Setting up a Wholly Foreign-Owned Subsidiary Company in India

Under Indian law, foreign investors are able to establish wholly owned subsidiary companies (WOS) in the form of private limited companies if they operate in sectors that permit 100 percent foreign direct investment (FDI). With India's recent loosening of FDI caps, companies are now also able to establish WOS in the telecom services and asset reconstruction sectors. Establishing a private limited company can be a lengthy and complicated process involving multiple steps.

First, a minimum of two directors must be appointed and registered through India's e-filing system for Director Identification Numbers (DIN). Minimum requirements for the establishment of a private limited company include the existence of two directors, two shareholders (who may be the same person as the directors), and a minimum share capital of INR 100,000 (1 Lakh).

Second, a suitable name must be selected that indicates the main objectives of the company, and submitted with the RoC along with a brief description of the business's proposed functions to verify both the name's appropriateness and availability. Upon successful name registration, the applicant company has 60 days to file its Memorandum of Association (MOA) and Articles of Association (AOA), and proceed with formal incorporation filings. Both the MOA and AOA must be stamped with the appropriate duty after the needed RoC fees and stamp duty have been paid, and both forms signed by at least two subscribers with a witness.

Within this 10-day time window, the following documents must also be filed with the Ministry of Corporate Affairs web portal along with the requisite filing fees:

•Form 1 – Application for incorporation along with the MOA and AOA
•Form 18 – Notice of situation for the registered office (proof of address, etc.)
•Form 32 – Details of the company's board of directors
Upon successful submission of the above documents, the RoC will issue a Certificate of Incorporation and a Corporate Identification Number (Corporate Identity). The process generally takes 7 to 8 weeks to complete, and private limited companies are permitted to commence business immediately following their successful incorporation.

Applicable Taxes

While India has been liberalizing its governing policies since 1991, the country's tax structure remains among the most complex and difficult to navigate in the world. Understanding the wide variety of laws, regulations and procedures can be confusing for even the savviest of business operators. Foreign companies that do not seek specialized advice often end up overpaying on taxes or on the associated penalties and interest that go along with them. What follows is a brief description of the various taxes which should be taken into consideration when incorporating a private limited WOS company in India.

Type of Company	Taxable Income		
	Below INR 10 Million	Exceeds INR 10 Million	Exceeds INR 100 Million
Domestic company	30%	32.45% (30% plus surcharge of 5%, plus education cess of 3%)	33.99% (30% plus surcharge of 10 %, plus education cess of 3%)
Foreign company	40%	42.02% (40% plus surcharge of 2%, plus education cess of 3%)	43.26% (40% plus surcharge of 5 %, plus education cess of 3%)

Tax on the Distribution of Dividends

Corporate entities are subject to a tax on the distribution of dividends. However, in the case of shareholder dividends, the associated income is exempt from tax. The current effective rate of the Dividend Distribution Tax is 16.995 percent (15 percent plus a 10 percent surcharge and an education cess of 3 percent). No exemption from payment of the DDT is granted for the profits relating to SEZ developers.

To avoid a situation of double taxation being created by the DDT, it is permitted that, for the purpose of computing the tax, any dividend received by a domestic company during any financial year from its subsidiary shall be allowed to be deducted from the dividend to be distributed. This is provided the dividend received by the domestic company has been subject to DDT and the domestic company is not the subsidiary of any other company.

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Minimum Alternate Tax

All companies declaring low or zero profits are subject to the Minimum Alternate Tax (MAT). Presently, MAT is levied at 18.5 percent of book profits plus the applicable surcharges and education cess. The MAT is levied on companies whose tax payable under normal income tax provisions is less than 18.5 percent of book profits. Additionally, MAT is applicable to SEZ developers/units for income arising on or after April 1, 2012.

Taxation of Royalties / Technical Fees

Under domestic tax law, the royalties/technical fees that are payable to non-residents with a permanent establishment in India are taxed on a different basis compared to non-residents without permanent establishment in India. Concessional tax rates apply if the agreement relates to a matter that has been approved by the government of India. The payments made are subject to tax avoidance agreements entered into by the non-resident's country.

Wealth Tax

Wealth tax is calculated on March 31st of every year (referred to as the valuation date). Wealth tax is charged to both individuals and companies at the rate of 1 percent of the amount by which the "net wealth" exceeds INR 3,000,000.

The term "net wealth" is basically defined as the excess value of certain assets over accumulated debt. Assets include guest and residential houses, motorcars, jewelry/bullion/utensils of gold and silver, yachts, boats, aircraft, urban land and cash in hand. A debt is an obligation to pay a defined sum of money arising from the assets included in "net wealth."

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