. 1992	n/a	1 Jan. 1995 (FR) 1 Apr. 1995 (IN)
Multilateral Instrument	Income and Capital	7 June 2017	1 Jan. 2019	n/a
MLI Synthesized Text	Income and Capital	29 Sep. 1992	1 Aug. 1994	1 Jan. 1995 (FR) 1 Apr. 1995 (IN)
Georgia	Income and Capital	24 Aug. 2011	n/a	1 Jan. 2012 (GE) 1 Apr. 2012 (IN)
Multilateral Instrument	Income and Capital	7 June 2017	1 July 2019	n/a
MLI Synthesized Text	Income and Capital	24 Aug. 2011	8 Dec. 2011	1 Jan. 2012 (GE) 1 Apr. 2012 (IN)
Germany	Income and Capital	19 June 1995	n/a	1 Jan. 1997 (DE) 1 Apr. 1997 (IN)

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
Greece	Income	11 Feb. 1965	n/a	1 Jan. 1964 (GR) 1 Apr. 1964 (IN)
Multilateral Instrument	Income	7 June 2017	1 July 2021	n/a
Hong Kong				
	Income	19 Mar. 2018	30 Nov. 2018	1 Apr. 2019
Hungary	Income	3 Nov. 2003	n/a	1 Jan. 2006 (HU) 1 Apr. 2006 (IN)
Multilateral Instrument	Income	7 June 2017	1 July 2021	n/a
Iceland	Income	23 Nov. 2007	n/a	1 Jan. 2008 (IS) 1 Apr. 2008 (IN)
Multilateral Instrument	Income	7 June 2017	1 Jan. 2020	n/a
Indonesia	Income	27 July 2012	n/a	1 Jan. 2017 (ID) 1 Apr. 2017 (IN)
Multilateral Instrument	Income	7 June 2017	1 Oct. 2019	n/a
MLI Synthesized Text	Income	27 July 2012	5 Feb. 2016	1 Jan. 2017 (ID) 1 Apr. 2017 (IN)
Iran	Income	17 Feb. 2018	n/a	21 Mar. 2021 (IR) 1 Apr. 2021 (IN)
Ireland	Income	6 Nov. 2000	n/a	1 Jan. 2002 (IE) 1 Apr. 2002 (IN)
Multilateral Instrument	Income	7 June 2017	1 Oct. 2019	n/a
MLI Synthesized Text	Income	6 Nov. 2000	26 Dec. 2001	1 Jan. 2002 (IE) 1 Apr. 2002 (IN)

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
<a href="#">Israel</a>	Income and Capital	29 Jan. 1996	n/a	1 Apr. 1994 (IN) 1 Jan. 1994 (IL) 1 June 1996
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017	1 Oct. 2019	n/a
<a href="#">Protocol</a>	Income and Capital	14 Oct. 2015	19 Dec. 2016	19 Dec. 2016 (IN IL) 1 Jan. 2017 (IL) 1 Apr. 2017 (IN)
<a href="#">Italy</a>	Income	19 Feb. 1993	n/a	1 Jan. 1996 (IT) 1 Apr. 1996 (IN)
<a href="#">Japan</a>	Income	7 Mar. 1989	n/a	1 Jan. 1990 (JP) 1 Apr. 1990 (IN)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">Protocol</a>	Income	11 Dec. 2015	29 Oct. 2016	1 Jan. 2017 1 Apr. 2017
<a href="#">Protocol</a>	Income	24 Feb. 2006	28 June 2006	1 July 2006 (JP) 1 Jan. 2007 (JP) 1 Apr. 2007 (IN)
<a href="#">MLI Synthesized Text</a>	Income	7 Mar. 1989	29 Dec. 1989	1 Jan. 1990 (JP) 1 Apr. 1990 (IN)
<a href="#">Jordan</a>	Income	20 Apr. 1999	n/a	1 Apr. 2000 (IN) 1 Jan. 2000 (JO)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">Kazakhstan</a>	Income and Capital	9 Dec. 1996	n/a	1 Jan. 1998 (KZ) 1 Apr. 1998 (IN)
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017	1 Oct. 2019	n/a
<a href="#">Protocol</a>	Income and Capital	6 Jan. 2017	12 Mar. 2018	1 Jan. 2019 (KZ) 1 Apr. 2019 (IN)

