Doing Business Guide - India, Singapore & USA

M2K Advisors

INDIA

India

1. About India

India is one of the fastest-growing economies in the world. Liberalisation of the Indian regulatory framework has enhanced its attractiveness as a destination for foreign investors. In 2016, India was at the 130th rank in the World Bank's Ease of Doing Business Index and within a few years, India has climbed up to the 63rd place, which indicates an improvement of 67 ranks as a result of the improvement made by the Government in its policies launched under the Make in India campaign. Through its 'Atmanirbhar Bharat' mission, India is striving towards becoming self-reliant from a manufacturing perspective driving exports, inbound foreign investments and collaboration with other countries. With measures being taken for ease of doing business, focused policies, digitization across processes, and multiple options for investments in emerging sectors, India has placed itself as one of the preferred destinations for investments. Sectors such as manufacturing, technology, healthcare, fintech, education, among others, show immense growth potential, translating into new business opportunities.

Some of the advantages of starting a business in India are large consumer base, low operational cost, robust financial system, vast trade network, Indian work ethics and availability of working class. Foreign investor can commence business in India as:

Indian company	Limited Liability Partnership (LLP)	Foreign company
• Joint venture • Wholly owned subsidiary	Foreign direct investment (FDI) is permitted in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions	• **Liaison office** - To represent the parent company in India • **Branch office** - To undertake activities such as Export, Import, Research, Consultancy, etc. • **Project office** - Activities as per contract to execute.

Foreign Companies often prefer to incorporate a private limited company / LLP. The basic requirements to establish a private limited company / LLP in India are given below:

Particulars	Private Limited Company	LLP
Minimum No. of Members	2	2
Maximum No. of Members	200	Unlimited
Minimum No. of Directors/Designated partners	2	2
Minimum No. of Resident Director/ Designated partners	1	1
Governing Act/ Law	Companies Act, 2013	LLP Act, 2008
Legal Status	Separate legal entity	Separate legal entity
Liability of Directors/ Designated Partners	The Directors are liable for any defaults	The Designated Partners are liable for any defaults
Annual statutory Filings	Annual statement of accounts & annual return with ROC	Annual statement of solvency & annual return with ROC

In addition to aforesaid corporate law, a business registered in India is also required to comply with the various laws such as Income Tax Act, 1961, Goods and Service Tax Act, Labour laws, Foreign Exchange Management Act, 1999, and state-specific laws and regulations. In an ever-changing regulatory environment, one of the biggest challenges for management is to implement appropriate systems and processes to proactively protect the organisations, people, and customers from any potential business disruption due to new regulatory requirements.

Since a majority of the business are registered as companies, Company Law compliance gathers utmost importance in a growing businesses. Hence, we have, in the ensuing paragraphs, captured a brief of the incorporation process, the secretarial compliances applicable to a private limited company.

2. Incorporation of a company

If a person intends to register a new company in India, he / she must submit an application to the Ministry of Corporate Affairs (MCA). For registration, a person will need Director Identity Number(DIN) and Digital Signature Certificate (DSC), among other things. Every Company shall consist of at least one resident Director. No person can be appointed as a Director without getting a DIN. The prescribed documents to be submitted for obtaining the DIN have to be notarised. If the documents are not in English, then translated version along with the original documents should be notarised. The company's first step is to go for Name approval, after which it shall disclose basic details of directors, shareholding pattern, registered office address. Following are the key documents that are required to be submitted during the incorporation process.

- Memorandum of Association i.e., MOA;
- The Articles of Association, i.e., AOA;
- Declaration by the directors as well as by the subscribers;
- A confirmation about the office address;
- The interest of the directors from other organizations (if required);
- Residential & identification proof of the applicants. etc

The process of incorporation would typically take 2 – 3 weeks if there are only resident shareholders and directors. If there are foreign shareholders/ directors, this may take additional time. Upon completion of registration, the Company receives a digitally signed Certificate of Incorporation.

3. Secretarial Compliances

- Board of directors meeting: At least four board meetings need to be held in a year and at least one meeting needs to be held every quarter. Quorum is 1/3rd of the directors or 2 Directors whichever is higher. The minutes of meetings need to be maintained at the Registered Office.

- Annual General meeting: This is a shareholders meeting that needs to be held every year. Approval of financial statements, declaration of dividends, appointment of auditors, etc. are some of the primary agenda for this meeting. Normally, the company is required to conduct the Annual General meeting before September 30th of the financial year (April to March).

Informing ROC on occurrence of certain events

As per Companies Act, 2013 there are various events which needs to be intimated to Registrar of Companies as and when they happen. To name a few:

- Change in the statutory auditors
- Appointment of Managing Director/ Whole Time Director
- Appointment/Resignation of directors
- Change in the bank signatories
- Alteration of main object of the company
- Change in registered office of the company, etc

The Company is also required to file its Financial Statements comprising of Balance Sheet, Statement of Profit and Loss Account, Cash Flow Statement, Directors' Report, Auditor's Report, and Notice of AGM with the ROC in Form AOC-04 on a yearly basis.

Listed Companies and public companies having paid up share capital of Rs. 10 Crore or more are required to appoint a whole-time company secretary.

The directors are required to inform the company about their directorship in other companies every year.

A number of registers are required to be maintained, such as- Register of Member, Register of Directors, Register of Contracts, Register of Charges, etc. The registers are required to be kept at the registered office of the company.

4. Income Tax

Indian taxes are primarily divided into two categories viz Direct Taxes and Indirect Taxes. Taxpayers are required to obtain Permanent Account Number (PAN), which is a pre-requisite for payment of taxes and undertaking various compliances. There are different types of taxpayers registered with the Income tax department and they pay taxes at different rates applicable to them. For example:

i. **Individuals:** The income-tax paid by the individual taxpayers is the personal income tax. Individuals get taxed on the basis of tax slabs at different rates.

ii. **Corporates:** LLPs, domestic companies, and foreign companies are required to pay corporate income-tax (CIT) at specified rate prescribed under the Income-tax Act, 1961 ('IT Act'). While a domestic company is taxed on its global income, a foreign company is only taxed on the income earned or received within India Further, the tax rate could also differ based on the type of income it earns, which is as follows:

- Profits earned from the business
- Capital Gains
- Income from House property
- Income from other sources (dividend, interest etc.)

Rates for Domestic and Foreign Companies:

Class of Persons	Tax Rates*
LLPs	30%
Companies having turnover up to Rs 400 crore in FY 2020-21	25%
Companies opted for new tax regime under section 115BAA	22%
Companies set up and registered on or after 1st October 2019 but before 31st March 2024) and engaged in manufacturing or production (Section 115BAB)	15%
Any other cases for domestic companies	30%
Foreign companies	40%

** Rates applicable for financial year 2022-23 (i.e., assessment year 2023-24). The said rates are excluding surcharge and education cess (4%). The rate of surcharge varies based on level of total income of the entity and the selection of tax regime.*

Rates for Capital Gains:

Taxation of Capital Gains	Long Term	Short Term
Equity Shares (Listed)	10%*	15%
Equity Shares (Unlisted)	10%*	As per above table
Other Assets	20%	As per above table

** Subject to conditions*

Minimum Alternate Tax (MAT): In addition to the above, companies are required to pay minimum alternate tax at the rate of 15% on book profits, if the tax calculated as per above rates are less than 15% of book profits. This is not be applicable to companies opting for new tax regime under Section 115BAA or Section 115BAB

Key Tax Incentives/ Deductions:

- **Tax Incentives for Startups (Section 80-IAC):** To provide an incentive for startups and aid their growth in the early phase of businesses, Section 80-IAC has been introduced to grant a deduction of 100 % of the profits and gains derived by an eligible startup from a qualified business for any three consecutive years among the 10 years beginning from the particular year in which the eligible startup is incorporated. The start-up should be incorporated as a LLP/ Company on or before 31st March 2023 and should obtain approval from inter-ministerial board of Government of India. The Company availing this incentive cannot opt for lower rate of tax (ie 22% or 15%) prescribed under section 115BAA/ 115BAB.

