NEERAJ BHAGAT & CO.
Chartered Accountants

DOING BUSINESS IN INDIA

Regulatory, Taxation and Compliances

Contents

- About India
- India Economy- World Bank's verdict
- FDI Opportunities in India
- How to enter Indian market
- Routes for FDI investment
- Formalities for setting up a company
- Mandatory documents to be filed with Registrar of Companies
- Mandatory requirements as directors
- Board Meetings
- AGM and other General Meetings
- Corporate Social Responsibility
- Taxation in India
- Double Taxation Avoidance Treaty
- Related Party transactions
- Transfer Pricing
- Advance Ruling and Dispute Resolution
- About Us
- Our Offices in India

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

About India

India is currently one of the fastest growing economies of the world with an average growth rate of about 5.5 to 6 percent per annum, over the last two decades. This has ensured that the economy ranks among the top five in the world, in terms of growth performance. Our analysis suggests that maintaining even this growth rate over the next two decades would be an impressive feat. Very few nations have sustained higher growth rates in the long run and even those who did - like the East Asian Tigers - are now suffering from prolonged recessions like that in Japan.

Given the current saving and investment rate as well as the productivity of capital, India can hope to attain about 6 percent growth per annum in the coming decades. Any substantial increase in this would require a significant step up of either domestic savings or foreign capital. The current economic scenario in India does not give any cause for optimism on this account. The alternative would have to involve a rise in the productivity of capital, for which there is a great deal of scope, not only in the public sector but also in the private sector. Achieving this would however require coherent micro and macro economic policies not only at the national but also at the state levels. Further, it would require a strong political consensus cutting across parties and regions. Certainly, if these barriers can be crossed, then India has the potential to attain a higher growth rate.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

India Economy:
The World Bank Verdict: 7% Growth Ahead for India

In its latest Global Economics' Prospect report, the World Bank projects a sharp improvement in India's growth prospects in the coming years. From 4.8% in 2013, the economy has been projected to grow by over 6% in the next two years crossing 7% in 2016. In comparison, China and the East Asia-Pacific region are projected to have a relatively flat growth. This note focuses on the merits of these projections.

The World Bank bases its view on three factors – (1) Expected recovery in global demand, and (2) Revival of investment cycle. (3) Eventual closure of the negative 'output gap'.

On the face of it, the assumptions are not unfounded. Growth pick up in developed countries has already generated a strong momentum in India's exports, and has contributed to a reduction in concerns over the current account deficit In fact, the World Bank maintains the correlation in its projections.

The World Bank's belief in the potential of India's investment is also supported by the fact that India has not promoted investment as a part of its growth strategy to the same extent as some of its other Asian peers, in particular China. However, falling investment was one of the initial causes of the current slowdown in India.

On the positive side, the slide came not from excess capacity, but due to supply side bottlenecks and institutional failures. The infrastructure deficit in India is still acute and hence presents strong potential for growth. Indeed, on digging deeper into the World Bank's growth projections, fixed investments GDP is expected to grow from 3.5% in 2013 to over 6% in 2014, and almost 8% by 2015 and 2016. Is it improbable? Not really.

India has previously seen even better investment performances – 9% in 2009, followed by remarkable increase in 2010 and years further. Essentially the crux of the World Bank argument seems to be the existence of a negative output gap for India. Crudely put, output gap is the difference between the current growth rate below the economy's potential growth rate.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

FDI Opportunities in India

The foreign direct investment into India is a process for facilitating people to invest in India. If you are really interested in doing business in India with the help of foreign capital then make sure that you are investing in the right source and you can do this in a number of ways. Even when India was going through tough times, it was still a good financial breeding ground for all foreign investors. They have never felt the pressure as their genre of investment has always been unleashed for the purpose of ushering more capital within the country.

