

Doing Business in India



Considerations From a Switzerland-
India Tax Perspective

August 2018

Doing Business in India

Considerations From a Switzerland-India Tax Perspective

August 2018

ndaconnect@nishithdesai.com
europe.nda@nishithdesai.com

Contents

1. SWISS - INDIA RELATIONS: BACKGROUND	01
2. SWISS - INDIA TAX TREATY: SPECIAL CONSIDERATIONS	02
I. Residency of Partnerships and Hybrid Entities	02
II. PE Risks	02
III. POEM	02
V. Lower Withholding Tax Rate not Available to 'Conduits'	04
VI. Taxation of Capital Gains	04
VII. Exchange of Information	05
3. QUICK GUIDE FOR INVESTING INTO INDIA	06

1. Swiss - India Relations: Background

India's traditional policy of non-alignment and the Swiss policy of neutrality, coupled with shared values of democracy and rule of law have forged close ties between the two countries.

Swiss-India economic relationship dates back to the 1850s, when Volkart Trading Co set up offices in Basel and Bombay. Since then, there has been a continuous rise in trade and investment flow between the two countries.

Switzerland is India's 9th largest trading partner with total bilateral trade including merchandise exports, bullion, IT services, and software export, amounting to approximately USD 20 billion in 2017-18.¹

Switzerland is also India's 11th largest investor, accounting for approximately 1.14% of the total FDI in India from April 2000 to March 2018. In fact, FDI from Switzerland into India is estimated to be approximately USD 4.31 billion during 2005 – 2016, which is no surprise considering that over 250 Swiss companies have a presence in India either through their own subsidiaries or joint ventures.² Keeping in mind that much investment in India is routed through other countries, the Swiss National Bank actually estimates investment into India at a much higher USD 7.71 billion during 2005-2016.³ Further, recent reform initiatives by India have created greater opportunities for Swiss companies especially in sectors like clean technology, life sciences, precision engineering, medtech, financial services and fintech, construction materials and equipment, consumer goods, railways and defense. To further boost FDI, the Indian Embassy in Berne has also initiated the "Momentum of India: Swiss SMEs Programme" which aims to facilitate the entry of Swiss SMEs into the Indian market.

A number of bilateral agreements and institutional arrangements have also been executed between India

and Switzerland including:

- Swiss-India Joint Economic Commission (1959)
- Swiss-India Collaboration in Biotechnology (1999)
- Agreement for Avoidance of Double Taxation (1994, amended in 2000 and 2010)
- Agreement for Promotion and Protection of Investments (1997)
- Agreement on Social Security (2009)
- Swiss-India Joint Committee on Science & Technology (2011)
- Swiss-India Financial Dialogue (2011)
- MoU on Mutual Cooperation in Local Governance (2011)
- MoU for Development Cooperation (2011)
- Joint Declaration on the introduction of the Automatic Exchange of Information on Tax Matters (2016)
- Letter of Intent for Sister State Agreement between the State of Andhra Pradesh and the Canton of Zurich (2018)

Further, the Swiss Embassy has taken a biennial initiative for 2017 and 2018 – "70 Years of Swiss-Indian Friendship: Connecting Minds – Inspiring the Future." This initiative aims at presenting cutting edge innovations where both Switzerland and India can mutually benefit. The new initiative is in commemoration of the 70th anniversary of the bilateral friendship treaty signed in 1948, and will provide an excellent opportunity to further strengthen the good bilateral economic relations between the two countries. Such initiatives poise India and Switzerland to see enhanced economic cooperation as well as an increase in trade and investment flows.

1. Embassy of India, Berne, India-Switzerland Relations. Available at: <http://www.indembassybern.gov.in/page/india-switzerland/>

2. Id.

3. Id.

2. Swiss - India Tax Treaty: Special Considerations

I. Residency of Partnerships and Hybrid Entities

Difficulties may arise when treaty benefits are claimed by partnerships and hybrid entities.

Benefits under the Swiss-India tax treaty (“**Swiss-India Treaty**”) are available to residents liable to tax in Switzerland.

In Schellenberg Wittmer⁴, a Swiss general partnership was held not to be entitled to treaty benefits since it is a fiscally transparent entity. It was further held that the Swiss resident partners of the partnership could also not take advantage of the treaty since they were not direct recipients of the income. In contrast, the Bombay High Court confirmed that a German partnership (*DIT v. Chiron Bhering*⁵) should be eligible for German-India tax treaty benefits since the partnership (though fiscally transparent) was subject to a German trade tax, which was listed as a covered tax under the treaty.

