FAQs

Doing Business in India

Taxation

1. What are the payments to be made in GST regime, who is liable for payment and when is the payment to be made?

In the GST regime, for any intra-state supply, taxes to be paid are the Central GST (CGST, going into the account of the Central Government) and the State GST (SGST, going into the account of the concerned State Government). For any inter-state supply, tax to be paid is Integrated GST (IGST) which will have components of both CGST and SGST. In addition, certain categories of registered persons will be required to pay to the government account Tax Deducted at Source (TDS) and Tax Collected at Source (TCS). In addition, wherever applicable, Interest, Penalty, Fees and any other payment will also be required to be made. In general the supplier of goods or service is liable to pay GST. However in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Further, in some cases, the liability to pay is on the third person (say in the case of e-commerce operator responsible for TCS or Government Department responsible for TDS) At the time of supply of Goods as explained in Section 12 and at the time of supply of services as explained in Section 13. The time is generally the earliest of one of the three events, namely receiving payment, issuance of invoice or completion of supply. Different situations envisaged and different tax points have been explained in the aforesaid sections. For further details please access following link.

2. What commodities are kept outside the purview of GST?

Alcohol for human consumption, Petroleum Products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel and electricity. For more information, click here

3. What does assessment under income tax mean?

Every taxpayer must furnish the details of his income to the Income-tax Department i.e. return. The Income-tax Department examines the return of income for confirming its correctness. The process of examining the return of income by the Income-tax Department is called “ Assessment ” Under the Income-tax Law, there are four major assessments as given below: Section 143(1), i.e., Summary assessment without calling the assessee i.e. taxpayer. Assessment under section 143(3), i.e., Scrutiny assessment. Assessment under section 144, i.e., Best judgment assessment. Assessment under section 147, i.e., Income escaping assessment. For more information, click here

4. What is tax audit?

Section 44AB gives the provisions relating to the class of taxpayers who are required to get their accounts audited from a chartered accountant. The audit under section 44AB aims to ascertain the compliance of various provisions of the Income Tax Law and the fulfilment of other requirements of the Income Tax Law. The audit conducted by the chartered accountant of the accounts of the taxpayer in pursuance of the requirement of section 44AB is called tax audit. The chartered accountant conducting the tax audit is required to give his findings, observation, etc., in the form of audit report. The report of tax audit is to be given by the chartered accountant in Form Nos. 3CA/3CB and 3CD. As per section 44AB, following persons are compulsorily required to get their accounts audited : 1) A person carrying on business, if his total sales, turnover or gross receipts (as the case may be) in business for the year exceed or exceeds US$ 145,050. This provision is not applicable to the person, who opts for presumptive taxation scheme under section 44AD and his total sales or turnover does not exceed US$ 290,100. 2) A person carrying on profession, if his gross receipts in profession for the year exceed US$ 72,525. 3) A person who is eligible to opt for the presumptive taxation scheme of section 44AD but claims the profits or gains for such business to be lower than the profits and gains computed as per the presumptive taxation scheme of section 44AD and his income exceeds the amount which is not chargeable to tax. 4) If an eligible assesse opts out of the presumptive taxation scheme, after specified period, he cannot choose to revert back to the presumptive taxation scheme for a period of five assessment years thereafter. 5) A person who is eligible to opt for the presumptive taxation scheme of section 44ADA but he claims the profits or gains for such profession to be lower than the profit and gains computed as per the presumptive taxation scheme and his income exceeds the amount which is not chargeable to tax. 6) This provision is not applicable to the person, who opts for presumptive taxation scheme under section 44AD and his total sales or turnover does not exceed US$ 290,100. 7) A person who is eligible to opt for the presumptive taxation scheme of sections 44AE but he claims the profits or gains for such business to be lower than the profits and gains computed as per the presumptive taxation scheme of sections 44AE. 8) A person who is eligible to opt for the taxation scheme prescribed under section 44BB or section 44BBB but he claims the profits or gains for such business to be lower than the profits and gains computed as per the taxation scheme of these sections.   Section 44BB is applicable to non-resident taxpayers engaged in the business of providing services or facilities in connection with or supplying plant and machinery on hire basis to be used in exploration of mineral oils. Section 44BBB is applicable to foreign companies engaged in the business of civil construction, erection of plant or machinery, or testing or commissioning thereof, in connection with a turnkey power project. For detailed provision of 44AD, 44AE, 44ADA, 44BB and 44BBE, refer Sec 44 AB on the link.

5. How is the residential status of a company determined?

A Company is said to be resident in India in any previous year, if: It is an Indian company or Its place of effective management, at any time in that year, is in India For more information, click For more information, click here

6. What are the heads under which an individual needs to pay tax?

Section 14 of the Income Tax Act has classified the income of a taxpayer under five different heads of income, viz.: Salaries. Income from house property Profits and gains of business or profession Capital gains Income from other sources For more information, click here.

7. Is a subsidy received from government liable to Goods and Service Tax?

As per Section 15(2)(e) of the CGST Act, 2017 value of supply shall include subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. Any subsidy received from the Government will hence not be taxable and would not be leviable to GST. For more information, click here

8. Would a foreign bidder require a Goods and Service Tax registration in India for execution of works contract?

If the foreign bidder coming into India for execution of LSTK works contract, then as per Sec 24 of CGST Act, such foreign bidder would be required to obtain GST registration mandatorily in India. For more information, click here

9. What would be the Goods and Service Tax applicability if a dealer supplies oil and gas equipment free of charge?

Since the supply is at free of cost (therefore no consideration involved), it would not be treated as supply (as per section 7 of CGST Act, 2017) under GST and hence, not leviable to GST. For more information, click here

10. What is the validity period of the registration certificate issued to a non-resident taxable person?

In terms of Section 27(1) read with proviso thereto, the certificate of registration issued to a 'casual taxable person' or a 'non-resident taxable person' shall be valid for a period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier. However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of ninety days by a further period not exceeding ninety days. For further details please access following link.

11. Who is a Non-resident Taxable Person as per the CGST/SGST Act?

As per CGST/SGST Act, a non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India. For more information, click here.

12. Can a person take multiple registration in a state for different business verticals?

Any person having multiple business verticals within a State or a Union territory, requiring a separate registration for any of its business verticals under sub-section (2) of section 25 shall be granted separate registration in respect of each of the verticals subject to the following conditions: Such person has more than one business vertical as defined in the Act No business vertical of a taxable person shall be granted registration to pay tax under section 10 if any one of the other business verticals of the same person is paying tax under section 9 All separately registered business verticals of such person shall pay tax under this Act on supply of goods or services or both made to another registered business vertical of such person and issue a tax invoice for such supply. For more information, click here

13. Can someone operate on the same PAN with a single registration in different states?

No, every person who is liable to take a Registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST. For more information, click here

14. Is possession of a Permanent Account Number (PAN) mandatory for obtaining a Registration?

Yes, every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 in order to be eligible for grant of registration under GST Law. However, as per PAN is not mandatory for a non-resident taxable person who may be granted registration based on any other document as may be prescribed. For more information, click here.

15. How early does one need to register under Goods and Service Tax?

Time Limit for GST Registration: a) 30 days for Regular Person b) 5 days for Casual Person c) Territorial Waters: Supplier from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of baseline is located. For more information, click here.