How to enter Indian market

A foreign company planning to set up business operations in India may:
Incorporate a company under the Companies Act, 2013, as a Joint Venture or a Wholly Owned Subsidiary.
Set up a Liaison Office / Representative Office or a Project Office or a Branch Office of the foreign company which can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Routes for receiving Foreign Direct Investment in an Indian company

An Indian company may receive Foreign Direct Investment under the two routes as given under:

i. Automatic Route

FDI is allowed under the automatic route wherein no prior regulatory approval is required from either the RBI or FIPB. Under this route, investors are required to notify the concerned regional office of the RBI within 30 days of receiving investment money in India and to file the required documents and details of the shares allotted, with the same regional office, within 30 days of issuing such shares to the respective foreign investors, without prior approval either of the Government or the Reserve Bank of India in all activities/sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.

ii. Government Route

FDI in activities not covered under the automatic route requires prior approval of the Government which are considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance.

The Indian company having received FDI either under the Automatic route or the Government route is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank.

Prohibited Route:

FDI is prohibited under the Government Route as well as the Automatic Route in the following sectors:

i) Atomic Energy

ii) Lottery Business

iii) Gambling and Betting

iv) Business of Chit Fund

v) Nidhi Company

vi) Agricultural (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and cultivation of vegetables, mushrooms, etc. under controlled conditions and services related to agro and allied sectors) and Plantations activities (other than Tea Plantations)

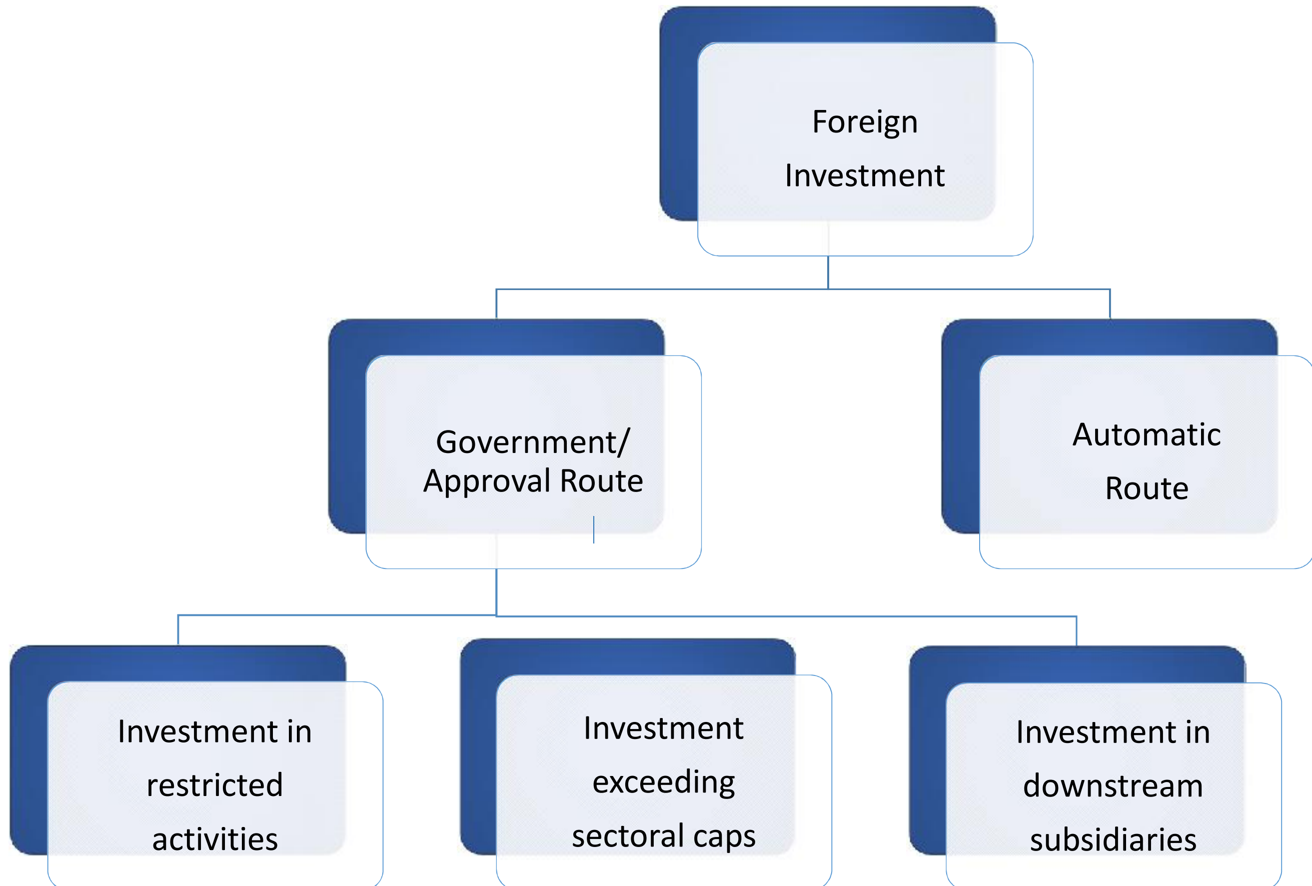
vii) Housing and Real Estate business (except development of townships, construction of residential/commercial premises, roads or bridges to the extent specified)