By virtue of a Protocol to the Swiss-India Treaty (effective from April 1, 2012), Swiss pension funds or schemes would be treated as residents entitled to treaty benefits even if they are generally exempt from tax in Switzerland. This specific clarification provides some relief, considering that in the US-India context, a US pension fund (in the case of *Re: General Electric Pension Trust*⁶) was held not to be entitled to treaty benefits.⁷

4. [2012] 210 TAXMAN 319 (AAR).

5. TS-12-HC-2013 (BOM).

6. (2006)200CTR(AAR)121.

7. Although the US-India treaty unlike most treaties recognizes trusts, in this case it was not possible to establish that all beneficiaries of the trust (policy holders) were resident in the US.

II. PE Risks

Swiss companies having a PE in India would be taxed to the extent of income attributable to such PE. It is necessary to take into account specific PE related tax exposure in the Swiss-India context.

In addition to the standard PE threshold in most treaties (eg: fixed base, office, branch, construction site), the Swiss-India Treaty also has a service PE clause. A service PE may be constituted if services are provided by the Swiss enterprise’s employees who spend more than 90 days (in a 12 month period) in India or 30 days if the services are provided to a related enterprise in India.

A dependent agent in India of the Swiss enterprise that negotiates and concludes contracts on its behalf would be treated as a PE. Unlike in most Indian treaties, an agent in India which manufactures or processes goods belonging to the Swiss enterprise would also be treated as a PE. This could create tax exposure for enterprises having contract research and manufacturing arrangements in India.

In *eBay International AG v. ADIT*⁸, the Tax Tribunal held that Indian company which entered into an exclusive marketing services arrangement with its Swiss parent should not be viewed as a PE. The Tribunal also held that fees received by the Swiss entity from Indian customers who used the online e-commerce platform is not in the nature of technical service fees and hence, not taxable in India in the absence of a PE.

III. POEM

Another issue that arises is when an entity is treated as a tax resident under the laws of both countries. Tax residence in a particular jurisdiction generally attracts taxation of the worldwide income of the

8. [2013] 140 ITD 20 (Mum).

individual / entity concerned in that jurisdiction. The India- Swiss tax treaty provides a tie-breaker rule to address situations where an entity is a resident of both countries under their domestic laws, i.e., the entity will be treated as resident of the jurisdiction where its place of effective management (“**POEM**”) is situated.

These tie-breaker rules in the India-Swiss tax treaty becomes important in light of the amendment introduced in 2015 in India with respect to criteria for determination of tax residence of companies incorporated outside India. Prior to this amendment, i.e., up to financial year 2015-16, a company incorporated outside India qualified as an Indian tax resident in a financial year (April 1 to March 31) only if the entire control and management of its affairs was wholly located in India during that financial year. From financial year 2016-17 onwards, a foreign company qualifies as tax resident in India if its POEM in the relevant financial year is in India.

The Indian domestic law and the India- Swiss tax treaty (in the context of the tie-breaker rule) prescribe the same criteria (i.e., POEM) for determining tax residence of companies. However, it is important to note that the jurisprudence which has evolved globally for determining where POEM of a company is situated, while being retained in the India-Swiss tax treaty, is somewhat different as compared to the guidelines issued by the Indian government in January 2017 for determination of POEM under domestic law. Having said that, the government has incorporated certain points of feedback from market participants and the final guidelines issued in January 2017, essentially prescribe the following:

- a. Foreign companies carrying on an Active Business Outside India (“**ABOI**”) benefit from a presumption that their POEM is outside India (provided a majority of the board meetings of such company takes place outside India, and the board actively exercises its power of management). A foreign company is said to be engaged in ABOI only if (i) less than 50% of its employees are situated in India; and (ii) less than 50% of its assets are situated in India; and (iii) less than 50% of its employees are situated in India; and (iv) payroll expenses incurred on

such employees comprise less than 50% of its total payroll expenses (“**ABOI Test**”).

- b. Foreign companies that do not meet the ABOI test are subject to a two-step test to determine POEM. Step 1 involves the identification of the persons who make the key commercial or management decisions of such company, while step 2 involves determining the place where such decisions are made.
- c. The final guidelines for determination of POEM also highlight that the approach for determination of POEM is that of substance over form and depends on the facts of each case. Accordingly, no single guiding principle will be decisive and various factors will have to be taken into consideration to determine whether a foreign company has a POEM in India.
- d. Certain administrative safeguards have also been included in the POEM final guidelines to ensure that senior revenue officers have to be consulted before initiating an inquiry into the POEM of the entity. Further, the assessing officer is required to consult a collegium of senior officers before holding that the POEM of a non-resident is in India.

