BCL INDIA

India’s Leading Advisory And Chartered Accountant Firm In Bengaluru, India

Incorporation Of Different Types Of Business Entities In India

FAQs

TYPES OF BUSINESS ENTITIES IN INDIA?

1. LLP

In recent years, Limited Liability Partnerships (LLPs) have become increasingly popular in India due to their unique structure. Introduced in 2008, LLPs combine the flexibility of a partnership with the limited liability protection of a corporation. Governed by the Limited Liability Partnership Act, 2008, and its rules, LLPs outline partner rights, duties, and registration processes. The 2021 Amendment Act further enhanced ease of doing business by introducing Small LLPs and Start-up LLPs, attracting more investors.

LLPs are particularly favoured by professionals like lawyers, architects, and consultants who benefit from limited liability protection and management flexibility. Additionally, the Indian government's initiatives to ease foreign investment regulations have made LLPs attractive for foreign entities seeking a foothold in the Indian market. These factors, along with benefits such as separate legal entity status, tax advantages, and ease of management, contribute to the growing popularity of LLPs among entrepreneurs and small to medium-sized enterprises.

INDIAN SUBSIDIARIES CAN BE PRIVATE OR PUBLIC.

2.1. Private Limited Company

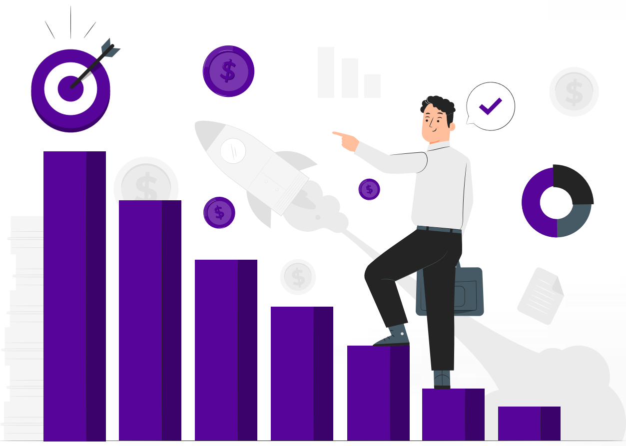
A Private Limited Company (PLC) is a corporate entity where ownership is restricted to a specific group of shareholders. It offers limited liability protection to shareholders, providing greater formality and credibility than LLPs. This structure suits businesses aiming to raise substantial capital or expand operations. Traditionally preferred by larger enterprises, recent reforms have made PLCs more accessible to startups and small businesses.

The Indian PLC landscape is transforming significantly. The Companies Act, 2013, introduced reforms to simplify incorporation and compliance, making PLC establishment easier. Government initiatives for digitalization have streamlined processes through e-filing and online platforms. Additionally, new business models and the rising demand for corporate governance have highlighted PLCs as a versatile and scalable business structure.

2.2. Public Limited Company

A Public Limited Company is a large-scale corporate entity with shares offered to the general public through stock exchanges. Unlike private companies, Public Limited Companies are subject to stringent regulations, including mandatory disclosures and higher compliance standards. Public companies typically have a larger capital base and a more complex governance structure, making them suitable for established businesses seeking substantial growth and public funding.

While traditionally associated with established giants, the landscape of Public Limited Companies is evolving. Factors like digitalization and increased investor interest in growth-oriented companies are reshaping their ecosystem. Some startups are opting for this route early on, aiming to leverage the public markets for rapid expansion. However, the complexities and regulatory burdens associated with Public Limited Companies still pose significant challenges for many businesses, making them a less accessible option compared to private limited companies or LLPs.



LIAISON OFFICE

A Liaison Office, also known as a representative office, is a business entity established by a foreign company in India to promote its business interests. It acts as a channel of communication between the parent company and Indian customers or suppliers. Liaison Offices are not permitted to engage in any commercial, trading, or industrial activities directly or indirectly. Their primary functions include market research, gathering information on potential market opportunities, and promoting the parent company's products and services. This structure is ideal for companies looking to explore the Indian market without committing significant resources or establishing a full-fledged business operation.

Recent trends indicate a growing interest in establishing Liaison Offices in India, driven by the country's robust economic growth and favourable investment climate. The Indian government has simplified the process for setting up Liaison Offices, making it more attractive for foreign companies. Digitalization and streamlined regulatory procedures have reduced the time and effort required for compliance. Additionally, sectors such as technology, pharmaceuticals, and consumer goods have seen a surge in Liaison Office setups due to increasing market potential. This form of business entity provides a strategic advantage for foreign companies to test the waters, understand market dynamics, and build relationships before making larger investments.