viii) Trading in Transferable Development Rights (TDRs).

ix) Manufacture of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Below chart gives the brief overview of approvals required in foreign investment in India:



© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Formalities for setting up a company

A foreign company can commence operations in India by incorporating a company under the
Companies Act as a subsidiary (including a wholly owned subsidiary) or as a joint venture
company.
Private or public companies are formed by first obtaining name availability approval, followed by registering the memorandum and articles of association and prescribed forms with the Registrar of Companies (ROC) online . If the documents are in order, the ROC will issue a certificate of incorporation. The filing for company formation is made in electronic form.

All directors or proposed directors must obtain a Director Identification Number (DIN). All the directors must obtain a Digital Signature Certificate (DSC) from the certifying authority for electronic filings.

Depending upon the nature of the business activities and the business sector, companies need to register with relevant sector regulators:

• Financing and investing operations, etc., must register with the RBI as a non-banking
finance company;

• Asset reconstruction companies must register with the RBI;

• Insurance services (life and non-life) and insurance broking companies, etc., must
register with the Insurance Regulatory Development Authority;

• Stock brokers, sub-brokers, merchant bankers, underwriters, custodians, portfolio
managers, credit rating agencies, mutual funds, venture capital, asset management
companies, share transfer agents, etc., must register with SEBI; and

• Pension funds must register with the Pension Fund Regulatory and Development Authority.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Mandatory documents to be filed by company with Registrar of Companies

A company must file below documents with RoC after incorporation:

(a) A declaration by a director that every subscriber to the memorandum has paid the value of shares agreed to be taken by him and paid-up share capital of the company is not less than one hundred thousand rupees on the date of this declaration;

(b) A declaration that the company has filed with RoC a verification of its Registered Office which should be within 30 days of incorporation;

(c) Particulars of interest in other firms and bodies corporate, if any, in relation to the first directors.

*Since the company has to file a declaration within 180 days of incorporation, hence money for shares subscribed to memorandum should be received within 180 days from the date of incorporation.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Mandatory Requirements as Directors

One Resident Director	At least one director must be resident in India, that is to say, he must have stayed in India for at least 182 days in previous calendar year
Board Meeting	Director must be present in at least one board meeting held during the period of 12 months with or without leave of absence, otherwise, he shall be considered to have vacated the office
Declaration	An individual before being appointed as director shall be required to furnish a declaration that he/ she is not disqualified for being appointed as director
Consent filing	Every director has to give his consent for appointment as such to be filed with Registrar of Companies
Resignation filing	There is mandatory requirement for the person to file his resignation with Registrar as director within 30 days. Resignation shall be effective from the date of receipt by company and not w.e.f. date of resignation
Limit on directorships	Directorship in Private company, One Person Company, and LLP (Limited Liability Partnerships) to be counted in total number of directorships (i.e, twenty), allowable for a person being a director
Quorum	One-third of the total directors or two, whichever is higher shall form the quorum for the board meeting, wherein no proxy shall be counted