16. Which are the cases in which registration is compulsory?

As per Section 24 of the CGST/SGST Act, the following categories of persons shall be required to be registered compulsorily irrespective of the threshold limit: i) persons making any inter-State taxable supply; ii) casual taxable persons; iii) persons who are required to pay tax under reverse charge; iv) electronic commerce operators required to pay tax under sub-section (5) of section 9; v) non-resident taxable persons; vi) persons who are required to deduct tax under section 51; vii) persons who supply goods and/or services on behalf of other registered taxable persons whether as an agent or otherwise; viii) Input service distributor (whether or not separately registered under the Act) ix) persons who are required to collect tax under section 52; x) every electronic commerce operator xi) every person supplying online information and data base retrieval services from a place outside India to a person in India, other than a registered person; and, xii) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council.

17. What is Transfer Pricing under income tax?

Transfer Pricing and related regulations are applicable to entities that enter into an International Transaction with an Associated Enterprise (AE). The aim is to arrive at the comparable price as available to any unrelated party in open market conditions and is known as ALP. For more information, click here.

18. What are the common direct tax compliance in India?

There are two types of taxes levied in India - Direct tax and Indirect tax. - Direct tax in India is governed by Indian Income-tax Act, 1961. Major compliances of direct taxes in India are as follows- PAN: PAN is a 10-digit alphanumeric number, mandatory to quote on return of income, correspondence with any income tax authority and on documents pertaining to specified financial transactions. TAN: Persons who are responsible for deducting tax at source at the time of making payment or who are required to collect tax at source at the time of selling certain specified products, should obtain a 10-digit alphanumeric number known as TAN. Advance Tax: It refers to paying part of your taxes in instalments (4 instalments) before end of the tax year. Every person, whose income tax liability is more than INR 10,000 in a year is required to pay advance tax on the income earned or expected to be earned in the tax year Withholding taxes: Any company or a person making specified payment, is required to deduct tax at source, file quarterly TDS return and deposit the same with the government, if the specified payment exceeds specified threshold limit. Tax Audit: Any person carrying on business/profession must get his accounts audited under Indian tax laws if turnover/ sales/ gross receipts exceed the specified limit. Returns: It is mandatory for every taxpayer to report income to the Income-tax Department, in the prescribed form known as return of income.

19. What are the elements of employment compensation, that enjoy exemption from tax?

Generally, subject to certain conditions, following items of compensation are not taxable in the hands of employees: 1) House Rent Allowance (HRA): HRA is an allowance granted to meet housing costs of employees. This exemption is not available if the employee resides in his own house, or in a house for which he does not incur any rent. 2) Certain travel/tour allowances: Allowances granted to meet the cost of travel for official purposes are exempt (on actual basis). 3) Reimbursement of medical expenses up to specified limits: Reimbursement of medical expenses actually incurred by an employee for self or any member of his/her family is exempt up to US$ 217.50 per tax year. 4) Leave travel concession (LTC): LTC granted to an employee for vacation at any place in India is exempt for upto two journeys in a block of four calendar years, subject to certain conditions. 5) Tax borne by an employer on non-monetary perquisites: Tax borne by an employer on non-monetary perquisites provided to its employee, is exempt from tax, provided the employer does not claim it as a deduction against its taxable income. 6) Gratuity: Gratuity received by an employee on retirement/termination of employment or by family on the death of employee tax-payer is exempt from tax subject to specified limit (presently US$ 14,505). 7) Leave encashment: Leave encashment received by an employee on retirement is exempt from tax subject to specified limit (presently INR 300,000). 8) Employer Provident Fund contribution:Employer ’ s contribution towards Provident Fund is exempt from tax subject to fulfilment of certain conditions. Apart from above, there are other allowances such as Children ’ s allowance, hostel allowance, etc., which form part of salary and are exempt from tax but subject to certain conditions and/or monetary limits. For further details please access following link.

20. What are ‘ Investment Linked Incentives ’ under the Indian Tax Act, and which businesses are eligible for such incentives?

With the objective of creating infrastructure and environment friendly alternative means for transportation of bulk goods, Investment linked incentives have been introduced in Indian tax laws for certain specified businesses. Under these incentives, any capital expenditure incurred for specified businesses is allowed as a deduction in the year in which it is incurred (instead of amortizing the same over several years). Following are the specified businesses, eligible for this incentive: 1) Setting up and operating a semi-conductor water fabrication manufacturing unit. 2) Laying and operating a slurry pipeline for the transportation of iron ore. 3) Production of fertilizers. 4) Building and operating a hotel of two star or above category, anywhere in India. 5) Developing and/or operating and maintaining a new infrastructure being a road, bridge, rail system, highway project, water supply project, water treatment system, irrigation project, a port, airport, inland waterway, inland port or navigational channel in the sea, etc. 6) Building and operating a hospital with atleast 100 beds for patients, anywhere in India. 7) Developing and building a housing project under specified schemes. 8) Setting up and operating an inland Container Depot or a container freight station. 9) Setting up and operating cold chain facilities/warehousing facilities. 10) Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution including storage facilities being an integral part of such network. For further details please access following link for Sec 35AD (income tax act 1961).

21. What are the incentives available under the Income tax Act, to business units established in Special Economic Zone?

A tax holiday for 15 years is granted to units located in a Special Economic Zones (SEZ) that are engaged in export of goods and services. This tax holiday is computed with reference to profits from such exports and is allowed as under. 1) 100% IncomeTax exemption on export income for first 5 tax years. 2) 50% for next five tax years thereafter 3) 50% of the export profit for next five tax years provided an equal amount of profit is retained or transferred to a special reserve in the books of accounts. Only units which become operational on or before 31 March 2020 can claim this tax holiday. For further details please access following link.

22. What is tax residency under Income Tax Act in India?

According to Section 6, Income-tax Act, 1961-2019: 1.An individual is said to be resident in India in any previous year, if he— is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year 2. 2. A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India

23. Is tax applicable to stock-based income?

Yes, tax is applicable on stock-based income. A two-step taxation procedure is applicable in this case: At the time of allotment of shares, as compensation income At the time of sale, as capital gains. Certain exemptions and/or concessional tax rates are available on the sale of shares listed on a recognized stock exchange in India, depending on the period of holding.

24. How to file the return of income electronically?

Section 10 provides list of incomes which are exempt from tax Amongst these the major exemptions relating to capital gains are listed below: Section 10(33) : Long-term or short-term capital gain arising on transfer of units of Unit Scheme, 1964 (US 64) (transferred on or after 1-4-2002). Section 10(37) : An individual or Hindu Undivided Family (HUF) can claim exemption in respect of capital gain arising on transfer of agricultural land situated in an urban area by way of compulsory acquisition. This exemption is available if the land was used by the taxpayer (or by his parents in the case of an individual) for agricultural purpose for a period of 2 years immediately preceding the date of its transfer . Section 10(37A) : An individual or Hindu Undivided Family (HUF) can claim exemption in respect of capital gain arising on transfer of land or building or both under Land Pooling Scheme under the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015. This exemption is available if individual or HUF was owner of such land as on 02-06-2014. [Inserted by the Finance Act 2017 w.e.f. 01-04-2015]. Section 10(38) : Long-term capital gain arising on transfer of equity shares or units of equity oriented mutual fund (*) or a unit of a business trust other than a unit allotted by the trust in exchange of shares of a special purpose vehicle as referred to in section 47(xvii), will be exempt from tax, if the following conditions are satisfied: The asset transferred should be equity shares of a company or units of an equity oriented mutual fund or a unit of a business trust other than a unit allotted by the trust in exchange of shares of a special purpose vehicle as referred to in section 47. The transaction should be liable to securities transaction tax (STT) at the time of transfer. Such asset should be a long-term capital asset. Transfer should take place on or after October 1, 2004. Note 1 : Any long-term capital gain arising from a transaction undertaken in recognized stock exchange located in an International Financial Service Center shall be exempt from tax. Such exemption is available if such transaction is undertaken in foreign current and even if no STT is paid on such transaction. Long term capital gain exemption on transfer of equity share acquired or on after 01-10-2004 shall be available only if the acquisition of share is chargeable to STT. However, the exemption shall continue in genuine cases where the STT could not have been paid like acquisition of share in IPO, FPO, bonus or right issue by a listed company, acquisition by non-resident in accordance with FDI policy, etc. [Inserted by Finance Act 2017] (*) Equity oriented mutual fund means a mutual fund specified under section 10(23D) and 65% of its investible funds, out of total proceeds of such fund are invested in equity shares of domestic companies. Exemption for long-term capital gains arising from transfer of listed securities as referred to in Section 10(38) has been withdrawn by the Finance Act, 2018 w.e.f. Assessment Year 2019-20 and a new section 112A is introduced in the Income-tax Act. As per Section 112A, long-term capital gains arising from transfer of an equity share, or a unit of an equity oriented fund or a unit of a business trust shall be taxed at 10% (without indexation) of such capital gains. The tax on capital gains shall be levied in excess of INR 1 lakh.

