GUIDE ON DOING BUSINESS IN INDIA

KNM | OUTSOURCING & CONSULTING

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KULDEEP NAGPAL
Managing Director

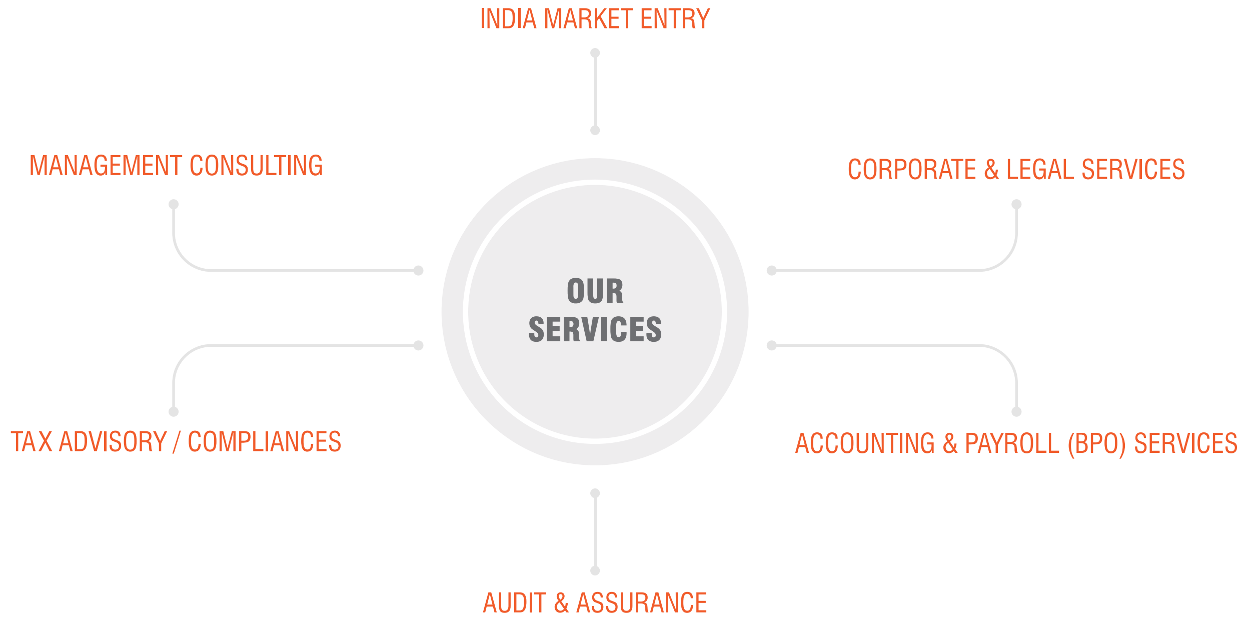
+91 98914 11110
kuldeep@knmc.in

"Business leaders should choose their advisors with much the same diligence as people choose doctors. There must be confidence that if challenges arise, you have invested your trust with the right people."

ABOUT US

KNM is one of the fastest growing outsourcing company in India in the field of Accounting, Taxation Services, Corporate Law Matters and other related issues regarding Indian Taxes. The company is managed by the professionals having experience of more than 15 years.

From our offices in Delhi and Pune as well as from our working points in Hyderabad and Bangalore, our advisors provide comprehensive and multidisciplinary advisory services in the fields of legal, tax, BPO and audit matters with the support from a compact regional and professional network of competent local partners.


INDIA MARKET ENTRY
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TAX ADVISORY / COMPLIANCES
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AUDIT & ASSURANCE

"The Credibility of the Indian economy has been re-established. The world is predicting that it is India's chance to fly."

Arun Jaitley, Hon'ble Finance Minister of India

AN OVERVIEW OF THE INDIAN ECONOMY - FASTEST GROWING ECONOMY OF THE WORLD

The post-independence Indian economy (from 1947 to 1991) was a mixed economy with an inward looking, centrally planned, interventionist and import-substituting economic policies.

In 1991, India adopted the free market principles and there after liberalised its economy to international trade. A shift from a closed-door economy to an open economy helped India realise its growth potential.

India has emerged as the fastest growing major economy in the world as per the Central Statistics Organisation (CSO) and International Monetary Fund (IMF).