BRANCH OFFICE

A Branch Office is an extension of a foreign company, operating as a dependent unit within India. Unlike a Liaison Office, it can engage in commercial activities such as trading, providing services, and project execution, but is limited to the parent company's core business activities. As it is not a separate legal entity, its financial performance directly impacts the parent company. This model allows for revenue generation and profit repatriation, offering a direct operational presence in India.

The Branch Office model is popular among foreign companies seeking quick market entry and commercial operations in India. While it provides faster establishment compared to a wholly-owned subsidiary, the unlimited liability of the parent company and restrictions on certain business activities make some companies consider alternative strategies. Simplified regulatory frameworks and digitalization have facilitated easier setup processes. Despite some limitations, sectors like finance, engineering, and technology have seen growth in Branch Office setups, driven by India's expanding market and economic opportunities.

PROJECT OFFICE

A Project Office is a temporary establishment set up by a foreign company to execute a specific project within India. It oversees project implementation, coordinates with local partners, and ensures project completion without engaging in independent business activities beyond the project's scope. Unlike a Branch Office, a Project Office has a limited life span tied to the project duration, making it ideal for short-term assignments such as infrastructure development or large-scale installations.

This model offers flexibility for foreign companies to participate in Indian projects without committing to a permanent establishment. However, its temporary nature and restricted operational scope limit its suitability for long-term market penetration. The increasing complexity of large-scale projects and India's evolving regulatory environment have led many foreign companies to explore alternative strategies, such as joint ventures or wholly-owned subsidiaries, for sustained business presence in India. Despite these limitations, sectors like infrastructure, engineering, and technology have seen a rise in Project Office setups due to streamlined approval processes and improved compliance mechanisms.

INCORPORATION OF AN LLP

1. What Is An LLP? What Are Its Features?

An LLP is a business structure formed by an agreement between two or more individuals (designated partners), who manage the day-to-day operations. The LLP Agreement, outlines profit sharing, management roles, and dispute resolution mechanisms. Unlike traditional partnerships, partners in an LLP have limited liability, meaning their personal assets are shielded from business debts beyond their capital contribution. This provides significant protection compared to a sole proprietorship or a traditional partnership.

What Is An LLP

Features Of LLPs:

Separate Legal Entity:

An LLP is a distinct legal entity separate from its partners, allowing it to own property, enter into contracts, and engage in legal proceedings independently.

Limited Liability:

Partners' liability is limited to their agreed contribution to the LLP, protecting personal assets from business liabilities.

Flexible Management:

LLPs offer management flexibility by allowing partners to directly run the business without the need for a formal board of directors.

Perpetual Succession:

LLPs continue to exist irrespective of changes in partners, providing long-term stability and continuity for the business.

Tax Benefits:

LLPs benefit from being taxed as partnerships, which means profits are taxed at the individual partner level, avoiding the double taxation that corporations face.

2. What Is The Legal Framework That Governs LLPs?

The Primary Legislation Governing LLPs In India Is:

- **Limited Liability Partnership Act, 2008:**

  This is the core law that defines the structure, formation, operations, and dissolution of LLPs. It outlines the rights, duties, and liabilities of partners, the registration process, and the governance framework.

- **The Limited Liability Partnership Rules, 2009:**

  These rules provide detailed procedures for various aspects of LLP operations, including registration, filing requirements, and compliance.

- **The LLP Amendment Act Of 2021:**

  Introduced Small LLPs and Start-up LLPs, along with measures to decriminalise certain offences, enhancing ease of doing business and attracting more investors to the LLP structure.

In addition to the main Act, there are rules and regulations issued by the Ministry of Corporate Affairs (MCA) to provide detailed guidelines for implementing the LLP Act. These rules cover various aspects of LLP formation, operations, and compliance.

Laws Governing LLPs Throughout Their Business Journey:

- ### The Income Tax Act, 1961:

  This act governs the taxation of LLPs, outlining how LLPs are taxed on their income, profits, and the distribution of income among partners.

- ### The Goods And Services Tax (GST) Act, 2017:

  This act is relevant for LLPs engaged in the supply of goods or services, requiring them to comply with GST registration, filing, and other related procedures.