Further, the Central Board of Direct Taxes (“**CBDT**”) has however clarified that provisions relating to POEM would not apply to companies having turnover or gross receipts less than INR 500 million during a financial

IV. The MLI

In Paris, on June 7, 2017, 68 developed and developing countries, including Switzerland and India signed the “Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting”, otherwise referred to as the Multilateral Instrument (“**MLI**”), to modify a large number of bilateral tax treaties. The signing of the MLI represents the dawn of a new era with respect to the taxation of cross-border businesses. Its entry into effect will have significant repercussions for Indian businesses with cross border

operations and foreign investors keen on investing in India. Specifically, certain provisions of the MLI require the mandatory amendment of bilateral tax treaties to allow for certain minimum standards like prevention of treaty abuse and making dispute resolution more effective. While the MLI is likely to have a significant impact on doing business in India, at the moment, neither India nor Switzerland have ratified the MLI. Until such time, the bilateral tax treaty between the two countries will remain unchanged.

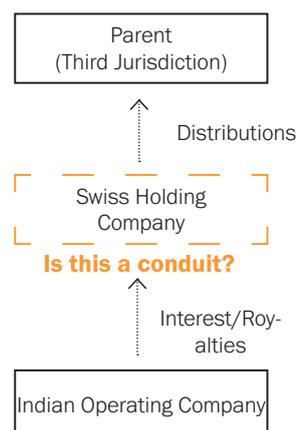
V. Lower Withholding Tax Rate not Available to ‘Conduits’

The Swiss-India Treaty provides some relief for financing arrangements, IP licensing and technology collaborations. Swiss residents should be able to take advantage of the **lower withholding tax rate of 10% for interest, royalties and technical service fees** available under the Swiss-India Treaty. Ordinarily, India’s domestic withholding tax rate on interest can be as high as around 40%, while the rate for royalty and FTS has been reduced to around 10% with effect from April 1, 2015.⁹

The lower withholding tax rate is available only to Swiss residents that are **beneficial owners** of interest, royalties or technical service fees. Such relief would therefore not be available to **conduit companies** in Switzerland.

The Protocol to the Swiss-India Treaty defines ‘**conduit arrangement**’ as one where the Swiss resident “pays, directly or indirectly, all or substantially all” of its income “at any time or in any form” to another person who is resident in a third State, and where the main purpose of the structure was to take advantage of the lower withholding tax rate.

Since the Swiss-India Treaty relief is critical in light of the higher domestic withholding tax rates, it is important to consider the ‘conduit’ limitation while setting up Swiss structures.



VI. Taxation of Capital Gains

Gains arising to a Swiss resident from the sale of shares of an Indian company would be taxable in India. The Swiss-India Treaty does not provide any relief in this regard.

Capital gains are categorized as short term and long term depending upon the time for which they are held. Gains from the transfer of listed shares which are held for a period of more than twelve months are categorized as long term while, gains from the transfer of unlisted shares would be treated as long term only when they are held for more than 24 months. For transfers made before April 1, 2018, long term capital gains arising out sale of listed shares on the stock exchange are tax exempt (but subject to a nominal securities transaction tax). However, the Finance Act, 2018 has introduced a new provision whereby, long term capital gains arising out sale of listed equity shares on the stock exchange are subject to a beneficial tax rate of 10% where such gains exceed INR 100,000 provided that securities transaction tax (STT) is paid both at the time of acquisition and sale of shares.

In case of non-residents, long term gains arising from the sale of unlisted shares of a public or private company are taxed at the rate of 10% (without benefit of adjustment for foreign exchange fluctuation).

Short term capital gains arising out of sale of listed shares on the stock exchange are taxed at the rate of 15%, while such gains arising to a non-resident from sale of unlisted shares are taxed at 40%.

9. All domestic tax rates specified herein are exclusive of applicable education cess and surcharge.

Under the ITA, capital gains are calculated as the amount by which the full value consideration received exceeds the cost of acquisition of the capital asset. The full value consideration is typically the actual consideration resulting from the transfer, irrespective of whether or not such consideration corresponds to the FMV of the capital asset. However, the Finance Act, 2017 has amended provisions relating to the calculation of capital gains and provides that with respect to transfers of unlisted shares of a company, at less than the FMV, the FMV would be deemed to be the full value consideration for computing capital gains. This places an additional burden on the seller of such shares to pay capital gains tax on 'notional gains' which are not really received by him. Transfer of shares of an Indian company in the course of a merger between two non-resident enterprises or a demerger should not be taxable in India subject to certain conditions being satisfied. In *Credit Suisse (International) Holding AG v. DIT*¹⁰, the Authority for Advance Rulings held that merger of a Swiss company (having an Indian subsidiary) into its Swiss parent could not be taxable in India on the basis that the merger was sanctioned under Swiss law, the transferor ceased to exist and no gains arose from the merger.