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
Kenya	Income	11 July 2016	n/a	1 Jan. 2017 (KE) 1 Jan. 2018 (KE) 1 Apr. 2018 (IN)
Korea (Rep.)	Income	18 May 2015	n/a	1 Jan. 2017 (KR) 1 Apr. 2017 (IN)
Multilateral Instrument	Income	7 June 2017	1 Oct. 2019	n/a
Kuwait	Income	15 June 2006	n/a	1 Apr. 2008
Protocol	Income	15 Jan. 2017	26 Mar. 2018	26 Mar. 2018
Kyrgyzstan	Income	13 Apr. 1999	n/a	1 Apr. 2002 (IN) 1 Jan. 2002 (KG)
Latvia	Income	18 Sep. 2013	n/a	1 Jan. 2014 (LV) 1 Apr. 2014 (IN)
Multilateral Instrument	Income	7 June 2017	1 Oct. 2019	n/a
MLI Synthesized Text	Income	18 Sep. 2013	28 Dec. 2013	1 Jan. 2014 (LV) 1 Apr. 2014 (IN)
Libya	Income	2 Mar. 1981	n/a	1 Jan. 1983 (LY)
Lithuania	Income and Capital	26 July 2011	n/a	1 Jan. 2013 (LT) 1 Apr. 2013 (IN)
Multilateral Instrument	Income and Capital	7 June 2017	1 Oct. 2019	n/a
MLI Synthesized Text	Income and Capital	26 July 2011	10 July 2012	1 Jan. 2013 (LT) 1 Apr. 2013 (IN)
Luxembourg	Income and Capital	2 June 2008	n/a	1 Jan. 2010 (LU) 1 Apr. 2010 (IN)
Multilateral Instrument	Income and Capital	7 June 2017	1 Oct. 2019	n/a

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
<a href="#">MLI Synthesized Text</a>	Income and Capital	2 June 2008	9 July 2009	1 Jan. 2010 (LU) 1 Apr. 2010 (IN)
<a href="#">Malaysia</a>	Income	9 May 2012	n/a	1 Jan. 2013 (MY) 1 Apr. 2013 (IN)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 June 2021	n/a
<a href="#">Maldives</a>	Income and Mutual Assistance	13 Nov. 2005	n/a	1 Apr. 2011 1 Apr. 2011 1 July 2011 1 July 2011 1 July 2011 16 July 2011 1 Jan. 2012
<a href="#">Malta</a>	Income	8 Apr. 2013	n/a	1 Jan. 2015 (MT) 1 Apr. 2015 (IN)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">MLI Synthesized Text</a>	Income	8 Apr. 2013	7 Feb. 2014	1 Jan. 2015 (MT) 1 Apr. 2015 (IN)
<a href="#">Mauritius</a>	Income	24 Aug. 1982	n/a	1 Apr. 1983 (IN) 1 July 1983 (MU)
<a href="#">Protocol</a>	Income	10 May 2016	19 July 2016	1 Apr. 2017 (IN) 1 July 2017 (MU)
<a href="#">Mexico</a>	Income	10 Sep. 2007	n/a	1 Jan. 2011 (MX) 1 Apr. 2011 (IN)
<a href="#">Moldova</a>	Income	20 Nov. 1988	n/a	1 Jan. 1990 (U3) 1 Apr. 1990 (IN)
<a href="#">Mongolia</a>	Income and Capital	22 Feb. 1994	n/a	1 Jan. 1994 (MN) 1 Apr. 1994 (IN)
<a href="#">Montenegro</a>	Income and Capital	8 Feb. 2006	n/a	1 Apr. 2009 (IN)
<a href="#">Morocco</a>	Income	30 Oct. 1998	n/a	1 Jan. 2001 (MA) 1 Apr. 2001 (IN)

