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Entering India

The entry options open to a foreign group, the withholding that applies to money leaving India, and the certification that has to accompany it.

Doing business in India: entry routes, withholding and the paperwork
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Doing business in India: entry routes, withholding and the paperwork

India is a document-led tax system. Most of what a foreign group finds difficult is not the rate but the sequence: a payment out of India needs its certification before it moves, and a lower withholding rate needs its certificate before the payment, not after.

Who this is for

- Foreign companies opening an Indian subsidiary, liaison office or project office.
- Groups already receiving payments from India that arrive net of withholding.
- Canadian and US companies with Indian development, support or manufacturing operations.

The entry routes, and what each one may do

A foreign company can operate in India through a subsidiary company, or through one of several forms of office of the foreign company itself. The office forms are narrower in what they are permitted to do: a liaison presence is generally limited to representation and cannot earn income, while a project or branch presence can carry on defined activity and is taxed accordingly.

The practical consequence is that the activity you intend decides the vehicle, and choosing a vehicle that cannot do what you need is a slow problem to fix. A subsidiary is the general-purpose answer where there is real trading or service delivery, and it brings inbound investment reporting with it — the receipt of share capital from abroad is itself a reportable event with its own filing.

Permanent establishment, and the service delivery trap

The treaty test applies here as elsewhere, but two patterns catch foreign groups repeatedly. The first is service delivery: personnel who spend enough time in India delivering services to a customer can create a taxable presence for the foreign company even with no office, because a service permanent establishment concept appears in several of India's treaties.

The second is the subsidiary that is effectively an extension of the parent. A subsidiary that provides services only to its parent, on terms the parent sets, with no independent business of its own, invites the argument that the parent has a presence in India through it. Documented intercompany agreements and a defensible pricing basis are the answer, and they have to exist before the argument is made.

Withholding on payments out of India

India operates a comprehensive withholding regime, and payments to non-residents sit inside it. The rate depends on the character of the payment — services, royalty, interest, dividend, fees for technical services — and on whether treaty relief applies. Treaty relief is claimable but it is conditional on documentation, including a residency certificate from the recipient's own tax authority and a treaty information declaration.

Where the statutory withholding is higher than the eventual liability, the recipient or the payer can apply for a certificate authorising a lower or nil deduction, in advance. This is materially better than withholding at the full rate and reclaiming by return, because refunds are slow and the cash sits in India in the meantime.

Remittance certification: the step nobody expects

Money leaving India generally requires a declaration by the remitter and, in most cases, an accountant's certificate confirming the nature of the payment and that the correct tax has been withheld. Banks will not process the remittance without it. This is why a payment that was agreed in a contract can still sit in India for weeks: the paperwork is a precondition, not a formality.

Building this into the payment cycle — the certificate obtained as part of the invoicing routine rather than as an emergency at month end — is one of the highest-value operational changes a group with Indian outflows can make. Our pages on theremitter declaration and theaccountant's certificateset out what each requires.

Transfer pricing and the accountant's report

India has a developed transfer pricing regime with its own documentation requirements and an accountant's report covering international transactions with associated enterprises, filed alongside the return. There is also a safe harbour option for certain categories of transaction, which trades a possibly higher margin for certainty and a lighter defence burden.

For a group with an Indian captive service centre, the transfer pricing file is the single most important tax document the Indian entity produces, because the margin it supports is the tax base. Our page onIndian transfer pricing documentationcovers what has to be in it.

An Indian entry, in order

The reporting on inbound capital and the withholding setup both come earlier than people expect.

1. **Match the activity to a vehicle** Representation, project delivery, trading or service export each point at a different entry route, and the permitted activities differ. Choose on what you will actually do.
2. **Incorporate and report the inbound investment** Company formation, then the reporting of foreign share capital received, which is a filing with its own deadline rather than a bank formality.
3. **Obtain the tax registrations** Permanent account number, tax deduction account number for withholding, and goods and services tax registration where supplies require it.
4. **Set the withholding architecture** Decide which outbound payments will attract withholding, gather the residency certificates and declarations, and apply for a lower deduction certificate where the default rate overstates the liability.

5. **Paper the intercompany relationships** Service agreements, a pricing basis and a benchmarking file, before invoicing starts. This is also what protects the parent against a presence argument.
6. **Build the annual calendar** Corporate return, transfer pricing report, withholding returns on their own cycle, and the remittance certification routine for every payment abroad.

Papers to gather

What an Indian entry or review needs:

- Group structure chart with ownership percentages and residence.
- Description of the Indian activity and who will perform it, in India and abroad.
- Draft intercompany service or licence agreements.
- Expected Indian revenue, cost base and headcount for two years.
- Tax residency certificates for every group entity that will receive money from India.
- Details of any payments already made from India, and the rate withheld.
- Any Indian registrations, notices or assessments already in existence.
- The parent's transfer pricing policy, if the group already has one.

Where it goes wrong

- **Choosing a vehicle that cannot do the work** A representation-only presence that starts invoicing, or a project presence used for general trading, creates a problem that is resolved by restructuring rather than by an amended return.
- **Leaving treaty documentation until the payment is due** Without the residency certificate and the declaration in the payer's hands, the default rate applies and the excess has to be recovered by return. The documents are the rate.
- **Treating the accountant's certificate as a bank formality** It is a precondition to the remittance. Groups that do not build it into the invoice cycle discover it as a cash-flow problem at quarter end, every quarter.

Questions this raises

Can our Indian subsidiary just invoice us at cost?

Not safely. A service subsidiary transacting with its parent is squarely within transfer pricing, and a cost-only charge with no margin is the position most likely to be adjusted. The margin should be supported by a benchmarking analysis rather than chosen.

Why is our Indian customer withholding tax on our invoice?

Because Indian withholding applies to payments to non-residents, by character of payment. A treaty may reduce the rate, but only if the documentation is with the payer before payment. Where the default rate overstates the liability, a lower deduction certificate can be obtained in advance.

Do we need an Indian tax number if we only receive payments?

Often yes. A permanent account number is frequently what allows the treaty rate rather than a higher default rate to apply to payments made to you, so obtaining one is usually cheaper than the withholding differential.

How long does the remittance paperwork take?

It is quick when it is routine and slow when it is an emergency. Groups that obtain the declaration and the accountant's certificate as part of the monthly close move money on schedule; groups that start at payment time wait.

What to do next

If the entry is ahead of you, the deliverable to ask for is a vehicle recommendation with the registration list and the annual calendar it implies. If you are already receiving payments from India net of withholding, the first question is whether a lower deduction certificate would have applied — and whether the excess can still be recovered.

We handle Indian entry, the withholding architecture, the transfer pricing report and the remittance certification as one engagement, at a fixed fee agreed before work starts. See a Canadian company opening in India and the remittance certification fee page.

Legal Quotient Consultants

Cross-border and international tax. Fixed fees agreed in writing before work starts, quoted from your own documents.

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