Further, the Finance Act, 2017 has rationalized the tax code by providing that the cost of acquisition of shares which are transferred to the resulting foreign company due to a demerger shall be the same as it was for the previous owner of the shares i.e. the demerged foreign company. This amendment brings the treatment of cost of acquisition in line with the tax treatment of the demerger by clarifying on the continuity of cost of acquisition due to the tax neutral nature of the arrangement.

VII. Exchange of Information

The Swiss-India Treaty was amended in 2011 to strengthen the exchange of information framework in line with internationally prescribed norms.

The amended Swiss-India Treaty clarifies that information cannot be declined solely because the information is held by a bank, financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

The 2011 Protocol adds some safeguards by clarifying that 'fishing expeditions' would not be permitted and hence complete details including identity of the person and nature of information and purpose should be provided. It also clarifies that the provisions do not envisage automatic or spontaneous exchange of information. Interestingly,

the exchange of information clause also recognizes the administrative rules regarding taxpayer's rights before any information is transmitted. On November 22, 2016 the two countries also signed a joint declaration on the introduction of the automatic exchange of information (AEOD) in tax matters on reciprocal basis. Both countries have committed to start collecting data under this agreement in 2018 and start sharing the information from 2019.

10. [2012] 349 ITR 161 (AAR).

3. Quick Guide for Investing into India

Particulars	India
Legal system (civil / common)	Common law system
Constitution	The Constitution of India came in effect on January 26, 1950 upon India's independence in 1947. It provides for India to be a sovereign socialist secular democratic republic with a federal-system of government towards the centre.
Key Agreements or Treaties with Switzerland	<ul style="list-style-type: none"> ■ Swiss-India Joint Economic Commission, established in 1959 to further economic and commercial relations. ■ Agreement on Technical and Scientific Co-operation entered on 27th September, 1966. ■ Swiss-India Collaboration in Biotechnology established in 1974 as a capacity building program. ■ Agreement for Avoidance of Double Taxation entered on 29th December, 1994 which became effective 1st January, 1995 (amended in 2000 and 2010). ■ Agreement for Promotion and Protection of Investments entered on 4th April 1997 which became effective on 16th February, 2002. ■ Agreement on Social Security entered on 3rd September, 2009 which became effective on 29th January, 2011. ■ Swiss-India Joint Committee on Science & Technology established in 2011. ■ MoU entered into on October 3, 2011 setting up Swiss-India Financial Dialogue. ■ MoU entered into on 12th December 2011 for Mutual Cooperation in Local Governance. ■ MoU entered into on 8th November, 2011 for Development Cooperation ■ Joint Declaration on the introduction of Automatic Exchange of Information on Tax matters entered on 22 November 2016, which will be effective from September 2018. ■ MoU entered into on 22nd June, 2016 for cooperation in skill development. ■ Technical arrangement on the Identification and Return of Swiss and Indian Nationals signed in October 2016 ■ Joint Declaration on the introduction of the Automatic Exchange of Information on Tax matters signed on 22 November 2016 ■ MoU entered on Technical Cooperation in the rail sector signed on 31st August, 2017. ■ MoU entered into on 31st August, 2017 for technical cooperation in Rail Sector.
Economic relation (trade) with Switzerland	Bilateral trade in 2017-18 was valued at approximately USD 20 billion. Switzerland is India's 9th largest trading partner.