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
<a href="#">Protocol</a>	Income	8 Aug. 2013	15 July 2019	15 July 2019
<a href="#">Mozambique</a>	Income	30 Sep. 2010	n/a	1 Jan. 2012 (MZ) 1 Apr. 2012 (IN)
<a href="#">Myanmar</a>	Income	2 Apr. 2008	n/a	1 Jan. 2010 (MM) 1 Apr. 2010 (IN)
<a href="#">Namibia</a>	Income	15 Feb. 1997	n/a	1 Mar. 2000 (NA) 1 Apr. 2000 (IN)
<a href="#">Nepal</a>	Income	27 Nov. 2011	n/a	1 Apr. 2013 (IN) 16 July 2013 (NP)
<a href="#">Nepal</a>	Income and Mutual Assistance	13 Nov. 2005	n/a	1 Apr. 2011 1 Apr. 2011 1 July 2011 1 July 2011 1 July 2011 16 July 2011 1 Jan. 2012
<a href="#">Netherlands</a>	Income and Capital	30 July 1988	n/a	1 Apr. 1989 (IN) 1 Jan. 1989 (NL) 1 Jan. 1987 (NL) 1 Apr. 1987 (IN)
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017	1 Oct. 2019	n/a
<a href="#">Protocol</a>	Income and Capital	10 May 2012	2 Nov. 2012	2 Nov. 2012
<a href="#">MLI Synthesized Text</a>	Income and Capital	30 July 1988	21 Jan. 1989	1 Apr. 1989 (IN) 1 Jan. 1989 (NL) 1 Jan. 1987 (NL) 1 Apr. 1987 (IN)
<a href="#">New Zealand</a>	Income	17 Oct. 1986	n/a	1 Apr. 1987
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">Protocol</a>	Income	26 Oct. 2016	7 Sep. 2017	7 Sep. 2017
<a href="#">Protocol</a>	Income	21 June 1999	17 Dec. 1999	1 Apr. 2000

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
<a href="#">Protocol</a>	Income	29 Aug. 1996	9 Jan. 1997	1 Feb. 1997
<a href="#">North Macedonia</a>	Income	17 Dec. 2013	n/a	1 Jan. 2015 (MK) 1 Apr. 2015 (IN)
<a href="#">Norway</a>	Income and Capital	2 Feb. 2011	n/a	1 Jan. 2012 (NO) 1 Apr. 2012 (IN)
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017	1 Oct. 2019	n/a
<a href="#">MLI Synthesized Text</a>	Income and Capital	2 Feb. 2011	20 Dec. 2011	1 Jan. 2012 (NO) 1 Apr. 2012 (IN)
<a href="#">Oman</a>	Income	2 Apr. 1997	n/a	1 Jan. 1998 (OM) 1 Apr. 1998 (IN)
<a href="#">Pakistan</a>	Income and Mutual Assistance	13 Nov. 2005	n/a	1 Apr. 2011 1 Apr. 2011 1 July 2011 1 July 2011 1 July 2011 16 July 2011 1 Jan. 2012
<a href="#">Philippines</a>	Income	12 Feb. 1990	n/a	1 Jan. 1995 (PH) 1 Apr. 1995 (IN)
<a href="#">Poland</a>	Income	21 June 1989	n/a	1 Apr. 1990 (IN) 1 Jan. 1990 (PL)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">Protocol</a>	Income	29 Jan. 2013	1 June 2014	1 Jan. 2015 (PL) 1 Apr. 2015 (IN)
<a href="#">MLI Synthesized Text</a>	Income	21 June 1989	26 Oct. 1989	1 Apr. 1990 (IN) 1 Jan. 1990 (PL)
<a href="#">Portugal</a>	Income	11 Sep. 1998	n/a	1 Jan. 2001 (PT) 1 Apr. 2001 (IN)
<a href="#">Protocol</a>	Income	24 June 2017	8 Aug. 2018	8 Aug. 2018

