

# ASA & Associates

chartered accountants *(A member firm of NIS Global)*



Setting Up >>  
business presence in india

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# INDIA SUBSIDIARY... >>

...OR BRANCH OFFICE OR...

	WHOLLY OWNED SUBSIDIARY	JOINT VENTURE COMPANY	LIAISON OFFICE	PROJECT OFFICE	BRANCH OFFICE
CHARACTERISTIC	Company with entire share capital owned by the foreign investor	Company when two or more parties jointly hold the share capital	Representative Office with no right to undertake commercial activities in India	Temporary Site Office for specific project only	Commercial activities on behalf of the Head Office
OWNERSHIP	Foreign company directly or through holding company structures	Joint ownership with other partners	Is part of overseas company	Is part of overseas company	Is part of overseas company
STATUS	Domestic Company	Domestic Company	Foreign Company	Foreign Company	Foreign Company
CONTROL	Controlled by its Board of Directors	Joint Control determined per shareholders agreement	Controlled by Parent	Controlled by Parent	Controlled by Parent
CORPORATE LIABILITY	Parent not generally liable, unless Permanent Establishment is determined	Liability of each party limited to share holding	Parent is fully liable	Parent is fully liable	Parent is fully liable
	Liability limited to share capital of subsidiary				



	WHOLLY OWNED SUBSIDIARY	JOINT VENTURE COMPANY	LIAISON OFFICE	PROJECT OFFICE	BRANCH OFFICE
SET-UP REQUIREMENTS	FIPB approval/ automatic route	FIPB approval/ automatic route	Prior approval from RBI	Automatic route/ Prior approval from RBI	Prior approval from RBI
	Indian Office Address	Indian Office Address	Indian Office Address	Indian Office Address	Indian Office Address
	Appoint Directors	Appoint Directors	Intimate RoC	Intimate RoC	Intimate RoC
	Filing of incorporation documents	Filing of incorporation documents			
	Issue shares to parent	Issue of fresh shares			
ON-GOING LEGAL OBLIGATIONS	Maintain books of accounts & secretarial records		Maintain books of accounts		
	Register changes to constitution/ directors/ shareholders		Annual Audit		
	Annual Audit		Annual return to RBI, RoC, I-T		
	Annual return to RoC, I-T		Annual accounts of parent company to be filed		
CLOSURE	Application to RoC/ legal process		Application to RBI		
			'No Objection Certificate' from I-T		

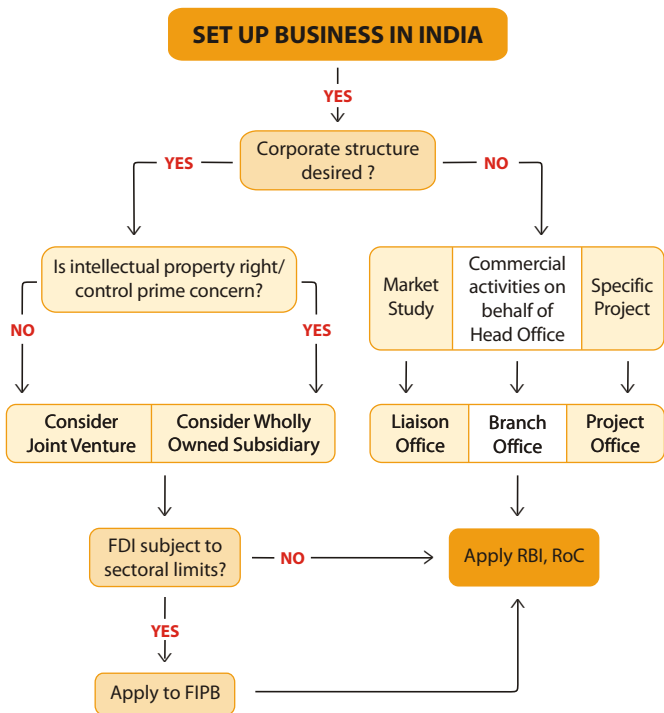
\* FIPB - Foreign Investment Promotion Board