According to the Economic Survey 2018-19, the Indian economy will continue to grow more than 5 per cent in 2019-20 and it is expected to be in the range of 6 – 6.5% in 2020-21.

India, a South Asian nation, is the seventh-largest country by area and is made up of 29 different states and 7 union territories, the second-most populous country with over 1.37 billion people, and the most populous democracy in the world.

India is one of the fastest growing economies in the world. It has a vibrant and expanding consumer market of over 1.2 billion people, and is destined to be the world's 3rd largest economy by 2030. This makes India an extremely attractive market with broad-ranging opportunities for International companies.

India has removed the majority of its trade barriers to improve the business environment. Huge investment potential exists in sectors such as life sciences, manufacturing, energy and infrastructure.

Historic changes are unfolding, unleashing a host of new opportunities to forge a 21st-century nation.

REGULATORY ENVIORNMENT

FOREIGN INVESTORS INCLUDING COMPANIES LOOKING TO ENTER INDIA OR ALREADY OPERATING IN INDIA NEED TO UNDERSTAND THE INDIAN LEGAL AND REGULATORY ENVIRONMENT.

THE REGULATORY ENVIRONMENT IN INDIA IS IMPACTED BY THE FOREIGN EXCHANGE CONTROL POLICIES OF THE RBI, SECURITIES LAW GOVERNED BY THE SECURITIES AND EXCHANGE BOARD OF INDIA AND VARIOUS OTHER LEGISLATIONS AFFECTING SET UP AND OPERATION OF ENTITIES IN INDIA.

REGULATORY ENVIORNMENT

The following section provides an overview of Indian laws and regulations, which would be relevant for a foreign investor in India.

1. Establishing a presence in India:
A foreign company setting up operations in India has the following options:

(a) Wholly-Owned Subsidiary

- Foreign entity can set up subsidiary company in India, which can be private or public limited, with or without limited liability.
- In India companies are incorporated and regulated under provisions of the Companies Act, 2013 and are subject to certain procedural formalities under the Act.
- Subsidiaries can either be wholly owned or in joint venture with some Indian partner, as per RBI (FDI) rules. Except in few sectors where foreign direct investment cap is applicable, foreign entity can have 100% subsidiary.
- It can under take all types of business activities, as may be permitted by its Charter, which may include marketing, manufacturing, providing services, etc.
- No RBI approval is needed where 100% direct investment is permissible.
- It is treated as domestic company under Indian tax law and is eligible for all the tax deductions and benefits as provided to any other Indian Company.
- Formation time: With Government functioning on Digital India, incorporation and other registrations/approvals are gradually upgraded to single window. The registration and approval times are drastically low and simple to comply.

(b) Joint Venture with an Indian Partner (Equity Participation)

- Although a wholly-owned subsidiary has proved to be a preferred option, many foreign companies have also begun operations in India by forging strategic alliances with Indian partners.
- The trend is to choose a partner who is in the same field / area of activity or who brings synergy to the foreign investor's plans for India.

(c) Limited Liability Partnership (LLP)

- LLP combines the advantages of a company, such as being a separate legal entity having perpetual succession, with the benefits of organisational flexibility associated with a partnership.
- The FDI policy permits foreign investment in LLP`s (subject to prescribed conditions) making this a possible viable entity form for foreign investors.

(d) Liaison Office

- A liaison office cannot enter into any commercial or business activities in India.
- Liaison office is required to submit annual activity report from its chartered accountant to RBI to ensure that it has undertaken only those activities that have been permitted by the RBI.
- A Liaison office is required to registered itself with the Registrar of Companies (ROC) and to comply with certain procedural formalities, as prescribed under the Companies Act, 2013.
- Liaison office has advantages like easy operations, less formalities and simple closure process. Its role is limited to collection of market information and providing information about the company and its products to the perspective Indian customers. Liaison office is just an entry point for foreign companies who wish to explore Indian market.
- Formation time: With Government functioning on Digital India, incorporation and other registrations/approvals are gradually upgraded to single window. The registration and approval times are drastically low and simple to comply.

(e) Project Office

- A foreign entity may open a project office in India to execute a contract awarded to it by an Indian Company.
- Such companies can open project office under RBI General permission (Automatic route), subject to certain conditions. In all other cases prior permission of RBI is required.
- It can execute only that specific project for which permission is granted. It cannot undertake any other activity like liaison, marketing, business or execute any other contract.
- Transactions between the project office and its parent/group entities are subject to Transfer Pricing Regulations.