Economic relation (Inbound Investment) with Switzerland	Switzerland's total FDI in India from April 2000 until March 2018 amounted to USD 4.31 billion. Switzerland is the 11th largest foreign direct investor in India, accounting for 1.14% of total FDI in India from April 2000 to March 2018.
Significant investment from Switzerland	<p>More than 250 Swiss companies have presence in India through their own subsidiaries and joint ventures</p> <p>Some recent investments from Swiss Mittelstand have been the following:</p> <ul style="list-style-type: none"> ■ July 2018: Ferring Pharma invests USD 250 million in a new R&D and manufacturing facility in Hyderabad ■ June 2018: Exide Industries and Leclanche announces launch of new JV to build lithiumion batteries and provide energy storage systems for India's electric vehicle market and grid-based applications. ■ February 2018: LafargeHolcim invests CHF 200 million to drive further growth in its operations in India by constructing a new cement plant in Rajasthan ■ September 2017: Landis+Gyr AG and Tata Power-DDL entered into a collaboration to deploy smart metering infrastructure in Delhi ■ June 2017: WISEKey International Holding Ltd launched an Artificial Intelligence and Blockchain Centre of Excellence to support its global projects, 7 months after entering India through a joint venture ■ May 2017: Sicap announced the opening of a Global Development and Support Centre in Kolkata ■ February 2017: Hagerbach Test Gallery Ltd., announced an MoU with Konkan Railway Corporation to set up 'George Fernandes Institute of Tunnel Training' ■ January 2017: ASEA Brown Boveri announced \$640 million project with Power Grid Corporation of India Ltd., to deliver a transmission link to bring reliable electricity.
Opportunities for Swiss companies	Opportunities in sectors engineering and industrial equipment, clean technology, services (tourism, financial, logistics etc.), precision instruments, chemical and pharmaceutical, electrical and electronics, construction and consumer goods

TAXATION	
Sources of Tax laws in India	<ul style="list-style-type: none"> ■ Income tax in India is levied under the Income Tax Act, 1961 ("ITA") ■ Double Taxation Avoidance Agreements with more than 80 countries ■ A new Goods and Services Tax (GST) regime became effective from July 01, 2017 has been put in place for collection of indirect taxes (manufacturing, consumption, value-added taxes etc.). This is administered by a central body.
Federal or state level	Income tax is levied at the Federal level. With the new GST regime majority of the indirect taxes are also levied at Federal level.
Domestic Tax rates	<ul style="list-style-type: none"> ■ Individual – Progressive tax rate, at a top rate of 30% plus 10-15% Surcharge and a 4% Health and Education Cess on total income tax and surcharge. ■ Domestic companies: 30% general corporate tax rate (starting from assessment year 2018-19, 25% if turnover is less than INR 2.50 billion); 25% for qualified manufacturing/research companies; 10% if patent is developed and registered in India; Surcharge (SC) of 7% where total income exceeds INR 10 million and 12% where total income exceeds INR 100 million (surcharge is 5% and 10% respectively prior to assessment year 2016/17) ■ 7-12% Surcharge and a 4% Health and Education Cess on total income tax and surcharge Foreign Companies 40% Surcharge 2-5% and a 4% Health and Education Cess on total income tax and surcharge
Tax rates under India – Swiss DTAA	<p>Capital Gains (depending on period of holding, security and type of company)</p> <ul style="list-style-type: none"> ■ Long term capital gains in case of shares of unlisted company - 10 / 20% (excluding applicable surcharge and cess) ■ Long term capital gains in case of equity shares where securities transaction tax is levied (subject to certain exceptions) – 10% ■ Short term capital gains in case of shares of unlisted company – normal tax rates ■ Short term capital gains in case of certain securities where securities transaction tax is levied – 15% ■ Dividend – 20.55% effective rate of dividend distribution tax ■ Interest – 10% (excluding applicable surcharge and cess) ■ Royalties / Fees for technical services - 10% (excluding applicable surcharge and cess)
Loss carry forward	8 years, subject to ownership continuity test.
Alternate minimum tax	Yes, alternative minimum tax of 18.5% plus applicable surcharge and cess is imposed on the adjusted book profits of corporations whose tax liability is less than 18.5% of their book profits.
Controlled Foreign Corporation	No
General Anti Avoidance Rules (GAAR)	Yes applicable from April 1, 2017.
Thin capitalisation	Yes, the Finance Act 2017 introduced provisions dealing with thin capitalization provision.