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Number of Directors	Maximum number of directors in a company is fifteen. Special resolution is required to appoint more than fifteen directors
Independent director	Mandatory appointment of at least one independent director (as defined in s 149(6)) in companies to which CSR is applicable. This requirement shall be complied by existing companies within one year of commencement of 2013 Act
Loan to directors	No company shall directly or indirectly advance any loan (including loan represented by a book debt) or give guarantee or provide security in connection with such loan to any director / related persons. * An exception to the above rule is made for MD or a whole time director (WTD) if such loan is in accordance with the terms of services extended to all employees or is approved by shareholders by special resolution
Key Managerial Personnel	Company having a paid-up share capital of Hundred million rupees or more shall have whole-time key managerial personnel (MD, CEO, CFO, CS)

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Meetings of Directors and Stakeholders

Board Meetings:

- First Board Meeting shall be held within 30 days of incorporation of the company.
- Company shall hold at least 4 board meetings in each calendar year.
- Maximum gap between two board meetings should not be more than 120 days.
- Electronic voting for Board and shareholders' meetings introduced.
- Approval of related party transactions by Board of Directors at Board meeting made mandatory.
- At least 7 days' notice to every director shall be given for the board meeting.
- As till now the foreign directors faced location constraints in attending the board meetings in India, now participation of directors through video-conferencing and other electronic means for board meetings has been permitted and considered equivalent to being in-person, provided such participation is capable of recording and recognizing.

*Further, such meeting can be held anywhere around the world with the aid of video-conferencing.

Annual General Meeting and other General Meetings:

- AGM is the annual event of shareholders of company and is a good example of shareholders' democracy.
- First AGM to be held within 9 months of closure of financial year and every subsequent meeting within six months from the date of closing of financial year.
- Maximum gap between two AGMs shall be 15 months.
- Meeting shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.
- No relief to foreign residents for attending general meetings through video conferencing or holding meetings outside the city where registered address of the company is situated. Every member has to be present in person.
- At least 21 days' notice shall be given for every general meeting.
- Any general meeting, in addition to AGM, shall be called "Extra-Ordinary General Meeting" (EGM).