• It is required to be registered with the Registrar of Companies (ROC) in India and to comply with certain procedural formalities, as prescribed in the Companies Act, 2013.
• Project office has advantages like easy operations, simple formalities with easy exit route. It can handle only specific projects for which it has permission.
• Formation time: With Government functioning on Digital India, incorporation and other registrations/approvals are gradually upgraded to single window. The registration and approval times are drastically low and simple to comply.

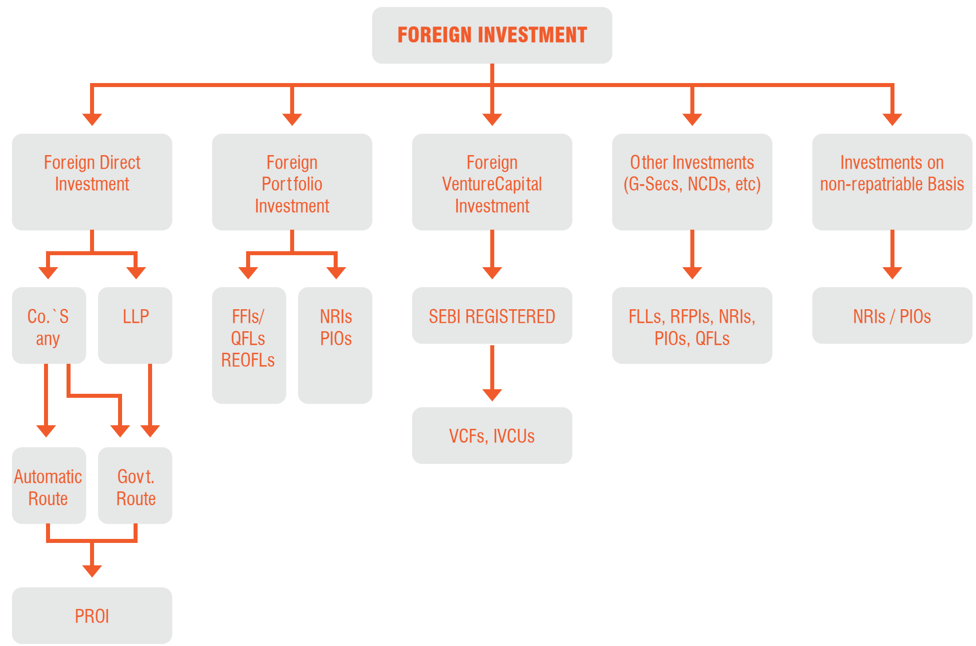
(f) Branch Office

• Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to setup Branch Office in India with specific approval of the Reserve Bank of India (RBI). A foreign company cannot undertake any activity in India that is not specifically permitted by the RBI.
• Branch Offices are permitted to represent parent/group companies and undertake the following activities.

a) Export/Import of goods, Procurement of goods for exports and sale of goods after import are allowed only on wholesale basis.
b) Rendering of professional or consultancy services.
c) Carrying out of research work in the areas in which the parent company is engaged.
d) Promoting technical or financial collaborations between Indian companies and parent/group companies.
e) To act as buying / selling agent in India.
f) Rendering of IT & Software Development services in India.
g) Rendering technical support to the products supplied by the parent/group companies in India.

• Branches are not allowed to undertake retail trading activities in India of any nature. A branch office cannot carry out manufacturing and processing activities in India, directly or indirectly.
• Branch office is required to register itself with the registrar of Companies (ROC) and to comply with certain procedural formalities, as prescribed under the Companies Act, . 2013

2. Foreign Investment in India



FDI in India is permitted under the automatic approval route- depending on the sector in which the investment is made.

Under the automatic route there is no requirement of any prior regulatory approval. Only post facto prescribed filing by the Indian company to the RBI through an authorized dealer (Banker) is required. Under the approval route, a prior of the government is required. Approval is granted from the erstwhile secretariat for industrial Assistance (SIA), Department of Industrial Policy and Promotion, Govt. of India and erstwhile foreign investment promotion board (FIPB) and or any of the ministry/department of the Govt. of India as the case may be.

