



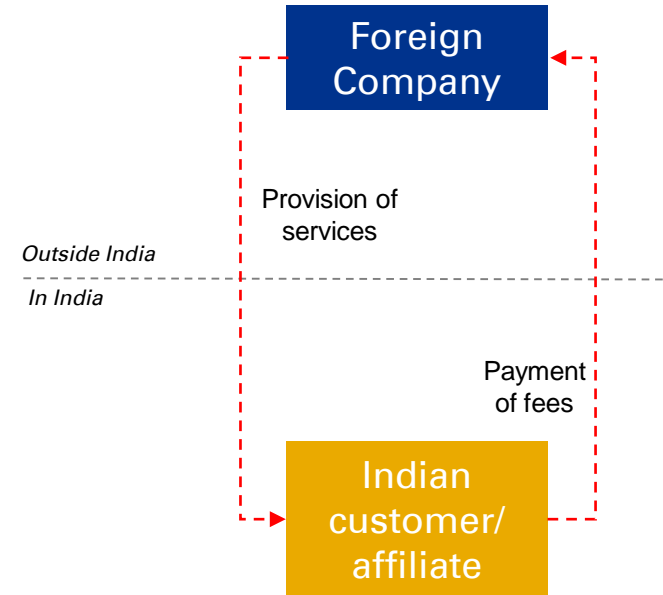
Indian Income Tax Return & Compliance obligations - Foreign Companies

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September 2018



Tax compliances in India for Foreign Companies

- Foreign Companies earn income/revenues from Indian customers/ affiliates towards rendering services
- As per provisions of India domestic tax law¹, every person being a company (which includes foreign company) earning income/revenues from India is required to file its corporate tax return in India
- Additionally Transfer Pricing ('TP') compliances are required to be undertaken if income/ revenues are earned from a related party in India



The Indian Revenue Authorities are enforcing tax compliances for foreign entities in India – notices issued to foreign entities for non-compliance (refer next slide for sample notice)

¹ Refer Annexure for relevant provisions of the Income-tax Act, 1961

Sample notice issued by Indian Revenue authorities



GOVERNMENT OF INDIA / भारत सरकार
MINISTRY OF FINANCE / वित्त मंत्रालय
INCOME TAX DEPARTMENT / आयकर विभाग
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
(IT) CIRCLE 2, PUNE

To.	
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Letter No: / पत्र संख्या: ITBA/AIM/S/95/2017-18/	Dated: / तारीख: 06/10/2017
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Sir / Madam,
 महोदय / महोदया,

Subject: Non Filing of Income Tax Return – Reg.
 विषय: आयकर विवरणी को दाखिल न करने के बारे में।

1. The Income Tax Department has received information on financial transactions/activities relating to you. A list of some of the information for Financial Year 2013-14 is provided below. As per records, you do not appear to have filed Income Tax Returns for Assessment Year(s) 2014-15
2. You are requested to furnish your response in the Compliance Module on the e-filing portal at <https://incometaxindiaefiling.gov.in>. If you are not registered with e-filing portal, use the "Register Yourself" link to register. The response to this letter has to be submitted electronically by clicking on the 'Compliance' link after logging into the e-filing portal. You may keep a printout of the acknowledgement of submitted response for your own record.
3. A copy of the acknowledgement is required to be submitted to the office of the undersigned within 20 days of receipt of this letter failing which appropriate proceedings under Income Tax Act, 1961 may be initiated.

Information Summary for PAN

S.No/ क्र.सं.	Fin Year/ वित्त वर्ष	Information Code/ सूचना कोड	Information Description/ सूचना का विवरण
1	2013-14	TDS-194J	TDS Return - Professional or Technical Fees (Section 194J)
2	2013-14	TDS-195	TDS Return - Payment to Non-residents (Section 195)

Foreign Company's India sourced income is traceable through Indian entity's withholding tax returns and filings with bankers at the time of remittances made by Indian entities

Implications in case of non-compliance

Tax compliances	Implications in case of non-compliance ¹
Filing of corporate tax return	<ul style="list-style-type: none"> • Fee of ~ USD 70 – 140 • Penalty of 50% of tax payable on income could be levied for non-reporting of income despite taxes being withheld <ul style="list-style-type: none"> ➤ In certain situations, where the under-reported income is in consequence of any misreporting, penalty could be levied at 200%
Filing of transfer pricing report ² (in Form 3CEB) – if applicable	<ul style="list-style-type: none"> • Penalty of ~ USD 1,400 • Penalty of 2 – 4% of the value of the international transaction

¹ Additionally prosecution implications for willful default may also arise at the discretion of the tax officer.

² In case TP provisions are applicable, the foreign company may also be required to maintain a mirror TP study with respect to its transaction with the Indian group entity. Typically, several Foreign Companies rely on the TP study maintained by the Indian group entity.