25. What is the meaning of presumptive taxation scheme?

As per sections 44AA of the Income-tax Act, 1961, a person engaged in business is required to maintain regular books of account under certain circumstances. To give relief to small taxpayers from this tedious work, the Income-tax Act has framed the presumptive taxation scheme under sections 44AD, sections 44ADA and sections 44AE. A person adopting the presumptive taxation scheme can declare income at a prescribed rate and, in turn, is relieved from tedious job of maintenance of books of account.

26. What is tax deducted at source?

For quick and efficient collection of taxes, the Income-tax Law has incorporated a system of deduction of tax at the point of generation of income. This system is called as “ Tax Deducted at Source ” , commonly known as TDS. Under this system tax is deducted at the origin of the income.

Tax is deducted by the payer and is remitted to the Government by the payer on behalf of the payee. The provisions of deduction of tax at source are applicable to several payments such as salary, interest, commission, brokerage, professional fees, royalty, contract payments, etc. In respect of payments to which the TDS provisions apply, the payer has to deduct tax at source on the payments made by him and he has to deposit the tax deducted by him to the credit of the Government.

27. What is Form 26AS?

A taxpayer may pay tax in any of the following forms: (1) Tax Deducted at Source (TDS) (2) Tax Collected at Source (TCS) (3) Advance tax or Self-assessment Tax or Payment of tax on regular assessment. The Income-tax Department maintains the database of the total tax paid by the taxpayer (i.e., tax credit in the account of a taxpayer). Form 26AS is an annual statement maintained under Rule 31AB of the Income-tax Rules disclosing the details of tax credit in his account as per the database of Income-tax Department. In other words, Form 26AS will reflect the details of tax credit appearing in the Permanent Account Number of the taxpayer as per the database of the Income-tax Department. The tax credit will cover TDS, TCS and tax paid by the taxpayer in other forms like advance tax, Self-Assessment tax, etc. Income-tax Department will generally allow a taxpayer to claim the credit of taxes as reflected in his Form 26AS.

28. Is it necessary to attach any documents along with the return of income?

ITR return forms are attachment less forms and, hence, the taxpayer is not required to attach any document (like proof of investment, TDS certificates, etc.) along with the return of income (whether filed manually or filed electronically). However, these documents should be retained by the taxpayer and should be produced before the tax authorities when demanded in situations like assessment, inquiry, etc.

29. How to deposit Self Assessment Tax or Advance tax to the credit of Government?

Self Assessment Tax or Advance Tax is to be deposited to the credit of Government by using the challan prescribed in this behalf, i.e., ITNS 280. The Challan can be downloaded from www.incometaxindia.gov.in Tax can be paid in the designated banks through two modes, viz., physical mode, i.e., cash/cheque or e-payment mode by using debit card or internet banking.

30. Where should the books of account of business be kept and for how long?

All the books of account and related documents should be kept at the principal place of business, i.e., where the business or profession is generally carried on. These documents should be preserved for a minimum of six years from the end of relevant Assessment year i.e. for a total of 7 financial year from the end of relevant year. However, when the assessment has been reopened, all books of account and other documents which were kept and maintained at the time of reopening of assessment should continue to be so kept and maintained till the assessment so reopened has been completed.

31. What books of account have been prescribed to be maintained by a person carrying on business/profession under the Income-tax Act?

The Income-tax Act does not prescribe any specific books of account for a person engaged in business or in non-specified profession. However, such a person is expected to keep and maintain such book of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Act, if:-. In case of existing business or profession, income or gross turnover in any one of the 3 preceding previous years exceeds the following-
Individual/HUF Other • Income from business or profession
INR 2,50,000 INR 1,20,000 • Turnover/gross receipts in the business or
profession Rs. 25,00,000 INR 10,00,000 In case of
newly setup business or profession, income or gross turnover of the first previous year is likely to exceed the following-
Individual/HUF Other • Income from business or profession
INR 2,50,000 INR 1,20,000 • Turnover/gross receipts in the business or
profession INR 25,00,000 INR 10,00,000 For
companies the books of account are prescribed under the Companies Act. Further, the Institute of Chartered Accountants of India has prescribed various Accounting Standards and Guidelines that are required to be followed by the business entities As regards the maintenance of books of account by a professional, who is engaged in specified profession has to maintain certain prescribed books of account, if the annual receipts from the profession exceed Rs. 1,50,000 in all the three years immediately preceding the previous year (in case of newly set up profession, his annual receipts in the profession for that year are likely to exceed Rs. 1,50,000). Specified profession covers profession of legal, medical, engineering, architectural, accountancy, company secretary, technical consultancy, interior decoration, authorised representative, film artist or information technology. For more details on the provisions relating to maintenance of books of account you may refer provisions of section 44AA read with Rule 6F of the Income-tax Rules, 1962.

32. What is revenue receipt and capital receipt?

Receipts can be classified into two kinds: A) Revenue receipt, B) Capital receipt. Revenue receipts are recurring in nature like salary, profit from business, interest income, etc. Capital receipts are generally of isolated nature like receipt on account of sale of residential building, personal jewellery, etc.

33. What incomes are taxable under the Income Tax Act?

Following forms of incomes are taxable for residents, not ordinarily residents and non-residents: 1) Income which accrues or arises in India. 2) Income which is deemed to accrue or arise in India. 3) Income which is received in India. 4) Income which is deemed to be received in India. Taxed for Incomes taxable for residents and not ordinarily residents but not non-residents: 1) Income accruing outside India from a business controlled from India or from a profession set up in India. 2) Taxed for ROR but not RNOR, NR. 3) Income other than above (i.e., income which has no relation with India). For more information, click here.

34. What is tax on regular assessment and how is it paid?

Under the Income-tax Act, every person has the responsibility to correctly compute and pay his due taxes. Where the Department finds that there has been understatement of income and resultant tax due, it takes measures to compute the actual tax amount that ought to have been paid. This demand raised on the person is called as Tax on regular assessment. The tax on regular assessment-400 has to be paid within 30 days of receipt of the notice of demand.

35. From where can I take the help of any expert on Income-tax related matters?

You can take the help of tax professionals or the help of Public Relations Officer [PRO] in the local office of the Income-tax Department. You may also take assistance from Tax Return Preparers [TRPs]. You can locate your nearest TRP at link.

36. How will I know how much Income-tax I have to pay?

The rates of Income-tax and corporate taxes are available in the Finance Act passed by the Parliament every year. You can also check your tax liability by using the free online tax calculator available at link.