Some recent policy measures/ development in FDI regime- the Government of India, in last 2-3 years, has launched of reforms by relaxing the restrictions on investment and opening up some sectors under the automatic route. Some of these are provided below:

• 100 per cent FDI has been allowed in the telecom sector. (49 per cent under the automatic route, above 49 per cent under the approval route)
• 100 per cent FDI has been allowed in single-brand retail. (49 per cent under the automatic route, above 49 per cent under the approval route)
• 49 per cent FDI in commodity exchanges, stock exchanges & depositories, power exchanges, petroleum refining by PSUs, courier services earlier under the approval route has now been brought under the automatic route.
• Prescribed restriction on the tea plantation sector has been removed.
• FDI limit has been raised to 100 per cent in credit information companies (CIC) and 100 per cent in asset reconstruction companies.
• FDI limit of 26 per cent in defense sector has been raised to 49 per cent under the approval route. FDI beyond 49 per cent is also allowed on a case-to-case basis with the approval of cabinet committee on security.
• Construction, operation and maintenance of specified activities of railway sector has been opened for 100 per cent FDI under automatic route.
• 100% FDI has been allowed in construction and development activities (townships, housing, built-up infrastructure)
• The NDA Government has launched an official website, www.makeinindia.com, which provides a platform for an investor to obtain an understanding of the policy measures, sectors with restriction, sectors with caps, sectors requiting Government approval, sectors under automatics route, entry routes, etc.

• Overseas loans by Indian companies/entities from foreign lenders are governed by the ECB guidelines issued by the RBI under the FEMA. The ECB policy stipulates details guidelines for eligible borrowed, recognized lenders, amounts and maturity periods, all-in-cost interest ceilings, end-use, compliances, etc. Issue of any non-convertible, optionally convertible of partially convertible preference shares or debentures to non-residents is considered as ECB under exchange control regulation and hence need to comply with the ECB guidelines.

• FIIs/FPIs that are eligible and apply/register with SEBI can invest in India under the prescribed guidelines, ceilings and parameters.

• FVCI, which is eligible and registered with SEBI can invest in an Indian VCF/Indian VCU and may also set up a domestic asset management company to manage the funds. All such investments are allowed under the automatics route subject to SEBI and RBI regulations and the FDI Policy.

• NRIs/PIOs can invest in the shares or convertible debentures of an Indian company on a repatriation basis on the Indian stock exchange under portfolio investment scheme, subject to limits and conditions. NRIs/PIOs can also invest in the shares or convertible debentures of an Indian company (not engaged in the sectors of agricultural or plantation activities, real estate business, construction of farm house or dealing in transfer of development rights) on a non-repatriation basis subject to prescribed conditions.

3. Companies Act, 2013

Reglatory checks, accountability and governance standards in India have received a serious boost with the introduction of the new Companies Act, 2013. Business and investors have expressed confidence in the Act's ability to induce transparency and welcomed the legislation as an attempt to restore the appeal of Indian business. The Government of India introduced this landmark legislation in the beginning of fiscal year 2014.

TAXATION FRAMEWORK

Tax system in India a two-tier system, controlled by the Central Government, The State government and the urban and rural local Bodies.

The Central Government is empowered levy taxes on income (except tax on agricultural income, for which the power vests with State Government), Customs duty, Central Goods & Service Tax (CGST) and Integrated Goods & Service Tax (IGST).

State Goods and Service Tax (SGST), Stamp duty, State excise, Land revenue and tax on professions are levied by the State Government.

Introduction

Over the last decade or so, an attempt has been made to reform and rationalize the taxation systems. The tax rates have been on the decline, while tax compliance has been on the rise. Administrative reforms have also been undertaken, aimed at facilitating compliance with the tax laws.

The rapidly changing economic scenario has led to the need for constant updation of the tax laws to keep up with this rapid pace of economic change. The transfer pricing regulations were introduced in the ITA in the year 2001, which has helped to streamline the taxation of cross-border transactions between related/ group entities, while also helping the Government to augment ta x revenues by preventing taxpayers from shifting profits outside India.

Determination of residency

A company is regarded as resident in India, if it is incorporated in India or its entire control and management is situated in India. From 1 April 2015, resident status of any company will be determined by the concept of place of effective management (POEM) which would replace the 'wholly controlled and managed' test for determination of residence of a foreign company. POEM has been defined to include a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as whole are, in substance made. The test of POEM is applied at any time during the year to determine tax residency in India.