\* RBI - Reserve Bank of India

\* I-T - Income Tax Authorities

\* RoC - Registrar of Companies

# INDIA ENTRY STRATEGY >>



\* FIPB - Foreign Investment Promotion Board

\* FDI - Foreign Direct Investment

\* RoC - Registrar of Companies

\* RBI - Reserve Bank of India

\* I-T - Income Tax Authorities

# KEY MATTERS >>

Restricted Sectors (FDI disallowed)	<ul style="list-style-type: none"> <li>&lt; Gambling and Betting</li> <li>&lt; Lottery Business</li> <li>&lt; Atomic Energy</li> <li>&lt; Retail Trading (except single branded product retailing)</li> <li>&lt; Agriculture</li> </ul>
Sectoral Caps on FDI in certain industries (illustrative list)	<ul style="list-style-type: none"> <li>&lt; Defence Production <b>(26%)</b></li> <li>&lt; Insurance <b>(26%)</b></li> <li>&lt; Telecommunication <b>(49%)</b></li> <li>&lt; Print Media <b>(26%)</b> i.e. publishing of newspapers and magazines dealing with news and current affairs</li> <li>&lt; Civil Aviation - Domestic Airlines Sector <b>(49%)</b></li> <li>&lt; Single brand trading <b>(51%)</b></li> </ul>
In case of a LTD company, where paid up capital exceeds INR 50 million (USD 1,086,950 approx)	Appointment of a Managing Director mandatory
In case paid up capital exceeds INR 50 million (USD 1,086,950 approx)	Company Secretary involvement
Environment Protection Act	Local state laws applicable
Restrictions on hours worked by employees	<b>48</b> hours per week maximum
Number of Indian employees which triggers employer obligation to provide employees state insurance (manufacturing units)	<b>10</b>
Number of Indian employees which triggers employer obligation under provident fund scheme, bonus act	<b>20</b>
Minimum bonus to be paid to an employee drawing INR 10,000 or less	<b>8.33%</b> of basic wage
On retrenchment / lay off / closure	Compensation is provided to employee

# CORPORATE TAX >>

**CORPORATE TAX IS PAID BY COMPANIES, BRANCHES AND PROJECT OFFICES OF OVERSEAS COMPANIES ON PROFITS AND OTHER INCOME**

RATES FOR FY 2010-2011	
Company	Percentage(%)
<b>Foreign</b>	<b>40<sup>1</sup></b>
<b>Domestic</b>	<b>30<sup>2</sup></b>

<sup>1</sup>plus surcharge at 2.5% for foreign companies if income exceeds INR 10,000,000 (USD 217,500 approx) and education cess of 3%

<sup>2</sup>plus surcharge at 7.5% for domestic companies if income exceeds INR 10,000,000 (USD 217,500 approx) and education cess of 3%

## **CORPORATE TAX**

Businesses need to determine their annual tax payment and ensure deposit under an installment plan referred as *Advance Tax* by June 15<sup>th</sup> (15%), September 15<sup>th</sup> (45%), December 15<sup>th</sup> (75%) and March 15<sup>th</sup> (100%).

## **TRANSFER PRICING**

Businesses having cross border dealing with related concerns fall within ambit of Indian Transfer Pricing regulations, which requires maintenance of prescribed documentation and certification by an Indian firm of chartered accountants.

## **DOUBLE TAXATION AVOIDANCE AGREEMENT ('DTAA')**

India has a network of DTAA with over 85 countries.

## **WITHHOLDING TAX**

Businesses, including Liaison Office, need to withhold tax on specified payments viz. contractual, professional, rental, etc.

## **TAX AUDIT**

Businesses with annual turnover exceeding INR 6 million (USD 130,400 approx) need to have accounts audited under specific provisions of the Indian income tax laws and certified by an Indian firm of chartered accountants.

