Nishith Desai Associates

LEGAL AND TAX COUNSELING WORLDWIDE

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In collaboration with:

Doing Israel – India Business

Tax Considerations and Incentives

August 2016

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As a firm of specialists, we work with select clients in select verticals. We focus on niche areas in which we provide high expertise, strategic value and are invariably involved in select, very complex, innovative transactions.

We specialize in Globalization, International Tax, Fund Formation, Corporate & M&A, Private Equity & Venture Capital, Intellectual Property, International Litigation and Dispute Resolution; Employment and HR, Intellectual Property, International Commercial Law and Private Client. Our industry expertise spans Automotive, Funds, Financial Services, IT and Telecom, Pharma and Healthcare, Media and Entertainment, Real Estate, Infrastructure and Education. Our key clientele comprise marquee Fortune 500 corporations.

Equally passionate about philanthropy, social sector and start ups, our role includes innovation and strategic advice in futuristic areas of law such as those relating to Bitcoins (block chain), Internet of Things (IOT), Privatization of Outer Space, Drones, Robotics, Virtual Reality, Med-Tech and Medical Devices and Nanotechnology.

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We have won the prestigious 'Asian-Counsel's Socially Responsible Deals of the Year 2009' by **Pacific Business Press.**

We believe strongly in constant knowledge expansion and have developed dynamic Knowledge Management ('KM') and Continuing Education ('CE') programs, conducted both in-house and for select invitees. KM and CE programs cover key events, global and national trends as they unfold and examine case studies, debate and analyze emerging legal, regulatory and tax issues, serving as an effective forum for cross pollination of ideas. Our trust-based, non-hierarchical, democratically managed organization that leverages research and knowledge to deliver premium services, high value, and a unique employer proposition has been developed into a global case study and published by John Wiley & Sons, USA in a feature titled 'Management by Trust in a Democratic Enterprise: A Law Firm Shapes Organizational Behavior to Create Competitive Advantage' in the September 2009 issue of Global Business and Organizational Excellence (GBOE).

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About APM & Co

Amit, Pollak, Matalon & Co is a renowned Israeli law firm, with a robust legal practice. Established in 1956, the firm still works under the same basic ethos upon which it was established; in-depth knowledge of its fields of expertise, creativity, flexibility of thought and uncompromising dedication to the clients.

APM & Co. is unique in its thinking and practice. Comprised of a group of multi-disciplinary professionals with a wide range of educations, backgrounds and experience, this exceptional group has one thing in common- a passion for the law. It is this shared passion that brings together seasoned lawyers with motivated young attorneys all working together, inspired and looking to achieve more for their clients.

The firm is active in all areas of all the corporate and commercial law, including: India Legal Practice,Antitrust and Competition, Mediation and arbitration, Australia practice, Banking and finance,Capital markets, China practice, corporate energy and infrastructure, Environmental law, Fund formation and representation, High tech and venture capital, Intellectual property, Labor and employment, Litigation and dispute resolution, Mergers and acquisitions, Real estate and construction, Regulations and compliance, Startups, Tax.

APM & Co. understands that cross border services are essential for conducting business and have therefore placed great importance on the international aspects of work; This becomes clearly evident in the teams' diverse backgrounds, international experience and licenses to practice law in various countries.

The firm never stops striving to provide the very best legal services. Alongside those services, there is a place for creativity, innovation and thinking outside the box. These are foundations that place the firm time and again as one of the leading law firms in Israel.

APM & Co. is proud to boast years of remarkable legal achievements, routinely winning awards and high rankings by top local and international legal directories including: **Chambers and Partners, Legal 500, BDI and DUN'S100**.

APM & Co.'s India practice is tailored to address the unique needs of Israeli and Indian players that wish to enter into the Israel-India business arena. Leveraging years of experience in a wide array of Indian– Israeli transaction, the team of experts offers the client ongoing counsel in all aspects of their commercial activities in and with India.

The Indian Legal Practice is headed by Adv. Benjamin Grossman, a partner. Prior to joining the firm, Mr. Grossman was in charge of the legal engagements of one of Israel's leading defense companies in India. Mr. Grossman has developed expertise and acquired in-depth knowledge of Indian law and regulations as well as of Indian business culture and practices.

Over the years, Mr. Grossman has advised on a wide array of complex transactions and activities, including, the establishment of joint ventures, technological collaborations and joint production ventures, procurement and offset transactions and tender processes and has led negotiations with various entities in India. Mr. Grossman also specializes in Transfer of Technology agreements, technological collaborations and licensing, investment, procurement and offset transactions. Mr. Grossman has been instrumental in the initiation of fruitful collaborations between Israeli, Indian and other global companies.

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1. Introduction

Following the establishment of full diplomatic relationship between them in 1992, India and Israel have enjoyed a fruitful partnership. Trade relations between the countries have been strengthened on the basis of mutual interests in defense, security, and intelligence. In particular, India's desire to diversify military procurement, allied with Israel's quest for additional markets has made each country a valuable trading partner for the other. In addition, cooperation in agriculture and water technologies has also been a key driver of trade relations betweenthe two countries.

Bilateral trade and economic relations between India and Israel have steadily grown from around $ 200 million in 1992 to approximately $ 4.52 billion in 2014. Israeli imports from India stood at $ 2.24 billion in 2014, making India its 10th largest import source; India also remains its 6th largest export destination. In recent years bilateral trade has increased in electronic machinery and high tech products such as communications systems, medical equipment, educational technologies, software and digital printing products.Cumulative FDI inflows into India from Israel in the period between April 2000 and March 2016 have been $ 97.84 million, comprising 0.03% of the total FDI inflows in India during that period.[1] These figures may not accurately reflect the total FDI from Israel, as many Israeli companies invest in India through the Cyprus, Europe, Singapore and US.[2]

Significant investments from India in Israel include 100% acquisition of Israeli drip-irrigation company NaanDan by Jain Irrigation, Sun Pharma's 66% stake in Taro Pharmaceuticals and Triveni Engineering Industries' investment in Israeli waste-water treatment company Aqwise. TCS started operations in Israel in 2005, and the State Bank of India opened a branch in Tel Aviv in 2007.[3] More recently, in 2015, Infosys Ltd. acquired the Israeli startup Panaya Ltd., a provider of software automation services, for $ 200 million, while Tech Mahindra acquired the R&D arm of Comverse, a technology company that offers a portfolio of digital services and Leadcom, an Israeli company which specializes in telecommunication network services.