Scope of taxation

An Indian resident company is subject to ta x on its worldwide income, unless the income is specifically exempt. Non-residents corporation are taxed in respect of Indian-sourced income i.e. income received or accrued or arisen or deemed to accrue or arise in India. Certain payments such as interest, royalty and fees for technical services are deemed to accrue or arise in India if paid by an Indian resident or a non-resident in case they are used for the purpose of a business carried on in India or for earning any income from a source in India.

Corporate taxation

Domestic as well as foreign companies are liable to pay corporate tax under the Income-tax Act. While a domestic company is taxed on its universal income, a foreign company is only taxed on the income earned within India i.e. is being accrued or received in India. For the purpose of calculation of taxes under Income tax act, the types of companies can be defined as under:

Domestic Company:

Domestic Company is one which is registered under the Companies Act of India and also includes the company registered in the foreign countries having control and management wholly situated in India. A domestic company includes private as well as public companies. Domestic company to pay income tax at the rate of 22% subject to condition they will not avail any incentive or exemptions. Manufacturing companies set up after October 1 to get option to pay 15% tax.

Foreign Company:

Foreign Company is one which is not registered under the company's act of India and has control & management located outside India. The tax rate for foreign company remain same is 40%

Any income from transfer of a capital asset is taxable under the head 'capital gains'. The ta x rate at which the capital gains are taxable in India depends on whether the capital asset transferred is a short t-term capital asset or along-term capital asset.

The capital asset may be classified as short-term or long-term, depending upon the period of holding of such asset. When the holding period exceeds 36 months, the asset is regarded as a long-term capital asset. However, in case of listed securities or units of equity oriented mutual fund, the 36 months test is replaced by a 12 months period. Other assets qualify as short term capital asset.

Gains arising from transfer of long-term capital assets are taxed at special rates/eligible for certain exemptions (including exemption from ta x where the transaction is chargeable to STT). Short-term capital gains arising on transfer of assets other than certain specified assets are taxable at normal rates. Capital gains are computed by deducting cost, adjusted for cost inflation index in case of all assets, other than bonds or debentures, and other expenses linked in connection with such transfer from net sale proceeds.

Other direct taxes

Dividend Distribution Tax

Currently, companies are required to pay Dividend Distribution Tax (DDT) on the dividend paid to its shareholders at the rate of 15% plus applicable surcharge and cess in addition to the tax payable by the company on its profits.

It has been proposed to remove the DDT and adopt the classical system of dividend taxation under which the companies would not be required to pay DDT. The dividend shall be taxed only in the hands of the recipients at their applicable rate.

Further, in order to remove the cascading effect, it is also proposed to allow deduction for the dividend received by holding company from its subsidiary.

• Buyback tax at the rate of 20 per cent (plus applicable surcharge and cess) is levied on specified distributed income of unlisted domestic companies that buy back share from its shareholders.
• Minimum Alternate Tax is levied at the rate of 15 percent (excluding applicable surcharge and cess) in case the normal income tax payable under domestic law is less than 15 percent of the book profit computed under ITA.
• STT is levied on the value of taxable securities transaction at specified rates. The taxable securities transactions are purchase/sale of equity shares in a company or a derivative or a unit of an equity-oriented fund to the mutual fund, etc.

Withholding of taxes

• Under the ITA select payments made to residents is liable to withholding tax by the payer. In case of non-residents, the payments made are subject to tax withholding if such payments is chargeable to tax in India in the hands of non-residents recipient. Under the ITA, the withholding tax rates for payments to non-residents companies are subject to the applicable tax rates.

Tax Treaties

Double taxation is the levying of tax by two or more jurisdictions on the same declared income (in the case of income taxes), asset (in the case of capital taxes), or financial transaction (in the case of sales taxes). Double liability is mitigated in a number of ways, for example:

• The main taxing jurisdiction may exempt foreign-source income from tax,

• The main taxing jurisdiction may exempt foreign-source income from tax if tax had been paid on it in another jurisdiction, or above some benchmark to not include tax haven jurisdictions,

• The main taxing jurisdiction may tax the foreign-source income but give a credit for foreign jurisdiction taxes paid.