37. How does the Government collect Income-tax?

Taxes are collected by the Government through three means: a) voluntary payment by taxpayers into various designated Banks. For example, Advance Tax and Self Assessment Tax paid by the taxpayers, b) Taxes deducted at source [TDS] from the income of the receiver, and c) Taxes collected at source [TCS]. It is the constitutional obligation of every person earning income to compute his income and pay taxes correctly.

38. What is the administrative framework of Income-tax?

The revenue functions of the Government of India are managed by the Ministry of Finance. The Finance Ministry has entrusted the task of administration of direct taxes like Income-tax, Wealth tax, etc., to the Central Board of Direct Taxes (CBDT). The CBDT is a part of Department of Revenue in the Ministry of Finance.CBDT provides essential inputs for policy framing and planning of direct taxes and also administers the direct tax laws through the Income-tax Department. Thus, Income-tax Law is administrated by the Income-tax Department under the control and supervision of the CBDT.

39. What is Income-tax?

It is a tax levied by the Government of India on the income of every person. The provisions governing the Income-tax are covered in the Income-tax Act, 1961.

40. What duties will be levied on import of goods?

Customs duty and cess as applicable + IGST+ GST compensation cess. IGST and GST compensation cess shall be paid after adding all customs duty and customs cess to the value of imports.

41. What tax benefits are available to the business units in Special Economic Zones?

A tax holiday for 15 years is granted to units located in Special Economic Zones (SEZ) that are engaged in export of goods and services. 100% Income Tax exemption on export income for first 5 tax years. 50% for next five tax years thereafter. 50% of the export profit for next five tax years provided an equal amount of profit is retained or transferred to a special reserve in the books of accounts. Only units which become operational on or before 31st March 2020 can claim this tax holiday. For more information, click here.

42. Who is required to register for Goods and Service Tax payment?

Every supplier is liable to get registered under this Act if his/her aggregate turnover in a financial year exceeds INR 40 lakhs /20 lakhs in case of special category states (North Eastern and Hilly States). Section 24 of GST Act also specifies compulsory registration for people irrespective of the above threshold limits.

43. What components of salary are exempted from income tax?

Generally, subject to certain conditions, the following items of compensation are not taxable in the hands of employees: House Rent Allowance (HRA) Certain travel/ tour allowances Reimbursement of medical expenses up to specified limits Leave travel concession Tax borne by an employer on non-monetary perquisites Gratuity Leave encashment Employer Provident Fund contribution Apart from above, there are other allowances such as children ' s allowance, hostel allowance, etc., which form part of salary and are exempt from tax but subject to certain conditions and/or monetary limits. For more information, click here.

44. Which tax is to be applied by the service provider on invoice issued on or after 1 July 2017 for services rendered up to 30 June 2017?

The time of supply being issuance of invoice under the CGST Act, 2017, the supplier of services must charge GST in this case. However, where the payment for such supplies has been made (prior to issuance of invoice) as advance before the 1 July 2017, the tax would be payable under the law prevalent prior to 1 July 2017, as the point of taxation had arisen before this date to the extent of the advance. For more information, click here.

45. What are the types of taxes in India?

The tax structure in India is divided into direct and indirect taxes. While direct taxes are levied on taxable income earned by individuals and corporate entities, the burden to deposit taxes is on the assesses themselves. Indirect taxes are levied on the sale and provision of goods and services respectively and the burden to collect and deposit taxes is on the sellers instead of the assesses directly. Taxes in India are levied by the Central Government and the State Governments. Some minor taxes are also levied by the local authorities such as the Municipality and the Local Governments. For more information, click here.

46. What does Goods and Service Tax (GST) entail?

GST is a destination-based tax that replaces the earlier Central taxes and duties such as Excise Duty, Service Tax, Counter Vailing Duty (CVD), Special Additional Duty of Customs (SAD), central charges and cesses and local state taxes, i.e., Value Added Tax (VAT), Central Sales Tax (CST), Octroi, Entry Tax, Purchase Tax, Luxury Tax, Taxes on lottery, betting and gambling, state cesses and surcharges and Entertainment tax (other than the tax levied by the local bodies). For more information, click here

47. What are the relevant tax registration under the Indian tax laws?

All taxpayers in India are required to apply for and obtain their tax registration number, known as a Permanent Account Number (PAN). PAN is a pre-requisite to file income-tax returns and to open a bank account. PAN is also reported by the person withholding the tax in the withholding tax returns and thereafter issues withholding certificates enabling them to claim the credit of tax so deducted while filing the income-tax return in India. Further, every person liable to withhold tax at source or collect tax at source is also required to obtain Tax Deduction and Collection Account Number (TAN).

48. What is the period for which a taxpayer ’ s income is taken into account for the purpose of calculating income-tax?

Income-tax is levied on the annual income of a taxpayer. The year under the Income-tax Law is the period starting from 01 April and ending on 31 March of the next calendar year. The Income-tax Law classifies the year as (1) Previous year and (2) Assessment year. The year in which income is earned is called as previous year and the year in which the income is charged to tax or is assessed is called the assessment year. For example, income earned during the period of 01 April 2019 to 31 March 2020 is treated as income of the previous year 2019-20. Income of the previous year 2019-20 will be charged to tax in the next year, i.e., in the assessment year 2020-21.

49. What are the applicable taxes that may be relevant for a corporate tax-payer in India?

Income tax rate for domestic company (including Indian subsidiary of a Foreign corporation): 26% ~ 34.944% Income tax rate for domestic LLP: 31.2% ~ 34.944 Income tax rate for Foreign corporation (including branch office (BO) and project office (PO) in India) : 41.6% ~ 43.68%

50. Do the Indian tax laws prescribe any other beneficial tax rates for new or existing Indian subsidiaries of foreign companies?

Yes, as per the recent Taxation Laws (Amendment) Ordinance, 2019, with effect from financial year 2019-20, Indian subsidiary companies shall have the option to pay tax at a beneficial tax rate of 25.17% (22% plus 10% plus 4%) subject to the condition that they will not avail specified tax exemptions or incentives under the Income tax Act.

51. Do the Indian tax laws prescribe any beneficial tax rates where a Foreign corporation proposes to establish an Indian subsidiary for undertaking manufacturing activities in India?

Yes. The Indian tax laws provide the option of beneficial tax rate of 17.6% (15% plus 10% plus 4%) for taxing the income of a new Indian subsidiary engaged in manufacturing activities, incorporated on or after 01 October 2019 and commencing manufacturing on or before 31 March 2023 (subject to certain conditions).

52. Can a wholly owned subsidiary (WOS) of a Foreign corporation repatriate profits to its parent/holding company in home country?

Yes. The WOS may repatriate the profits to its holding company in China by way of dividends upon payment of Dividend Distribution Tax(DDT) in India @ 20.555%. Additionally, in cases where DDT has been paid by the WOS, such dividend will be exempt from tax in the hands of the shareholders/ Foreign corporation.

53. What other documentation would a project office or branch office in India or Indian subsidiary of a Foreign corporation require to file a tax return?