- **Deduction for Salaries paid to New Employees (Section 80JJAA):** To encourage employment generation, an additional deduction of 30% of the emoluments paid to new employees (employed for minimum of 240 days in a FY) is granted for three years. This minimum period of employment is reduced to 150 days for manufacturers of apparel, leather and footwear. In addition, if the minimum period of employment is not met in the first year, the deduction is allowed in the subsequent year if the criteria is met in the succeeding year.

- **Deduction towards expenditure on specified business (Section 35AD):** Accelerated deduction of capital expenditure (other than expenditure on the acquisition of land, goodwill or financial instruments) incurred, wholly and exclusively for certain specified businesses in the year of the incurrence of such expense. Expense incurred before the commencement of business is allowed as a deduction on the commencement of the specified business. The Company availing this incentive cannot opt for lower rate of tax (i.e., 22% or 15%) prescribed under section 115BAA/ 115BAB.

International Taxation:

Tax Treaties: India has entered into comprehensive tax treaties (DTAAs) with several partner countries. The DTAA provides for distributive right of taxation between the source and resident country. Vide Section 90 of the IT Act, India also provides supremacy of tax treaty against the provisions of the domestic law, whereby a non-resident can avail benefits under the DTAA to the extent it is beneficial in comparison with domestic law (subject to satisfaction of prescribed conditions).

Earlier, a Tax Residency Certificate (TRC) issued by the partner country was considered sufficient proof for accepting the status of residence for applying DTAAs. However, pursuant to amendment in section 90 of the IT Act, if TRC does not contain all the prescribed information, then Form 10F (self-declaration) has to be furnished by the non-resident party. Recently, it has been notified that Form 10F had to be furnished electronically by registering into the income-tax portal through PAN.

India is a signatory of the Multi-lateral instruments (MLI) and hence the preamble, principal purpose test and other anti-avoidance provisions would be applicable, where the treaty partner has also adopted MLI and notified the DTAA as a covered tax agreement.

Transfer Pricing: Where the Indian taxpayers enter into international transactions with related parties, the income of the taxpayers from such transactions are required to be computed at arm's length price. Such Companies are required to furnish Chartered Accountant's report on international transactions in Form 3CEB on annual basis. Further, where the aggregate of international transactions during a FY exceeds Rs. 1 Crore, such taxpayers are required to maintain prescribed documents to substantiate arm's length pricing in respect of the international transactions.

Thin Capitalisation Provisions: Indian Income-tax laws has capped the interest deduction (in computation of taxable profits), being interest payable to overseas related parties or interest on borrowings guaranteed by the overseas related parties to 30% of EBITDA. Any amount of interest incurred in excess of the said limit can be carried forward and set-off within a period of 8 years, subject to the satisfaction of given threshold in such year of such set-off. However, these provisions would not be applicable, if the interest expense for the FY does not exceed Rs. 1 Crore.

Foreign tax credit: Under the applicable tax treaty, Indian residents paying taxes in other countries can claim a credit in India for foreign tax payments to the extent the income is doubly taxed.

Where a resident of India has paid tax in any country with which India does not have a tax treaty, credit is available (under Section 91) in India for such tax payments. The following conditions are required to be satisfied for availing unilateral tax credit:

- Person claiming the credit must be resident in India for the said previous year
- Income is from a source outside India.
- Tax has been paid in the foreign country. The taxpayer should be able to prove that he/she has paid income tax on such income in the foreign country.
- Absence of agreement u/s 90 for the relief or avoidance of double taxation.

Any person claiming foreign tax credit has to file Form 67 along with supporting documents on or before the due date of filing the income tax return.

Compliances on Foreign Remittances:

Companies making payments to a non-resident or foreign company are required to submit **Form 15CA**. This form is required to be submitted electronically using the Company's account in income-tax portal at the time of each foreign payment.

Further, in certain cases, based on transaction limit, a certificate from a Chartered Accountant in Form 15CB is required to be furnished before uploading Form 15CA online.

Equalization Levy (EL): EL is leviable in the following cases:

- Online advertising: EL at the rate of 6% is required to be deducted by a resident/ a non-resident having PE in India, in respect of the consideration paid to a non-resident for online advertising or provision of digital space for online advertisement or any other service for purpose of online advertising.

- Ecommerce transactions: EL at the rate 2% is required to be paid by the non resident in respect of consideration received (where such aggregate consideration for the financial year exceeds Rs. 2 Crores) for:

    i. online supply of goods or services by an e-commerce operator/ facilitated by an e-commerce operator to a person resident in India;
    ii. for sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement though internet protocol address located in India; and
    iii. sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India

Statement of Financial Transaction (SFT)

SFT is a report of specified financial transactions to be reported by specified persons including prescribed reporting financial institutions. Some of the key financial transactions that required to be reported under SFT by a company are as follows:

- Receipt from any person aggregating to Rs. 1,000,000 in a FY for :
  - issuance of bonds or debentures
  - issuance of shares/ as share application money
- Payment to any person for buyback of shares (applicable only to a listed company)
- Receipt of cash exceeding Rs. 200,000 for sale of goods and services
- Dividend distributed by a company

Key compliances under IT Act:

Description	Due Date
Due date of depositing Taxes Deducted at Source (TDS)/ Taxes Collected at Source (TCS)*	7th day of succeeding month (30th April for the month of March).
Due Date of Deposit of equalization levy	7th day of succeeding month
Due date for payment of Advance Income Tax :	
Due Date	% of estimated tax liability for the year
15th June	15%
15th Sep	45%
15th Dec	75%
15th Mar	100%
Due Date for Filing Quarterly TDS Return	31st day of the subsequent month following the end of the quarter/ 31st May, in case of quarter ending March.
Due Date for Filing Quarterly TCS Return	15th day of the subsequent month following the end of the quarter/ 15th May, in case of quarter ending March.
Statement of Financial Transactions (SFT) in Form 61A	On or before 31st day of May following the end of the Financial Year.
The Equalization Levy Statement in Form No. 1 for a Financial Year	On or before 30th day of June following the end of the Financial Year.
Annual Income Tax Return (Form ITR 6) by all Companies including Foreign Companies	• 30th November where companies are required to report international related party transaction in Form 3CEB • 31st October in all other cases.
Tax Audit Report	One month before the due date of filing income tax return as indicated above.
Accountant's Report on Transfer Pricing (Form 3CEB)	

**TDS Certificates are to be issued on quarterly basis within 15 days of due date of filing TDS Returns.*

Withholding Tax (TDS):

- Tax at the prescribed rates is required to be deducted at source on various payments such as rent (for use of land, building, machinery, plant, equipment, furniture or fittings), salary, professional fees, fees for technical services, royalty, interest, commission, etc. to residents.

