



THINKING OF OPENING A “COMPANY” IN INDIA?

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HIGHLIGHTS

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- ✓ **SEPARATE LEGAL ENTITY**
- ✓ **INCOME TAX @22.88%. IF MANUFACTURING, THEN @15.6%
NO MINIMUM ALTERNATE TAX OF @18.5% - ABOLISHED**
- ✓ **DIVIDEND DISTRIBUTION TAX @20.56% , IF PROFIT DISTRIBUTED**
- ✓ **LIBERAL RULES FOR FOREGIN CITIZENS/NRI/ INDIAN ORIGIN. IF NON-
REPATRIABLE BY NRI/OCI, CONSIDER AS “DOMESTIC” INVESTMENT**
- ✓ **AS ON AUG, 2019 11.79 LAKHS ACTIVE INDIAN COMPANIES “LIMITED BY
SHARES”, OUT OF WHICH 11.39 LAKHS ARE PRIVATE LIMITED COMPANIES**
- ✓ **FASTER INCOPORATION PROCESS BY GOVERNMENT AND COMPLETE
ON-LINE PROCESS FOR MAJORITY OF LAWS AND REGULATION**

GENERAL DESCRIPTION

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- Indian Company is a separate legal entity
- Two types of Companies – Private Limited and Public Limited
- Shareholders are the “owners” of Company and Directors are “Managers” of Company. In practice, same people are shareholders and directors but there can be different people also, for e.g. Foreign Citizen are Shareholders of the Company and Indian Citizens are Directors in the Company.
- As per Indian Laws, Directors are generally responsible for any wrong doing or compliance with all laws rather than Shareholder unless and until shareholder are also involved in any fraudulent activities.
- Private Company – Minimum 2 Shareholder & 2 Director (At least 1 “Resident Director”)
 - Shares are not freely transferable
 - No minimum capital required. Advisable to Start with Rs.1 Lakh
 - Exemptions in Company Law for Various compliances – Advisable to start with
- Public Company – Minimum 7 Shareholder & 3 Director (At least 1 “Resident Director”)
 - Shares are freely transferable
 - No minimum capital required. Advisable to Start with Rs.5 Lakh
 - Strict Compliances in Company Law

CORPORATE LAWS – COMPANIES ACT, 2013

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- Statutory Audit by a Chartered Accountant in practice is compulsory every year. (April to March)
- Private Limited Companies are not allowed to borrow money from any third parties except Banks, Financial Institutions, Shareholders, Directors, Director's Relative any other Companies. Public Companies can accept public deposit but subject to strict compliances.
- Public Companies are not allowed to give loan to directors or any partner or relative of such director or any person in whom any of the director of the company is interested. Private Limited Companies are allowed to give such loans subject to certain conditions. Further, if company gives loan to any other person, it has to charge interest from such parties and subject to other conditions.
- Valuation of shares is compulsory if Company wishes to issue further shares to any non-existing shareholders. Valuation should be done only by a Registered Valuer under Companies Act, 2013
- Various Annual filing and other changes in companies like directors resignation, appointment, charge creation etc. needs to be filed with ROC (i.e. government) within due date otherwise penalty and late fees will be levied.
- If shareholder are directors also, they can get Salary from Companies. In addition to that, Shareholder can also received Dividend from Profit after tax subject to Dividend Distribution Tax of 20.56%

INCOME TAX ACT, 1961

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- As per recent income tax amendments, Companies are liable for @22.88% income tax, instead of @31.20%. If Manufacturing, then @15.60%
- No Minimum Alternate tax of @18.5% - Abolished.
- After paying Income Tax, if company wishes to distribute the profits among the shareholders then it needs to pay Dividend Distribution Tax (DDT) @20.56%.
- If Unlisted Company issue the shares at more than face value, excess of difference between issue price and fair price (As prescribed) will be consider as income and liable for Tax.
- Loan given to shareholder holding more than 10% in the Company will be consider as “Deemed Dividend” and liable for DDT.
- If Company incurs any loss in any previous year, it will be allowed to carry forward for 8 years and can be set off against future income
- Directors are allowed to take reasonable amount as Salary under Income Tax

FEMA – FOREIGN CITIZEN/NRI/OCI

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- Indian Companies are allowed to issue the shares to a person resident outside India subject to entry routes, sectoral caps and attendant conditionalities specified for foreign investment. Funds to be remitted from foreign bank account, NRE or FCNR account only .
- Investments are classified as “Repatriation” and “Non-Repatriation basis”. ‘Investment on repatriation basis’ is an investment, the sale/ maturity proceeds of which are, net of taxes, eligible to be repatriated and the expression ‘Investment on non-repatriation basis’, will be construed accordingly
- ‘Non-Resident Indian (NRI)’ is an individual resident outside India who is citizen of India. Overseas Citizen of India (OCI)’ is an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955. <https://ociservices.gov.in/>
- If NRI/OCI invest on Non-Repatriation basis, it will be consider as “Domestic Investment” and there would be no conditions as specified for FDI.
- Transfer of share by NRI/Foreign citizen to Indian Citizen should not be “more” than fair value as certified by Chartered Accountant or Merchant Banker. Transfer of shares by Indian Citizens to NRI/Foreign citizens should not be “Less” then the Fair value.
- Reporting requirements to RBI is there at the time of investment, transfer and annual filings.

OTHER LAWS

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- In addition to Companies Act, Income Tax Act and FEMA Regulation, there are other Laws and Regulation which needs to be complied for e.g. Goods and Service Tax Act, Labour Laws etc.
- Due to introduction of GST, various laws like Sales Tax (separate for each state), Central Sales Tax, Excise Laws, Service Tax and other indirect taxes has been abolished.
- Goods and Service Tax Act i.e. GST applies when Company is having turnover more than Rs.40 lakhs for Goods (Rs.20 Lakhs for Services) on all over India basis subject to other conditions and restrictions.
- GST rates are different on each item and services ranging from 5% to 28% (generally). Company needs to register in each state wherever it has a fixed place of business.
- Labour Laws are applicable subject to crossing of certain threshold number of employees.

DISCLAIMER

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- Please note that all above stated points are general in nature and there are other conditions and restrictions or options available.
- Views expressed are personal in nature.
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Do you want to take whole profit after paying income tax at home?

Do not want to pay DDT @20.56%? ->

Heard about LLP? -> Stay tuned for next article !!!

Thank You.