Disclosure of foreign assets - Voluntary or Amnesty scheme	No more effective. Last scheme was available until September 30, 2016. Disclosure for foreign asset is required to be made in the annual tax return.
Recognises concept of trust or foundation	India being a common law country recognises the concept of trust under the Indian Trusts Act, 1882.
Inheritance or Gift tax	No
Wealth tax	No
Any special taxes?	<ul style="list-style-type: none"> ■ Stamp duty – Yes, applied at Federal or State level depending on nature of document/ transaction. ■ Distribution tax on buyback – Yes, 20% (excluding applicable surcharge and cess) on the difference of buy-back consideration and issue price of shares. ■ Tax on dividends in the hands of shareholders – Yes, 10% additional tax on dividends received by resident individual, HUF, or firm in excess of INR 1 million from resident company ■ Equalisation Levy –6% tax on consideration in excess of INR 10 million for online advertising revenues earned by non-residents from India introduced by Finance Act 2016.
CORPORATE	
Main Governing law for corporates	Companies in India are regulated under Companies Act, 2013.
Federal or state level	Administered at Federal level
Type of entities available	Company (private, public, one-person company); Limited liability partnerships; Partnership; Cooperative; Joint Hindu Family; Sole proprietorship; Representative (Liaison) office; Branch of a foreign corporation with Reserve Bank of India approval; Project office.
Form of entity commonly used	Company especially private limited company has been the preferred form for doing business in India. In certain instances, undertaking business through LLPs in India is being preferred by foreign investors because of recent liberalisation of LLPs being now eligible to have foreign interest-holders.
Board structure	Single-board structure with prescribed corporate governance norms.
Requirement of resident director / shareholder	Yes, mandatory requirement of one resident director in case of a company.
Type of instruments	Equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company.
Are Indian companies allowed to merge with foreign companies?	Yes effective since April 13, 2017.

Are there exchange control laws?	<p>Yes, exchange control is regulated under the Foreign Exchange Management Act 1999 (FEMA). The central bank is the Reserve Bank of India (RBI).</p> <p>The Indian rupee is fully convertible for current account transactions, subject to a negative list of transactions that are prohibited or which require prior approval.</p> <p>Capital account transactions can be undertaken only to the extent permitted. Foreign debt is regulated and can be availed after meeting prescribed norms.</p> <p>Remittances of up to USD 250,000 per financial year (April-March) by a resident individual are allowed for any permitted current account or capital account transactions or a combination of both.</p>
Any requirement to obtain approval for foreign investment?	<p>Investments can be made by non-residents under the Automatic Route or the Government Route.</p> <p>Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment.</p> <p>Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under Government route, are considered by nodal Administrative Ministry/Department for a given sector.</p> <p>Foreign investment is permitted in most sectors without any approval subject to a few specified sectoral ceilings and prohibitions.</p>
Restriction on repatriation of profits or buy back of capital?	No subject to payment of taxes.
Corporate immigration and Emigration	No provisions for corporate emigration.
DISPUTE RESOLUTION	
Court system	Indian court system is multi-tier structure. At the top of the hierarchy lies the Supreme Court of India which is the highest constitutional court, appellate court and adjudicates appeals from the state High Courts. The High Courts for each of the states (or union territory) are the principal civil courts of original jurisdiction in the state (or union territory), an appellate court for criminal matters and a constitutional court. The District and Sessions Courts are typically courts of first instance for civil and criminal matters. In addition to the above there are various specialised courts and tribunals specially empowered to hear matters in relation to specific subject-matters.
Are court orders from Switzerland enforceable in India?	No
Are arbitral awards from Switzerland enforceable in India?	Yes
MISCELLANEOUS	
Is it easy to terminate employment?	Termination of services of blue-collared employees may be difficult in India due to extensive protections under various laws.
Can non-resident acquire real estate?	Generally, foreigners are not permitted to acquire immovable property except in certain cases, where the property is required for the business of the Indian branch, office or subsidiary of the foreign entity (excluding a liaison office).

About NDA

At Nishith Desai Associates, we have earned the reputation of being Asia's most Innovative Law Firm – and the go-to specialists for companies around the world, looking to conduct businesses in India and for Indian companies considering business expansion abroad. In fact, we have conceptualized and created a state-of-the-art Blue Sky Thinking and Research Campus, Imaginarium *Aliqunjan*, an international institution dedicated to designing a premeditated future with an embedded strategic foresight capability.

We are a research and strategy driven international firm with offices in Mumbai, Palo Alto (Silicon Valley), Bangalore, Singapore, New Delhi, Munich, and New York. Our team comprises of specialists who provide strategic advice on legal, regulatory, and tax related matters in an integrated manner basis key insights carefully culled from the allied industries.

As an active participant in shaping India's regulatory environment, we at NDA, have the expertise and more importantly – the VISION – to navigate its complexities. Our ongoing endeavors in conducting and facilitating original research in emerging areas of law has helped us develop unparalleled proficiency to anticipate legal obstacles, mitigate potential risks and identify new opportunities for our clients on a global scale. Simply put, for conglomerates looking to conduct business in the subcontinent, NDA takes the uncertainty out of new frontiers.