- Tax is also required to be deducted from payments to non-residents, in respect of interest or any other sum chargeable under the Act.

- Tax will be deductible irrespective of whether the payer is a resident or non-resident and even if a non-resident does not have any place of business, business connection or any other presence in India.

Summary of TDS provisions

The provisions of the IT Act require the payer to withhold tax and remit to the government. The gist of key payments to residents that are subject to withholding tax are summarized below:

S No	Section	Nature of payment	Rate	Threshold limit for non-deduction	Non-applicability of the section
1	192	Salary	As per slab rates	Basic exemption limit applicable to the said individual	
2	193	Interest on securities	10%	Rs. 5,000	• Interest on Central/State Government securities, LIC, GIC and other notified units.
3	194-A	Interest other than interest on securities	10%	Rs. 50,000 (for Senior citizen) and Rs. 40,000 (for others)	• where the payee are Banking companies, Insurance companies or other financial institution, • by firm to the partner, or • deposits under notified schemes of central government.
4	194C	Payment to Contractors	Individuals/ HUF-1% Company-2%	Single payment of Rs 30,000 and aggregate payment during the financial year of Rs 100,000	Note 1
5	194-D	Insurance Commission	5%	Rs 15,000	
6	194-H	Commission or Brokerage	5%	Rs 15,000	Note 1 Any commission or brokerage payable to BSNL or MNTL.
7	194-I	Rent	Rent on plant and machinery - 2% Rent on land, building, furniture, etc – 10%	Rs 240,000	Note 1 Rent collected and paid to a business trust being a real estate investment trust.

S No	Section	Nature of payment	Rate	Threshold limit for non-deduction	Non-applicability of the section
8	194-IA	Payment on transfer of certain immovable property other than agricultural land	1%	Rs 5,000,000	
9	194-IB	Payment of rent by individuals and HUF not liable for Tax audit	5%	Rs 50,000 per month	
10	194-IC	Payment of monetary consideration under joint development agreements	10%		
11	194-J	Fees for Professional service, Technical service, Royalty and Remuneration to director (not in the nature of Salaries), Non-compete fee	Payments for technical service (other than professional) and royalty for cinematographic films - 2% Other cases - 10%.	Rs 30,000 for every class	Note 1
12	194-O	Payment or credit of amount by e-commerce operator	1%	Rs 500,000	
13	194Q	Purchase of goods	0.1%	Purchase of goods not in excess of INR 50 lakh by a buyer whose total sales/ gross receipts doesn't exceed 10 cr during the immediate previous FY	Tax is deductible under any other provisions of this Act or tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.
14	194-R	Perquisites or benefits arising from business or exercise of profession	10%	Rs 20,000 in a FY	Person being an individual or a HUF, whose total sales, gross receipts or turnover does not exceed 1 crore Rupees in case of business or fifty lakh rupees in case of profession, during the FY immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided by such person.

S No	Section	Nature of payment	Rate	Threshold limit for non-deduction	Non-applicability of the section
15	194-S	Payment on transfer of virtual digital asset	1%	Specified person - Rs 50,000. Others – Rs 10,000	

Note 1 : In case the payer is individual/HUF/AOP/BOI, TDS is required to be deducted only if last year turnover of business is >Rs 1 crore or of profession the gross receipt is >Rs 50 lakhs

The rate of withholding tax applicable on payments to non-residents are summarized below:

S No	Section	Nature of payments	Rate
1	192	Salary	As per slab rates
2	194 E	Payments to sportsmen or sports associations	20%
3	194LC, 194LD	Specified interest	5%
4	195	Interest or any other sum chargeable to tax	Rates in force**

**As discussed above, non-resident is eligible to claim the provisions of DTAAs or the provisions of IT Act, whichever is more beneficial, subject to satisfaction of prescribed conditions.

Tax collected at source:

TCS is the tax collected by the seller from the buyer at the time of sale. The key items subject to TCS are:

S No	Section	Nature of Payment	Rates
1	206C (1)	Sale of Scrap	1.00%
2	206C (1)	Sale of Minerals, coal lignite, Iron ore by a trader	1.00%
3	206C (1F)	Sale Value of Motor vehicle whether in cheque or in any other mode of receipt Exceeding Rs. 10 Lakhs per transaction	1.00%
4	206C(1G)	Foreign remittance through Liberalised Remittance Scheme (LRS) of exceeding Rs. 7 Lakh in a financial year if the remitted amount is out of loan obtained from any financial institution u/s 80E to pursue any education	0.50%
5	206C(1G)	Foreign remittance through Liberalised Remittance Scheme (LRS) of exceeding Rs. 7 Lakh in any other case	5.00%
6	206C(1G)	Selling of overseas tour package	5.00%
7	206C(1H)	Sale of goods (Other than those being exported) of value exceeding Rs. 50 Lakh where total Sale/ gross receipts/turnover from business exceeds Rs 10 Crore during immediately financial year	0.10%

5. Goods and Services Tax (GST):

GST is an indirect tax that has replaced other taxes like Excise duty, VAT, Services tax, etc. It is levied on the supply of goods and services. Furthermore, it is a comprehensive, multi-stage tax that is levied on every value addition. The process of registration and filing returns under GST are online through a common portal.

Particulars	Details
GST rates	5%, 12%, 18% & 28% *
Return period	Monthly / Quarterly
Turnover Threshold** for GST registration	Rs. 4 Million for Goods and Rs. 2 Million for Service Provider

*Additionally, there is rate of 3% , 1.5% and 0.25% on jewelleries and precious stones.

** The turnover threshold limit for seeking registration in the special carteogy states of Assam, Arunachal Pradesh, Himachal Pradesh, Uttarakhand, Manipur, Mizoram, Sikkim, Meghalaya, Nagaland, or Tripura, is Rs. 2 Million for Goods and Rs. 1 Million for Service Provider.

In addition, person undertaking certain businesses or activities are required to undertake mandatory, registration under GST, irrespective of turnover threshold. GST registration usually takes 15 working days. If the entity carries on business without registering under GST, it will be an offence under GST and penalties will apply.

Levy: A dual GST model is implemented in India where taxes are levied by both central and state governments on a common base. GST levied by the Centre is known as central tax (CGST) and that levied by states or union territories is known as state tax (SGST) or union territory tax (UTGST). Intrastate supply of goods and services attract CGST and SGST/UTGST in equal proportion.

Further, integrated tax (IGST) is levied by the Central Government on interstate supply of taxable goods and services. It is equivalent to sum of CGST and SGST. The CGST and SGST/UTGST or IGST applies to all supplies of goods and services except the exempt supplies and the supplies that are outside the purview of GST like alcohol for human consumption and petroleum products.

Time of Supply: The time of supply for goods is the date an invoice is issued or the last date on which invoice is required to be issued. For services, the time of supply is the date of the invoice or receipt of the consideration, whichever is earlier. However, if the invoice is not issued within a prescribed time limit, the time of supply is the date of provision of the service or receipt of the consideration, whichever is earlier.

Valuation: Generally, the transaction value is considered as the taxable value for applying GST. Certain items that must be included in the taxable value are prescribed under the GST legislation. They include any interest or penalty for delayed payment of the consideration for a supply, incidental expenses including commission and charges for packing charged by the supplier to the recipient of supply.