A number of bilateral agreements and institutional arrangements have been executed between India and Israel. Listed below are some of the important agreements on commercial and economic cooperation:

- Agreement for cooperation in agriculture (1993)
- Agreement for Promotion and Protection of Investments (Jan 1996)
- Avoidance of Double Taxation and for the Prevention of Fiscal evasion with respect to taxes on Income and on Capital, which entered into force on May 15, 1996.
- Bilateral Agreement regarding Mutual Assistance and Cooperation in Customs Matters (1996)
- MOU on India-Israel Research and Development Fund Initiative (2005)

1. Department of Industrial Policy & Promotion, *Fact sheet on Foreign Direct Investment (FDI)*, available at http://dipp.nic.in/English/Publications/FDI_Statistics/2016/FDI_FactSheet_JanuaryFebruaryMarch2016.pdf
2. Embassy of India, Tel Aviv, *India-Israel Economic and Commercial Relations*, available at http://www.indembassy.co.il/pages.php?id=14
3. Ministry of External Affairs, *India-Israel Relations*, available at https://mea.gov.in/Portal/ForeignRelation/Israel_July_2014.pdf

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2. Investing In India

Data from Israel's Ministry of Economy and Industry show that inbound investment from Israel has been steadily growing. While the traditional business thrust in diamonds, agriculture, chemicals, information & communication technology & pharmaceuticals remains strong, there is a growing interest from Israeli companies in clean energy, water technologies, biotech, nanotech, homeland security, real estate, infrastructure and financial services.[4] This is mainly because a growing market like India is the right place for high-tech Israeli companies to provide ground breaking commercial solutions.

In this regard, the recent decision[5] of the Indian government to permit 100% FDI in a number of key sectors, including defence, pharma (both greenfield and brownfield), and civil aviation, will be of interest to Israeli entities looking to invest in India, as this will provide flexibility in capital structuring as well as significant market diversity.

In addition, India is quickly making a name for itself as a start-up oriented economy as a result of targeted government initiatives such as Startup India[6] and Make in India.[7] These policies have created the ideal climate for cross-border inbound investment in early stage high-tech innovative ventures, to move to India.Thus aiming to move India from the old services economy to a new innovation driven start-up economy, providing perfect opportunity to young Israeli start-ups to migrate to India to take advantage of the sizeable market.

4. Israel Trade & Economic Office, Embassy of Israel, India, *Overview of India-Israel Bilateral Trade and Economic Relations*, available at http://itrade.gov.il/india/israel-india/
5. Department of Industrial Policy & Promotion, *Press Note No. 5 (2016 Series)*, available at http://dipp.nic.in/English/acts_rules/Press_Notes/pn5_2016.pdf
6. Ministry of Commerce and Industry, *Startup India Action Plan*, available at http://startupindia.gov.in/actionplan.php
7. Department of Industrial Policy & Promotion, *Make in India*, available at http://www.makeinindia.com/about

I. Tax Considerations Under The Israel – India Tax Treaty

A. Residence

For an Israeli entity to be entitled to relief under the Israel – India tax treaty, it has to be liable to tax in Israel, by way of domicile, residence, place of management, or otherwise.[8]

An 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 individual/entity concerned in that jurisdiction. The Israel-India Treaty provides extensive tie-breaker rules to address situations where an individual is a resident of both countries under their domestic laws.[9] However, where a juristic person is a resident of both countries, the DTAA treats the entity as tax resident in the country where its POEM is situated.[10]

These tie-breaker rules in the Israel – India Treaty become important in light of the amendment introduced in 2015 in India with respect to criteria for determination of tax residence of compa[6]nies incorporated outside India. Prior to this amendment, i.e., up to FY 2014-15, a company incorporated outside India qualified as an Indian tax resident in a financial year (April 1 to March 31) only if the whole of the control and management of its affairs was located in India during that financial year. From FY 2015-16 onwards, a foreign company qualifies as tax resident in India if its POEM in the relevant financial year is in India. Thus, Indian domestic law and the Israel – India Treaty prescribe the same criteria (i.e., POEM) for determining tax residence of companies However, it is important

8. Article 4(1), Israel – India Tax Treaty
9. Article 4(2), Israel – India Tax Treaty
10. Article 4(3), Israel – India Tax Treaty

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to note that the jurisprudence which has evolved globally for determining where POEM of a company is situated is somewhat different when compared to the Draft Guidelines issued by the Indian government in December 2015 for determination of POEM under domestic law. This could create ambiguities and uncertainty in determining the existence of POEM.

The final guidelines for determination of POEM have not yet been issued. The Finance Bill, 2016 (part of the annual budget) has proposed to defer the commencement of POEM by one year i.e. from the financial year starting April 1, 2016 onwards.

B. PE Risks

Israeli companies having a PE in India would be taxed to the extent of income attributable to such PE.[11]
It is necessary to take into account specific PE related tax exposure in the Israel – India context.

A PE may be constituted if an Israeli enterprise has a fixed base, place of management, office, branch, factory, workshop, or a place of extraction of natural resources (such as a mine, oil and gas well, quarry etc.) in India.[12] A construction PE may be constituted if the work carried on at a building or construction site, installation or assembly project or supervisory activities in connection therewith continue for a period of more than six months.[13] A dependent agent in India of the Israeli enterprise would be treated as a PE if the agent habitually exercises authority to conclude contracts in the name of the Israeli enterprise.[14]

However, certain activities, including warehousing, stock-keeping, and the maintenance of a fixed place of business solely for the purpose of carrying on activities of a preparatory or auxiliary nature have been specifically excluded from constituting a PE.[15]

In addition, the Treaty also clarifies that a mere holding-subsidiary relationship will not of itself create a PE. This has helped introduce a measure of clarity regarding the scope of taxation.[16]

The Delhi Bench of the Income Tax Appellate Tribunal in *ACIT* v. *Radware Ltd.*[17] has held that under the provisions of the Israel – India Treaty, a liaison office in India acting purely as a communication channel between an Israeli entity and its customers in India, and involved in no other trading, commercial, or industrial activity would not constitute a PE for the Israeli entity, as such activities are merely preparatory or auxiliary in nature.

C. Taxation Of Dividends, Interest, Royalty And FTS

Dividend,[18] interest,[19] royalties,[20] and FTS[21] arising in India and paid to an Israeli resident are subject to a lower withholding tax of 10% under the Israel – India Treaty. This is a significant relief from the withholding requirement under Indian domestic law which can be as high as 40% for interest income. In case of dividend, royalties and FTS also, the treaty provides relief through a more restricted definition clause as compared to domestic law.