# PAYROLL TAX >>

## EMPLOYER NEED TO WITHHOLD TAXES ON EMPLOYEE EARNINGS

RATES FOR FY 2010-2011	
Income Range	Rate (%)
<b>Upto 160,000</b> (USD 3,475 approx)	<b>Nil</b>
<b>160,001 - 500,000</b> (USD 3,475 - 10,800 approx)	<b>10</b>
<b>500,001 - 800,000</b> (USD 10,800 - 17,300 approx)	<b>20</b>
<b>800,001 and above</b> (above USD 17,300 approx)	<b>30</b>

(1 USD = 46 INR)

An employer is required to contribute and comply with a social tax namely *Provident Fund*. There is also an *Employee State Insurance* cost. Both of these primarily focus on blue collared staff.

Foreign nationals deputed to work in India will be taxed on the basis of tax residential status, which is linked to the days stayed in India. An employment/business visa is necessary, as is registration with the Foreigners Regional Registration Officer ('FRRO').

There are certain state specific regulations e.g. *Professional Tax* and *Shop and Establishment Act*, which apply in Indian states like Karnataka, Maharashtra etc.

# INDIRECT TAX >>

## TAX ON GOODS AND SERVICES

India aims to adopt a comprehensive Goods & Service Tax ('GST') by 2011. In the meanwhile, the following indirect taxes apply

### EXCISE DUTY

Manufacturing units need to pay an *excise duty* on goods produced in India. The duty varies between products and the unit is required to periodically deposit the duty on removal of products. Furthermore, these units are to maintain detailed stock records and accounts in respect of duty payable on final goods, credit claimed on inputs etc and submit annual returns. Submission dates are linked to level of operations.

### CUSTOMS DUTY

Movement of goods across borders would need compliance to *customs duty* regulations. The duty varies between products. The compliance requirement includes determination and deposit of duty prior to clearance of goods by the customs authority.

### SERVICE TAX

Businesses rendering specified services are liable to a *service tax* at 10 percent plus education cess on the billable value. They are required to monthly deposit the tax collected.

### CENTRAL SALES TAX ('CST')/VALUE ADDED TAX ('VAT')

Businesses trading in goods between states are liable to charge CST whereas those trading within the same state are subject to VAT. The rate of VAT/ CST varies between products and states. The businesses are required to deposit the tax collected and submit bi-annual/ quarterly returns with the sales tax authorities.

Besides, certain states of India levy *entry/octroi tax* on movement of goods.

# REGULATORY COMPLIANCE >>

## COMPANIES

Two main forms - Private Limited Company ('PVT') and Public Limited Company ('LTD'). PVT is the most common form for an international subsidiary.

Audited accounts are filed annually on public record with the Registrar of Companies ('RoC'), in a format set out under the Indian law and Indian Accounting Standards, within a set time scale. Companies also file an Annual Return which gives detail of shareholders and directors.

Businesses are required to follow fiscal year i.e. April 1<sup>st</sup> to March 31<sup>st</sup>, for compliance under the Indian Income tax laws.

REGULATORY MATTER	DUE DATE
CORPORATE LAW	
Board Meeting	Quarterly ( <i>calendar year basis</i> )
Annual General Meeting ('AGM') ( <i>adoption of financials</i> )	Within 180 days of closing the accounts
Annual Return with the RoC	Within 30 days of holding the AGM
INCOME TAX	
Corporate Tax Return	September 30 <sup>th</sup>
Tax Audit Report	September 30 <sup>th</sup>
Transfer Pricing Report	September 30 <sup>th</sup>
TDS Returns ( <i>Tax Withholding</i> )	Quarterly
Employee Tax Return	July 31 <sup>st</sup>
SERVICE TAX	October 25 <sup>th</sup> & April 25 <sup>th</sup>

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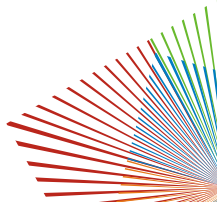
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