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">MLI Synthesized Text</a>	Income	11 Sep. 1998	30 Apr. 2000	1 Jan. 2001 (PT) 1 Apr. 2001 (IN)
<a href="#">Qatar</a>	Income	7 Apr. 1999	n/a	1 Jan. 2001 (QA) 1 Apr. 2001 (IN)
<a href="#">Exchange of Notes</a>	Income	16 Mar. 2018	29 Apr. 2018	29 Apr. 2018 ( )
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">Romania</a>	Income	8 Mar. 2013	n/a	1 Jan. 2014 (RO) 1 Apr. 2014 (IN)
<a href="#">Russia</a>	Income	25 Mar. 1997	n/a	1 Jan. 1999 (RU) 1 Apr. 1999 (IN)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">MLI Synthesized Text</a>	Income	25 Mar. 1997	11 Apr. 1998	1 Jan. 1999 (RU) 1 Apr. 1999 (IN)
<a href="#">Saudi Arabia</a>	Income	25 Jan. 2006	n/a	1 Jan. 2007 (SA) 1 Apr. 2007 (IN)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">Serbia</a>	Income and Capital	8 Feb. 2006	n/a	1 Jan. 2009 (CS) 1 Apr. 2009 (IN)
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017	1 Oct. 2019	n/a
<a href="#">MLI Synthesized Text</a>	Income and Capital	8 Feb. 2006	23 Sep. 2008	1 Jan. 2009 (CS) 1 Apr. 2009 (IN)
<a href="#">Serbia and Montenegro</a>	Income and Capital	8 Feb. 2006	n/a	1 Jan. 2009 (CS) 1 Apr. 2009 (IN)

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017	1 Oct. 2019	n/a
<a href="#">MLI Synthesized Text</a>	Income and Capital	8 Feb. 2006	23 Sep. 2008	1 Jan. 2009 (CS) 1 Apr. 2009 (IN)
<a href="#">Sierra Leone</a>	Income	23 June 1956	n/a	n/a
<a href="#">Singapore</a>	Income	24 Jan. 1994	n/a	1 Jan. 1994 (SG) 1 Apr. 1994 (IN)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">Protocol</a>	Income	30 Dec. 2016	27 Feb. 2017	1 Apr. 2017
<a href="#">Protocol</a>	Income	24 June 2011	1 Sep. 2011	1 Jan. 2008
<a href="#">Protocol</a>	Income	29 June 2005	1 Aug. 2005	1 Aug. 2005
<a href="#">MLI Synthesized Text</a>	Income	24 Jan. 1994	8 Aug. 1994	1 Jan. 1994 (SG) 1 Apr. 1994 (IN)
<a href="#">Slovak Republic</a>	Income	27 Jan. 1986	n/a	1 Apr. 1985 (IN) 1 Jan. 1985 (C6)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">MLI Synthesized Text</a>	Income	27 Jan. 1986	13 Mar. 1987	1 Apr. 1985 (IN) 1 Jan. 1985 (C6)
<a href="#">Slovenia</a>	Income	13 Jan. 2003	n/a	1 Apr. 2006 (IN) 1 Jan. 2006 (SI)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">Protocol</a>	Income	17 May 2016	21 Dec. 2016	1 Mar. 2017
<a href="#">MLI Synthesized Text</a>	Income	13 Jan. 2003	17 Feb. 2005	1 Apr. 2006 (IN) 1 Jan. 2006 (SI)

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
South Africa	Income	4 Dec. 1996	n/a	1 Apr. 1998 (IN) 1 Jan. 1998 (ZA)
Protocol	Income	26 July 2013	26 Nov. 2014	26 Nov. 2014
Spain	Income and Capital	8 Feb. 1993	n/a	1 Jan. 1996 (ES) 1 Apr. 1996 (IN)
Protocol	Income and Capital	26 Oct. 2012	29 Dec. 2014	1 Jan. 2015 1 Jan. 2015 (ES) 1 Apr. 2015 (IN)
Sri Lanka	Income	22 Jan. 2013	n/a	1 Apr. 2014
Sri Lanka	Income and Mutual Assistance	13 Nov. 2005	n/a	1 Apr. 2011 1 Apr. 2011 1 July 2011 1 July 2011 1 July 2011 16 July 2011 1 Jan. 2012
Sudan	Income	22 Oct. 2003	n/a	1 Jan. 2005 (SD) 1 Apr. 2005 (IN)
Sweden	Income and Capital	24 June 1997	n/a	1 Jan. 1998 (SE) 1 Apr. 1998 (IN)
Multilateral Instrument	Income and Capital	7 June 2017	1 Oct. 2019	n/a
Protocol	Income and Capital	7 Feb. 2013	16 Aug. 2013	16 Aug. 2013
Switzerland	Income	2 Nov. 1994	n/a	1 Jan. 1995 (CH) 1 Apr. 1995 (IN)
Multilateral Instrument	Income	7 June 2017	1 Oct. 2019	n/a
Protocol	Income	30 Aug. 2010	10 Oct. 2011	1 Jan. 2012 (CH) 1 Apr. 2012 (IN)
Protocol	Income	16 Feb. 2000	20 Dec. 2000	1 Jan. 2001 (CH) 1 Apr. 2001 (IN)