In cases where the supplier and the recipient are related persons, or the price is not the sole consideration for the supply, the taxable value is to be determined under the prescribed valuation rules.

Input tax credit: Any **registered person** can avail credit of tax paid on the inward supply of goods or services or both which is used or intended to be used in the course or furtherance of business. A taxable person generally recovers input tax through its GST returns, by deducting it from output tax, which is GST charged on supplies made. ITC can be claimed by a registered person subject to certain pre-requisites / conditions.

Input tax credit is not available for goods and services used for making exempt supplies or for a nonbusiness purpose. Further, the GST law specifies a list of goods and services for which no input tax credit is available.

Exports: Under the GST Law, export of goods or services are treated as 'Zero rated supply'. A registered person has the option to export the goods and services or both

- without payment of tax under a bond or Letter of Undertaking (LUT) and can claim refund of unutilised accumulated ITC or
- on payment of tax (IGST) and then claim a refund of such tax paid.

Export invoices must carry an endorsement indicating the option exercised by the exporter and must contain the name and address of the recipient, address of delivery, and the name of the country of destination.

Reverse Charge: For certain supplies of goods and services, the tax due is payable by the recipient, instead of supplier, under the reverse-charge mechanism. In the case of import of services, the recipient importer is required to discharge the GST on reverse-charge basis. The reverse charge is also applicable for prescribed domestic supplies such as services performed by a goods transport agency for the transportation of goods by road, services provided by an advocate, sponsorship services and renting of motor vehicle.

Digital Economy: For online information and database retrieval services provided by a person located in a non-taxable territory to an unregistered recipient in India (business-to-consumer [B2C]), the tax is payable by such non-resident supplier by registering for GST in India.

For business-to-business (B2B) supplies of such services, tax is payable by the GST registered recipient, under the reverse-charge mechanism.

Tax invoice: A taxable person must issue a tax invoice for all supplies of goods and services. Generally, invoices are issued in the local currency, Indian rupee (INR). However, for exports, the invoices may be issued in foreign currency. In such cases, GST rules provide for adopting a rate of exchange for determining taxable value.

The time limit for issuing an invoice depends on the nature of the supply, specifically, whether it is a supply of goods or services

- For a supply of goods, a tax invoice should be issued before or at the time of removal of goods (where supply involves movement of goods) or Delivery or making goods available to the recipient.
- For services, a tax invoice should be issued within 30 days of provision of services. For a continuous supply of goods, where successive statements of account or successive payments are involved, the invoice should be issued before or at the time when the periodic statement is issued, or payment is received.

While no standard format has been prescribed for invoices and bills of supply, certain details must be included in the relevant document (such as a description of the supply, the value, details of the recipient, and the Harmonized System of Nomenclature (HSN) code, etc.).

It is not necessary that only a person supplying goods or services needs to issue an invoice. any registered person buying goods or services from an unregistered person needs to issue a payment voucher as well as a tax invoice.

E-invoicing: Taxpayers whose aggregate turnover in any financial year exceeds Rs. 100 Million* have to follow the procedure prescribed for electronic invoicing with respect to supplies made to registered persons. Such invoices should contain an invoice reference number (IRN), which should be obtained by uploading specified information on the Common GST Electronic Portal.

E-Way Bill Mechanism: Electronic Waybill (e-way bill) is basically a compliance mechanism whereby way of a digital interface the person causing the movement of goods uploads the relevant information prior to the commencement of movement of goods and generates e-way bill on the tax portal. This mechanism facilitates faster movement of goods, improves the turnaround time of trucks and helps the logistics industry by reducing the travel time as well as costs. This also helps the Government to ensure that goods being transported comply with the GST Law, track movement of goods and check tax evasion

**Threshold limit for e-invoicing reduced from Rs. 200 Million to Rs. 100 Million effective from 1 October 2022.*

Records: Every GST-registered person is required to maintain the prescribed accounts and records. These include details of inward and outward supplies, stock of goods, input tax credit availed, GST paid on outward supplies. Relevant documents like invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers are to be preserved.

Such records are required to be maintained at the principal place of business (i.e., this can be physically in India or outside). Where there are additional places of business mentioned in the registration certificate, the accounts relating to each additional place of business should be kept at such place.

Record retention period. The accounts and records are required to be retained for 72 months (i.e., 6 years) from the due date of furnishing of annual return for the year pertaining to such accounts and records

Periodic Returns and payment: A return containing a summary of inward and outward transactions has to be filed and GST payment is to be made on a monthly basis (GSTR 3B). The tax liability pertaining to a specific month has to be paid on or before filing GSTR 3B return. The due date for filing GSTR 3B return is 20th of the succeeding month. Also, a return containing invoice details of outward supplies is to be filed on monthly (GSTR 1) on or before 11th of the succeeding month. Registered person having annual turnover less than Rs. 50 Million would be allowed to file the returns on quarterly basis with tax payment to be done monthly.

Interest is levied with respect to non-payment or late payment of tax. The rate of interest for a delay in payment of tax is 18% per annum.

As per the procedure prescribed by law, the details of every ITC availed on inward supply is required to be matched with the corresponding details of the outward supply provided by the registered supplier. The consolidated details of outward supply provided by all the registered supplier of the tax payer is reflected in Form GSTR 2B of the taxpayer in the GST Portal.

Annual Return: Every registered person must submit an annual GST return for each financial year by 31 December following the end of the financial year in Form GSTR 9. Annual return to be accompanied with a reconciliation statement reconciling value of supplies as per audited financial statements and annual return in Form GSTR 9C.

6. Customs Duty

Basic Customs duty, Social Welfare Surcharge, Additional Health Cess, and IGST, (in few cases GST Compensation Cess, Road and Infrastructure Cess) are payable on import of goods at the rate specified in Customs Tariff. In respect of specified petroleum products like Petrol, Diesel, Crude, Natural Gas, Aviation fuel, and on Tobacco Products, there is a Countervailing Duty (CVD) in lieu of IGST.

7. Labour law Compliances

A. Employee State Insurance (ESI)

ESI Contribution Amount means employee's contribution of Employee State Insurance deducted from the employees' salary and the employer's contribution.

Applicability and Eligibility: ESI Registration is **mandatory** for a business entity **having 10 or more employees**. The employees whose gross earnings **are less than Rs.21,000 per month** then the entity needs to contribute 3.25% and the employee needs to contribute 0.75% towards ESI contribution.

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The Due dates with respect to ESI are as below

Description	Due Date
Due Date for ESI Payment	On or Before 15th day of following month
Due Date Half Yearly Return	11th of November and 11th of May respectively
Failure to deposit contribution within due dates attracts Simple Interest at the rate of 12% per annum for each day of the default or delay.	

B. Provident Fund (PF)

PF Contribution amount is a sum of the employee's contribution to Provident Fund deducted from the employees' salary and corresponding equivalent employer's contribution.

Applicability:

- Every specified factory or establishment in **which 20 or more persons are employed**. With the amendment in the rule of EPF, the limit of the minimum employee is 10 employees.
- Any factory or Establishment can also **willingly cover** under the Act, even if the number of employees is less than 20.

