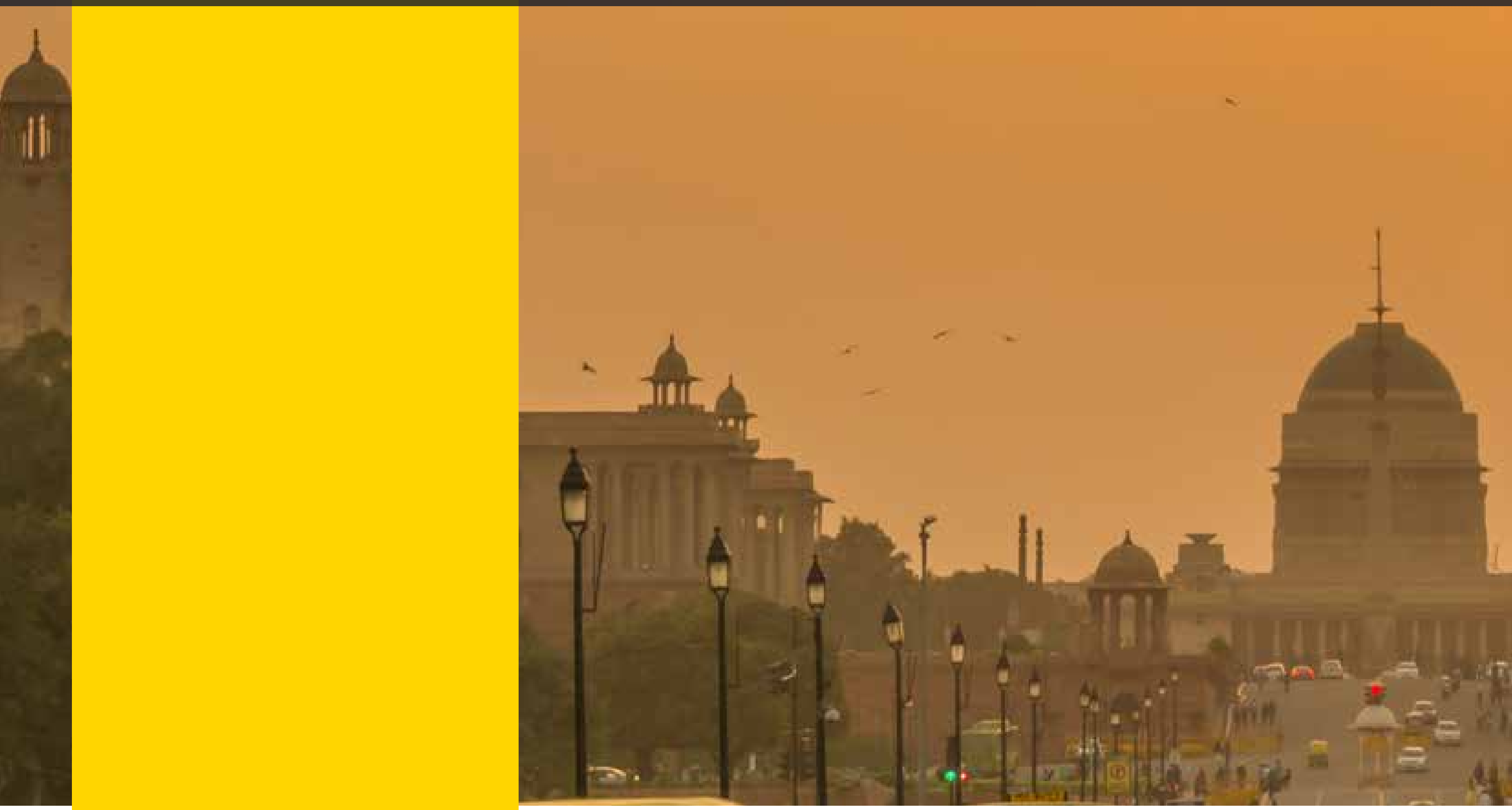
India



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1. Types of tax

1.1 Inheritance tax

There is no estate duty (inheritance tax) payable in India. Estate duty on property that is passed on to the legal heirs on death of a person was removed in 1985. Prior to removal, estate duty was payable on a slab basis ranging from 7.5% to 40% of the principal value of the estate. In 2012, this topic had gained prominence as there were news reports that the Indian Government was thinking of reintroducing this levy, but no formal proposal has been tabled before the Parliament.