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
<a href="#">Syria</a>	Income	18 June 2008	n/a	1 Jan. 2009 (SY) 1 Apr. 2009 (IN)
<a href="#">Tajikistan</a>	Income	20 Nov. 2008	n/a	1 Jan. 2010 (TJ) 1 Apr. 2010 (IN)
<a href="#">Protocol</a>	Income	17 Dec. 2016	20 Feb. 2018	20 Feb. 2018
<a href="#">Tanzania</a>	Income	27 May 2011	n/a	1 Apr. 2012 (IN) 1 Jan. 2012 (TZ)
<a href="#">Thailand</a>	Income	29 June 2015	n/a	1 Jan. 2016 (TH) 1 Apr. 2016 (IN)
<a href="#">Trinidad and Tobago</a>	Income	8 Feb. 1999	n/a	1 Apr. 2000 (IN) 1 Jan. 2000 (TT)
<a href="#">Turkey</a>	Income	31 Jan. 1995	n/a	1 Jan. 1994 (TR) 1 Apr. 1994 (IN)
<a href="#">Turkmenistan</a>	Income and Capital	25 Feb. 1997	n/a	1 Jan. 1998 (TM) 1 Apr. 1998 (IN)
<a href="#">Uganda</a>	Income	30 Apr. 2004	n/a	1 Apr. 2005 (IN) 1 July 2005 (UG)
<a href="#">Ukraine</a>	Income and Capital	7 Apr. 1999	n/a	1 Jan. 2002 (UA) 1 Apr. 2002 (IN)
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017	1 Oct. 2019	n/a
<a href="#">MLI Synthesized Text</a>	Income and Capital	7 Apr. 1999	31 Oct. 2001	1 Jan. 2002 (UA) 1 Apr. 2002 (IN)
<a href="#">Union of Soviet Socialist Republics</a>	Income	20 Nov. 1988	n/a	1 Jan. 1990 (U3) 1 Apr. 1990 (IN)
<a href="#">United Arab Emirates</a>	Income and Capital	29 Apr. 1992	n/a	1 Jan. 1994 (AE) 1 Apr. 1994 (IN)
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017	1 Oct. 2019	n/a

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
<a href="#">Protocol</a>	Income and Capital	16 Apr. 2012	12 Mar. 2013	12 Mar. 2013
<a href="#">Protocol</a>	Income and Capital	26 Mar. 2007	28 Nov. 2007	1 Jan. 2008 (AE) 1 Apr. 2008 (IN)
<a href="#">MLI Synthesized Text</a>	Income and Capital	29 Apr. 1992	22 Sep. 1993	1 Jan. 1994 (AE) 1 Apr. 1994 (IN)
<a href="#">United Arab Republic</a>	Income	20 Feb. 1969	n/a	30 Sep. 1969 (EG) 1 Jan. 1969 (IN)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Jan. 2021	n/a
<a href="#">MLI Synthesized Text</a>	Income	20 Feb. 1969	30 Sep. 1969	30 Sep. 1969 (EG) 1 Jan. 1969 (IN)
<a href="#">United Kingdom</a>	Income	25 Jan. 1993	n/a	1 Apr. 1994 (IN) 1 Apr. 1994 (UK)
<a href="#">Multilateral Instrument</a>	Income	7 June 2017	1 Oct. 2019	n/a
<a href="#">Protocol</a>	Income	30 Oct. 2012	27 Dec. 2013	27 Dec. 2013 (IN) 27 Dec. 2013 (UK) 1 Jan. 2014 (UK) 1 Apr. 2014 (UK) 6 Apr. 2014 (UK)
<a href="#">MLI Synthesized Text</a>	Income	25 Jan. 1993	25 Oct. 1993	1 Apr. 1994 (IN) 1 Apr. 1994 (UK)
<a href="#">United States</a>	Income	12 Sep. 1989	n/a	1 Jan. 1991 (US) 1 Apr. 1991 (IN)
<a href="#">Uruguay</a>	Income and Capital	8 Sep. 2011	n/a	1 Jan. 2014 (UY) 1 Apr. 2014 (IN)
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017	1 Oct. 2019	n/a
<a href="#">Uzbekistan</a>	Income and Capital	29 July 1993	n/a	1 Jan. 1993 (UZ) 1 Apr. 1993 (IN)