Where business / professional receipts of such taxpayers exceed certain thresholds prescribed by the domestic laws, such tax payers would be required to obtain a certificate from a Chartered Accountant (Tax Audit Report) for filing their return in India. Also, where such tax payers have inter-group international transactions exceed the prescribed threshold, they shall also be required to obtain a Transfer Pricing Certificate from a Chartered Accountant

54. How can a taxpayer lodge the particulars of their income with the tax authorities in India?

The particulars of income during the relevant tax period can be furnished to the Indian tax authorities by electronically lodging a tax return at the income tax web portal. The summary of relevant steps is as follows: Signing up/registering at the income tax web portal using PAN and other validation details Obtaining Digital Signature Certificate (DSC) for the directors/authorized representatives (who shall verify and sign on behalf of WOS/ Chinese corporation) for e-filing the tax return Filing of tax audit certificate, transfer pricing certificate, etc. (wherever applicable) Paying taxes, if any Filing tax return by selecting appropriate tax return and tax year by affixing DSC at the income tax web portal

55. How can I view the details of the taxes withheld on my income?

Once the taxpayer is registered at the income tax web portal, they can access the details of the taxes withheld by the customers, taxes collected, any advance tax or self-assessment or tax on regular assessment paid by such tax payer. Such details are captured in Form 26AS, available at the tax portal.

56. Is it advisable to file return of income even when Project office/branch office/Indian subsidiary of a Foreign corporation does not have any positive income?

If a project office/branch office/Indian subsidiary of a Foreign corporation has sustained a loss in the financial year, which it proposes to carry forward to the subsequent year for adjustment against subsequent year(s) positive income, such taxpayer must make a claim of loss by filing tax return before the due date.

57. What are the due dates for filing a tax return in India?

For corporate taxpayers who are required to furnish the Transfer Pricing Certificate for reporting international transactions and specified domestic transactions: 30 November of the subsequent year Other corporate taxpayers: 30 September of the subsequent year

58. How do the Indian revenue authorities (IRA) collect taxes?

Broadly taxes are collected by IRA through three means: Voluntary payment by taxpayers into various designated banks by way of Advance Tax (on quarterly basis) and Self-Assessment Tax (at the time of filing of tax return) Tax Deducted at Source (TDS) by the payer Tax Collected at Source (TCS)

59. Are there any requirements to maintain proofs and records of business income as per tax laws?

The tax laws in India require the taxpayers to maintain books and accounts specified under the Income-tax Act. These documents are required to be preserved for a total of seven financial years from the end of relevant financial year to which such records pertain (subject to certain exceptions).

60. Is there a Minimum Alternate Tax (MAT) applicable in India?

Yes, the Indian tax laws contain provisions related to MAT. As per the concept of MAT, the tax liability of a company is capped at higher of the regular tax or tax computed @ 15% (further enhanced by applicable surcharge and cess) on book profit.

61. What are the consequences if a taxpayer (say, Chinese corporation or Wholly Owned Subsidiary, WOS) does not file tax return in India?

Non-filing of tax return despite of having taxable income carries penalty and prosecution exposure. Also, non-filing of tax return with negative income by due date prohibits the carry forward of such losses including the losses in the past years, if any, to the subsequent year for adjustment against subsequent year(s) positive income. Taxpayers are liable to furnish the tax returns even in situation where tax payable is negated by the taxes withheld by the customers. Further, it may be noted that non-payment of tax, i.e., tax evasion can attract interest, penalty and prosecution.

62. Can Indian Tax Authorities review my (Foreign investors ’) tax return?

Yes, tax authorities can review the tax returns lodged by the taxpayers to verify that income and deductions reported by the taxpayers are accurate by serving notice as per the prescribed timelines

63. Does India also have a mechanism of private tax rulings? What are the benefits of obtaining a private tax ruling in India?

To get certainty on tax position, a non-resident may consider seeking an advance ruling/private tax ruling. The Authority for Advance Rulings (AAR) is an independent quasi-judicial body which issues advance rulings on income-tax matters. AAR rulings are binding on both the applicant and revenue authorities unless there is a change in law or facts. Benefits: Upfront resolution of questions related to tax liability Avoid uncertainty and protracted litigation with revenue authorities Lower time cost vis-à-vis normal dispute resolution process Currently there is a lot of pendency in the AAR due to non-functioning in the past. Hence the option may require to be evaluated from a timing perspective

64. What are inter-state supplies and intra-state supplies?

Primarily, in case where the location of the supplier and the place of supply are in same state it will be intra-state and where it is in different states it will be inter-state supplies, except in certain specified cases.

65. Is there a mechanism whereby the recipient of services may be liable to pay GST under reverse charge?

Yes, there is a mechanism of reverse charge under the GST regime whereby the liability to pay tax is on the recipient of supply of goods and services instead of the supplier of such goods or services. Reverse charge is mostly triggered when a person imports services, receives supply of goods or services from an unregistered vendor and in respect of other notified categories of supply For example, if a Chinese company enters into a contract for supply of services to a registered taxable person in India say its Indian subsidiary, then the onus of discharging the GST liability would be casted upon the Indian subsidiary. However, in case of unrelated party contracts say government contracts, the bids/contracts preclude the customer from undertaking the GST liability and requires the same to be reimbursed once the GST liability is paid by the customer. In such cases, the GST liability may become cost in the hands of the Chinese company and further there maybe no option of obtaining credit of the said GST paid.

66. What is meant by zero rated supply under GST?

Zero rated supply means export of goods and/or services or supply of goods and/or services to a SEZ developer or a SEZ unit.

67. How are exports treated under GST?

All exports are deemed as inter-state supplies. Exports of goods and services are treated as zero rated supplies. The exporter has the option either to export under bond/Letter of Undertaking without payment of tax and claim refund of ITC or pay Integrated Tax by utilizing ITC or in cash at the time of export and claim refund of Integrated Tax paid.

68. Who are the persons liable to take registration under the GST Law?

Every supplier (including his agent) who makes a taxable supply, i.e., supply of goods and / or services which are leviable to tax under GST law and whose aggregate turn over in a financial year exceeds the threshold limit of INR 4 million is liable to register himself in the state or the union territory of Delhi or Puducherry from where he makes the taxable supply. In case of eleven special category states, this threshold limit for registration liability is INR 2 million. Besides, GST provisions mentions certain categories of suppliers who shall be liable to take registration even if their aggregate turnover is below the said threshold limit of INR 4 million.

69. Whether a company having a SEZ unit or being SEZ developer need to have separate registration?

Yes. A person having SEZ unit or being SEZ developer shall have to apply for a separate registration, as distinct from his place of business located outside the SEZ in the same state or union territory.

70. What other type of taxes are required to be paid in GST regime?

Tax Deducted at Source (TDS) is required to be paid by certain categories of registered persons to the government account Tax Collected at Source (TCS) is required to be paid by e-commerce operator

71. What is Input Tax Credit (ITC)?

Input Tax Credit means the credit of input tax on the supplies of goods or services or both received by a registered person and used in furtherance of business. There are certain provisions under GST law mentioning specific items for which ITC is not available while discharging the output tax liability.

Input tax credit for inputs, input services and capital goods other than the said ineligible ITC is called eligible ITC.

72. What is an e-way bill?

An e-way bill is an electronic document generated on common portal evidencing movement of goods of consignment value more than INR 50,000.

73. Who is required to furnish the report under section 92E of the Income-tax Act?

Any person who has been involved in an international and/or specified domestic transactions (if aggregate value exceeds INR 200 million) in the previous year shall submit the report in Form 3CEB through a Chartered Accountant, duly verified and certified by him, on or before the date (i.e., 30th November of every year) prescribed by the authority, furnishing all the required details.

74. What is the applicability of statutory audit?

Applicability of Statutory Audit for different types of entities is as follows: Private/ Public company: Statutory audit is mandatory irrespective of turnover, profit, etc. Even if the company is incurring losses, it must get the audit done LLP: Statutory audit is mandatory only if it ’ s turnover in a financial year exceed INR 4 million or contribution exceeds INR 2.5 million

75. What are the types of audit required under company law in India?

Following types of audits are contemplated under company law: Statutory audit: Conducted in order to report the state of a company ’ s finances and accounts to the Indian government. Such audits are performed by qualified Chartered Accountants who are working as external and independent parties Internal audit: Conducted at the bequest of internal management in order to check the health of a company ’ s finances and analyze the operational efficiency of the organization. However, internal audit is also mandatory for company satisfying the prescribed threshold

76. Are there any withholding tax (WHT) obligations in relation to salary payments to expats that has been casted upon the employer under the domestic tax laws?