Eligibility: Any person who is employed for work of an establishment or employed by the contractor in or in connection with the work of an establishment (including international workers*) and drawing salary **up to Rs.15,000 per month** (optional for employees drawing more than Rs. 15,000 per month). The salary is calculated as Basic Salary plus Daily Allowance.

Rate of Contribution: Employees shall contribute **12%** of their Salary and Employers shall also contribute **12%** of the Salary. The employer is required to pay his contribution and deduct employees' contribution from wages and deposit the same with ESIC.

The Due dates with respect to PF are as below:

Description	Due Date
Due Date for PF Payment	On or Before 15th day of following month
Filing of Electronic Challan cum Return (ECR)	On or Before 15th day of following month
Due Date for filing PF Annual Return	On or Before 25th day of April of the following Financial Year.
• **Failure to deposit contribution within due dates attracts Simple Interest at the rate of 12% per annum for each day of the default or delay.** • **Delayed Payment of PF contribution also attracts Penal Damages.**	

** India has entered into Social Security Agreements (SSA) with about 20 countries that facilitates to avoid payment of social security in the host country*

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C. Professional Tax

The respective state governments in India levy the professional tax on income from profession or employment. The professionals earning an income from salary or other practices such as a lawyer, teacher, doctor, chartered accountant, etc. are required to pay professional tax. In case of salaried and wage earners, the professional tax is liable to be deducted by the employer from the salary/wages and the same is to be deposited to the state government.

8. Exchange control regulations

A non-resident wanting to set up business operations in India, investing or acquiring Indian company or LLP needs to comply with Foreign Exchange Management Act, 1999 (FEMA) and the rules made thereunder.

Every foreign investor planning to enter India should select an appropriate form of business presence, keeping in mind the business objective of its parent entity. The right selection is likely to go a long way to ensure efficiency (from an operational/ legal/regulatory/tax perspective).

In case of issue of shares by Indian company to non-resident, Form FC-GPR needs to be filed within 30 days of issue of shares. Further, if the shares an Indian company are being transferred between resident and non-resident (or vice versa), Form FC-TRS needs to be filed within 60 days of transfer of instruments or receipt/ remittance of funds, whichever is earlier. The onus of reporting shall be on the resident transferor / transferee.

In case of contribution to an LLP, Form LLP (I) should be filed within 30 days from the date of receipt of capital contribution. Similarly, disinvestment / transfer of capital contribution or profit share between a resident and non-resident (or vice versa) should be filed in Form LLP (II) within 60 days from the date of receipt of funds. The onus of reporting shall be on the resident transferor / transferee.

Every Indian Resident company / LLP that has received Foreign Direct Investment (FDI) must submit the Foreign Liabilities and Assets (FLA) Return by 15th of July following the FY.

The Indian Company may also raise funds as borrowing from non-resident/ foreign company subject to conditions and in accordance with the framework for External Commercial Borrowings (ECB) issued by Reserve Bank of India (RBI) in this regard. Please note that LLPs cannot raise ECB.

SINGAPORE

Singapore

1. About Singapore

Singapore, is an island country, located off the southern edge of the Malay Peninsula, between Malaysia and Indonesia. Its official languages are English, Malay, Chinese and Tamil, and the official currency is Singapore Dollar (SGD)

Singapore is considered to be one of the most cosmopolitan and prosperous destinations in the world. It is also widely known for its cleanliness, cosmopolitan vibe, and electronics. It has one of the highest percentages of expats in the world and every year it sees more and more people from across the globe moving to the island to find new opportunities and excitement.

Singapore is also considered as one of the world's most prosperous countries, with strong international trading links (its port is one of the world's busiest in terms of tonnage handled) and with a per capita gross domestic product (GDP) comparable to or exceeding that of many nations in Western Europe.

2. Incorporation & registration requirements

A person who is carrying on business in Singapore will have to register its business with the Accounting and Corporate Regulatory Authority of Singapore (ACRA). A private limited company is the most common vehicle used by foreign corporation for setting up business in Singapore. A company is a separate legal entity with limited liability and has its own identity for tax and legal requirements purposes.

There are other forms of vehicles for setting up business in Singapore such as Sole-Proprietorship, Partnership, Limited Partnership, Limited Liability Partnership, Branch but are not often used by foreign corporation due to taxation challenges or regulatory issues in Singapore & Country of investment.

A private limited company can be incorporated within one to two days provided all corporate information with respect to directors and shareholders are furnished.

3. Secretarial compliances

All companies must **have at least one resident director** in Singapore at all times. A director of a company has fiduciary and statutory duties and can be subject to civil or criminal penalties.

It is mandatory for a company to hold its annual general meeting (AGM) of shareholders where the financial statements will be presented to the shareholders. A newly incorporated company will need to hold its first AGM within 18 months from the date of incorporation. The AGM must be held every year with each not more than 15 months from the previous AGM. A company is also required to complete and lodge an annual return with ACRA within one month after the date of AGM.

Key aspects about company

- **Paid-up share capital** – minimum SGD 1. There is no concept of authorised share capital.
- **Company secretary** – the company must appoint a qualified company secretary.
- **Shareholders** – a private limited company can have a minimum of 1 and maximum of 50 shareholders. The shareholder can be an individual or a legal entity and 100% foreign shareholding is allowed.
- **Registered address** – The address must be a physical address and cannot be a PO Box.

4. Corporate Taxation

Singapore Companies are subject to corporate income tax on all income derived from sources in Singapore, and on income from sources outside Singapore if received in Singapore. Capital gains are not taxable in Singapore.

The standard corporate tax rate is 17%, subject to partial tax exemption and start-up tax exemption available for first 3 years. The start-up tax exemption is not available to property development and investment holding companies. It shall be noted that to be eligible for the start-up tax exemption, at least 10% of the capital in a company must be held individuals, irrespective of their citizenship (foreigner or Singaporean). Hence, a company which is wholly held by another corporate shall be ineligible for the said exemption. In addition, there is **a corporate tax rebate** of 25% of the tax payable, capped at SGD 15,000 for year of assessment 2020 and there is no such rebate announced for the year of assessment 2021.

Snapshot of tax rate (domestic law):

Particulars	%
Corporate tax	17%
Capital Gains	Nil
Goods and Services Tax	7%
Gift tax / Estate duty / Death tax	Nil
Withholding tax rate on residents	Nil
Withholding tax rate on non-residents** - Dividend - Interest - Royalty **Under the domestic law of Singapore without giving effect to Tax Treaty.	 0% 15% 10%

Start-up exemption for first 3 years:

Particulars	Cos having first FY end prior to 31 Dec 2018	Cos having first FY end after 31 Dec 2018
First 100,000 SGD	100%	75%
Subsequent 100,000 SGD	50%	50%
Subsequent 100,000 SGD	50%	Nil
Total exemption	SGD 200,000	SGD 125,000
Effective tax on income up to SGD 300,000	5.67%	9.92%

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Partial tax exemption

Particulars	Year of assessment 2018 to 2019	Year of assessment 2020 onwards
First 10,000 SGD	75%	75%
Subsequent 190,000 SGD	50%	50%
Subsequent 100,000 SGD	50%	Nil
Total exemption	SGD 152,000	SGD 102,500
Effective tax on income up to SGD 300,000	5.67%	9.92%

Incentives: There are various tax incentives, exemptions, and tax reductions available, depending on the investment level and specified activities performed in Singapore or industries identified as being beneficial to Singapore's economic development. These incentives are generally subject to an approval process.