Under the Treaty, dividend only covers income from shares, mining rights, founders' rights or other rights, including corporate rights taxed on the same basis as income from shares under domestic law.[22] This is notably narrower than the definition under Indian domestic law.[23]The definition of interest under the Treaty covers income from debt-claims of every kind.[24]

11. Article 7(1), Israel – India Tax Treaty
12. Article 5(2), Israel – India Tax Treaty
13. Article 5(3), Israel – India Tax Treaty
14. Article 5(5), Israel – India Tax Treaty
15. Article 5(4), Israel – India Tax Treaty
16. Article 5(7), Israel – India Tax Treaty
17. Order dated 21.01.2016 in ITA No. 3099/Del/2009
18. Article 10(2), Israel – India Tax Treaty
19. Article 11(2), Israel – India Tax Treaty
20. Article 12(2), Israel – India Tax Treaty
21. Article 13(2), Israel – India Tax Treaty
22. Article 10(3), Israel – India Tax Treaty
23. *See* Section 2(22), Income Tax Act, 1961 [India]
24. Article 11(4), Israel – India Tax Treaty

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The definition of royalty under the Treaty is also much narrower than the equivalent definition under Indian domestic law.[25]

Royalty under the Treaty is defined to mean consideration for the use of or the right to use any copyright of literary, artistic or scientific work, including motion picture films or works on films or videotapes for use in connection with television, any patent, trade mark, design or model, plan, secret for[6]mula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.[26] On the basis of this definition of royalty, the Mumbai Bench of the Income Tax Appellate Tribunal has held in *Team Telecom International*[27] that the supply and license of software constituted the transfer of a copyrighted article, rather than the transfer of the copyright itself, and accordingly, payments received for such sale would not be taxable as royalty under the Treaty.

At the same time, the Bangalore Bench of the Tribunal in *Samsung Electronics*[28] has held that payment made to an Israeli entity under a software license agreement for a non-exclusive license to use "shrink-wrapped"/off-the-shelf software would constitute royalty under the Israel – India Treaty.

The difference in tax treatment appears to rest on the characterization of the payment, and the rights available to the licensee: specifically, if under the terms of the license, the licensee enjoys the same rights as the copyright holder itself (i.e. right of reproduction, distribution, public performance etc.), the payment would be treated as consideration for "use of or the right to use" copyright, and would accordingly be taxable as royalty under the Treaty.

The Mumbai Bench has also held in *Galatea Ltd.*[29] that where the transaction is predominantly for sale of hardware, and the supply of software is merely incidental to such sale without there being any separate software transaction, any consideration paid for software, even if invoiced separately, would not be taxable as royalty under the Israel – India Treaty.

In *Finoram Sheets Ltd.*,[30] the Pune Bench of the Income Tax Appellate Tribunal held that consideration paid to an Israeli entity for the permanent right to use and exploit design engineering know-how for erection of a plant does not fall within the definition of royalty under the Israel – India Treaty, whereas on the other hand, payments made for technical and process know how to manufacture products were clearly fell within the ambit of royalty under the Treaty.

The definition of FTS in the Treaty is also more restricted than the definition under Indian domestic law.[31] FTS is defined under the Treaty to mean payments of any kind received as consideration for services of a managerial, technical or consultancy nature, including the provision of services by technical or other personnel.[32] It is important to note that there is no "make available" requirement under the Treaty for payment to be treated as FTS; this is in contrast to India's DTAAs with various other countries where a payment is considered as FTS only if the service involves making available, or transfer of, knowledge, skill, knowhow, or a technical plan or design. Nonetheless, it appears that the Mumbai Bench in *ADIT* (IT) v. *Team Telecom International*[33] has read a "make available" requirement into the Israel – India Treaty in order for a payment to be treated as FTS.

The Protocol to the Israel – India Treaty has also introduced a most favored nation requirement, providing that if India enters into a treaty with a third State which provides for a more restricted

25. *See* Explanation 2 to Section 9(1)(vi), Income tax Act, 1961 [India]
26. Article 12(3), Israel – India Tax Treaty
27. [2011] 12 ITR (T) 688 (Mumbai)
28. [2012] 52 SOT 295 (Bangalore)
29. [2016] 157 ITD 938 (Mumbai-Trib.)
30. [2015] 152 ITD 77 (Pune – Trib.)
31. *See* Explanation 2 to Section 9(1)(vii), Income Tax Act, 1961 [India]
32. Article 13(3), Israel – India Tax Treaty
33. Order dated 11.09.2015 in ITA No. 3939/M/2010

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scope, or a lower rate, of taxation of dividends, interest, royalties, or FTS, then the same relief may be available under the Israel – India Treaty.[34] The Protocol is however, yet to be ratified.

D.Taxation Of Capital Gains

Normally under Indian domestic law, capital gains tax can range between 10% to around 40% depending on the residence of the transferor, status of the transferor (for e.g., individual, company, etc.), period of holding, nature of asset and type of transaction. In certain situations, however, the Israel – India Treaty provides a beneficial regime for the taxation of capital gains.

As per the Treaty, gains derived by an Israeli entity from the alienation of shares or similar rights in an Indian company, are taxable both in Israel and India.[35] The same rule applies to gains from alienation of partnership interests, trust units and estates. In this context, it is important to note that the Treaty makes no other distinction for the purposes of capital gains, between listed and unlisted shares, or otherwise.

Nonetheless, for the purpose of avoiding double taxation on the same income, the Treaty provides that Indian tax paid in respect of capital gains arising from sources in India shall be allowed as credit against Israeli tax payable in respect of such capital gain.[36] The Treaty therefore follows the tax credit method, as opposed to the tax exemption method, under which a head of income taxable in one State is exempt from taxation in the other State. In no circumstances however, will the credit given exceed the net Israeli tax chargeable on such gains.[37]

Gains from the alienation of any other property (other than gains from immovable property) are taxable only in the State of which the alienator is a resident. [38]

34. Article 2, Protocol to the Israel – India Tax Treaty
35. Article 14(4), Israel – India Tax Treaty
36. Article 24(1), Israel – India Tax Treaty
37. Article 24(1), Israel – India Tax Treaty
38. Article 14(1), Israel – India Tax Treaty

E. Exchange of Information

The Israel – India Treaty also contains a comprehensive framework for the exchange of information between the two countries on tax matters, with a view to prevent fraud and cross border tax evasion. Each State has an obligation to treat as secret any information so received from the other State. Disclosure of information is permitted only to persons or authorities (including Courts and administrative bodies) involved in the assessment, collection, enforcement, prosecution or determination of appeals in respect of taxes covered by the Convention.[39]

II. Start-up in India

On India's Independence Day last year, the Prime minister of India announced that the Government intended to launch an initiative titled "Startup India, Stand up India" to encourage entrepreneurship among the youth.