Another approach is for the jurisdictions affected to enter into a tax treaty which sets out rules to avoid double taxation. The term "double taxation" can also refer to the double taxation of some income or activity. For example, in some jurisdictions, corporate profits are taxed twice, once when earned by the corporation and again when the profits are distributed to shareholders as a dividend or other distribution.

India has comprehensive double-taxation avoidance agreements in force with several countries. ITA permits non-residents to be governed by the provisions of the ITA or a tax treaty whichever is more beneficial of the non-residents. Accordingly, the taxability of non-residents is likely to be restricted or modified. However, in order to obtain treaty benefits, a non-resident is required to obtain a Tax Residency Certificate (TRC) issued by revenue authorities of the country of residence along with some additional information. Tax rates applicable on various transactions involving payment for royalties, fees for technical services and interest payments are generally governed by tax treaties.

Transfer Pricing

• The price of any ‘international transaction’ between ‘associated enterprises’, is computed with regards to the Arm’s Length Price (ALP). The ITA defines the term ‘international transaction’ and also provides specific situations wherein two enterprises shall be demand to be associated enterprises.
• The transfer pricing regulations also apply to certain domestic transactions defined as SDT covering the following:
• Payments (i.e. only expenditure) to specific related parties’.
• Threshold Limit is changed to 200 Million INR as per provisions of Income Tax
• Transactions between ta x holiday eligible units and other business units of the same taxpayer:
• Computation of ordinary profits of a tax holiday unit of the taxpayer where there are transactions with entities having close connection:
• Such other transactions, as may be prescribed.
• The other transfer pricing regulations required the ALP in relation to an international transactions to be determined by the any one of the following methods:

• CUP method (Comparable uncontrolled price);
• RPM (Resale price method);
• CPM (Cost plus method);
• PSM (Profit split method);
• TNMM (Transactional net margin method); or
• Other Method which permits use of a ‘price which has been charged or paid’ or would have been charged or paid’ thereby allowing use of bonafide quotations, bids, proposals as comparable transactions or prices, and also economic and commercially justifiable models and similar approaches.
• The transfer pricing regulations have prescribed an illustrative list of information and supporting documents requires to be maintained by taxpayers. Stringent penalty provisions have been incorporated in the ITA for non-compliance.

GOODS AND SERVICE TAX – ONE COUNTRY ONE TAX

GST is an Indirect Tax which has replaced many Indirect Taxes in India. The Goods and Service Tax Act was passed in the Parliament on 29th March 2017. The Act came into effect on 1st July 2017; Goods & Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition.

In simple words, Goods and Service Tax (GST) is an indirect tax levied on the supply of goods and services. This law has replaced many indirect tax laws that previously existed in India. GST is one indirect tax for the entire country.

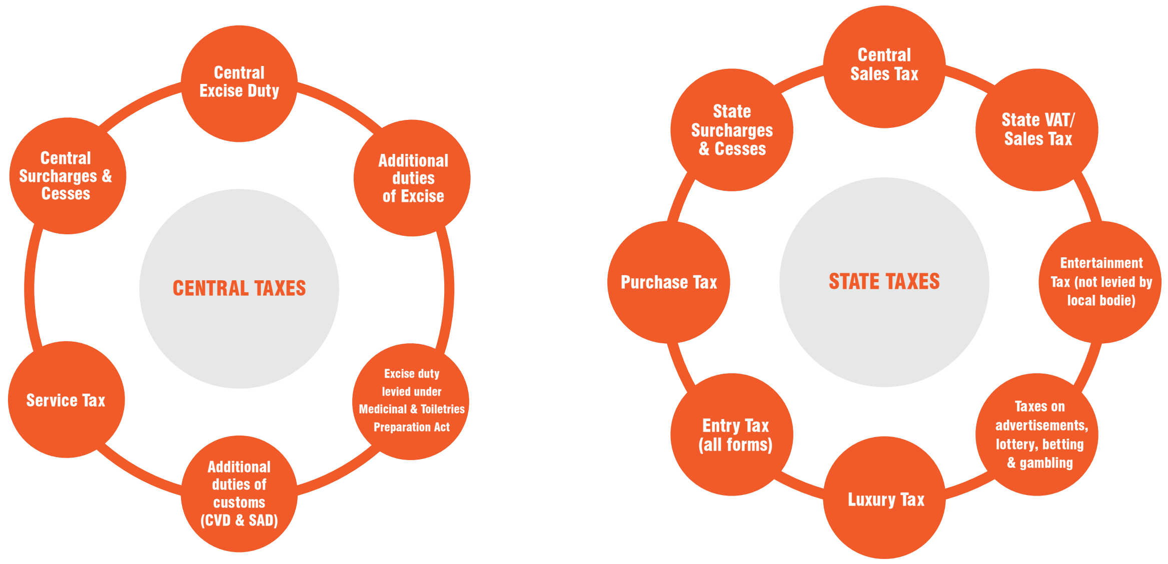
The GST journey began in the year 2000 when a committee was set up to draft law. It took 17 years from then for the Law to evolve. In 2017 the GST Bill was passed in the Lok Sabha and Rajya Sabha. On 1st July 2017 the GST Law came into force. There are 3 taxes applicable under this system: CGST, SGST & IGST.