Receipt of specified foreign income (dividends, branch profits and services income) into Singapore by companies' resident in Singapore may be exempt from tax if prescribed conditions are met. For remittances of specified foreign income that does not meet the prescribed conditions, companies may be granted tax exemption under specific scenarios or circumstances on an approval basis.

Tax losses: Unused trading losses may be carried forward indefinitely, subject to the shareholding test (see below). Excess capital allowances can also be offset against other chargeable income of the same year and carried forward indefinitely subject to the shareholding test and to the requirement that the trade giving rise to the capital allowances continues to be carried on (same trade test). A one-year carry back of tax losses and capital allowances up to an aggregate of SGD 100,000 is subject to meeting the same conditions as explained above. Singapore incorporated companies belonging to the same group (with at least 75% shareholdings) may also avail of their current year tax losses for use against the current year assessable income of a fellow Singapore company within the same group.

Shareholding test: In order to meet the shareholding test, the shareholders of the loss company must remain substantially (50% or more) the same at the relevant comparison dates. If the shareholder of the loss company is itself another company, look-through provisions apply through the corporate chain to the final beneficial shareholder.

Repatriation of profits: There is no withholding tax on payment of dividends by Singaporean companies or repatriation of profits by branches to its head office. Dividends paid by a Singaporean tax-resident company are exempt from income tax in the hands of shareholders, regardless of whether the dividends are paid out of taxed income or tax-free gains.

Foreign tax credit is claimable only by a Singapore tax resident and limited to the lower of the foreign tax paid and the Singapore tax payable on that income. Foreign tax credits claims are governed by tax treaties and the unilateral tax credit provisions. A company is resident in Singapore if the control and management of its business is exercised in Singapore.

Corporate residence: In Singapore, the tax residence of a corporation is determined by the place where the central management and control of its business is exercised. This is taken generally to mean the place where the directors meet to exercise de facto control. The Inland Revenue Authority of Singapore (IRAS) has also set out further guidance.

Deductions or expenses: Deductions or expenses are generally allowed if the same are incurred for business purposes. However, there are specific provisions in relation to claiming of depreciation, start-up expenses, research & development (R&D) expenses, bad debts, charitable contributions, fines & penalties, private automobile & medical expenses, taxes, etc.

Payment to related parties: Payments to foreign affiliates, are deductible, provided they are fair and reasonable, are revenue in nature, and can be seen to be relevant in earning the payer's income. Transactions with related parties should adhere to IRAS transfer pricing guidelines and be supported by contemporaneous transfer pricing documentation.

Tax administration:

- **Taxable period**: The tax basis period is the calendar year; however, for business profits, the accounting period will generally be adopted.

- **Tax returns & Estimated Chargeable Income (ECI)**: Tax is computed for each tax year based on the income earned in the preceding year (the tax basis period). The corporation files an estimate of its income (ECI) **within three months** of the end of the accounting period followed by a return of income by **30 November** of the tax year, and the tax is assessed by the Comptroller of Income Tax.

- **Payment of tax**: Assessed tax is payable within **one month** after the service of the notice of assessment, whether a notice of objection to the assessment has been lodged with the tax authorities. Application may be made to the Comptroller to pay estimated tax liabilities on a monthly instalment basis, who may approve on a case-to-case basis. Late payment of tax will attract penalties, up to a maximum of 17% of the outstanding tax.

- **Tax assessment/ audit**: The IRAS undertakes tax audit on a risk-based approach, to identify the mistakes made in the tax returns, create an audit presence in the community to deter non-compliance by other taxpayers, educate taxpayers on their tax obligations and how to comply and identify areas of tax law, policies, and processes where the tax system can be simplified.

Time limit for assessment: The statute of limitation is four years from the year of assessment; however, the limitation does not apply where there has been fraud or wilful default by the taxpayer.

5. Goods & Services Tax (GST)

Singapore currently has **a 7% GST**, imposed on all goods and services supplied in Singapore as well as on importation of goods unless the supplies qualify for zero rating relief or exemption.

Exports of goods and international services are zero-rated (i.e., not taxable). Exempt supplies include the sale or lease of residential property, importation or supply of investment precious metals and the financial transactions listed in the Fourth Schedule to the GST Act.

A business is required to mandatorily register for GST if its annual taxable supplies is **SGD 1 million or more.** A GST-registered business is required to file GST returns on a quarterly basis. However, taxable persons that receive regular refunds of GST may seek approval to file their returns monthly, to ease cash flow. From 1 Jan 2020, a business may also be liable to mandatory GST registration if the total value of its imported services for a 12-month period exceeds SGD 1 million. This takes into consideration the fact that imported services are liable to GST reverse charges with effect from 1 January 2020.

Tax invoice: A taxable person must issue a tax invoice for standard-rated supplies made to another taxable person within 30 days from the time of supply. A simplified tax invoice may be issued if the amount payable (including GST) does not exceed SGD1,000. The information required to be shown on a tax invoice and a simplified tax invoice is prescribed by GST law.

Snapshot of GST

Particulars	Details
Date introduced	1 April 1994
Standard GST rate **Others**	7% Zero-rated & exempt.
Return period.	Quarterly (Monthly optional, subject to approval by GST Comptroller)
Threshold registration	SGD 1 million

Input tax credit: A taxable person may recover the GST incurred on its expenses as input tax credit if the input tax is incurred in the making of taxable supplies or certain prescribed supplies. Input tax refers to GST incurred on goods and services supplied to the taxable person or goods imported into Singapore by the taxable person that are used or to be used for the purpose of any business carried on or to be carried on by the taxable person. A taxable person generally recovers input tax through its GST returns, by deducting it from output tax, which is GST charged on supplies made.

A valid tax invoice or import permit must be held to support a claim for input tax. A taxable person is required to repay to the IRAS any input tax claimed for which payment has not been made to the supplier for more than 12 months from the due date of the payment.

Refunds: If the amount of input tax recoverable in a GST period exceeds the output tax in the same period, the excess is refundable. Refunds are generally made within three months after the date on which the Comptroller receives the GST return. If a taxable person submits monthly returns, the refund is generally made within one month from the date of receipt. Interest at the prime lending rate is payable on the amount of any GST refund that is outstanding. Interest is calculated from the date on which the refund is due from the GST authorities.

Penalty: A penalty of 5% of the tax due is assessed for late payment of GST. If the amount remains outstanding after 60 days, an additional penalty is assessed, equal to 2% of the tax due for each month, up to a maximum of 50% of the unpaid tax. In addition, penalty of SGD200 after the submission due date and an additional SGD200 for each completed month are assessed for the late submission of a GST return, up to a maximum penalty of SGD10,000.

6. Accounting and Audit

All Singapore companies are required to maintain proper and accurate accounting records and prepare financial statements in accordance with the Singapore Accounting Standards.

Audit & financial statement: The Companies Act requires the annual financial statements of every company to be audited unless it qualifies for audit exemptions. Notwithstanding the audit exemptions, every company is still required to prepare financial statements.