Country	Scope	Date of signature	Date of entry into force	Effective date
<a href="#">Protocol</a>	Income and Capital	11 Apr. 2012	20 July 2012	20 July 2012 1 Jan. 2013 (UZ) 1 Apr. 2013 (IN)
<a href="#">Vietnam</a>	Income	7 Sep. 1994	n/a	1 Jan. 1996 (VN) 1 Apr. 1996 (IN)
<a href="#">Protocol</a>	Income	3 Sep. 2016	21 Feb. 2017	1 Jan. 2018 (VN) 1 Apr. 2018 (IN)
<a href="#">Zambia</a>	Income	5 June 1981	n/a	1 Apr. 1978 (IN) 1 Jan. 1979 (ZM)

Note: The Income Tax (Double Taxation Relief) (Dominions) Rules 1956 continue in force in respect of Sierra Leone only. The rules set out the rules for refunds where taxes have been paid in both states and do not provide for any withholding rates.

#### 7.4.1.4. Tax treaties signed but not yet in force

Country	Scope	Date of signature
<a href="#">Algeria</a>	Income	25 Jan. 2001
<a href="#">Armenia</a>		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
<a href="#">Belgium</a>		
<a href="#">Protocol</a>	Income	9 Mar. 2017
<a href="#">Bulgaria</a>		
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017
<a href="#">Chile</a>	Income	11 Mar. 2020
<a href="#">Colombia</a>		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>
Fiji		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
Germany		
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017
Hong Kong		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
Italy		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
<a href="#">Protocol</a>	Income	13 Jan. 2006
Kenya		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
Kuwait		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
Kyrgyzstan		
<a href="#">Protocol</a>	Income	14 June 2019
Mauritius		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
Mexico		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
Morocco		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017

Country	Scope	Date of signature
North Macedonia		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
Oman		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
Romania		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
South Africa		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
Spain		
<a href="#">Multilateral Instrument</a>	Income and Capital	7 June 2017
Switzerland		
<a href="#">Other</a>	Income	13 Aug. 2021
Turkey		
<a href="#">Multilateral Instrument</a>	Income	7 June 2017
<a href="#">Zambia</a>	Income	11 Apr. 2018

#### 7.4.1.5. Treaty withholding tax rates

##### [Treaty Withholding Rates Table](#)

#### 7.4.1.6. Special provisions in tax treaties

##### 7.4.1.6.1. Limitation on benefits provisions

Generally, Indian treaties do not contain a separate article to prevent treaty shopping. Until the Supreme Court decision of 7 October 2003 in *Union of India v. Azadi Bachao Andolan* (263 ITR (Income Tax Reports (India)) 706), India's usual tax treaty policy was not to include limitation on benefits provisions in its treaties. Before this decision, only a few treaties signed by India included limitation on benefits

provisions (e.g. the India-United States and India-Singapore treaties), and they were always negotiated on the initiative of the other contracting state. After this ruling, India changed its treaty policy and decided to include limitation on benefits clauses in all its future treaties to prevent treaty shopping and to be on the safe side. The treaties with the following countries have a limitation on benefits clause:

- Albania (article 29);
- Armenia (article 28);
- Bhutan (article 27);
- China (article 27A);
- Colombia (article 28);
- Estonia (article 28);
- Ethiopia (article 28);
- Finland (article 27);
- Fiji (article 28);
- Georgia (article 30);
- Iceland (article 24);
- Indonesia (article 24);
- Israel (article 27A);
- Korea (article 28);
- Kuwait (article 27);
- Latvia (article 28);
- Lithuania (article 30);
- Luxembourg (article 29);
- Macedonia (article 28);
- Malaysia (article 28);
- Malta (New) (article 27);
- Mauritius (article 27A);
- Mexico (article 28);
- Mozambique (article 28);
- Myanmar (article 27);
- Namibia (article 24);
- Nepal (article 28);
- Norway (article 29);