- ### The Foreign Exchange Management Act (FEMA), 1999:

  This act governs foreign investments in LLPs, including regulations related to Foreign Direct Investment (FDI) and the repatriation of profits.

3. Who Can Be Partners In An LLP?

Any individual or body corporate can be a partner in an LLP. This means that both natural persons (individuals) and legal entities (such as companies) can form an LLP. It's important to note that minors, persons of unsound mind, and undischarged insolvents cannot be partners in an LLP.

4. Who Are Designated Partners? What Are Their Responsibilities?

Designated partners are individuals who hold a crucial role in an LLP. They are responsible for the day-to-day management and compliance of the LLP.

Key Points About Designated Partners:

Mandatory

Every LLP must have at least two designated partners.

Individual Only

Designated partners must be individuals, not legal entities.

Residency

At least one designated partner must be a resident of India.A resident of India for this purpose is defined as someone who has stayed in India for at least 120 days during a financial year.

Liability

Designated partners have personal liability for the LLP's compliance with the LLP Act.

Foreign Nationals

can be designated partners in an LLP, provided they obtain a DPIN and fulfil the necessary compliance requirements.

Powers And Responsibilities Of Designated Partners:

Designated partners in an LLP ensure compliance with legal and regulatory requirements, including filing annual returns and financial statements with the Registrar of Companies. They maintain statutory records, ensure timely payment of taxes, and oversee adherence to statutory obligations. They are accountable for legal compliance and can be held liable for penalties in case of non-compliance. Additionally, they have the authority to sign documents and represent the LLP in legal matters, focusing on governance and regulatory adherence rather than day-to-day operations.

5. Is Registering An LLP Mandatory?

Yes, it is compulsory to register an LLP with the Registrar of Companies (ROC) to legally establish it as a separate legal entity.

Registration is essential for availing government benefits and ensuring compliance with regulatory requirements. Before registering, it is important to ensure that the business nature and operations match the eligibility criteria for an LLP. Only a registered business can be officially recognized as an LLP.

6. What Are The Requirements For Capital Contribution By Partners In An LLP?

In an LLP, the capital contribution by partners can be made in any form, including cash, tangible assets, intangible assets, or other agreed-upon resources. There is no minimum capital requirement specified by law, allowing partners to decide the amount of capital they wish to contribute based on their business needs. The details of each partner's capital contribution must be outlined in the LLP agreement, ensuring transparency and clarity among partners.

7. Can An LLP Be Converted Into Another Business Form, Such As A Company?

Yes, an LLP can be converted into a company, governed by the Limited Liability Partnership Act, 2008, and the Companies Act, 2013. The process involves passing a resolution by the LLP to approve the conversion and submitting an application to the Registrar of Companies (ROC). This includes filing Form 17 (Application for Conversion) and Form LLP-1, along with the LLP agreement and a declaration of compliance.

Following approval, the ROC issues a certificate of conversion, which formally recognises the LLP as a company. The assets and liabilities of the LLP must be transferred to the new company, and statutory records must be updated to reflect the conversion. This ensures that the transition from an LLP to a company meets all legal and regulatory requirements.

8. What Are The Steps Involved In Incorporating An LLP?

Before registering an LLP, it's essential to ensure that the business nature and operations meet the eligibility criteria.

Acquiring Digital Signature Certificate (DSC)

The registration process of an LLP starts with the online filing of the required documents, which must be digitally signed by the designated partners. Therefore, all designated partners must obtain a Class II or Class III Digital Signature Certificate (DSC) from recognized certifying agencies. This DSC is essential for the online filing of documents and to proceed with the registration process.

Obtaining Designated Partner Identification Number (DPIN)

Each designated partner must possess a Designated Partner Identification Number (DPIN), which can be applied for and obtained online through the MCA portal.

This DPIN is essential for legal recognition and compliance with regulatory requirements.

Choosing A Unique Name

Conducting a comprehensive name availability search and reserving the chosen name with the ROC is crucial. Form LLP-1 is used to seek a unique LLP name, with online availability checking provided by the Ministry of Corporate Affairs (MCA). To establish a unique name, it is important to ensure that the proposed name does not bear any similarity to existing partnerships, as this could result in rejection by the Registrar of Companies (ROC), leading to additional costs and delays.