As the first step to this initiative, a full action plan for Startups in India was launched by the Prime Minister on January 16th, 2016 ("**Action Plan**") in New Delhi setting the stage for wide ranging reforms aiming to give impetus to the fast burgeoning startup culture in India and reiterating his Government's intention of *'less government more governance'* where he attempted to reduce the regulatory hurdles for starting up a business in India.

As per the framework laid down by the Government, a "startup" is defined as follows: An entity (i.e. a private limited company / limited liability partnership or a registered partnership firm) incorporated/ registered in India shall be considered as a "startup" if:

1. It has been in existence for less than 5 years from the date of its incorporation/ registration;
2. If its turnover for any of the financial years has not exceeded INR 250,000,000 (approximately USD 3,687,810 and;

39. Article 27(1), Israel – India Tax Treaty

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3. It is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

However, any such entity formed by splitting up or reconstruction of a business already in existence will not be considered as a 'startup'. Further, the benefits available to an entity which was considered a startup would cease to apply once the turnover of the entity for any financial year exceeds INR 250,000,000 (approximately USD 3,687,810) or it has completed 5 years from the date of incorporation.

The government has further clarified that a business would be covered under the definition of startup only if it aims to develop and commercialize (a) a new product or service; or (b) significantly improves an existing product, service or process that will create and add value for customers or the workflow. As such, the mere act of developing the following would not be covered under the definition of "startup":

1. Products or services which do not have potential for commercialization; or
2. Undifferentiated products or services or processes; or
3. Products or services or processes with no or limited incremental value for customers or workflow.

A number of incentives have been made available to startups under the Action Plan. Broadly, these may be divided into three categories:

a. Incentives granted by the Reserve Bank of India ("**RBI**");
b. Tax Incentives; and
c. Incentives for Ease of Doing Business

A. Incentives Granted By RBI

The RBI Governor, in his statement on the sixth bi-monthly Monetary Policy Statement, 2015-16 ("**Monetary Policy**") had stated that in line with the Action Plan, the RBI will take steps to ease doing business and contribute to an ecosystem that encourages startup growth. The most important of these steps has come in the form of a notification to the effect that Foreign Venture Capital Investors ("**FVCI**") would now be able to invest in all startups regardless of the sector that the startup would fall under. This is a marked departure from the RBI's previous stance of limiting FVCI investment to certain permissible sectors.

The RBI also announced that it would permit transfer of shares or ownership with deferred consideration, and facilities for escrow or indemnity payments for a period of up to 18 months. These instruments are typically used to structure different types of transactions. For example, deferred payments are often required when the payment of consideration is based on achieving certain milestones, or completion of certain conditions precedent. Currently, Indian law places restrictions on how such payments can be structured. It appears the RBI will now allow some flexibility in structuring.

The RBI has also announced the enablement of online submissions for outward remittances, with or without uploading additional documents, as may be necessary, depending upon the nature of the transaction. The RBI has also permitted electronic reporting of investment and subsequent transactions on the e-Biz platform only. As such, submission of physical forms has been discontinued with effect from February 8, 2016.

In addition, the RBI has also announced that it is exploring other reforms in consultation with the Indian government, including access to rupee denominated loans under the External Commercial Borrowing ("**ECB**") framework, with proposed

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relaxations in respect of eligible lenders, and the issuance of convertible notes under the FDI regime, along with streamlining overseas investment for startups. The move to permit startups to avail of ECB under a relaxed framework will open up an additional fund raising avenue without diluting the equity stake of the Founder(s). This is particularly important, given the limited availability do venture debt in India.

Furthermore, the streamlining of overseas investment operations will help startups in setting up foreign subsidiaries and provide them with operational ease in terms of inflow and outflow of funds.

B.Tax Incentives

The Indian government has announced various tax related incentives, which have been notified in the Union Budget 2016. This can broadly be summarized under the following heads:

i. Corporate Tax Reduction

As first announced in the Action Plan, eligible startups have been exempted from paying income tax for a period of 3 years. This has been provided for by allowing them a 100% deduction of profits in computing the total income of the startup. Such exemption can, however, be claimed by the startup only for any three consecutive assessment years out of the five years beginning from the year in which the startup is incorporated.

However, since the exemption does not extend to Minimum Alternate Tax, it would continue to remain liable to tax at 18.5% of its book profits even in the years that it claims the exemption.

ii. Capital Gains Exemption

In line with the Action Plan, capital gains arising from the sale of long-term capital assets have been exempted from taxation, provided such gains are invested into a government specified long-term asset, which is expected to be a 'Fund of Funds' that invests in other funds.[40] Similarly, an exemption has also been provided for an individual that invests capital gain from the transfer of residential property for subscription of equity shares of an eligible startup, provided that the individual owns more than 50% of the shares of the company, and such company utilizes the amount invested to purchase computers or computer software.[41]

iii. Taxation of Share Premium

The Central Board of Direct Taxes, which oversees income tax collection and administration in India, has issued a notification exempting a startup from taxation in respect of share premium received from resident investors. This means that a startup may now receive funding from resident investors without having to pay income tax on the amount of the investment that exceeds the fair market value of the shares (i.e. the share premium) issued to the investor.

iv. Patent Box Regime

Startups may also be able to benefit from the new patent box regime that has been introduced to boost indigenous research and development. Under the new regime, worldwide income derived by way of royalty in respect of a patent developed and registered in India would be subject to tax at a concessional rate of 10%. There is a clear requirement that the patent must be 'registered'

40. *See* Section 54EE, Income Tax Act, 1961

41. *See* Section 54GB, Income Tax Act, 1961

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in India in order for the royalty to be eligible to the concessional tax rate; this means that resident inventors who have filed for patents in offshore jurisdictions rather than under the Patents Act will not be eligible for this proposed benefit.

C. Incentives For Ease Of Doing Business

i. Incorporation & Other Formalities

Realizing the inefficiencies in the existing system causing inordinate delays in the incorporation of entities as well as the fact that founders are at most times, simply unaware of the various formalities involved in setting up a business, the government has created a mobile application, as well as a dedicated web portal whereby:

1. A simplified form can be filled for registration of a startup with various government agencies. Importantly, this mobile application is connected to the Ministry of Corporate Affairs (which regulates companies through the Registrar of Companies) for seamless integration;

2. A checklist of various applicable laws, licenses and FAQs has been provided for founders to educate themselves on various compliances; and

3. Filing for compliances and obtaining information on the status of various clearances and approvals has also been made possible on the app.

