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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 on transfer of property by way of gift to the transferor continues. Currently, the following specified gifts when received by an individual are taxable in his or her hands at the rate applicable to him or her (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
  - Archeological 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.

As mentioned above, certain categories of gift 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

On 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 value 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 previous owner (i.e., the donor).

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 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, order passed by the High Court to sanction a scheme of arrangement, etc.

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 fair market value (FMV) of the property.

Stamp duty on transfer of shares of an Indian company is levied at 0.25% of the value of the transaction. However, if the shares are transferred under the depository mechanism, no stamp duty is payable on such transfer of shares.

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

In India, wealth tax is payable at 1% if the taxable value of an individual's net worldwide wealth exceeds INR3 million. Such tax is levied on net wealth as calculated on 31 March of every year. However, if the individual is a foreign citizen, nonresident or resident but not ordinarily resident (See Section 2.1 for rules of residency), exemption from wealth tax is available on assets located outside India.

Assets subject to tax include residential houses, cars, yachts, boats, aircraft, urban land, jewelry, bullion, precious metals, cash and commercial property not used as business, office or factory premises. While certain categories of assets are specifically excluded from the ambit of net wealth, for others, a deduction is allowed for debts incurred in relation to taxable assets.

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 depends on the residential status of the individual. For income tax purposes, an individual may be resident, nonresident or 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 and 365 days during the preceding four years

Individuals fulfilling neither are nonresidents. (The rules are slightly more liberal for Indian citizens residing abroad or leaving India for employment abroad.) A resident who was not present in India for 730 days during the preceding seven years or who was nonresident in 9 out of 10 preceding years is treated as not ordinarily resident. Residents are taxable on worldwide income. Nonresidents are taxed only on income that is received in India or arises or is deemed to arise in India. A person not ordinarily resident is taxed like a nonresident but is also liable for tax on income accruing 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 the income arising in a financial year (1 April to 31 March) at the specified slab rates with the highest slab being 30%. Presently, where the total income of such individual exceeds INR10 million, a 10% surcharge on the total tax liability of the individual is applicable. An additional levy of 3% on the total tax liability is applicable on income tax towards education cess.

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 nonresidents, must file a return of income in India if they have income which Is chargeable to tax in India. Resident and ordinarily resident individuals who have an asset (including a financial interest in an entity) located outside India or signing authority in an account outside India must file a return even if they do not have any taxable income.

Nonresidents are subject to the same filing requirements as residents. However, nonresident citizens (including persons of Indian origin) who have only certain types of investment income need not file returns if the required tax is withheld at source. Nonresidents 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 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 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, 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 into 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.

Nature of trust	Tax rate
Discretionary trust	Income is taxable at the maximum marginal rate *If the beneficiaries are individuals*: ‣ 30.9% (if the individuals earn less than INR10 million) or 33.99% (if the individuals earn more than INR10 million) *If the beneficiaries are domestic companies*: ‣ 32.45% (if the domestic companies earn more than INR10 million but less than INR100 million) or 33.99% (if the domestic companies earn more than INR100 million)
Determinate trust	Income is generally taxable at the tax rates applicable to each beneficiary except when it includes income from business (in which case, it is taxable at maximum marginal rate).

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. However, the same is dependent on facts of the case.

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 trust involving a nonresident.

8. Grants

There aren't any death grants in India.

9. Life insurance

Premium paid for securing life insurance policy for oneself, his or her spouse or his or her child of an amount not exceeding INR150,000 is allowed as a deduction while computing the taxable income of an individual. Any sum received under a life insurance policy on death of a person is tax exempt.

10. Civil law on succession[1]

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.

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

10.2 Succession

The rules of succession differ for different religions:

- Succession to the property of Hindus is governed by the provisions of Hindu Succession Act, 1956.
- Succession to property of Muslims is governed by Muslim Law, which is not yet codified but is based on their religious texts (Sunni and Shia laws).
- Succession of persons other than Hindus, Muslims, Buddhists, Sikhs or Jains is governed by 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.

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 of 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 of 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, absence of a 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 UK. As per the treaty, inheritance tax would not be imposed in the UK on the death of an individual who is not domiciled in UK at the time of his death but is domiciled in India, in respect of his assets situated outside the UK.