Preparation Of LLP Agreement

The preparation of the LLP Agreement, filed through Form LLP-2, is a crucial step in defining the internal governance of the LLP. This document outlines profit sharing, management roles, and dispute resolution mechanisms, and governs the mutual rights and duties among the partners and between the LLP and its partners.

Filing Incorporation Documents

Filing the FiLLiP form (Form for Incorporation of Limited Liability Partnership) is the next step in registering an LLP. This form is used for the online filing of incorporation documents along with the prescribed fees.

Certificate Of Incorporation

Upon successful registration, the MCA issues a Certificate of Incorporation, formally recognising the LLP as a legal entity.

8. What Documents Are Required For LLP Registration?

01 Identity and address proof of partners

02 PAN card and photographs of partners

03 Passport (in case of Foreign Nationals/NRIs)

04 Digital Signature Certificate (DSC) for partners

05 Address proof of the registered office

9. What Are The Initial Post-Incorporation Compliance Requirements For An LLP?

PAN & TAN Registration:

Obtain the Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN) for the LLP. Securing these registrations is a crucial step for establishing the LLP's financial identity and ensuring compliance with tax laws.

GST Registration:

Register for GST if the LLP's turnover exceeds the specified threshold. This registration is critical for lawful business operations and avoiding penalties for non-compliance.

Annual Filings:

To remain compliant with regulatory requirements, LLPs must file annual returns and statements of accounts with the Registrar of Companies (ROC). This involves two primary filings:

Form LLP-11 is an Annual Return of the LLP that must be filed within 60 days from the end of the financial year.

Form LLP - 8 is a Statement of Account & Solvency that must be filed within 30 days from the end of six months of the financial year.

Accounting And Taxation Requirements:

Maintaining accurate financial records is essential for an LLP's legal compliance and operational efficiency. This includes bookkeeping, preparing financial statements, and filing tax returns.

10. How Are LLPs Taxed?

Limited Liability Partnerships (LLPs) in India are taxed as separate legal entities, similar to companies. As of the current tax provisions, LLPs are subject to a flat income tax rate of 30% on their taxable income. Additionally, if the total income exceeds INR 1 crore, a surcharge of 12% is applicable, and a Health and Education Cess of 4% is levied on the income tax plus surcharge.

INCORPORATION OF LIMITED COMPANIES.

1. What Is The Governing Law For Company Incorporation In India?

The Companies Act, 2013 ('Act') and the Companies (Incorporation) Rules, 2014 regulate the procedure for company incorporation in India and the provision of the company registration certificate. A company established in India cannot operate its business without the registration certificate granted by the Registrar of Companies (ROC). These regulations provide the framework for forming private and public limited companies, including requirements for directors, shareholders, authorized capital, and necessary filings.

2. What Are The Types Of Companies That Can Be Incorporated Under The Companies Act, 2013?

The Companies Act, 2013 Permits:

Private Limited Company

Minimum Of 2 And Maximum Of 200 Members. Shares Cannot Be Freely Transferred To The Public

Public Limited Company

Minimum Of 7 Members With No Upper Limit. Shares Can Be Freely Traded In The Open Market.

One Person Company (OPC)

A Company With Only One Shareholder.

Section 8 Company

A Company Formed For Charitable Or Not-For-Profit Purposes.

3. What Are The Advantages Of Incorporating A Business As A Company?

Incorporating as a company offers several benefits, making it an attractive option for businesses.

Here Are The Key Advantages:

- **Limited Liability Protection**

The most significant benefit of incorporation is limited liability protection. Shareholders' liability is restricted to the amount they have invested in the company. Personal assets of shareholders are generally not at risk in case the company incurs debt or faces legal action.

- **Perpetual Succession**

A company, as a separate legal entity, has perpetual succession, meaning its existence is not affected by the death, insolvency, or departure of any of its shareholders or directors. The company continues to exist until it is legally dissolved.

- **Separate Legal Entity**

Upon incorporation, a company is recognized as a separate legal entity distinct from its owners and managers. This means the company can own property, enter contracts, sue, and be sued in its own name.

Ease Of Raising Capital

Incorporated companies can raise capital more easily than other business structures. They can issue shares to investors, attract venture capital, and secure loans from financial institutions. Public limited companies can also list on stock exchanges to raise funds from the public.

Brand Recognition And Credibility

Incorporation adds credibility to a business, as companies are subject to more stringent regulations and reporting requirements. This can enhance the company's reputation with customers, suppliers, and investors.