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

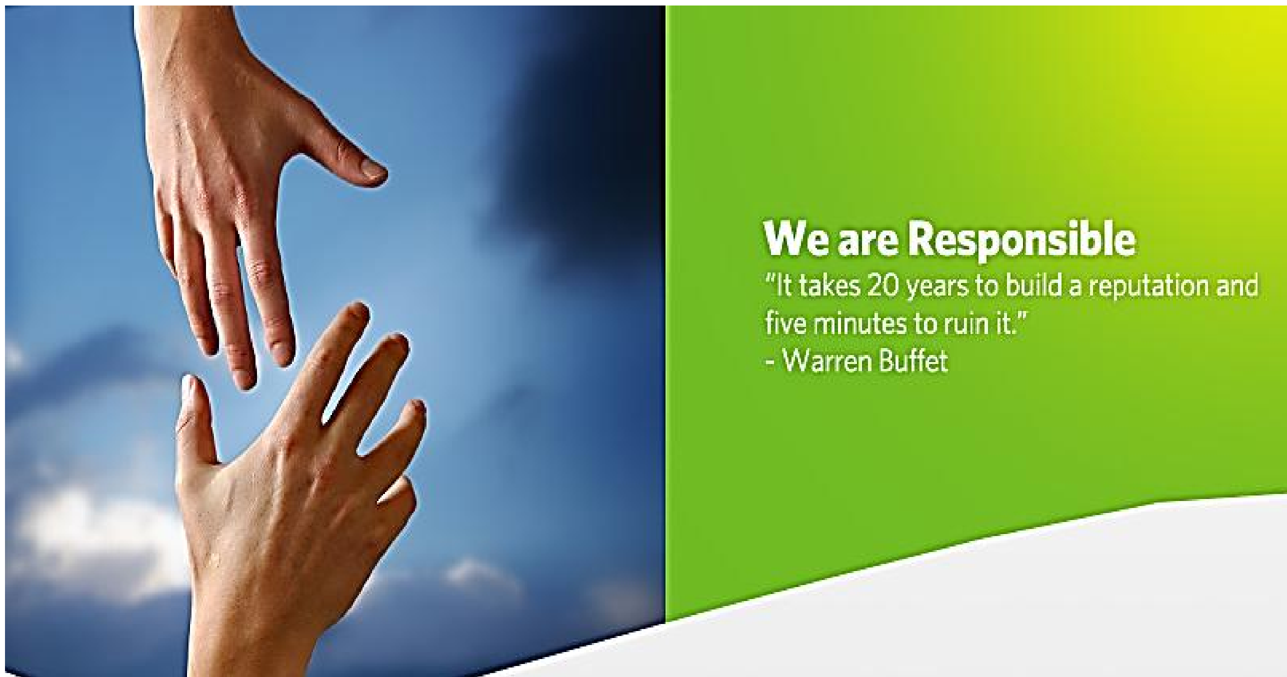
Corporate Social Responsibility

Applicable to companies having:

- Net worth of INR 5 billion or more, or
- Turnover of INR 10 billion or more, or
- Net profit of INR 50 million or more,
- during any financial year shall have to constitute a CSR committee and implement CSR policies.

Such companies will have to spend at least **2% of the average net profits** made by the company in the preceding three financial years in accordance with the CSR policy.

*Losses, if any, in preceding financial years shall not be considered for calculating average net profits.



© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Taxation in India

India has a well-developed tax structure with clearly demarcated authority between Central Government, State Governments and Local Bodies. Central Government levies taxes on income (except tax on agricultural income, which the State Governments can levy), custom duties, central excise and service tax.

Value Added Tax (VAT), (Sales tax in States where VAT is not yet in force), stamp duty, Land revenue and tax on professions are levied by the State Governments. Local bodies are empowered to levy tax on properties, octroi and for utilities like water supply, drainage etc.

In last 10-15 years, Indian taxation system has undergone tremendous reforms. The tax rates have been rationalized and tax laws have been simplified resulting in better compliance, ease of tax payment and better enforcement. The process of rationalization of tax administration is ongoing in India.

Since April 01, 2005, most of the State Governments in India have replaced sales tax with VAT.

Taxes Levied by Central Government

Direct Taxes
- Tax on Corporate Income
- Capital Gains Tax
- Personal Income Tax
- Tax Incentives
- Double Taxation Avoidance Treaty

Indirect Taxes
- Excise Duty
- Customs Duty
- Service Tax
- Securities Transaction Tax

Taxes Levied by State Governments and Local Bodies
- Sales Tax/VAT
- Other Taxes

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Direct Taxes

Taxes on Corporate Income Companies residents in India are taxed on their worldwide income arising from all sources in accordance with the provisions of the Income Tax Act. Non-resident corporations are essentially taxed on the income earned from a business connection in India or from other Indian sources. A corporation is deemed to be resident in India if it is incorporated in India or if it's control and management is situated entirely in India.

Domestic corporations are subject to tax at a basic rate of 30%. Foreign corporations have a basic tax rate of 40%. In addition, an education cess at the rate of 3% on the tax payable is also charged. Corporates are subject to wealth tax at the rate of 1%, if the net wealth exceeds INR 3 million. Domestic corporations have to pay dividend distribution tax at the rate of 15% plus surcharge and education cess, however, such dividends received are exempt in the hands of recipients.

Goods and Service Tax – new tax regime to be introduced

One of the biggest taxation reforms in India -- the Goods and Service Tax (GST) -- is all set to integrate State economies and boost overall growth.