Yes, employer is required to withhold taxes on the salary income by applying an average rate and deposit the same by seventh of the following month. For the month of March, the same is required to be deposited by 30 April.

77. Where the taxes on the salary is borne by the employer, what are the implications where the WHT (Withholding tax) is not deposited to the government treasury?

In case where the income tax of the employee is borne by the employer, the WHT is deemed to be deducted on the date of payment of salary to the employee. Hence, any delay in depositing WHT to the government treasury may be considered as “ tax deducted but not deposited ” . In such a scenario, in addition to the interest and the penalty consequences, the employer may also be liable for prosecution, i.e., a rigorous imprisonment for a term of three months to years and a fine.

78. What are the consequential tax implications where an assignee attains an ordinary resident tax status in India during the relevant tax year?

The global income of such ordinary resident would become taxable in India. Additionally, such resident would be required to report moveable and immoveable assets held overseas along with any other financial interest or signing authority abroad and trusteeship in offshore trusts in his/her tax return.

79. What is transitional relaxation on tax on buybacks by listed companies?

The Finance (No.2) Act 2019 has been extended to listed companies with effect from 5 July 2019. This created hardships for listed companies who had publicly announced buy-backs before 5 July 2019 but not completed it by that date. The Ordinance relaxes the applicability in respect of buy-backs by listed companies in reference of which public announcement of buyback as per regulatory norms has been made before 5 July 2019. Thus, the buy-back tax will apply in case of listed companies where public announcement of buyback is made on or after 5 July 2019.

80. What are the recent changes in Corporate Income Tax (CIT) for domestic companies?

With effect from tax year 2019-20, domestic companies shall have an option to pay income tax at the rate of 22% plus 10% surcharge and 4% cess taking the effective tax rate (ETR) to 25.17%, subject to the condition that they will not avail specified tax exemptions or incentives under the

Income Tax Act. New domestic manufacturing companies, incorporated on or after 1 October 2019 and commencing manufacturing on or before 31 March 2023, making fresh investments in manufacturing, will have an option to avail an even lower tax rate of 15% plus 10% surcharge and 4% cess taking the ETR to 17.16%

81. Who needs to apply for Permanent Account Number (PAN)?

PAN is to be obtained by following persons: Every person if his total income or the total income of any other person in respect of which he is assessable during the previous year exceeds the maximum amount which is not chargeable to tax. A charitable trust who is required to furnish return under Section 139(4A) Every person who is carrying on any business or profession whose total sale, turnover, or gross receipts are or is likely to exceed five lakh rupees in any previous year Every person who intends to enter into specified financial transactions in which quoting of PAN is mandatory Every non-individual resident persons and person associated with them if the financial transaction entered into by such non-individual resident persons during a financial year exceeds Rs. 2,50,000. A person not covered in any of the above can voluntarily apply for PAN. A person not covered in any of the above can voluntarily apply for PAN For more information, click here

82. What Is Permanent Account Number (PAN)?

PAN stands for Permanent Account Number and is a ten-digit unique alphanumeric number issued by the Income Tax Department. For more information, click here

83. What is income tax return (ITR)?

ITR stands for Income Tax Return. It is a prescribed form through which the particulars of income earned by a person in a financial year and taxes paid on such income are communicated to the Income-tax Department. It also allows carry -forward of loss and claim refund from income tax department. For more information, click here

84. What are the prescribed forms of return under the income tax law?

Different forms of returns of income are prescribed for filing of returns for different Status and Nature of income. These forms can be downloaded from www.incometaxIndia.gov.in For more information, click here.

85. What are the common compliances under Indirect taxes in India?

From 1st July 2017, indirect taxes such as service tax, VAT would be subsumed by Goods and Service tax (GST) which is a comprehensive levy on manufacture, sale, and consumption of goods and services. Major compliances are as follows: GST Registration Number: It is 15-digit identification that is allotted to taxpayer based on PAN and state of the applicant. Returns: Under GST, generally, a person is required to file 3 monthly returns and an annual return.

86. What are the major direct taxes in India?

Major direct taxes in India are: Income Tax Wealth Tax Corporation Tax For more information, click here

87. What are the major indirect taxes in India?

Major indirect taxes in India are: Central Goods & Services Tax (CGST) State Goods & Services Tax (SGST) Integrated Goods & Services Tax (IGST) Customs Duty For more information, click here

88. Who is obligated to pay GST under the GST administration?

The following categories of persons are liable to pay GST: Persons registered under GST and making taxable supplies under GST Persons registered under GST required to make payment of tax under the reverse charge mechanism   E-commerce operators registered under the GST and through whom certain categories of notified supplies are made   Persons registered under GST and required to deduct tax (TDS) E-commerce operators registered under GST and required to collect tax (TCS) For more information, click here

89. What are the major advantages of IGST model?

The major advantages of IGST model are Maintenance of uninterrupted ITC chain on inter-State transactions No upfront payment of tax or substantial blockage of funds for the inter-state supplier or recipient No refund claim in exporting State, as ITC is used up while paying the tax Self-monitoring model Model takes ‘ Business to Business ’ as well as ‘ Business to Consumer ’ transactions into account For more information, click here

90. What are the taxes that organizations pay in India?

Taxability in India: Company: Tax incidence of a company depends on the residential status of the company i.e., whether the company has been incorporated in India or its place of effective management lies in India Firm/LLP: Tax incidence of a Limited Liability Partnership (LLP) depends on the residential status of the LLP,i.e., whether the control and management of its affairs are situated wholly or partially in India For more information, click here

91. Which entity will qualify as constituent entities (CEs) for the purpose of reporting in the CbCR as per Indian regulations?

A constituent entity means Any separate entity of an international group that is included in the consolidated financial statement of the said group for financial reporting purposes on a line by line basis (i.e., profits, revenue and assets) Any such entity that is excluded from the consolidated financial statement of the international group solely on the basis of size or materiality Any PE of any separate business entity of the international group included in above points, if such business unit prepares a separate financial statement for such PE for financial reporting, regulatory, tax reporting or internal management control purposes

92. When are inbound CEs required to file CbCR in India?

An inbound CE is required to file CbCR in India if: Its parent entity is not obligated to file a CbCR for a reportable accounting year If there is no exchange agreement of CbCR with ultimate or alternate reporting entity ’ s jurisdiction If there has been a systemic failure in a country and this is intimated

93. If the ultimate parent entity of the group is a resident of a country (home jurisdiction) where the CbCR is not required to be filed, or if it has not opted for a parent surrogate filing, will the Indian CE be required to file a CbCR in India?

As per the section 286(4) of the Income Tax Act, if the ultimate parent entity, resides in a country where CbCR is not required to be filed and the group has not opted for a surrogate filing, then the entity will be obligated to file a CbCR in India.

94. Is every CE required to file MF in India?

Every constituent entity is required to file Part A of the Form 3CEAA and Part B is to be filed by entitles that fall in the mentioned criteria. However, in case there are more than two CEs resident in India of an international group, any one CE resident in India can be designated to file Form 3CEAA (both Part A and B) on behalf of other CEs operating in India (including non-resident CEs operating in India) by way of an intimation in Form 3CEAB. For instance, an international group has one Indian resident CE and five non-resident CEs with taxable income in India. Since, there are not more than one resident CEs in India of the group, all the entities (i.e., one resident CE and five non-resident CEs) will be required to file MF in India.

