



■ ANNUAL REVIEW Reprint October 2021

Global tax

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in global tax.





India ■

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Punit Shah is a partner at Dhruva Advisors and is a fellow member of the Institute of Chartered Accountants of India (ICAI) with over 30 years' experience in tax and regulatory matters. He specialises in the banking, financial services and private equity sector and is widely recognised as a leader in this field. He has extensive experience in advising domestic organisations and multinationals on international and transactions tax matters. In particular, he advises banks, insurance companies and non-banking financial companies and is widely regarded for his expertise in the fund space and extensively advises private equity and mutual funds.

■ Q. What do you consider to be among the key developments affecting corporate tax in India over the last year or so?

SHAH: India has a vibrant tax system. The Indian government has introduced several significant changes in recent years. With a renewed focus on the 'Make in India' initiative to stimulate manufacturing activities, India has introduced a concessional tax regime of 15 percent for domestic companies engaged in manufacturing activities. The taxation of dividends has also undergone a paradigm shift wherein dividend income is now taxable in the hands of shareholders, thereby abolishing the burden which was hitherto on the company. In the M&A space, the law has been amended to deny depreciation of goodwill arising out of business restructurings. Furthermore, transactions of slump exchanges are now taxable. The provisions pertaining to the taxation of partnership firms has also been overhauled. The launch of anonymous assessments and appeals has also altered the functioning of the Indian tax administration, with a view to enhancing transparency, accountability and efficiency. The time limit on reassessments has also been reduced from six years to three.

■ **Q. To what extent have tax authorities in India increased their monitoring and enforcement activities?**

SHAH: The Indian tax authorities are vigilant in enforcement. India has leveraged technological developments to improve the monitoring and enforcement of tax compliance. India has also introduced regulations regarding the reporting of certain high-end financial transactions. Increasing withholding tax requirements on the purchase and sale of goods, ecommerce transactions, and so on, has helped provide a digital trail to allow the authorities to monitor the economic activities of taxpayers. Reporting requirements for foreign payments also monitors the tax compliance of non-residents. India has also implemented technological surveillance of suspicious transactions. Increased data sharing between direct and indirect tax departments has helped to control revenue leakage and potential tax evasion. The application of algorithms and artificial intelligence has optimised the risk-based audit approach of the Indian tax authorities in recent years. India has also signed agreements with certain foreign jurisdictions for the automatic exchange of information to combat offshore tax evasion and avoidance. A separate unit, the Foreign Tax & Tax Research department, has been established to analyse classified tax-related information shared between India, tax havens and other countries.

■ **Q. How are tax authorities approaching the issue of transfer pricing? In your experience, do companies tend to underestimate the risks and challenges in this area?**

SHAH: Following the introduction of transfer pricing provisions in India, the tax authorities aggressively scrutinised all types of international transactions, which led to massive adjustments and a huge backlog of litigation. However, recently with the introduction of safe harbour rules, there has been a significant reduction in the number of transfer pricing litigations and audits.

■ **Q. How would you describe tax laws in India as they relate to foreign entities? Are there any unique regulatory aspects, whether positive or negative, that need to be considered?**

SHAH: Indian tax regulators have a special focus on the taxation of foreign entities. Foreign companies are subject to a 40 percent rate of tax in India. India provides for a gross rate of tax for interest, dividends, royalties and fees for technical services earned by non-residents and foreign companies. Safeguards like the dispute resolution panel and the Board of Advance Rulings have been established to ensure tax certainty in India for foreign taxpayers. India also has a vast treaty network with foreign jurisdictions. A tax residency certificate is a key document for availing treaty benefits. The newly introduced definition of 'liable to tax' would be relevant when determining the availability of treaty benefits. As far as digital taxes are concerned, India has expanded the scope of its digital tax, known as the equalisation levy, to bring non-resident ecommerce operators within its ambit. A non-resident ecommerce operator selling goods or services through an ecommerce platform or providing digital advertisement services would be liable for the equalisation levy in India. Furthermore, the domestic law



has also been amended to provide that a virtual presence held by a non-resident in India would also constitute a taxable presence. One must also be mindful of provisions pertaining to indirect transfers, especially in cases of offshore share transfer deals. Finally, the roll-back effect of the much-debated indirect transfer provisions signifies India's strong commitment to achieving tax certainty and boosting the investment climate.

■ **Q. Have you seen an increase in tax disputes in India? What lessons can companies learn from recent settlements, prosecutions, penalties and court rulings?**

SHAH: Tax litigation in India is a long and costly process. Despite efforts by Indian tax regulators, the country has seen a significant increase in the number of tax disputes, with a large backlog of cases pending across various levels. Typically, disputes pertaining to the taxation of royalties, fees for technical services, the existence of permanent establishment, indirect transfers, withholding obligations on resident payers and transfer pricing have taken centre stage in the past few years. Gaining certainty beforehand through the advanced ruling mechanism could help mitigate tax disputes. Taxpayers can also explore various options whereby they can fast track any impending tax matter. India has codified General Anti-Avoidance Rules, based on the principle of substance over form. Having a strong commercial rationale for undertaking a transaction in a particular manner is extremely important to substantiate that the main purpose is not to obtain any tax benefit. Transparent and full disclosure of all material facts before the courts is another important aspect.

■ **Q. What is your advice to a company that finds itself subject to a tax-related audit, investigation or enquiry?**

SHAH: When the Indian tax authorities issue notices seeking information and documents for tax-related investigations or enquiries, taxpayers are always advised to make full and true disclosures of facts, along with supporting evidence, which would help them at a later stage of appeal before the higher courts. Providing the required information and documents ensures the smooth running of any time sensitive tax investigation or enquiry. As tax-related investigations are now conducted anonymously, it is imperative that all facts and legal merits of the case are documented appropriately and in a manner which makes it easy for the tax officer to understand. It may be noted that a tax appeal may involve placing the disputed amount in escrow, which may impact the company's cashflow. Alternatively, a stay application on the recovery of a disputed amount may be preferred. Furthermore, as per the tax laws, a penalty of 50 percent of the tax amount is payable for underreporting income and 200 percent of the tax amount for misreporting income. A penalty can be avoided if the taxpayer offers a genuine explanation and discloses all material facts to substantiate the explanation offered.

■ **Q. What steps can companies take to ensure they maintain robust tax compliance processes while maximising tax efficient structures?**

SHAH: Indian tax regulations require companies to undertake a variety of tax compliance processes, such as monthly and

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quarterly payment of taxes, filing quarterly and annual forms and returns, prior reporting of foreign payments, and so on. Awareness of evolving tax regulations is the first step toward tax compliance. Robust tax compliance can be achieved with the help of technology and staff. The COVID-19 pandemic and the implementation of remote working policies has seen technology come to the fore. The use of sophisticated and scalable systems with adequate internal checks and controls is a must for efficient tax compliance processes. Real-time accounting and reporting systems can increase staff efficiency. Accounting systems can be integrated with taxation modules to help generate reports in a timely manner. ■

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Dhruva Advisors offers a wide range of services in the tax and regulatory space to clients in India and around the world. With a highly regarded and experienced team of professionals, the firm provides well thought out strategies and solutions to complex problems in tax and regulatory matters. The firm’s professionals have advised on some of the most significant transactions and have handled several of the largest and most critical tax controversies and related matters in India. The firm also has a strong track record of designing and implementing pioneering solutions in several areas of domestic and international tax.

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