GST will create a single, unified Indian market to make the economy stronger.

GST is a comprehensive tax levy on manufacture, sale and consumption of goods and services at a national level.

The implementation of GST will lead to the abolition of other taxes such as octroi, Central Sales Tax, State-level sales tax, entry tax, stamp duty, telecom licence fees, turnover tax, tax on consumption or sale of electricity, taxes on transportation of goods and services, et cetera, thus avoiding multiple layers of taxation that currently exist in India.

Through a tax credit mechanism, this tax is collected on value-added goods and services at each stage of sale or purchase in the supply chain.

The system allows the set-off of GST paid on the procurement of goods and services against the GST which is payable on the supply of goods or services. However, the end consumer bears this tax as he is the last person in the supply chain.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Double Tax Avoidance Treaty

India has entered into DTAA with more than 80 countries including the US. In case of countries with which India has Double tax Avoidance Agreement, the tax rates are determined by such agreements. Domestic corporations are granted credit on foreign tax paid by them, while calculating tax liability in India.

Double taxation can be avoided in two ways. One, the resident country exempts income earned in the foreign country. Or, it grants credits for the tax paid in the other country.

The rules vary from treaty to treaty. For example, the tax treaty with Mauritius has zero tax for capital gains on equities, but that with the US taxes capital gains.

Broadly, under DTAA, the country where the income is generated has the right to tax it according to its laws. The country of residence gives credits for this tax and taxes the income at a lower rate.

For example, if India taxes long term capital gains at 20%, the country of residence where such gains are taxed at 30% will levy only 10% tax on such income.

In many cases, if an individual establishes his residency in a country with which India has signed DTAA, then income generated in India will be taxed at the rate mentioned in the treaty.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Related Party Transactions

The Companies Act, 2013 has made significant amendments vis-à-vis related party transactions making this a significant focus area. The responsibilities are rather onerous with strict consequences in cases of non-compliance.

Key highlights are as follows:

The transactions of a company with its related parties which are not in the ordinary course of business and which are not arm's length would require the consent of the Board of Directors of the Company.

Related party transactions have been defined to include the following:

• Sale, purchase or supply of any goods or materials

• Selling or otherwise disposing of, or buying, property of any kind

• Leasing of property of any kind

• Availing or rendering of any services

• Appointment of any agents for purchase or sale of goods, materials, services or property

• Related party's appointment to any office or place of profit in the company, its subsidiary company or associate company, and

• Underwriting the subscription of any securities or derivatives of the company.

The definition of 'related party' with respect to a company has been widely defined and includes:

• Holding Company,

• Subsidiary Company,

• Sister Subsidiary,

• Associate Company,

• Directors, Key Management Personnel (including relatives),

• Firms / companies where directors / relatives are interested and

• Senior management i.e. members of core management team one level below executive directors including functional heads.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Transfer Pricing

Overview

Transfer Pricing in India was introduced in 2001 for curbing tax avoidance by laying down norms for computation of income arising from international transactions or specified domestic transactions("SDTs") having regard to the "arm's length price". The Indian Transfer Pricing Regulations (TP Regulations) comprise Sections 92 to 92F of the Income-tax Act, 1961 ("the Act") and Rules 10A to 10T of the Income Tax Rules, 1962 ('the Rules') which guides computation of the transfer price and suggests detailed documentation procedures.

The Finance Act, 2012 expanded the scope of TP regulations by insertion of a new section 92BA in the Indian Income tax Act, 1961 to include SDTs within its ambit. SDTs would include transactions entered into by domestic related parties, or by an undertaking with another undertaking of the same tax payer. In addition the Finance Act, 2012 also introduced Section 92CC and 92CD read with Rules 10F to 10T and 44GA to provide the Advance Pricing Agreement Regime in the Indian transfer pricing environment.