- Poland (article 28A, Protocol to the 1989 Treaty);
- Romania (article 27);
- Singapore (article 24);
- Spain (article 28B);
- Sri Lanka (article 28);
- Syria (article 27);
- Taiwan (article 28);
- Tajikistan (article 28);
- Tanzania (article 28);
- Thailand (article 27);
- Turkmenistan;
- United Arab Emirates (article 29);
- United Kingdom (article 28C);
- United States (article 24);
- Uruguay (article 29); and
- Uzbekistan (article 28B).

On 25 June 2019, India deposited its instrument of ratification with the nominated authority under the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (~~MLI (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting)~~). The MLI covers minimum standards and various other recommended actions to prevent base erosion and profit shifting. The MLI for India entered into force on 1 October 2019, notified vide the ~~Not. (Notification (usually issued by the CBDT, RBI, SEBI, etc. as one of a series, e.g. as (CBDT)SO/.....(RBI)AD/MA/....))~~ 57/2019, and shall revise or replace the existing provisions of tax treaties starting on 1 April 2020 in accordance with the provisions of the MLI as agreed between the parties.

#### **7.4.1.6.2. Tax sparing credit**

As a developing country, India tries to seek inclusion of tax-sparing provisions in its treaties with developed countries. This has often been a stumbling block in concluding treaties (e.g. with the United States).

#### **7.4.1.6.3. Special provisions for offshore activities**

The 2012 treaty with Malaysia excludes persons who are entitled to tax benefits under the tax regime in Labuan from the benefits of the treaty, unless they have made an irrevocable election to be charged to tax under the normal tax regime in Malaysia.

#### 7.4.1.6.4. Excluded individuals

Not applicable.

#### 7.4.1.6.5. Other special provisions

India's treaties with the following include most-favoured nation clauses:

Country	Scope		
	Dividends	Interest	Royalties
Belgium	–	–	yes
Finland	yes	yes	yes
France	yes	yes	yes
Hungary	yes	yes	yes
Nepal	–	–	yes
Netherlands	yes	yes	yes
Spain	–	–	yes
Sweden	yes	yes	yes

#### 7.4.2. Treaties on administrative assistance

Later developments:

India is a party to the SAARC (South Asian Association for Regional Cooperation) Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters, which was concluded on 13 November 2005 and is effective in India from 1 April 2011. The other parties to the

treaty are Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka. India has also concluded an agreement with Argentina on cooperation and mutual assistance on customs matters on 26 April 2011 (effective from 1 August 2011).

India has also signed exchange of information treaties with the following:

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
<a href="#">Argentina</a>	Exchange of Information	21 Nov. 2011	n/a	28 Jan. 2013
Bahamas				
	Exchange of Information	11 Feb. 2011	1 Mar. 2011	11 Feb. 2011
<a href="#">Bahrain</a>	Exchange of Information	31 May 2012	n/a	11 Apr. 2013
<a href="#">Belize</a>	Exchange of Information	18 Sep. 2013	n/a	25 Nov. 2013
Bermuda				
	Exchange of Information	7 Oct. 2010	3 Nov. 2010	3 Nov. 2010
British Virgin Islands				
	Exchange of Information	9 Feb. 2011	22 Aug. 2011	22 Aug. 2011
<a href="#">Brunei</a>	Exchange of Information	28 Feb. 2019	n/a	30 Jan. 2020 1 Jan. 2017
	Exchange of Information	28 Feb. 2019	30 Jan. 2020	30 Jan. 2020 1 Jan. 2017
Cayman Islands				
	Exchange of Information	21 Mar. 2011	8 Nov. 2011	8 Nov. 2011
<a href="#">Gibraltar</a>	Exchange of Information	1 Feb. 2013	n/a	11 Mar. 2013