1.2 Gift tax

Until 1998, gift tax was levied on donors in India on transfer of any existing movable or immovable property without consideration, at the rate of

30%. In 2004, taxation on transfer without consideration or inadequate consideration (together referred to as gift) was reintroduced in the form of income tax in the donee's hands on receipt of gift, albeit with certain exceptions. However, the tax exemption to the transferor on transfer of property by way of gift continues.

The following specified gifts, when received by any individual, company, trust, partnership firm or limited liability partnership, are taxable at the applicable rates (see Section 3):
- Any sum of money received without consideration
- Any other property as mentioned below, received without consideration or for consideration less than its fair value:
- Immovable property
- Shares and securities
- Jewelry
- Archaeological collections
- Drawings
- Paintings

- Sculptures
- Any work of art
- Bullion

In cases involving gifts of property, the difference between the fair value and the consideration paid by the donee, if any, is taxable for the donee. The methodology for determining the fair value of the property has also been specified under income tax law.

Certain categories of gifts are exempt for the donee from such income tax, which are listed below:
- Gift received of value not exceeding INR50,000
- Gift received from relatives (such as spouse, brother or sister of individual, parents of individual or spouse, etc.)
- Gift received on occasion of marriage
- Gift received from will or inheritance
- Gift received in contemplation of death of the donor
- Gift received from an individual by a trust created solely for the benefit of the relatives of such individual
- Gift received from or by any registered charity trust or institution

On the subsequent transfer of the asset received by the donee as a gift, the difference between the sale consideration and the cost of such asset is taxable in the hands of the donee as capital gains. The cost of acquisition would differ in the following two scenarios:
- Where the donee had paid income tax on receipt of gift — the cost of acquisition would be the fair market value (FMV) of such asset on which the donee had paid income tax.
- Where the donee had not paid income tax on account of such gift being exempt — the cost of acquisition would be the same as the cost of acquisition of such asset in the hands of the previous owner (i.e., the donor).

There was a specific exemption from long-term capital gains tax on transfer of listed company shares (which are a long-term capital asset) on a stock exchange provided securities transaction tax (STT) was paid both at the time of purchase and sale of those shares. This exemption stands withdrawn and long-term capital gains on sale of listed company shares on stock exchange after 1 April 2018 are subject to tax at 10%.

Transfer of non-quoted shares for less-than-prescribed FMV may attract notional taxation for transferor and transferee.

1.3 Real estate transfer tax

From the estate and succession perspective, no real estate transfer tax is levied in India. However, transfer of real estate in India may be subject to income tax and stamp duty (discussed below in greater detail).

1.4 Endowment tax

India does not levy endowment tax.

1.5 Transfer duty

Transfer of movable and immovable property is subject to the following duty and tax:

Stamp duty

Stamp duty is paid in respect of a transaction executed through a document or instrument under the provisions of the Indian Stamp Act of 1899 (central law governing the country) or the State Stamp Acts. Stamp duty is applicable on transfer of movable and immovable property and also on various other transactions, e.g., lease, conveyance, mortgage, partitions, transfers and order passed by the National Company Law Tribunal (NCLT) to sanction a scheme of arrangement.

Payment of accurate stamp duty on instruments gives them legality. Such instruments have evidentiary value and can be admitted as evidence in a court of law.

The rate of duty is generally calculated on an ad valorem basis depending on the nature of the instrument and the state where it is executed. Typically for immovable property, this duty is payable in the state where the property is located. The rates of stamp duty on instruments related to the transfer of immovable property vary from 3% to 10% on the FMV of the property.

Stamp duty on transfer of shares/securities of an Indian company is levied at a rate ranging from 0.0001% to 0.2% on the value of the transaction/fair market value. Exemption from stamp duty for transfer of shares/securities under the depository mechanism has been withdrawn.[1]

No stamp duty is required to be paid for executing a will or a codicil. Also, no stamp duty is levied on inheritance of property by the legal heirs. Generally, stamp duty is payable on settlement of property into a trust and distribution of the assets of the trust to the beneficiaries.

1.6 Net wealth tax

The Finance Act 2015 abolished the levy of wealth tax in India with effect from 1 April 2016. This means that the return of wealth need not be filed for the financial year 2015–16 and thereafter.