Audit exemption: Audit is exempt for a particular financial year (FY) for “small company” that meets at least two of three criteria (as listed below) for the immediate past two FYs:

- Total revenue for each FY of not more than SGD 10 million
- Value of total assets at the end of each FY is not more than SGD 10 million.
- Number of employees not more than 50 at the end of each FY

Company which is part of a group shall be exempt only if the group qualifies for “small company” criteria on consolidated basis. Even if the parent or subsidiary entity is located outside Singapore, the same shall be considered for determining the status of “small company”.

XBRL: Every company (unless it is a private exempt company) is required to file its financial statements in XBRL (eXtensible Business Reporting Language) format together with the company’s annual return with ACRA within one month from the date of AGM on an annual basis. A private exempt company is a company that has not more than 20 individual shareholders. However, a company with foreign corporate shareholder is required to mandatory file its financial statement in XBRL format.

7. Other taxes & levies

Customs and excise duties: Singapore is essentially a free port with minimal import restrictions. Customs and excise duties are imposed on intoxicating liquors, tobacco products, motor vehicles, and petroleum products.

Personal tax: Individuals are only liable to tax on income derived from or earned in Singapore. Income which arose from offshore sources are not subject to tax in Singapore even if they are remitted here. Singapore dividend and bank interest income received by an individual are also tax exempted in Singapore. The tax rates for an individual who is tax resident of Singapore is at a progressive range from 0% to 22%. In the case of a non-resident individual, the tax rate on employment income is at a flat rate of 15%, and at 22% on director's remuneration and other investment income derived in Singapore.

Property tax: Property tax is levied annually on the annual value of houses, land, buildings, or tenements. For residential properties, owner-occupier tax rates range from 0% to 16%. The tax rates depend on the annual value bands. For non-residential properties, such as commercial and industrial buildings and land, the tax rate is 10%.

Stamp duties: Stamp duties are levied on written documents relating to immovable properties, leases and stocks and shares. Certain transfers of equity interest in property holding entities that own (directly or indirectly) primarily Singapore residential properties could attract additional conveyance duty (ACD). Instruments effecting the transfer of stocks and shares are subject to stamp duty of 0.2% on the purchase price or market value of the shares transferred, whichever is higher.

Foreign workers levy (FWL): FWL is a monthly levy of up to SGD 950 that employers are liable to pay for each foreign employee (Work Permit or S Pass holders) hired. The levy rate depends on the employees' qualifications, the employer's industry, and the ratio of foreigners to Singaporeans and permanent residents employed in the Company.

Payroll taxes: Singapore does not have payroll withholding. However, when a non-Singapore citizen employee ceases employment in Singapore, leaves Singapore for an overseas posting, or leaves Singapore for a period exceeding 3 months, the employer needs to notify the Singapore tax authorities once the fact of cessation/ departure is known to the employer, unless the employer is bearing full Singapore taxes for the employee and withhold all monies due until tax clearance is issued.

UNITED STATES OF AMERICA

United States of America

1. About the United States of America ('USA' or 'United States')

- **The United States** is a highly developed country, and continuously ranks high in measures of socioeconomic performance. It accounts for approximately a quarter of global GDP and is the world's largest economy by GDP at market exchange rates.

- **By value**, the United States is the world's largest importer and the second-largest exporter of goods. Although its population is only 4.25% of the world total, it holds 29.4% of the total wealth in the world, the largest share held by any country.

- **The United States** has the most technologically powerful economy globally, and its firms are at or near the forefront in technological advances. The U.S. dollar is the currency most used in international transactions. It is the world's main reserve currency, backed by its economy, military, petrodollar system, linked euro dollar, and large U.S. treasuries market.

2. Incorporation

- Company incorporation in USA is administered at the state level and not the federal level. The process for incorporation may differ from state to state. Usually, Secretary of respective State is the governing authority.

- Before one starts a business, the following shall be the key considerations:

  - **Selecting the proper vehicle:** In USA, for foreign investors, there are two major vehicles for setting up business i.e., Corporations and Limited Liability Company ('LLC'). An incorporated company or C corporation is a separate legal entity from the person or people forming.

  - In contrast, an LLC brings together some features of business partnerships and corporations, although it is more like a partnership. The key differences are highlighted in the subsequent paragraphs.

  - **Choose a State to Register Your Company:** It is important to note that each state has their own set of rules and flexibilities and consequently ease of doing business may differ from state to state. Hence, at the time of selecting a state, one may consider the following factors:

    - Place of business presence
    - Type of protection offered by state to business and owners
    - Sales tax exemption granted by state
    - Ease of incorporation and administration
    - Secrecy of the information provided by the state (e.g., Delaware)
    - Other benefits in the state

  - **Paperwork:** The forms and other requirements for forming an entity may vary between states. Generally, it involves (i) Selecting and reserving a unique name for the business entity; (ii) Filing of Articles of Association, operating agreements, etc. (iii) Obtaining Employer Identification Number ('EIN'), (iv) Filing of certificate of assumed name (v) Appointing a registered agent that can receive legal documents on behalf of the company, and (vi) Obtaining appropriate state tax registrations and business licenses, if any.

- **Obtain the EIN:** EIN (also known as Federal Tax Identification Number ('TIN') or Federal EIN) is a unique 9-digit number assigned by Inland Revenue Service ('IRS') for the purposes of identification. It is imperative to note that, for any business in the USA, to open a bank account, pay taxes, or often to get a business license, EIN is mandatory.

3. Secretarial Compliance

- Registered agent and office address: Having a registered agent and their address within the state of formation is a requirement to form a company. When a company expands its operations to another state within USA, it will also need registered agent as well as agent's office address in that state. The registered agent for a business entity may be an officer or employee of the company or more often a professional third party, such as the organization's lawyer or a service company. The agent's name and office address are included in the articles of incorporation to give public notice as to where to send the important documents of the Corporation.

- Officers: In the case of Corporation, there is a requirement of a minimum of one director (may be a non-resident). Where more than one shareholder holds the Corporation, it requires more than 1 director. Certain states may also require other statutory officers such as president, CFOs, etc. For Corporations, some states require a corporate secretary (e.g., California), while other types do not (e.g., Delaware). LLCs do not require appointment of Company Secretary. In case of an LLC, a manager is appointed through the operating agreement for managing the affairs of LLC.

4. Corporation vs LLCs

Below is a snapshot of a comparison of the most preferred vehicles for business in USA:

Particulars	LLC	C Corporations
Form of entity	• Separate and distinct legal entity • Managed by either the members or a manager appointed by the members • Members of the LLC have flexibility in structuring the company, including the ability to divide ownership, and voting rights Note: A few types of businesses generally cannot be LLCs such as banks & insurance companies	• Separate and distinct legal entity • Managed by a board of directors that are responsible for major business decisions and overseeing general affairs of the company • The shareholders elect directors. It shall be noted that even shareholders can act as director • Officers that run the day-to-day operations, are appointed by the directors
Number of shareholders	Unlimited number of shareholders	Unlimited number of shareholders
Liability	No personal liability	
Charter documents	Articles of organization / certificate of formation and operating agreement	Articles of Incorporation, Bylaws, Organizational Board Resolutions, Stock Certificates, and Stock Ledger

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Particulars	LLC	C Corporations
Minimum capital need	No minimum capital requirement	
Taxation	Not taxed (unless opts to be taxed at the entity level) i.e., profits and losses are passed through to the members and taxed at their individual tax rates To file Form 1065 by declaring the share of profit of each partner / member	Taxed on its earnings at corporate level and the shareholders are taxed on any dividends distributed To file Form 1120 as its income tax return for profit to be taxed at corporate level
Shareholders' and board meeting requirements	Annual meetings of members or manages is not required. The provisions of the operating agreement may determine any meeting requirements	Annual meeting is mandatory

In case of S Corporation, only 100 shareholders are allowed and only 1 class of stock is permitted. In case the number of shareholders is more than 100, then the S Corporation status is revoked.