In addition, the government has also proposed a self-certification mechanism to ensure easier labour law and environmental law compliance for startups. These compliances can also be satisfied using the app, or the web portal.

ii. Streamlining IPR

The Action Plan has also proposed a number of important initiatives regarding intellectual property rights under a 1 year pilot program. These include:

1. Fast track examination and disposal of patent applications filed by startups;

2. Empanelment of facilitators who would be responsible for providing startups with (a) general advisory on intellectual property rights; (b) filing and disposal of applications dealing with patents, trademarks and design rights. Startups are only required to pay statutory filing fees, while all dues to the facilitators would be paid by the government; and

3. Grant of 80% rebate on patent filing fees to eligible startups.

iii. Ease of Winding Up

The Parliament has just cleared the Insolvency and Bankruptcy Code, 2016 to expedite both turnaround and voluntary closure of business. Through the Action Plan, the government has also provided that Startups with simple debt structures, or with other specified criteria, may be wound up within 90 days from the date of making an application, on a fast track basis.

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3. Investing in Israel

I. Tax Considerations under the Israeli Domestic Law and the Israel – India Tax Treaty

A. Residence

Pursuant to Israeli domestic law, two alternative tests apply to treat a body of persons (including a corporation) as an Israeli resident for tax purposes: (i) Place of incorporation- a company that was incorporated in Israel will deem to be an Israeli resident (ii) place of control and management- a body of persons whose management and control is exercised from the State of Israel shall be treated as an Israeli resident ("**control and management test**"). In the event that a foreign company is treated as an Israeli resident for Israeli tax purposes its worldwide income would be subject to tax in Israel.

As mentioned above, in the event that an entity (or an individual) is treated as a tax resident in both Israel and India pursuant to the Israeli and Indian domestic laws, such an entity and/or individual would apparently be subject to a double taxation (in Israel and in India) with respect to their worldwide income. In order to avoid such an adverse tax consequence, and as mentioned in Chapter 2, Israel and India have engaged a tax treaty which addresses this issue and determines the country of residency for tax purposes of such individuals and entities.

As set forth above, pursuant to the Israel-India treaty an entity (which is a tax resident in India and Israel under their domestic laws) will deem to be a tax resident of the country in which its effective management is situated. As can be deduced, the test provided under the Israel-India treaty is to a great extent similar to the control and management test which is used under the Israeli domestic law.

B. PE Risks

In general, Indian entities which are engaged in a business activity in Israel through a fixed place of business and/or through a dependent agent may deem to have a PE in Israel and therefore would be taxed in Israel with respect to income allocated to their PE in Israel. The criteria which are examined in order to determine whether an Indian entity maintains a PE in Israel are established in the Israel- India treaty and are identical to the criteria as elaborated in the paragraph "PE Risks" included in Chapter 2 above- "Investing in India".

C. Taxation of Corporations in Israel

Indian investors may elect to carry out business activity in Israel through an Israeli company. Israeli companies are generally subject to income tax on their taxable income. The regular corporate tax rate in Israel for 2016 is 25%. However, the effective rate of tax payable by a company which is qualified under Israeli law as an "Industrial Company" and/or which derives income from an "approved enterprise", a "benefited enterprise" or a "preferred enterprise" may be lower, as elaborated in below.

D. Taxation of Dividends, Interest, Royalty

Non-residents of Israel are subject to income tax on income accrued or derived from sources in Israel. Such sources of income include among others passive income such as dividends, royalties and interest.

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i. Interest

As mentioned above, pursuant to the Israel- India treaty, interest arising in Israel and paid to a resident of India is generally subject to a reduced withholding tax rate of 10%.

The tax rate as set forth in the treaty provides a significant tax relief, in comparison to the Israeli domestic law. The Israeli law provides that the tax rate on interest income derived by an individual (whether an Israeli resident or not) from financial instruments (e.g. bonds, savings plans, bank deposits) linked to the Israeli Consumer Price ("**CPI**") or to a foreign currency is 25%, and interest income generated by an individual from financial instruments not linked to the CPI or to a foreign currency, is subject to Israeli tax at a rate of 15%

In certain cases (e.g. where the interest is considered as ordinary business income; where interest expenses are claimed against the interest income; where interest is received from a company in which the person is a significant shareholder; or other cases where the payer and the payee have a special relationship), interest income is taxed in Israel at the rate of up to 48%.

The tax rate provided under the Israel-India tax treaty is also beneficial with respect to companies resident in India which generate interest income in Israel, whereas a company is generally subject to Israeli tax on interest income at the corporate tax rate applicable for the year the company is entitled to receive the money.

ii Dividends

Dividends distributed to a resident of India (according to the Israel-India Treaty) from an Israeli company (due to its holdings in such a company) are generally subject to 10% withholding tax in Israel pursuant to the Israel-India Treaty.

The above tax rate is significantly lower than the Israeli tax rate applicable to such dividends under the Israeli domestic law. In general, tax rate on dividend income received by individual shareholders is generally 25%. In case of dividends received by a "significant individual shareholder" (generally, a holder of 10% or more of the shares of the company at the time of distribution or during the preceding 12-month period), such dividends will be taxed at a rate of 30%). However, as elaborated below, under the Investment Encouragement Law (as defined below), dividends generated by an approved enterprise are generally taxed at the rate of 15%, and dividends generated by a benefited enterprise or a preferred enterprise are generally subject to tax at a rate of 20%.

iii. Royalties

As mentioned above, the Israeli-India treaty generally sets out a reduced Israeli withholding tax rate of 10% in connection with royalties payments made by Israeli residents to Indian residents. The above makes an additional relief compared to the domestic law in Israel –which set of 48% tax rate on incomes tax rate for individuals and 25% for companies.

E. Taxation of Capital Gains

In general, capital gains on the sale, exchange, transfer or other disposition of most types of tangible and intangible capital property located in Israel or constituting a direct or indirect ownership interest of an asset located in Israel, are deemed to be Israeli-source income and are subject to Israeli capital gains tax, regardless of whether or not the seller is a resident of the State of Israel for Israeli tax purposes. For that purpose, a sale of shares and other securities of Israeli companies, or of shares and other securities of non-Israeli companies which primarily hold rights, directly or indirectly, to assets located in Israel (only with regard to the portion of consideration derived from such Israeli-located assets), is deemed to constitute Israeli-source income and may be subject to Israeli capital gains tax. However, various exemptions from tax on capital gains are available to non-Israeli residents under Israeli tax law.