Tax Benefits And Deductions

Companies can access various tax benefits and deductions not available to other business structures. Corporate tax rates may be lower than personal income tax rates, and companies can deduct expenses such as salaries, rent, and utilities from their taxable income.

Transferability Of Ownership

Shares of a company can be easily transferred from one person to another, subject to the company's Articles of Association. This makes it easier to bring in new shareholders or exit the business.

Access To Government Schemes And Incentives

Incorporated companies may have better access to government schemes, subsidies, and incentives aimed at promoting businesses. Governments often provide support to companies for innovation, export promotion, and industry development.

Professional Management

Companies can attract and retain skilled professionals by offering them positions as directors or key management personnel. The formal structure of a company allows for clear roles and responsibilities, improving overall management.

Greater Stability And Continuity

The structured and regulated environment of a company offers greater stability and continuity in operations. Investors and stakeholders often view companies as more stable and long-term investments.

4. What Are The Pre-Requisites For Incorporating A Private Or Public Limited Company In India?

- **Directors:**

A private limited company must have a minimum of 2 directors, while a public limited company requires at least 3 directors. Section 149(3) of the Companies Act, 2013 mandates that every company must have at least one director who has stayed in India for at least 182 days in the previous year (i.e., resident director).

- **Shareholders:**

A private limited company must have a minimum of 2 shareholders, while a public limited company requires at least 7 shareholders.

- **Registered Office:**

The company must have a registered office address in India, which will be the official communication address for all formal and legal communications.

- **Name Availability Check:**

A preliminary check to ensure the proposed company name is unique and reflects the core activity of the business.

5. What Are The Memorandum Of Association (MOA) And Articles Of Association (AOA)?

MOA (Form INC-33):

The MoA is the foundational document of a company that outlines its core constitution. It defines the company's name, registered office, objectives, liability, and authorized share capital. Essentially, it acts as the company's charter, specifying its purpose and scope of operations. The MoA is a public document and reflects the company's external face.

AOA (Form INC-34):

The AoA is a complementary document to the MoA that details the internal management and administration of the company. It covers rules regarding shareholding, directors, meetings, dividends, and other operational procedures. In short, it is the company's internal rulebook.

While the MoA defines the company's external boundaries, the AoA governs its internal workings. Both the MoA and AoA are crucial for the company's formation and ongoing operations.

6. What Is SPICe+ And Its Role In Company Incorporation?

- **SPICe+ (Simplified Proforma For Incorporating Company Electronically Plus):**

SPICe+ is an integrated web form used for incorporating companies electronically. It is available on the MCA portal and combines several services into one, including name reservation, incorporation, DIN allotment, PAN, TAN, EPFO, ESIC, GSTIN (optional), Professional Tax Registration, and opening a bank account.

- **Structure Of SPICe+:**

The Form Is Divided Into Two Parts:

Part A: Name Reservation For The Proposed Company.

Part B: Incorporation, Including The Application For DIN, PAN, TAN, And Other Services.

Supporting Forms: INC-33 (E-MOA) And INC-34 (E-AOA) Are Electronic Forms For Memorandum Of Association (MOA) And Articles Of Association (AOA), Respectively, Which Are Filed Along With SPICe+.

7. What Are The Steps Involved In Incorporating A Company?

Obtaining DSCs

All directors and subscribers to the Memorandum of Association (MoA) of a company must obtain a Digital Signature Certificate (DSC) for the incorporation process.

To obtain a Digital Signature Certificate (DSC), the first step is to identify the Certifying Authority (CA) from whom you want to procure the DSC. Various CAs are licensed by the Controller of Certifying Authorities (CCA) under the Information Technology Act, 2000. Next, you need to fill out the application form for the DSC, which typically requires identity proof, address proof, and a passport-sized photograph. After completing the form, submit it along with the necessary documents to the CA. In some cases, you may need to present the original documents for verification. Once the verification process is complete, the CA will issue the DSC, which you can then use for filing electronic documents on the Ministry of Corporate Affairs (MCA) portal.

Reserving A Unique Name For The Company

Choosing a business name is crucial as it represents your brand. It must be unique, not infringe on existing trademarks, and comply with naming conventions set by regulatory authorities.

To reserve a company name, first log in to the MCA portal and access the SPICe+ form. In Part A of the SPICe+ form, enter the proposed company name and select the type of company (Private, Public, or OPC). Next, conduct a name search to ensure the name is not already in use or trademarked, and that it complies with naming guidelines under Rule 8 of the Companies (Incorporation) Rules, 2014. Submit the name reservation request, and upon approval, the name will be reserved for 20 days, during which the company must be incorporated.