- CGST: Collected by the Central Government on an intra-state sale.
- SGST: Collected by the State Government on an intra-state sale.
- IGST: Collected by the Central Government for inter-state sale.

GST has mainly removed the Cascading effect on the sale of goods and services. Removal of cascading effect has impacted the cost of goods. Since the GST regime eliminates the tax on tax, the cost of goods decreases. GST is also mainly technologically driven. All activities like registration, return filing, application for refund and response to notice needs to be done online on the GST Portal; this accelerates the processes

Alcohol for human consumption, Petroleum Products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel & Electricity are being proposed to kept outside the purview of GST

Below Central and States Taxes to be subsumed in GST;



ABBREVIATION	PARTICULARS
AIF	Alternate Investment Fund
ACR	Annual Compliance Report
AE	Associate Enterprise
ALP	Arm's Length Price
AO	Assessing Officer
APA	Advance Pricing Agreeements
CBDT	Central Board of Direct Taxes
DIPP	Department of Industrial Policy and Promotion
DTC	Direct Tax Code
ECB	External Commercial Borrowing
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FFI	Foreign Financial Institution
FII	Foreign Institutional Investors
FPI	Foreign Portfolio Investors
FVCI	Foreign Venture Capital Investor
GST	Goods and Service Tax
ITA	Income Tax Act
IVCU	Indian Venture Capital Undertaking

ABBREVIATION	PARTICULARS
LLP	Limitd Liability Partnership
MCA	Ministry of Corporate Affairs
NRI	Non-resident Indian
OECD	Org for Economic Co-operation & Development
PIO	Person of Indian Origin
POEM	Place of Effective Management
PROI	Person Resident Outside India
QFL	Qualified Foreign Investor
RBI	Reserve Bank of India
RFPI	Registered Foreign Portfolio Investor
SEBI	Securities and Exchange Board of India
SHR	Safe Harbour Rules
STT	Securities Transaction Tax
TP	Transfer Pricing
TPO	Transfer Pricing Officer
TRC	Tax Residency Certificate
VAT	Value Added Tax
VCF	Venture Capital Fund
VCU	Venture Capital Undertaking

TESTIMONIALS

Clients contentment is of paramount importance to us. Take a look at what our clients have to say about us.

**"We have been working with KNM Pune Branch for the past 2.5 years.
KNM take care of our complete Book Keeping, Tax & Statutory Compliances, Audit Support Activities etc.
The services provided by the KNM team in Pune is very good and of a high quality.
We wish the KNM Pune team lots of success in the years to come."**

Mr. Sudarsan Srinivasan, Managing Director
VEGA India LEVEL & Pressure Measurement Private Limited

**"KUKA Robotics (India) Private Limited has been getting financial services & advisory from KNM since 2008 including sorting out some complex challenges while maintaining the fair business practices.
We are satisfied with the excellent services & would highly recommend the same to existing as well as new entrants to India."**

Mr. Raj Singh Rathee, Managing Director
KUKA Robotics (India) Private Limited

**"We as BPW consider KNM as a valuable partner on our journey in India. Thank you KNM for your support.
We highly recommend their services to succeed in India"**

Mr. Philipp Baecker, Director
BPW Trailer Systems India Private Limited

KN MANAGEMENT CONSULTANTS PRIVATE LIMITED

Mobile : +91 98914 11110 | E-mail : contact@knmc.in

www.knmc.in

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