A foreign resident will be exempt from capital gains tax derived from the sale of securities of a non-public Israeli companies and from selling rights in an entity whose most of its assets, directly or indirectly, are located in Israel, provided that: (i) the securities or rights were purchased commencing 1/1/2009; (ii) the gain is not attributable to a permanent establishment of the foreign

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resident in Israel; (iii) the securities were not purchased from a relative and the provisions of part 5(b) to the Ordinance (which deals with structural changes and mergers) or the provisions of Section 70 of the Real Estate Taxation Law do not apply to it, and (iv) the securities and the rights are not traded on the stock exchange market in Israel on the date of the sale.

This exemption applies to either (i) the securities of an Israeli resident company, or (ii) an interest in a foreign body of persons, the majority of whose assets are direct or indirect interests in Israeli assets.

Capital gains derived from the sale of shares listed for trading on a stock exchange in Israel are exempt from tax if such capital gains are not attributable to such foreign resident's permanent establishment in Israel. This exemption shall not apply to the portion of the capital gain attributed to the period prior to date on which the shares were listed for trading in the stock exchange (the "**Listing Date**") in the event that the capital gain would not have been exempt from Israeli tax had the sale occurred prior to the Listing Date of the shares.

Notwithstanding the foregoing, a Indian resident company will not be entitled to the foregoing exemptions from the sale of shares in an Israeli company if an Israeli resident controls that Indian company (i.e., holds, directly or indirectly, more than 25% of certain rights in the company), or is entitled to at least 25% of the income or profits of that company.

If Israel capital gain tax would apply, pursuant to the Israeli domestic law, capital gains for an individual from the sale of capital assets (including securities) are subject to a uiform rate of 25%. However, where the individual is a significant shareholder at the time of sale of securities (or anytime in the 12 months preceding the sale), a 30% rate will apply, and for gains from the sale of publicly traded bonds and commercial securities which are unlinked to the Consumer Price Index or if not denominated in foreign currency, a 15% rate shall apply (or 20%, in the case of a significant shareholder). Corporations are taxed at corporation tax rate of 25% with respect to the component of the capital gain not attributable to inflation. As set forth in Section 14 of the treaty, pursuant to the Israel-India Tax treaty, capital gain derived from sell of shares can be taxable in both countries. However, India will credit for the tax paid in Israel.

F. Excess Tax

Individuals whose taxable income in Israel exceeds NIS 811,860 in 2016 are also subject to an additional tax at a rate of 2% on the annual income portion exceeding NIS 811,860 for 2016. Such amount is linked to the annual change in the Israeli consumer price index. The Excess Tax is applicable to certain types of taxable income in Israel including, but not limited to, dividends, interest and capital gains.

II. Start-up in Israel

A. VCF's Rulings

Venture Capital Funds that invest in Israeli companies may submit a tax ruling application to the Israel Tax Authority which provides an Israeli tax exemption with respect to certain gains and/or income generated by the funds which are allocated to their non-Israeli investors, even if gains/income are allocated to a PE in Israel.

The expected requirements that a fund will have to satisfy in order to enable investors to qualify for the benefits of the ruling are generally as set forth below: (i) The fund will maintain an office in Israel to serve as its permanent place of business in Israel. All of the fund's investments in Israeli and Israeli-related companies will be carried out by that office; (ii) The fund will invest at least US$10 million in Israel through the office in Israel within 48 months from the first closing date; (iii) The fund will have at least 10 investors and no investor will hold more than 20% of the capital of the fund; (iv) The total commitments of the fund will not be less over the whole period of the ruling, than US$10 million of which at least $US5 million from foreign investors; (v) The Fund will not invest more than 20% of the fund's total investments in Israel in public companies; (vi) The fund will invest an amount exceeding half of the total commitments to the Fund, excluding management fees, in "Qualifying Investments."

A

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"Qualifying Investment" investment is an investment in an Israeli company or Israeli related company (except investments in publicly traded companies, unless the period of holding in the investee is at least one year from the date of initial investment therein), which is mainly engaged in setting up or expanding enterprises in Israel that operate in industry, production, agriculture, tourism, transportation, construction (except real estate), water, energy, technology, media and communication, computerization, security, medicine, bio-technology and nano-technology, or research and development in the said sectors;

An "Israeli-related" company is a company not registered in Israel, but whose main assets and/or activity, directly or indirectly, is in Israel or whose main technology is acquired or developed in Israel;

(i)The Fund will not invest an amount in excess of 20% of the Fund's total commitments (net of ma agement fees) in any single company (or in excess of 25% together with a follow-on investment in such company); Pursuant to the tax ruling application submitted by the Fund, the Fund requests the ITA to approve an investment of 30% of the Fund's total commitments (net of management fees) in a single company. The Fund has yet to receive the response of the ITA to the above request and there is no assurance that this request will be approved; (ii) The Fund will provide certain reports to ITA as required by the Ruling; (iii) The Fund will not hold short-term monetary deposits or marketable securities unless they originate from money transferred by investors pursuant to their commitments for the purpose of investments in the Fund, or unless they are held by the Fund after a realization event but prior to a distribution; (iv) The Fund will maintain a system of accounts that will enable identification of the amounts invested in Israeli resident companies, Israeli-related companies, foreign companies, and the details of the investments in which intellectual property is owned by Israeli resident companies;

If all of the conditions of the ruling are met, the fund (in respect of its non-Israeli resident investors) and the non-Israeli Investors therein, are expected to be exempt from Israeli tax with respect to the following types of income:

(i) Gains derived from realization of the Fund's investments in Israeli or Israeli related companies will be exempt provided that such gains will not deemed to be generated mainly from real estate rights and/or nature resources in Israel; (ii) Any income derived from Venture Capital Investments will be exempt provided that such income deriving from such investments will not deemed to be generated mainly from real estate rights and/or nature resources in Israel; (iii) A "Venture Capital Investment" is a Qualifying Investment in a company in the high-tech field, of which, inter alia, at least 75% was implemented through issuance of shares (including options, convertible loans and convertible debentures).

B. "The Angels Law" – Israeli Tax Benefits for Individuals Investing in R&D Companies

"The Angels Law" refers to Section 20 of The 2011-2012 Economic Policy Law. According to the provisions of the section, The Law provides that Israeli and foreign individuals who invested in private Israeli resident companies between January 1st, 2011 and December 31st, 2015 were entitled to substantial tax benefits.

Despite the benefits that were offered to the investors, the investors did not use it frequently, mostly because of the uncertainty that they were entitled to the tax benefits.

That was the main reason which made the Israeli legislator to amend the law and set forth new provisions as will be described above.

The amendment will be remain force until January 1st, 2019 .