Submission Of Company Details

Complete the SPICe+ Part B by providing detailed information on capital, registered office address, subscribers, directors, stamp duty, PAN, TAN application, and necessary attachments. SPICe+ Part B is crucial in the company incorporation process as it requires detailed information about the company's structure, financial aspects, and legal compliance. This stage ensures adherence to statutory requirements and establishes the company's framework.

Submission Of Incorporation Forms

Draft the Memorandum of Association (MOA) and Articles of Association (AOA) electronically, attach them as PDFs in the SPICe+ form, and secure digital signatures from the subscribers and witnesses.

Complete and review the SPICe+ form, ensuring all details are accurate and that required documents are attached. After confirming everything is in order, pay the requisite filing fees online based on the company's authorized capital.

Submit the form through the MCA portal, where it will be processed by the Central Registration Centre (CRC).

Additionally, file the AGILE-PRO-S form to register for GST, EPFO, ESIC, a bank account, and any state-dependent shop and establishment license.

Certificate Of Incorporation

After successful document verification, the MCA will issue the Certificate of Incorporation (COI), which will include the Company Identification Number (CIN), PAN, and TAN.

8. Can A Company Begin Its Business Operations Immediately After The Incorporation Process Is Complete?

After Incorporation, Steps Are Needed To Start Operations:

Open A Bank Account:

Use the COI, PAN, and other necessary documents to open a current bank account in the company's name. This account will be used for all business transactions.

Deposit Share Capital:

The subscribers to the Memorandum of Association must deposit the initial share capital into the company's bank account. The company must issue share certificates to the subscribers.

Obtain Mandatory Registrations:

Register for GST, EPFO, ESIC, and any other mandatory licenses or registrations, such as a Shop and Establishment license, based on the state and nature of the business. These can be filed using the AGILE-PRO-S form.

Hold The First Board Meeting:

Conduct the first board meeting within 30 days of incorporation. In this meeting, the directors should appoint a Chairperson, approve the bank account, authorise share certificates, and discuss the statutory registers to be maintained.

Maintain Statutory Registers And Records:

Maintain statutory registers, such as the Register of Members, Register of Directors, and Minute Book, in compliance with the Companies Act, 2013.

Issue Share Certificates:

The company must issue share certificates to its shareholders within two months from the date of incorporation.

Appointment Of Auditor:

Appointing statutory auditors and company secretary (if required).

Comply With Post-Incorporation Filings:

File necessary post-incorporation forms with the MCA, such as DIR-12 (appointment of directors) and INC-22 (registered office address), if not already submitted during incorporation.

Once all the above steps are completed, the company can officially commence its business operations.

9. What Are The Ongoing And Annual Compliance Requirements For A Company?

Annual General Meeting (AGM)

Every company must hold its first AGM within 9 months of the end of the first financial year.

Annual Return (Form MGT-7)

File an annual return with details of shareholders, directors, and other information within 60 days of holding the AGM.

Financial Statements (Form AOC-4)

File the financial statements of the company within 30 days of the AGM.

Income Tax Return

File the company's income tax return annually.

10. How Are Companies Taxed?

Companies in India are subject to corporate income tax. This is a direct tax levied on the company's profits. A company is a separate legal entity and is taxed independently of its shareholders, with the current corporate tax rate at 25% for domestic companies.

However, lower rates may apply under specific conditions. Taxable income is computed by deducting allowable expenses from total income, and companies must pay advance tax in instalments throughout the year. Additionally, companies are responsible for deducting TDS on certain payments and collecting TCS on specified receipts. Besides income tax, companies may also be liable for other taxes like GST, service tax, and customs duty, depending on their business activities.

11. What Are The Scenarios In Which Companies In India Can Benefit From Lower Corporate Tax Rates?

In India, lower corporate tax rates apply in specific scenarios. New manufacturing companies starting operations between April 1, 2019, and March 31, 2024, can benefit from a 15% tax rate with a minimum ₹1 crore investment in eligible machinery. SMEs with turnover below ₹1 crore may opt for presumptive taxation at reduced rates. DIPP-recognized start-ups enjoy a three-year tax holiday and certain capital gains exemptions. Infrastructure projects may qualify for lower rates or exemptions, while DTAAs help reduce tax burdens for companies with foreign investments. Consulting a tax professional is recommended for tailored advice.