5. Direct Taxation

- The United States has a federal system of the government. This means that laws are made at the federal, state, and local levels.
- Corporations formed in the US will be treated as domestic Corporation and is subjected to modified territorial tax regime on US sourced income and certain earnings related to foreign profits.
- Foreign corporations are not subject to US tax except on (i) income effectively connected with US trade or business and (ii) certain passive incomes from US sources.
- Corporate income tax (CIT) is levied by federal and state governments on business profits.
- As highlighted earlier, businesses broadly may fall into two categories corporations paying tax at corporate level (like C Corporations) and pass throughs (like LLCs, S Corporations)
- Foreign Tax Credits ('FTC'): In any year, a taxpayer can choose whether to take FTC as a credit (subject to limitation) for taxes or claim the FTC as a deduction on such foreign income.
- Losses: Net operating losses can be used to offset the company's tax payments in other tax periods to reduce its over-tax liability in the future tax period. Losses generated in tax years before 2018 can be off set without any limitation i.e., 100% can be used. Losses generated 2018 inwards, set off allowed is capped at 80% of the loss amount. Significant limitations could apply for corporations which have experienced a change of control.

- State taxes and Local taxes – Many states impose income or franchise taxes on corporations. State income taxes can vary from one state to another. States taxes range from 0% to 13%. Certain states follow flat rates or progressive rates with various slabs of income. The most common taxable base is federal taxable income, which is modified by state provisions and is allocated to a state based on an apportionment factor consisting of one or more of property, payroll and sales located within their borders. Taxes paid at state level can be claimed as a deduction on expense for Federal law purposes subject to limitations provided under state specific laws.

- Withholding tax:

  - Domestic: Employers are required to withhold federal taxes payable by the employees on the income earned at the time of making the payment of salary on an estimated basis. In addition, tax may be withheld on certain other payments such as pensions, bonuses, commissions and gambling winnings.

  - International: Taxes are required to be withheld from portfolio dividends, interest, rents, and royalties, and certain other types of income paid to non-US payees. The statutory rate is 30% but reduced rates may apply if the recipient is qualified to obtain the benefits of a US tax treaty. Persons paying shall be required to file withholding tax return in Form 1042 & withholding tax certificate in Form 1042S.

- Tax administration:

  - Tax returns: US corporate taxpayers are taxed on an annual basis and the US tax system is based on the principle of self-assessment and voluntary reporting. A corporate taxpayer is required to file an annual tax return (Form 1120) and pay tax by the 15th day of the fourth month following the close of its tax year.

  - Advance payment of tax: Individuals, including sole proprietors, partners, and S corporation shareholders, must make estimated tax payments if they expect to owe tax of USD 1,000 (other than tax already withheld) or more when their return is filed. Corporations must make estimated tax payments if they expect to owe tax of USD 500 or more when their return is filed. The taxpayers shall be required to prepay its estimated tax liability in up to quarterly instalments as prescribed.

  - Taxation for individuals: US citizens and resident aliens are required to file Form 1040 as their tax return on or before 15 April (for taxpayers following calendar year). This is filed based on the Social Security Number ('SSN') i.e., a nine-digit unique number allotted to US citizens, permanent residents, and temporary residents of US. Non-resident aliens with taxable and reportable US gross income must file Form 1040NR as tax return. Non-resident aliens are not required to file Form 1040NR if they are not engaged in a US trade or business during the tax year and if any tax liability on US-source investment (portfolio) income is satisfied by the 30% (or lower treaty rate) withholding tax. The ones who are not eligible to apply for SSN, can apply for Individual Tax Identification Number ('ITIN').

6. Indirect taxation

- The United States does not impose a federal sales tax / value-added tax (VAT) / federal goods and services tax (GST). State 'indirect taxation' refers to any state tax that is not based on income. The most common indirect tax is a state's sales and use tax; other indirect taxes include real estate transfer taxes, telecommunication taxes, commercial rent taxes, and hotel occupancy taxes. These may vary from state to state.

- Sales taxes are a form of consumption tax levied on retail sales of goods and services. All states other than Alaska, Delaware, Montana, New Hampshire, and Oregon collect state-wide sales taxes, as do localities in thirty-eight states.

- Use tax is a sales tax on purchases made outside one's state of residence for taxable items that will be used, stored, or consumed in one's state of residence and on which no tax was collected in the state of purchase.

7. Accounting and audit

- Methods of accounting: The two most common methods of accounting are the accrual basis and cash basis method. The cash basis method can be applied by corporates whose turnover does not exceed USD 25 million. The method must be consistently applied.

- The U.S. Securities and Exchange Commission recognizes that the Financial Accounting Standards Board sets the accounting standard for public companies in the United States. Every person liable for to pay any tax shall be required to maintain proper and accurate accounting records. The same shall be required to be submitted, if asked for, to the tax authorities.

- By law, public companies are required to get their annual financial statements audited by independent auditors i.e., independent CPA or a firm of CPAs. On the other hand, for private entities, or other type of non-corporate entities, the audit is not mandatory.

8. Other taxes and levies

- **Customs duties and import tariffs:** All goods imported into the United States are subject to entry and are dutiable or duty-free in accordance with their classification under the applicable items in the Harmonized Tariff Schedule of the United States. When goods are dutiable on an 'ordinary' basis, ad valorem, specific, or compound duty rates may be levied.

- **Excise duties:** Excise taxes are special taxes on specific goods or activities - such as gasoline, tobacco, or gambling rather than general tax bases such as income or consumption. All fifty states and many local municipalities levy excise taxes of various kinds.

- **Payroll Taxes:** Payroll taxes are taxes paid on the wages and salaries of employees to finance social insurance programs. The amount of payroll tax is withheld by the employer from employees' income. The largest payroll taxes are at a rate of 12.40% to fund Social Security and a rate of 2.90% tax to fund Medicare, for a combined rate of 15.30%. Employers directly remit half of payroll taxes (7.65 percent), with the other half withheld from employees' pay checks.

- **Property taxes:** Most states and local governments impose a variety of property taxes on real property. Most states also impose a tax on business personal property.

- **Environmental tax:** Importers, manufacturers, and sellers of Ozone Depleting Chemicals ('ODCs'), or imported products manufactured using ODCs, are subject to environmental taxes calculated per weight of the ODC. If the weight cannot be determined, the tax is 1% of the entry value of the product.

- **Other state and municipal taxes:** Other taxes that states may impose, in lieu of or in addition to taxes based on income may include franchise taxes and taxes on the capital of a corporation. State and municipal taxes are deductible expenses for federal income tax purposes.

- **Other tax return filing:** Sales and use tax returns must be filed either annually, semi-annually, quarterly, monthly, or semi-monthly, depending on state requirements. Filing frequency is commonly based on the taxpayer's sales volume and the amount of tax that the taxpayer collects during the period. Monthly filing is most frequently required.

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