95. Has India adopted/implemented Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Action 13 for transfer pricing documentation in Indian transfer pricing regulations?

Yes, OECD (Organisation for Economic Co-operation and Development) BEPS (Base Erosion and Profit Shifting) Action Plan 13 has been implemented in India through Section 92D and Section 286 of the Act, accompanied by relevant rules (i.e., Rule 10DA and 10DB).

96. Describe the three-tier approach recommended in the BEPS (Base Erosion and Profit Shifting) report?

It is recommended in the BEPS report that the countries should adopt a standardized approach to transfer pricing documentation. A three-tiered structure has been mandated consisting of:- Master file A local file A country-by-country report (CbC Report)

97. What is meant by Alternate Reporting Entity?

Alternate Reporting Entity means any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the report of the nature referred to in Section 286(2) of the Act in the country or territory in which the said constituent entity is resident on behalf of such group.

98. In the case of multiple resident inbound CEs, does CbCR need to be filed by all of them?

According to Rule 10DB(5), when there are more than one constituent entity resident in India, any one CE, resident in India, can be designated to file CbCR by way of filing an intimation form in Form 3CEAE before the due date of filing CbCR.

99. Do I need to take any precautions while filling the tax payment challan?

Following caution can be taken while filling-up the tax payment challan: Clearly mention the following: Type of payment Assessment year Permanent Account Number mode of payment of the tax the head of payment

100. How are the applicable tax rates decided?

The rates of Income-tax and corporate taxes are decided by the Finance Act passed by the Parliament every year. There is a free online tax calculator present at www.incometaxindia.gov.in where once can check his/her tax liability. For more information, click here.

101. What is the monetary threshold for applicability of MF (Master file) regulations for a CE?

Every person, being a CE of an international group operating in India, shall file such details in part A to Form 3CEAA. Further, such person shall also be required to file additional details as required under part B of Form No. 3CEAA if it satisfies the following criteria: If the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds INR 5 Bn The aggregate value of international transactions: During the accounting year, as per the books of accounts, exceeds INR 500 Mn In respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds INR 100 Mn

102. If the international group does not prepare the MF, as the jurisdiction in which it operates (other than India) does not have any legislative requirement to prepare/file the MF, will the CEs operating in India still be required to maintain and furnish the MF?

Yes. The CEs operating in India will be required to file Part A of Form 3CEAA and Part B (if the applicable criteria are satisfied).

103. How would a Foreign corporation be taxed in India?

A wholly owned Indian subsidiary of a Foreign corporation is taxed on its global income. A Foreign corporation is taxed only on income sourced in India, i.e. received in India, or accrues or arises, or is deemed to accrue or arise, in India.

104. What is e-PAN?

e-PAN is a digitally signed PAN card issued in electronic form and it is a valid proof of allotment of PAN. For more information, click here.

105. What is e-payment of taxes?

Taxpayers are provided with the facility to make income tax payments online using Net-banking/Debit card of the selected bank, this facility is termed as e-payment of taxes. For more information, click here.

106. What is a Mutual Agreement Procedure (MAP)?

MAP is a dispute resolution facility provided under the MAP article in India's DTAs. It is a facility through which Indian Revenue Authorities and the competent authorities would mutually negotiate based on facts and legal and technical positions regarding the application of the DTAA. Illustratively, MAP may be invoked in case of the disputes that could arise from a transfer pricing adjustment, characterization of income, or dispute relating to existence of PE in one of the contracting state, to list a few.

107. What is a deemed international transaction?

A transaction entered into by an enterprise with a person other than an associated enterprise shall be deemed to be an international transaction entered into between two associated enterprises, if: There exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise The terms of the relevant transaction are determined in substance between such other person and the associated enterprise where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not

108. Why have amendments been made in the Indian Stamp Act, 1899?

The amendments have been carried out with respect to securities market transactions. The present system of collection of stamp duty on securities market transactions has led to multiple rates for the same instrument, resulting in jurisdictional disputes and multiple incidences of duty, thereby raising the transaction costs in the securities market and hurting capital formation. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

109. What is the basic framework being created through the amendments to the Indian Stamp Act, 1899?

Through the said amendments, the Central Government has created the legal and institutional mechanism to enable States to collect stamp duty on securities market instruments at one place by one agency (through the Stock Exchanges or Clearing Corporations authorised by the Stock Exchange or by the Depositories) on one instrument. A mechanism for appropriate sharing the stamp duty with relevant State Government based on State of domicile of the buying client has also been included. In the extant scenario, stamp duty was payable by both seller and buyer whereas in the new system it is levied only on one side (payable either by the buyer or by the seller but not by both, except in case of certain instrument of exchange where the stamp duty shall be borne by both parties in equal proportion). For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

110. What are the expected key benefits of amendments in the Indian Stamp Act, 1899?

The amendments in the Indian Stamp Act, 1899 and Rules made thereunder will facilitate ease of doing business and will bring in uniformity and affordability of the stamp duty on securities across States and thereby build a pan-India securities market. Further, cost of collection would be minimised while revenue productivity is enhanced. Further, this system will help develop equity markets and equity culture across the length and breadth of the country, ushering in balanced regional development. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

111. The amended provisions of the Stamp Act and Rules made thereunder will come into force from which date?

The amended provisions of the Indian Stamp Act, 1899 brought through Finance Act, 2019 and Rules made thereunder shall come into force w.e.f 1st July, 2020. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

112. Which instruments are covered under Part AA of Chapter II of the amended Stamp Act and the Rules made thereunder?

Each security is charged with a duty as specified in Schedule I of the amended Stamp Act. Securities are defined to include all those instruments specified in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956; a " derivative " as defined in clause (a) of Section 45U of the Reserve Bank of India Act, 1934; a certificate of deposit, commercial usance bill, commercial paper and such other debt instrument of original or initial maturity up to one year as the Reserve Bank of India may specify from time to time; repo on corporate bonds; and any other instrument declared by the Central Government, by notification in the Official Gazette, to be securities for the purposes of this Act. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

113. Who will collect the Stamp Duty on behalf of the State Government?

The stamp-duty on sale of securities, transfer of securities and issue of securities shall be collected on behalf of the State Government by the Stock Exchange or Clearing Corporation authorized or Depositories (authorized collecting agents). The Central Government has also notified the Clearing Corporation of India Limited (CCIL) and the Registrars to Issue and / or Share Transfer Agents to act as collecting agents. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

114. What is the manner of collection of stamp duty under new system?

For all exchange based secondary market transactions in securities, Stock Exchanges shall collect the stamp duty; and for off-market transactions (which are made for a consideration as disclosed by trading parties) and initial issue of securities happening in demat form, Depositories shall collect the stamp duty. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

115. When and how will the stamp duty be transferred to each State?

The collecting agents shall within three weeks of the end of each month and in accordance with the Rules made in this behalf by the Central Government, transfer the stamp-duty collected to the State Government where the residence of the buyer is located and in case the buyer is located outside India, to the State Government having the registered office of the trading member or broker of such buyer and in case where there is no such trading member of the buyer, to the State Government having the registered office of the participant. The collecting agent shall transfer the collected stamp-duty in the account of concerned State Government with the Reserve Bank of India or any scheduled commercial bank, as informed to the collecting agent by the Reserve Bank of India or the concerned State Government. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

116. What would be the fees for the collecting agent?

The collecting agent may deduct 0.2 per cent of the stamp-duty collected on behalf of the State Government towards facilitation charges before transferring the same to such State Government. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

117. How will the State Government communicate regarding stamp duty matter?

The State Government shall appoint a nodal officer for all official communications with the principal officers (appointed representatives of collecting agents) for the purposes of collection of stamp-duty in accordance with stamp duty Rules. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

118. What if collecting agents fails to transfer the duty to the State Government within the time period specified in the Stamp Act and Rules made thereunder?