12. What Are The Tax Implications For Shareholders When Withdrawing Profits From A Company?

As of the 2024 budget, the withdrawal of profits from companies in India primarily occurs through the distribution of dividends to shareholders. Since the abolition of the Dividend Distribution Tax (DDT) in 2020, dividends are now taxed in the hands of shareholders based on their individual income tax slabs. For dividends exceeding INR 5,000, a Tax Deducted at Source (TDS) of 10% is applied before distribution. High-income shareholders may face a higher effective tax rate due to applicable surcharge and cess. Additionally, capital gains tax applies if profits are withdrawn through the sale of shares, with short-term capital gains taxed at 15% and long-term capital gains (on profits over INR 1 lakh) at 10%.

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INCORPORATION OF A BRANCH OFFICE

1. What Is The Eligibility Criteria For A Foreign Company To Open A Branch Office In India?

- The foreign company must have a net worth of at least USD 100,000 or its equivalent.
- The foreign company must have a profit-making track record during the immediately preceding five financial years in its home country.

2. What Is The Process For Incorporating A Branch Office In India?

Approval From The RBI And Other Necessary Government Approvals:

A foreign company intending to establish a branch office in India must obtain approval from the Reserve Bank of India (RBI) under the Foreign Exchange Management Act (FEMA), 1999. This application can be filed through an Authorized Dealer (AD) Category-I bank.

Submission Of Form FNC:

The foreign company must submit Form FNC (Form for Establishing a Branch/Liaison/Project Office) to the RBI along with required documents like the company's Certificate of Incorporation, Memorandum and Articles of Association, the latest audited balance sheet, and a resolution from the parent company.

Registration With ROC:

Within 30 days of RBI approval, the branch office must be registered with the Registrar of Companies (ROC) by filing Form FC-1 under the Companies Act, 2013. The branch office must also obtain a Certificate of Establishment from the ROC.

PAN And TAN Application:

The branch office must apply for a Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN) from the Income Tax Department. GST registration may also be required depending on the activities of the branch office

3. What Activities Are A Branch Office Of A Foreign Company Permitted To Undertake In India?

- Export/import of goods
- Providing professional or consultancy services
- Research work in which the parent company is engaged
- Promoting technical or financial collaborations between Indian and foreign companies
- Representing the parent company in India and acting as a buying/selling agent
- Rendering services in Information Technology and development of software in India
- Providing technical support for the products supplied by the parent/group companies
- Representing foreign airlines/shipping company

4. What Are The Taxation And Compliance Requirements For Branch Offices Of Foreign Companies In India?

Corporate Tax Rate:

Branch offices of foreign companies in India are taxed at a flat rate of 35% (plus applicable surcharge and cess) on their profits.

Transfer Pricing:

Transactions between the branch office and its parent or other group companies are subject to transfer pricing regulations to ensure that they are conducted at arm's length.

Withholding Tax:

Withholding tax may be applicable on certain types of payments made by the branch office to non-resident entities.

Goods And Services Tax (GST):

If the branch office engages in taxable supplies of goods or services, it is liable to pay GST.

Double Taxation Avoidance Agreements (DTAs):

India has DTAs with many countries to prevent double taxation. These agreements can provide relief from taxation in both countries.

Compliance Requirements:

Branch offices must comply with various Indian laws and regulations, including labour laws, environmental laws, and accounting standards.

Annual Filings And Auditing:

Branch offices are generally required to maintain audited accounts and submit annual filings of these audited financial statements. This includes filing various returns with the RBI, ROC, and Income Tax Department, such as Form FC-4, Statutory Audit, Form FC-3, Annual Activity Certificate (AAC), Income Tax Return (ITR), and Tax Audit.

Repatriation Of Profits:

Profits earned by branch offices of foreign companies in India can be repatriated after paying applicable taxes and meeting regulatory requirements. The process, governed by FEMA, requires submitting audited financial statements and tax confirmations. Certain sectors, like defense, may need additional permissions. Authorized dealers oversee compliance with Indian regulations during repatriation.