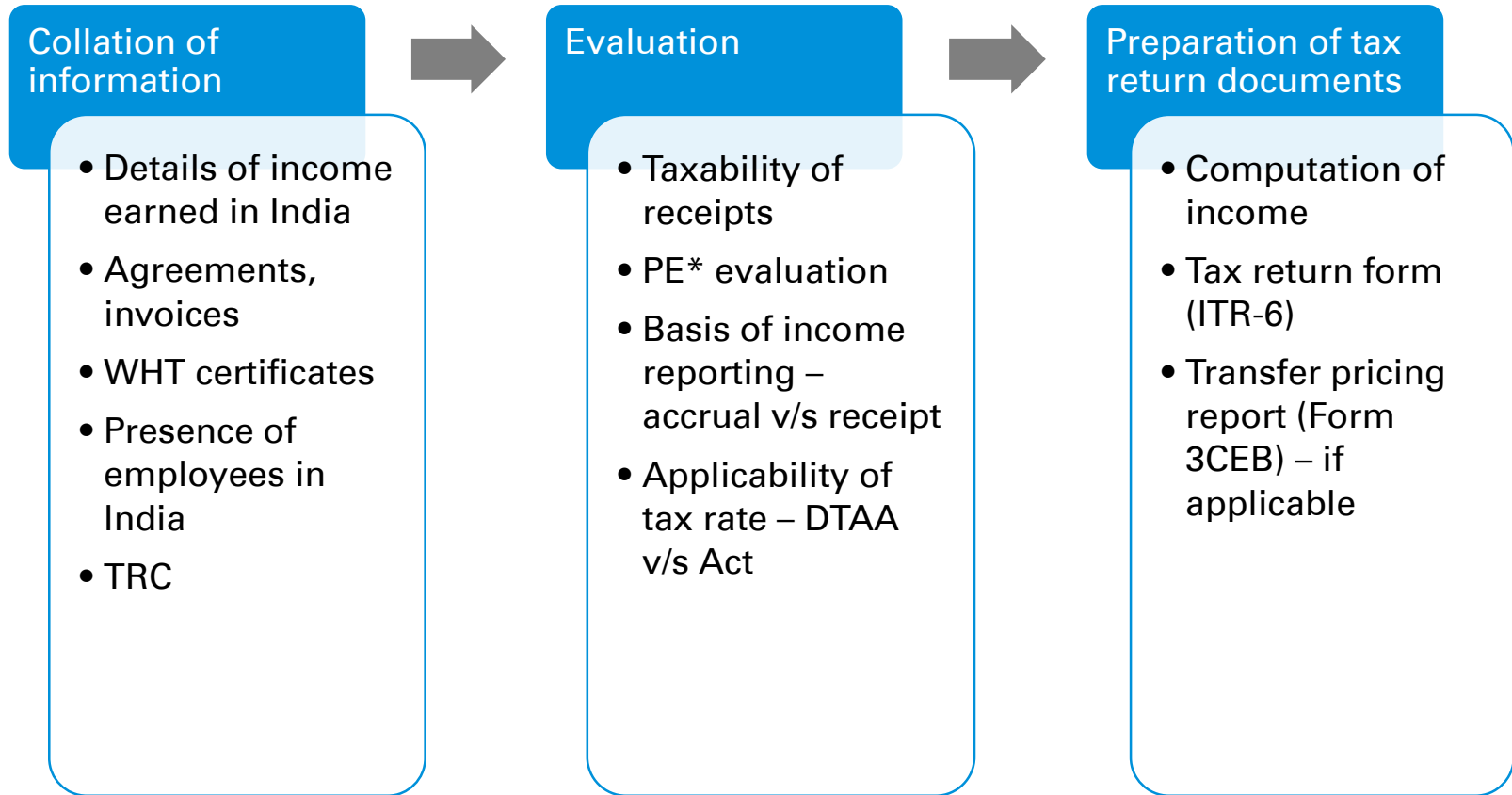
³ Considering 1 USD = INR 71

Timelines for undertaking compliances

- India follows a financial year of April to March
- The due date for undertaking India tax compliances for income earned during a financial year is:
 - In case transfer pricing is not applicable – 30 September
 - In case transfer pricing is applicable – 30 November
- India tax filings could be undertaken for the following years:

Financial year (FY)	Due date for undertaking tax compliances
FY 2017-18	30 November 2018 (assuming transfer pricing is applicable)
FY 2016-17	31 March 2019 (belated filings)

India tax filing process



** Permanent Establishment - Typically a PE is constituted where the stay of employees of a Foreign Company in India exceeds the prescribed threshold under the applicable Tax Treaty or if the Foreign Company has any office or place of business in India, etc.*

Key Issues in Foreign Company Tax Returns

In our experience of working with several foreign companies, the following aspects are critical for preparation of tax returns of foreign companies

- Determine whether receipts/ revenues earned from India are taxable or not
- Prior to signing the Indian tax return of Foreign Company, an official declaration is required to be given in the Foreign Company's return of income with respect to whether there exist any Permanent Establishment ('PE') in India
 - Typically a PE is constituted where the stay of employees of a Foreign Company in India exceeds the prescribed threshold under the applicable Tax Treaty or if the Foreign Company has any office or place of business in India, etc.
- Basis of income reporting – accrual v/s receipt basis
 - If income is offered to tax in Year 1 but corresponding withholding tax ('WHT') deducted by payer is reported in Year 2, it could lead to denial of WHT credits claimed by Foreign Company in Year 1 and consequent raising of tax demands
- Tax rates as per domestic tax law are required to be increased by surcharge and cess unlike Tax Treaty rates
- Tax Residency Certificate ('TRC') is mandatory to claim Tax Treaty benefits

Way forward

- Determine quantum of receipts/ income earned from India
- Review agreements with Indian customers/ affiliates to determine taxability of income from India
- Post the above, undertake India tax compliances i.e. obtain India tax registration (PAN), file corporate tax return and transfer pricing report (if applicable)
 - Belated filings for earlier years could also be undertaken

Annexure 1 – Relevant provisions

Provisions of the Income-tax Act, 1961 ('Act')

Section 139

Return of income.

139. (1) Every person,—

(a) being a company or a firm; or

(b) being a person other than a company or a firm, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax,

shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed⁵⁴ form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :.....

Section 2

(17) "company" means—

(i) any Indian company, or

(ii) any body corporate incorporated by or under the laws of a country outside India, or...



Thank you

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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