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The new law allows an individual or a **partnership, in which all partners are individuals** purchasing up to NIS 5 million in a "Target Company" or a "Start-UP Company" can deduct the amount of his investment from his overall taxable income from all sources. The deduction is spread over a three years "Benefit Period" commencing with the tax year in which the investment is made. The investor must hold the investment throughout that Benefit Period.

"Start-Up Company" a company which is incorporated in Israel and the control and management of its business conducted in Israel, the company has to meet the following criteria: (i) Investment to be made within 48 months from its incorporation date; or 60 months if the company operates in Development Area A in accordance with the Encouragement of Capital Investment Law, 1959; or if the company received a governmental aid and the investment was made within 12 months ; (ii) the total revenues between the incorporation date and the investment date has not exceeded NIS 4.5 million, and the total sales in each preceding tax year (or any part of a tax year) has not exceeded NIS 2 million; (iii) the total expenses of the company from the incorporation date to the investment date did not exceed NIS 12 million, and the total expenses for the preceding tax years (or any party of a tax year) has not exceeded NIS 3 million; (iv) the total amount of the loans and investment has not exceeded NIS 12 million; (v) the company's accountant certified that the above criteria are met; (vi) The National Authority for technological innovation must certified that the following two conditions are met: (a) At-least 70% of the expenses since incorporation date due to the investment date are R&D expenses; and (b) the company has owned the product under development, and owns all IP.

"Target Company"" a company which is incorporated in Israel and the control and management of its business conducted in Israel, the company has to meet the following criteria: (▯) during the Benefit Period, it's trading securities should not be listed on any stock exchange; (ii) At least 75% of the investor's invested amount must be R&D expenditures no later than the end of the Benefit Period and as until the tax year that this condition has been satisfied- in each of the tax years during the Benefit Period, the R&D expenditures are at least 70% of all of the company's expenses; (iii) at least 75% of the invested amount was spend in Israel; (iv) during the year that the investment was made and also during the following year, the revenues of the company may not exceed 50% of the R&D expenditure; (v) during the Benefit Period, the R&D expenditures were made in order to promote or develop the company's plant.

C. Tax Benefits Under the Law for the Encouragement of Industry (Taxes), 5729-1969.

Pursuant to the Law for the Encouragement of Industry (Taxes), 5729-1969, or the Industry Encouragement Law, a company qualifies as an "Industrial Company" if it is a resident of Israel, was incorporated in Israel and at least 90% of its income in any tax year (exclusive of income raising from certain governmental security loans) is derived from an "Industrial Enterprise" it owns, which is located in Israel. An "Industrial Enterprise" is defined for purposes of the Industry Law as an enterprise whose principal activity in a given tax year is production.

An Industrial Company is entitled to certain tax benefits, including a deduction of the purchase price of patents or the right to use a patent or know-how used for the development or promotion of the Industrial Enterprise at the rate of 12.5% per annum, commencing the year in which such rights were first exercised.

Prior to January 1, 2011, the tax laws and regulations dealing with the adjustment of taxable income for local inflation provided that Industrial Enterprises, such as us, were eligible for special rates of depreciation deductions. These rates vary in the case of plant and equipment. With respect to equipment, the applicable rates of depreciation are determined according to the number of shifts in which the equipment is being operated and generally range from 20% to 40% on a straight-line basis, a 30% to 50% on a declining balance basis for equipment first put into operation on or after June 1, 1989 (instead of the regular rates which are applied on

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a straight-line basis). The applicable regulations are valid for equipment whose first operation was not later than December 31, 2013.

Moreover, companies which own Industrial Enterprises that are approved enterprises or benefited enterprises (see below) can choose, with respect to income deriving from such enterprises, between (a) the special depreciation rates referred to above or (b) accelerated regular rates of depreciation applied on a straight-line basis in respect of property and equipment, generally ranging from 200% (for equipment) to 400% (for buildings) of the ordinary depreciation rates during the first five years of service of these assets, provided that the depreciation on a building may not exceed 20% per annum, multiplied by the applicable adjustment rate.

Eligibility for benefits under the Industry Encouragement Law is not contingent upon the prior approval of any Government agency. There can be no assurance that we will continue to so qualify, or will be able to avail ourselves of any benefits under the Industry Law in the future.

D. Tax Benefits Under the Law for the Encouragement of Capital Investments, 5719-1959

i. General

One of our production facilities qualifies as a "benefited enterprise" under the Law for the Encouragement of Capital Investments, 5719-1959, as amended in 2005, or the Investment Encouragement Law, which provides certain tax benefits to investment programs of an "approved enterprise" or "benefited enterprise." Our benefited enterprise was converted from a previously approved enterprise program pursuant to the approval of the Israel Tax Authority that we received in September 2006. As of yet, it was not necessary for us to utilize these tax benefits. In the event that we do not commence use of the tax benefits until the 2017 tax year (the "**Expiration Date**"), the tax benefits granted to our benefited enterprise shall expire.

The Investment Encouragement Law stipulates certain criteria which need be met with respect to investment programs carried out by an enterprise, in order for such an enterprise to be classified as a "benefited enterprise". Israeli resident companies which own benefited enterprise are generally classified as Benefited Companies. Benefited Companies may claim tax benefits (as further discussed below) granted by the Investment Encouragement Law in its tax returns (and there is no need to obtain prior approval to qualify for such benefits). There is no requirement to file reports with the Investment Center. Audits are the responsibility of the Israeli Income Tax Authority as part of their tax audits. Companies may also approach the Israeli Tax Authority for a pre-ruling regarding their eligibility for benefits under the Investment Encouragement Law.

A company that owns an approved enterprise is eligible for governmental grants, but may elect to receive an alternative package comprised of tax benefits, referred to as the "previous alternative benefits track". The tax benefits of an approved enterprise include lower tax rates or no tax depending on the area and the track chosen, lower tax rates on dividends and accelerated depreciation. In order to receive benefits in the grant track or the alternative benefit track, the industrial enterprise must contribute to the economic independence of the Israeli economy, be competitive and contribute to the gross local product in one of the manners stipulated in the Investment Encouragement Law. Tax benefits would be available, subject to certain conditions (described below), to production facilities that generally derive more than 25% of their annual revenue from export, or that do not derive 75% or more of their annual revenue in a single market.

If, (i) only a part of a company's taxable income is derived from an approved enterprise or a benefited enterprise, as in our case; or (ii) a company owns more than one approved enterprise or benefited enterprise, the resulting effective corporate tax rate of thecompany represents the weighted combination of the various applicable rates. A company owning a "mixed enterprise" (which is a company that derives income from one or more sources in addition to an approved enterprise or benefited enterprise) generally may not distribute a dividend that is attributable only to the approved enterprise or benefited enterprise.