5. Give A List Of Documents Required For The Incorporation Of A Branch Office In India?

Parent Company Documents:

- Certificate of Incorporation
- Memorandum and Articles of Association
- Audited financial statements of the parent company for the last five years
- Board resolution authorising the establishment of the branch office in India

Branch Office Documents:

- Complete details of the branch office, including the address, nature of business, and activities to be undertaken
- Details of the authorized representative in India (including a copy of the passport, address proof, and contact details)
- Power of Attorney in favour of the authorized representative

Regulatory Filings:

- Form FNC (for approval from the RBI)
- Form FC-1 (for registration with the Registrar of Companies)

- KYC of the directors or authorized signatories
- Banker's certificate from the foreign bank of the parent company

Taxation Documents:

- PAN and TAN application forms
- Digital Signature Certificates (DSCs) for authorized signatories

Other Documentation:

- Declaration by the foreign company stating that it will adhere to Indian laws and regulations
- Any sector-specific approvals, if required (e.g., for defence, telecom, etc.)

INCORPORATION OF A LIAISON OFFICE

1. What Is The Eligibility Criteria For A Foreign Company To Open A Liaison Office In India?

To Establish A Liaison Office (LO) In India, A Foreign Company Must Meet The Following Criteria:

- **Profitability:**

The parent company must have a profit-making track record for the preceding three financial years.

- **Net Worth:**

The company must have a minimum net worth of USD 50,000 or its equivalent, verified by its auditors.

2. What Is The Process For Incorporating A Liaison Office In India?

Filing Of Application:

Foreign companies looking to establish a liaison office (also known as a representative office) in India must first obtain approval from the Reserve Bank of India (RBI). The application is submitted to the RBI through the authorized dealer bank. The application is in Form FNC (Foreign Company Registration) and must include various documents like the certificate of incorporation, Memorandum and Articles of Association, and the audited financial statements of the parent company.

Approval From RBI:

The RBI, after reviewing the application and ensuring that it meets all the eligibility criteria, grants approval for the establishment of the liaison office. The approval is generally granted for a period of three years and can be renewed further.

Registration With The Registrar Of Companies (RoC):

After obtaining RBI approval, the liaison office must be registered with the Registrar of Companies (RoC) within 30 days of establishing the office. Form FC-1 is required for this purpose.

PAN And Bank Account:

The liaison office needs to obtain a Permanent Account Number (PAN) from the Income Tax Department and open a bank account in India. All funds for the operations of the liaison office should come from remittances from the parent company.

3. What Activities Are A Liaison Office Of A Foreign Company Permitted To Undertake In India?

A Liaison Office Is Permitted To Undertake The Following Activities:

- Representing the parent company in India.
- Acting as a communication channel between the parent company and Indian companies.
- Promoting export/import from/to India.
- Collecting market information and providing it to the parent company.
- Promoting technical and financial collaborations between the parent company and Indian companies.

4. What Are The Taxation And Compliance Requirements For Liaison Offices Of Foreign Companies In India?

Income Tax:

Liaison offices are not permitted to generate income in India and therefore are not liable to pay income tax. All expenses must be funded through remittances from the parent company abroad. However as per Transfer Pricing guidelines there may be tax implications in Liaison office. Applicable tax rate is 35%.

Transfer Pricing Regulations:

Even though liaison offices do not conduct commercial transactions, transfer pricing regulations may apply to ensure that transactions between the parent company and the liaison office are at arm's length.

Compliance With Local Tax Regulations:

Liaison offices must obtain a Permanent Account Number (PAN) and adhere to Tax Deducted at Source (TDS) norms where applicable. Additionally, they are required to submit an Annual Activity Certificate (AAC) to the RBI and the Income Tax Department to confirm compliance with operational limits and financial activities.

5. Give A List Of Documents Required For The Incorporation Of A Branch Office In India?

Application Documents:

01 Form FNC (RBI application form)

02 Covering letter to RBI

Company Documents:

01 Certificate of Incorporation

02 Memorandum and Articles of Association (MoA and AoA)

03 Audited financial statements (last 3 years)

04 Board resolution approving the liaison office

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Authority Documents:

01 Power of Attorney/Letter of Authority

02 Details of the authorized representative (passport, photo, contact details)

Liaison Office Details:

01 Office address proof (lease agreement/property documents)

02 Description of proposed activities

Banking And Financial Documents:

01 Banker's report from the parent company's bank

KYC And Additional Documents:

01 KYC documents of the foreign entity and authorized representatives

02 Affidavits or declarations as required

RoC Registration:

01 Form FC-1 (for RoC registration)

02 Charter documents of the parent company