2. Who is liable?

As mentioned above, there is no inheritance tax in India. Regarding income tax, the extent and scope of Indian income tax liability depend on the residential status of the individual. For income tax purposes, an individual may be resident, non-resident or resident but not ordinarily resident.

2.1 Residency

An individual is treated as resident in a year if present in India:
- For 182 days during the year (1 April to 31 March)
  Or
- For 60 days during the year (for Indian citizens residing abroad or leaving India for employment abroad, the stay needs to be longer) and 365 days or more during the preceding 4 years

Further, Indian citizens meeting certain income criteria would be deemed to be resident in India if such a person is not liable to tax[2] in any other country/territory by virtue of domicile, residence or any other similar criteria. Such individuals would be considered to be resident but not ordinarily resident.

[1] These amendments are effective from 1 July 2020.

[2] The Finance Act 2021 has inserted the definition of the term "liable to tax" in relation to a person and with reference to a country, to mean that there is an income-tax liability on such person under the law of that country for the time being in force and includes a person who has subsequently been exempted from such liability under the law of that country.

Individuals not falling under any of the above criteria are treated as non-residents.

A resident who was not present in India for 730 days during the preceding 7 years or individuals who are non-resident in 9 out of 10 preceding years are treated as resident but not ordinarily resident. Indian citizens or persons of Indian origin are also treated as not ordinarily resident on satisfaction of specified conditions.

Residents' worldwide income is taxable. Non-residents are taxed only on income that is received in India or that arises or is deemed to arise in India. A person who is resident but not ordinarily resident is taxed like a non-resident but is also liable for tax on income accrued abroad if it is from a business controlled in or a profession set up in India.

2.2 Domicile

Taxation in India is not governed by rules of domicile.

3. Rates

Individuals are taxed on income arising in a financial year (1 April to 31 March) at the specified slab rates, with the highest slab being 30%. Where the income exceeds INR5 million, there is a surcharge levied on the base tax rate, which ranges from 10% to 37%, depending on the income slab. Additionally, a cess of 4% on the total tax liability (including surcharge) is applicable.

From 1 April 2020, dividends received by individuals from domestic companies will be taxable as per specified slab rates, though concessional surcharge rates will apply.

4. Exemptions and reliefs

India does not have any inheritance tax.

5. Filing procedures

As mentioned above, there is no inheritance tax in India. With respect to income tax, all income is taxed using a fiscal tax year from 1 April to 31 March. All taxpayers, including non-residents, must file a return of income in India if they have income that is subject to tax in India.

Resident and ordinarily resident individuals who have an asset (including a financial interest in an entity) located outside India or have signing authority in an account outside India must file a return even if they do not have any taxable income. They are also required to provide details of foreign bank accounts and assets located outside India in their return of income.

Non-residents are subject to the same filing requirements as residents but with lesser disclosure requirement. However, non-resident citizens (including persons of Indian origin) who have only certain types of investment income or long-term capital gains on foreign-exchange assets need not file returns if the required tax is withheld at source. Non-residents are subject to assessment procedures in the same manner as residents.

6. Assessments and valuations

Upon the death of an individual, his or her income till the date of death is taxable for his or her legal representative as it would have been taxable for the deceased had he or she not died. The liability of a legal representative is limited to the extent to which the estate is capable of meeting the liability.

The income from the estate of a deceased person (post-death but before distribution) is also chargeable to tax in the hands of the executor(s) as a representative assessee, prior to its distribution to the legal heirs. Such tax paid can be recovered by the executor from the estate of the deceased.

7. Trusts, foundations and private purpose funds

The Indian Trusts Act of 1882 governs the constitution of trusts, which can be set up as either:

- Discretionary trust: where the trustee has discretion with respect to income or corpus on how to distribute (whether, when and how much) and to decide on the extent of distribution to each beneficiary
  Or
- Determinate trust: where the settlor fixes the entitlement of the beneficiaries, and the trustees have little or no discretion

Taxation of trust

The rules governing taxation of a trust are quite complex. The taxability of a trust is dependent on the residential status of a trust, which is a fact-specific exercise.

The income of a trust is taxable for the trustee as a representative assessee of the beneficiary. However, in certain cases, tax authorities may tax either the trustees or the individual beneficiary directly.