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Date of entry into force</b>	<b>Effective date</b>
Guernsey				
	Exchange of Information	20 Dec. 2011	11 June 2012	11 June 2012
Isle of Man				
	Exchange of Information	4 Feb. 2011	17 Mar. 2011	17 Mar. 2011
Jersey				
	Exchange of Information	3 Nov. 2011	8 Mar. 2012	8 Mar. 2012
Liberia	Exchange of Information	3 Oct. 2011	n/a	30 Mar. 2012
Liechtenstein	Exchange of Information	28 Mar. 2013	n/a	1 Apr. 2013
Macau				
	Exchange of Information	3 Jan. 2012	16 Apr. 2012	16 Apr. 2012
Maldives	Exchange of Information	11 Apr. 2016	n/a	1 Aug. 2016
Marshall Islands				
	Exchange of Information	18 Mar. 2016	6 Dec. 2018	6 Dec. 2018
Monaco	Exchange of Information	31 July 2012	n/a	3 Apr. 2013
San Marino	Exchange of Information	19 Dec. 2013	n/a	29 Aug. 2014
Seychelles	Exchange of Information	26 Aug. 2015	n/a	28 June 2016

Country	Scope	Date of signature	Date of entry into force	Effective date
St. Kitts and Nevis	Exchange of Information	13 Nov. 2014	n/a	2 Feb. 2016

India signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information on 3 June 2015.

### 7.4.3. Foreign account reporting agreements

India has agreed to adopt the OECD Standard for Automatic Exchange of Financial Account Information.

#### 7.4.3.1. Foreign account reporting agreements signed

Country	Scope	Date of signature	Date of entry into force	Effective date
United States				
Protocol	FATCA Model 1A Agreement	30 Sep. 2015	30 Sep. 2015	n/a
	FATCA Model 1A Agreement	9 July 2015	31 Aug. 2015	n/a

#### 7.4.3.2. Foreign account reporting agreements not signed

To date there are no foreign account reporting agreements available for signature.

### 7.4.4. Transportation (tax) treaties

India has concluded transport tax treaties with the following countries:

Country	Scope	Date of signature	Effective date
Afghanistan	air	14.09.75	14.09.75
Bulgaria	air	18.11.76	15.04.77
Czech Rep.	sea	03.11.78	03.06.80
Ethiopia	air	25.11.76	01.07.66

<b>Country</b>	<b>Scope</b>	<b>Date of signature</b>	<b>Effective date</b>
Italy	air	03.02.70	01.01.60
Kuwait	air	21.04.82	01.01.67
Lebanon	air	22.02.68	01.04.62
Maldives	air	11.04.16	01.04.17
Poland	sea	27.06.60	27.06.60
Saudi Arabia	air	14.11.91	01.01.70
Slovak Rep.	sea	03.11.78	03.06.80
United Arab Emirates	air	03.03.89	01.01.71
United States	sea/air	12.04.89	01.01.87

#### **7.4.5. Inheritance and gift tax treaties**

India has entered into an inheritance tax agreement with the United Kingdom. The agreement was concluded on 3 April 1956, entered into force on 30 June 1956 and is effective from the same date in India.

#### **7.4.6. Social security agreements**

India has signed social security agreements with various countries and is in advanced stages of negotiation with other countries. Social security agreements which have been signed are as follows:

<b>Country</b>	<b>Date of signature</b>	<b>Effective date</b>
Australia	18.11.14	01.01.16
Austria	04.02.13	01.07.15
Belgium	03.11.06	01.09.09

<b>Country</b>	<b>Date of signature</b>	<b>Effective date</b>
Canada	06.11.12	01.08.15
Czech Rep.	09.06.10	01.09.14
Denmark	17.02.10	01.05.11
Finland	12.06.12	01.08.14
France	30.09.08	01.07.11
Germany (new)	12.10.11	01.05.17
Hungary	02.02.10	01.04.13
Japan	16.11.12	01.10.16
Korea (Rep.)	19.10.10	01.11.11
Luxembourg	30.09.09	01.06.11
Netherlands	22.10.09	01.12.11
Norway	29.10.10	01.01.15
Poland	04.03.13	–
Portugal	04.03.13	–
Quebec	26.11.13	–
Sweden	26.11.12	01.08.14
Switzerland	03.09.09	29.01.11

S. Shah, India - Corporate Taxation sec. 7., Country Tax Guides IBFD.

Exported / Printed on 20 Sep. 2021 by jitendra.sanghavi@relianceada.com.