As a firm of doyens, we pride ourselves in working with select clients within select verticals on complex matters. Our forte lies in providing innovative and strategic advice in futuristic areas of law such as those relating to Blockchain and virtual currencies, Internet of Things (IOT), Aviation, Artificial Intelligence, Privatization of Outer Space, Drones, Robotics, Virtual Reality, Ed-Tech, Med-Tech & Medical Devices and Nanotechnology with our key clientele comprising of marquee Fortune 500 corporations.

The firm has been consistently ranked as one of the Most Innovative Law Firms, across the globe. In fact, NDA has been the proud recipient of the Financial Times – RSG award 4 times in a row, (2014-2017) as the **Most Innovative Indian Law Firm**.

We are a trust based, non-hierarchical, democratic organization that leverages research and knowledge to deliver extraordinary value to our clients. Datum, our unique employer proposition has been developed into a global case study, aptly titled 'Management by Trust in a Democratic Enterprise,' published by John Wiley & Sons, USA.

A brief chronicle our firm's global acclaim for its achievements and prowess through the years -

- **AsiaLaw 2019:** Ranked 'Outstanding' for Technology, Labour & Employment, Private Equity, Regulatory and Tax
- **RSG-Financial Times:** India's Most Innovative Law Firm (2014-2017)
- **Merger Market 2018:** Fastest growing M&A Law Firm
- **IFLR 1000 (International Financial Review - a Euromoney Publication):** Tier 1 for TMT, Private Equity
- **IFLR:** Indian Firm of the Year (2010-2013)
- **Legal 500 2018:** Tier 1 for Disputes, International Taxation, Investment Funds, Labour & Employment, TMT
- **Legal 500 (2011, 2012, 2013, 2014):** No. 1 for International Tax, Investment Funds and TMT

- **Chambers and Partners Asia Pacific (2017 – 2018):** Tier 1 for Labour & Employment, Tax, TMT
- **IDEX Legal Awards 2015:** Nishith Desai Associates won the “M&A Deal of the year”, “Best Dispute Management lawyer”, “Best Use of Innovation and Technology in a law firm” and “Best Dispute Management Firm”

Please see the last page of this paper for the most recent research papers by our experts.

Disclaimer

This report is a copyright of Nishith Desai Associates. No reader should act on the basis of any statement contained herein without seeking professional advice. The authors and the firm expressly disclaim all and any liability to any person who has read this report, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this report.

Contact

For any help or assistance please email us on ndaconnect@nishithdesai.com or visit us at www.nishithdesai.com

The following research papers and much more are available on our Knowledge Site: www.nishithdesai.com

 <p>Fund Formation: Attracting Global Investors</p> <p>Global Regulatory and Tax Environment Impacting India Based Funds</p> <p>March 2018</p>	 <p>Social Impact Investing in India</p> <p>A Supplement to Corporate Social Responsibility & Social Business Models in India</p> <p>July 2018</p>	 <p>The Curious Case of the Indian Gaming Laws</p> <p>Legal Issues Demystified</p> <p>February 2018</p>
 <p>Corporate Social Responsibility & Social Business Models in India</p> <p>Legal & Tax Perspective</p> <p>March 2018</p>	 <p>Incorporation of Company/LLP in India</p> <p>FDI</p> <p>April 2017</p>	 <p>Outbound Acquisitions by India-Inc</p> <p>A Primer on Outbound Acquisitions by Indian Companies With a Focus on United States, United Kingdom and Australia</p> <p>September 2014</p>
 <p>Internet of Things</p> <p>Legal & Tax Issues</p> <p>January 2017</p>	 <p>Doing Business in India</p> <p>With Special Reference to Tax Residency Between India and</p> <p>September 2018</p>	 <p>Private Equity and Private Debt Investments in India</p> <p>March 2018</p>

NDA Insights

TITLE	TYPE	DATE
Blackstone's Boldest Bet in India	M&A Lab	January 2017
Foreign Investment Into Indian Special Situation Assets	M&A Lab	November 2016
Recent Learnings from Deal Making in India	M&A Lab	June 2016
ING Vysya - Kotak Bank : Rising M&As in Banking Sector	M&A Lab	January 2016
Cairn – Vedanta : 'Fair' or Socializing Vedanta's Debt?	M&A Lab	January 2016
Reliance – Pipavav : Anil Ambani scoops Pipavav Defence	M&A Lab	January 2016
Sun Pharma – Ranbaxy: A Panacea for Ranbaxy's ills?	M&A Lab	January 2015
Reliance – Network18: Reliance tunes into Network18!	M&A Lab	January 2015
Thomas Cook – Sterling Holiday: Let's Holiday Together!	M&A Lab	January 2015
Jet Etihad Jet Gets a Co-Pilot	M&A Lab	May 2014
Apollo's Bumpy Ride in Pursuit of Cooper	M&A Lab	May 2014
Diageo-USL- 'King of Good Times; Hands over Crown Jewel to Diageo	M&A Lab	May 2014
Copyright Amendment Bill 2012 receives Indian Parliament's assent	IP Lab	September 2013
Public M&A's in India: Takeover Code Dissected	M&A Lab	August 2013
File Foreign Application Prosecution History With Indian Patent Office	IP Lab	April 2013
Warburg - Future Capital - Deal Dissected	M&A Lab	January 2013
Real Financing - Onshore and Offshore Debt Funding Realty in India	Realty Check	May 2012