Key features of the TP Regulations

- every person who has undertaken an international transaction with an associated enterprise shall maintain information and contemporaneous documentation as prescribed under the Rules
- every person who has entered into an international transaction during a previous year shall obtain an Accountant's Report and furnish such report on or before the filing of the income tax return which is 30th November following the end of the financial year.
- stringent penalties have been prescribed for non-adherence to the TP Regulations

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Advance Ruling and Dispute Resolution

The Central Government has constituted an Authority for Advance Rulings and Dispute
Resolution for the purposes of pronouncing an advance ruling and resolution of disputes.

Non-resident Applicant/ Appellant: for determination in relation to a transaction which has been undertaken, or is proposed to be undertaken, by the applicant, and such determination shall include the determination of any question of law, or of fact, specified in the application.

Resident Applicant/ Appellant: for determination in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken, or is proposed to be undertaken, by the applicant with such non-resident, and such determination shall include the determination of any question of law, or of fact, specified in the application.

Public sector company: A resolution of any dispute relating to computation of tax bases or any other issue arising from the order of an Assessing Officer passed in pursuance of the direction of the Dispute Resolution Panel or with the approval of the Commissioner, or any rectification order in relation to such order.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

About Us

Who We Are:

We are a team of distinguished chartered accountant, corporate financial advisors and tax consultants in India. Our firm of chartered accountants represents a coalition of specialized skills that is geared to offer sound financial solutions and advices. The organization is a congregation of professionally qualified and experienced persons who are committed to add value and optimize the benefits accruing to clients.

Our Focus:

To provide high quality services to our clients and believe in upholding high standards of honesty and integrity in what we do.

Our Clientele:

We have been providing services to a proud mix of Multinational companies, Indian companies, High Net Worth Individuals amongst others. Our multinational client-set includes companies belonging to Japan, US, Singapore, China, Taiwan, Hong Kong, and many others.

We advise & also hand-hold foreign companies set-up operations in India & cater to their compliance requirements right from inception to regular day-to-day operations.

Our Services:

Accounting / Book-keeping

Book-keeping, Preparation and Compilation of financial statements, Accounting reconciliations and Consolidations, Accounting system implementation, Development of Accounting policies and Procedures Manual, Forecasting and Projections, Financial analysis of reports, Cash flow management.

Audit / Assurance

Audit, Review of financial statements, Internal control reviews, Reporting requirements, Drafting of Management

Regulatory

Advice on Regulatory matters, Assistance in obtaining Clarifications and Approvals from Reserve Bank of India (RBI) and other Statutory Authorities, Company Law Compliance, Compliance with Exchange Control Regulations and Import-Export Code norms.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Taxation

Corporate, Individual & International Taxation, Direct & Indirect tax compliance, Return Filing, Tax Advisory, Tax Audit, Dispute Resolution, Transfer Pricing.
secretarial records, Filing of necessary forms.

Transaction advisory

Business structuring, Valuations, Corporate Finance, Due diligence, Tax planning.

Compliances

Income tax, Service tax, VAT/ CST, Excise/ Customs, RBI and ROC compliances in respect of all types of regulatory filing of documents and their follow up.

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.

Our Offices in India

New Delhi:
S-13, St. Soldier Tower, G-Block Commercial Complex, Vikas Puri, New Delhi - 110018

Phone : + 91 11 28543739
: +91 11 28544939
: +91 11 45527239
Fax : +91 11 43850030

Gurgaon:
1156, Tower B2, 11th Floor, Spaze I Tech Park, Sohna Road, Sector 49, Gurgaon-122001

Phone : +91 124 4371317
+ 91 124 4371318
Fax : +91 11 43850030

Mumbai:
Unit No.3, 1st Floor, New Laxmi Shopping Centre, A-Wing, H.D.Road, Ghatkopar (W), Mumbai - 400086 (India)

Phone : + 91 98202-63544
: + 91 22-65957459

E-mail : info@neerajbhagat.com
Web site : www.neerajbhagat.com

© 2014 NBC, Chartered Accountants and member of INAA Group. All Rights Reserved.