Taxability on settlement of property in a trust

Settlement of property in a trust is not taxable for the settlor. Since Indian tax law envisages taxability in the hands of the recipient on receipt of a gift, there may be tax implications for the trust or beneficiary on settlement of property in a trust, depending on the facts of the case.

Taxability of income earned or generated by a trust

The Indian tax law governing taxability of income earned by a trust depends on the nature of trust. In case of a discretionary trust, income is taxable at maximum marginal rate; whereas in case of a determinate trust, income is taxable at tax rates applicable to each beneficiary.

Taxability on distribution by a trust to the beneficiaries

Typically, at the time of distribution by the trust to the beneficiaries, no tax should arise. Also, arguably, there should not be any taxation in the hands of beneficiaries on receipt of a trust fund/corpus.

Exchange control regulations governing trust

While India allows current account convertibility, full capital account convertibility is not allowed. Various restrictions are imposed on cross-border transactions. Due to possible complexity, attention should be given to settlement of trusts involving a non-resident.

8. Grants

There are no death grants in India.

9. Life insurance

Premiums paid for securing a life insurance policy for oneself, a spouse or children that do not exceed INR150,000 are allowed as deductions while computing the taxable income of an individual. Any sum received under a life insurance policy on death of a person is tax-exempt, subject to the satisfaction of certain conditions.

A unit-linked insurance plan (ULIP) is a multifaceted product issued by insurance companies that combine insurance coverage and investment exposure in a single offering. The Finance Act 2021 has withdrawn the exemption in respect of ULIP issued on or after 1 February 2021 if the aggregate premium amount exceeds INR250,000. It has also introduced taxation of said proceeds from ULIP issued on or after 1 February 2021 under the head capital gains.

10. Civil law on succession[3]

10.1 Estate planning

Trusts are often used as estate and wealth planning and asset protection vehicles. India recognizes testamentary and living trusts. Trusts can be oral or written. However, a trust in which immovable property is settled has to be compulsorily written and registered.

Wealthy or internationally mobile Indian families use trusts in addition to conventional wills to facilitate the devolution of assets and to mitigate *inter alia* issues of probate and asset protection.

10.2 Succession

The rules of succession differ for different religions:
- Succession to the property of Hindus is governed by the provisions of the Hindu Succession Act 1956.
- Succession to property of Muslims is governed by Muslim law, which is not yet codified but is based on religious texts (Sunni and Shia laws).
- Succession of persons other than Hindus, Muslims, Buddhists, Sikhs or Jains is governed by the Indian Succession Act 1925.

10.3 Forced heirship

There is no concept of forced heirship in Indian succession laws in respect of self-acquired properties. However, certain laws, such as Muslim law, are exceptions to this rule.

10.4 Matrimonial regimes and civil partnerships

The Indian law does not recognize civil partnership. Matrimonial rules vary depending on religion. Generally, prenuptial agreements are not recognized under the Indian legal system.

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[3] Based on information available in the public domain.

10.5 Intestacy

Under the Indian Succession Act, the order of succession that is prescribed for distribution of property upon death of the deceased who dies intestate is as follows:

- If there is no spouse or lineal descendant, the estate passes to the state according to the doctrine of escheat.
- If the deceased leaves behind a spouse and lineal descendants, the spouse will be entitled to one-third of the estate, while the remaining two-thirds will be divided between the lineal descendants.
- If the deceased leaves a spouse and persons who are kindred to him or her, but no lineal descendant, the spouse inherits half of the estate and those who are kindred shall inherit the other half.
- If the deceased leaves behind a spouse, but no lineal descendants or persons who are related to him or her, then the whole estate passes to the spouse.

Similarly, the Hindu Succession Act 1956 and Muslim law also contain rules for distribution of property where a person dies intestate.

10.6 Probate

A will for which no probate has been obtained cannot be used to prove that any person named therein is entitled to the estate of the testator. However, the absence of probate does not debar the executor from dealing with the property of the deceased, e.g., collecting assets or selling property to pay debts.

11. Estate tax treaties

India has entered into an inheritance tax treaty only with the United Kingdom. Under the treaty, inheritance tax would not be imposed in the United Kingdom on the death of an individual who is not domiciled in the United Kingdom at the time of his death but is domiciled in India, in respect of his assets situated outside the United Kingdom.