Research @ NDA

Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm's culture.

Our dedication to research has been instrumental in creating thought leadership in various areas of law and public policy. Through research, we develop intellectual capital and leverage it actively for both our clients and the development of our associates. We use research to discover new thinking, approaches, skills and reflections on jurisprudence, and ultimately deliver superior value to our clients. Over time, we have embedded a culture and built processes of learning through research that give us a robust edge in providing best quality advices and services to our clients, to our fraternity and to the community at large.

Every member of the firm is required to participate in research activities. The seeds of research are typically sown in hour-long continuing education sessions conducted every day as the first thing in the morning. Free interactions in these sessions help associates identify new legal, regulatory, technological and business trends that require intellectual investigation from the legal and tax perspectives. Then, one or few associates take up an emerging trend or issue under the guidance of seniors and put it through our "Anticipate-Prepare-Deliver" research model.

As the first step, they would conduct a capsule research, which involves a quick analysis of readily available secondary data. Often such basic research provides valuable insights and creates broader understanding of the issue for the involved associates, who in turn would disseminate it to other associates through tacit and explicit knowledge exchange processes. For us, knowledge sharing is as important an attribute as knowledge acquisition.

When the issue requires further investigation, we develop an extensive research paper. Often we collect our own primary data when we feel the issue demands going deep to the root or when we find gaps in secondary data. In some cases, we have even taken up multi-year research projects to investigate every aspect of the topic and build unparalleled mastery. Our TMT practice, IP practice, Pharma & Healthcare/Med-Tech and Medical Device, practice and energy sector practice have emerged from such projects. Research in essence graduates to Knowledge, and finally to *Intellectual Property*.

Over the years, we have produced some outstanding research papers, articles, webinars and talks. Almost on daily basis, we analyze and offer our perspective on latest legal developments through our regular "Hotlines", which go out to our clients and fraternity. These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our Lab Reports dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research articles and disseminate them through our website. Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with much needed comparative research for rule making. Our discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged. Although we invest heavily in terms of time and expenses in our research activities, we are happy to provide unlimited access to our research to our clients and the community for greater good.

As we continue to grow through our research-based approach, we now have established an exclusive four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. **Imaginarium AliGunjan** is a platform for creative thinking; an apolitical ecosystem that connects multi-disciplinary threads of ideas, innovation and imagination. Designed to inspire 'blue sky' thinking, research, exploration and synthesis, reflections and communication, it aims to bring in wholeness – that leads to answers to the biggest challenges of our time and beyond. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams and serves as a dais to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear your suggestions on our research reports. Please feel free to contact us at

research@nishithdesai.com

Nishith Desai Associates

LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI

93 B, Mittal Court, Nariman Point
Mumbai 400 021, India

tel +91 22 6669 5000
fax +91 22 6669 5001

SILICON VALLEY

220 California Avenue, Suite 201
Palo Alto, CA 94306-1636, USA

tel +1 650 325 7100
fax +1 650 325 7300

BANGALORE

Prestige Loka, G01, 7/1 Brunton Rd
Bangalore 560 025, India

tel +91 80 6693 5000
fax +91 80 6693 5001

SINGAPORE

Level 30, Six Battery Road
Singapore 049 909

tel +65 6550 9856

MUMBAI BKC

3, North Avenue, Maker Maxity
Bandra-Kurla Complex
Mumbai 400 051, India

tel +91 22 6159 5000
fax +91 22 6159 5001

NEW DELHI

C-5, Defence Colony
New Delhi 110 024, India

tel +91 11 4906 5000
fax +91 11 4906 5001

MUNICH

Maximilianstraße 13
80539 Munich, Germany

tel +49 89 203 006 268
fax +49 89 203 006 450

NEW YORK

375 Park Ave Suite 2607
New York, NY 10152

tel +1 212 763 0080