The collecting agents have to transfer collected stamp duty to the State Government within three weeks of the end of each month. Any collecting agent who fails to collect the stamp duty or fails to transfer stamp duty to the State Government within fifteen days of the expiry of the time specified, shall be punishable with fine which shall not be less than INR 1,00,000, but which may extend up to 1% of the collection or transfer so defaulted. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

119. Will any information be provided to the State Government in respect of the stamp

duty collected?

The collecting agent shall submit a return of stamp-duty collected on various transactions to the State Government including details of defaulters in the prescribed format on a monthly basis to be furnished manually or electronically within seven days of the succeeding month. Further, the collecting agent shall furnish a consolidated return of stamp-duty collected during a financial year manually or electronically on or before the 30th June immediately following that financial year to the concerned State Government and the Accountant General of each State. The State Government may provide an online facility by which a collecting agent shall upload State-wise monthly and yearly returns. If a collecting agent fails to submit details of transactions to the Government or submits a document or makes a declaration which is false or which such person knows or believes to be false, shall be punishable with fine of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

120. Can collecting agents utilise amount collected on behalf of States for any other purpose?

The stamp-duty collected on behalf of the State Government shall not be utilized by any collecting agent for any other purpose and shall be transferred to the State Government along with interest earned on such amount, if any. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

121. Who will collect the stamp duty in case of private placements/ e-IPOs through Stock Exchange platform?

As per section 9A(1)(c), stamp duty shall be collected by the Depository on any creation or change in the records of a Depository, pursuant to issue of securities. This should be followed even in case of private placements/ e-IPOs through stock exchange platform. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

122. Is stamp duty applicable on bonus issue of shares?

In case of bonus issue, there is no consideration which means bonus shares are issued free to existing shareholders. Section 21 of the Amended Indian Stamp Act read with sub-section 16B of Section 2 clearly indicates that stamp duty is to be collected on market value which is based on price or consideration involved. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

123. Is stamp duty applicable on units of Mutual Fund?

Sub-Section 23A of Section 2 of the Indian Stamp Act, 1899 defines securities as including securities defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (SCRA). Further, it may be noted that clause (h)(id) of Section 2 of SCRA, 1956, which defines " securities " includes " units or any other such instrument issued to the investors under any mutual fund scheme " under its ambit. Therefore, units of Mutual Fund Schemes are to be considered as securities for the purpose of applicability of stamp duty also. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

124. Which section of amended Indian Stamp Act, 1899 (section 9A or 9B) is applicable for Mutual Funds for the purposes of collection and transfer of stamp duty to States/UTs?

Since RTI and/or STA of Mutual Funds have been declared as Depositories under the Stamp Act vide gazette notification dated 8th Jan, 2020, the entire mutual fund business gets covered under Section 9A of the Indian Stamp Act. Section 9B is not applicable to them. RTAs have to function like a Depository in respect of collection of Stamp Duty on issue and sale or transfer of mutual funds in SoA form. The extant Stamp Rules applies to them as well i.e. the operational clause for them is Section 9A and not 9B of the Indian Stamp Act. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

125. Who will collect and transfer the Stamp duty to States in case of transactions in units of Mutual Funds and AIFs in Statement of Account/ Physical (non-demat form)?

To provide for collection of Stamp Duty on transactions in mutual fund and AIF units in the statement of account/physical (non-demat) form, RTI and/or STA have been notified (vide Gazette Notification dated 8th January, 2020) as a " Depository " for the limited purposes of acting as a " collecting agent " under the said Act and the Rules made thereunder. Accordingly, for non-demat Mutual Fund and AIF transactions, collection of stamp duty by RTAs shall be governed by the provisions of Section 9A(1)(b) and 9A(1)(c) and the transfer of stamp duty to the respective States shall be governed by the provisions of Section 9A (4). Thus, the transfer of collected stamp duty to respective States/UTs by RTAs also is governed by buyer-based principle as covered in Section 9A(4) and not on the basis of registered office of the issuer. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

126. Who will collect the Stamp duty in case of Mutual Fund and AIF transactions (sale, transfer and issue of units in demat mode) through recognized Stock Exchange or Depository?

As clear from the Act that in case of Mutual Fund and AIF transactions (sale, transfer and issue of units in demat mode) through recognized Stock Exchange or Depository as defined under SCRA, 1956 and Depositories Act, 1996 respectively, the respective Stock Exchange/authorized Clearing Corporation or a Depository is already empowered to collect stamp duty as per Amended Indian Stamp Act and Rules made thereunder. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

127. On transfer of units of Mutual Funds and AIFs held in physical form stamp duty is to be collected from the transferor. As these transfers happen outside the purview of RTAs what will be process of collection and remittance of stamp duty?

Stamp duty has to be collected and remitted only by collecting agents (RTA for physical units and Depositories for demat units). Where Mutual Fund and AIF units are issued in physical form, stamp duty has to be collected and remitted by RTA. Accordingly, when the transferee approaches RTA for effecting the transfer in their books, RTA will be collecting the stamp duty from the transferor before effecting the transfer which will then be remitted to the state of domicile of the transferee. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

128. How is stamp duty calculated in case of issuance of Mutual fund Units?

Stamp duty is imposed on the value of units excluding other charges like service charge, AMC fee, GST etc. If the units are issued for INR1 crore then INR 500 would be the stamp duty to be remitted to States. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

129. Will switching in Mutual fund attract stamp duty?

The issue of fresh units in the switched scheme would also attract stamp duty even though there is no physical consideration paid or transfer of ownership. This is because the new units are deemed to have been purchased with the NAV realized from the sale of earlier units. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

130. Is stamp duty is applicable on redemption of Mutual Fund units ?

Redemption is not liable to duty as it is neither a transfer nor an issue nor a sale. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

131. Will stamp duty be charged on off-market transfer of securities without consideration such on gift, legacy transfer etc?

No, Section 21 of the Amended Indian Stamp Act read with sub-section 16B of Section 2 clearly indicates that stamp duty is to be collected on market value which is based on price or consideration involved. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

132. Is stamp duty applicable at multiple levels of a single transaction (on account of procedural requirements) and to which state government should the stamp duty amount be transferred in such cases?

It should be ensured that a double incidence of stamp duty doesn ’ t occur on any transaction. Where, before being credited in the buyer ’ s Demat account, the securities were transferred from the Demat accounts of an issuer to the clearing corporation, member, etc., the stamp duty shall be transferred to the state government where the residence of the buyer is located. For more information on Indian Stamp Act, 1899, click here. For more details about the amendments, refer here.

133. What are the stamp duty rates being implemented through the Amended Indian Stamp Act?

Stamp Duty Rates w.e.f. 1st July 2020 Instrument Rate Issue of Debenture 0.005% Transfer and Re-issue of debenture 0.0001% Issue of security other than debenture 0.005% Transfer of security other than debenture on delivery basis 0.015% Transfer of security other than debenture on non-delivery basis 0.003% Derivatives (i) Futures (Equity and Commodity) 0.002% (ii) Options (Equity and Commodity) 0.003% (iii) Currency and Interest Rate Derivatives 0.0001% (iv) Other Derivatives 0.002% Government Securities 0% Repo on Corporate Bond 0.00001%