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Subject to certain provisions concerning income subject to the alternative benefits track with respect to a benefited enterprise (see below), any distributed dividends are deemed attributable to the entire enterprise, and the effective tax rate represents the weighted combination of the various applicable tax rates. A company may elect to attribute dividends distributed by it only to income not subject to the alternative benefits track.

ii. Tax Benefits

The tax benefits available to benefited enterprises are: (1) benefited enterprise situated in zone A may choose between (a) reduced corporate tax at the rate of 11.5% ("**Ireland Track**"); or (b) tax exemption from corporate tax on undistributed income; (2) benefited enterprises situated in zone B or elsewhere ("**Zone C**") are entitled to tax exemption on undistributed income for six or two years, respectively, and to beneficial tax rate (generally 25% or less in the case of a qualified foreign investor's company that is at least 49% owned by non-Israeli residents) for the remainder of the applicable period of benefits. Our plant is located in Zone C.

Dividends paid out of income derived from an approved enterprise (or out of dividends received from a company whose income is derived from an approved enterprise) are generally subject to withholding tax at the rate of 15%. Dividends paid out of income derived from a benefited enterprise (or out of dividends received from a company whose income is derived from a benefited enterprise) are generally subject to withholding tax at the rate of 20%. The rate of 20% with respect to dividends paid from income derived from a benefited enterprise, as set forth above, is limited to dividends distributed out of income derived during the benefits period and actually paid at any time up to 12 years following the lapse of the benefits period (the "**12 Years Limitation**"), excluding in the event of dividends paid by foreign investor's company, as provided below. A company which elects the alternative benefits track and pays a dividend out of income derived from its benefited enterprise during the tax exemption period will be subject to corporate tax in respect of the amount of the dividend distributed at the rate otherwise applicable to the company in the year the income was earned (the applicable tax rate is generally 25%, or lower in the case of a qualified foreign investor's company which is at least 49% owned by non-Israeli residents) on an amount consisting of such dividend grossed up by the otherwise applicable corporate tax rate. Dividends paid to a qualifying non-resident out of the profits of a benefited enterprise which is subject to the Ireland Track (i.e., subject to 11.5% corporate tax) are generally subject to withholding tax at the rate of 4%.

The tax benefits available to a benefited enterprise relate only to taxable income attributable to that specific enterprise and are contingent upon the fulfillment of the conditions stipulated by the Investment Law and its regulations and the terms of the pre-ruling that we received from the Israeli Tax Authority. If we fail to comply with these conditions, the tax and/or other benefits may be discontinued, in whole or in part, and we might be required to refund the amount of tax benefits, adjusted to the consumer price index ("**CPI**") and interest, or other monetary penalty, as the case may be.

A company that qualifies as a foreign investor's company is entitled to further tax benefits relating to its benefited and/or approved enterprises. Subject to certain conditions, a foreign investor company is generally a company that more than 25% of each of the rights of the company (in terms of shares, rights to profits, voting and appointment of directors), is owned, directly or indirectly, by persons who are not residents of Israel. Such a company with a foreign investment of over 25% will be eligible for an extension of the period of tax benefits for its approved and benefited enterprises (up to a total period of ten years, compared to a normal period of seven years) and further tax benefits (a reduced corporate tax rate of 10% 20%) should the foreign investment reach or exceed 49%. In addition, dividends distributed by a foreign investor's company from income attributed to its benefited enterprise shall be subject to a rate of 20%, regardless to the date on which such dividend is distributed (i.e., the 12 Years Limitation shall not apply). No assurance can be given that we currently qualify or will qualify in the future as a foreign investor's company.

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iii. Amendment to Investment Encouragement Law

In December 2010, the Israeli Parliament passed the Law for Economic Policy for the Years 2011 and 2012 (Amended Legislation), 5771-2011, which prescribes, among other things, amendments to the Investment Encouragement Law, effective as of January 1, 2011 (the "**2011 Amendment**"). The 2011 Amendment introduced new benefits for income generated by a "Preferred Company" through its Preferred Enterprise (as such terms are defined in the Investment Encouragement Law), if certain criteria are met. The new tax benefits (described below) would be available, subject to certain conditions, to production facilities that generally derive more than 25% of their annual revenue from export, or that do not derive 75% or more of their annual revenue in a single market, or, to competitive facilities in the field of renewable energy. A "Preferred Company" is defined in the amendment as either (i) a company incorporated in Israel and not wholly-owned by governmental entities; or (ii) a partnership (a) that was registered under the Israeli Partnerships Ordinance; and (b) all of its partners are companies incorporated in Israel, but not all of them are fully owned by governmental entities and such companies or partnerships own, among other conditions, Preferred Enterprises and are controlled and managed from Israel.

In accordance with the 2011 Amendment and a further amendment made during 2013, a Preferred Company is entitled to reduced corporate tax with respect to income derived by it Preferred Enterprise (and subject to certain conditions) at the rate of 15% in 2011-2012, unless it is located in a certain development zone, in which case the rate will be 10%. Such corporate tax rate was reduced to 12.5% and 7%, respectively, in 2013 and was raised to 16% and 9% in 2014 and thereafter, respectively.

Under the amendments, dividends distributed out of income which is generally attributed to a Preferred Enterprise are subject to withholding tax at the rate of 20% (or lower, under an applicable tax treaty). However, upon distribution of a dividend attributed to income generated in Israel, to an Israeli company , no withholding tax will apply.

The 2011 Amendment applies to income generated as of January 1, 2011. Under the transitional provisions of the 2011 Amendment, we may elect to irrevocably implement the 2011 Amendment to the Investment Encouragement Law while waiving benefits provided under the Investment Encouragement Law as in effect prior to the 2011 Amendment or to remain subject to the Investment Encouragement Law as in effect prior to the 2011 Amendment. We may elect to implement the 2011 Amendment by May 31 of any year, and such an election shall apply as of the tax year following the year on which the company's tax return (and the election) was filed. Electing to implement the 2011 Amendment is irreversible.

We qualify for the status of a "Preferred Company" pursuant to the 2011 Amendment. We intend to implement the 2011 Amendment in future tax year. Therefore, the deferred tax balance as of December 31, 2014 was calculated based on the rate provided by the 2011 Amendment.

The termination or substantial reduction of any of the benefits available under the Investment Encouragement Law could have a material adverse effect on our future investments in Israel, and could adversely affect our results of operations and financial condition.

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4. Conclusion

India and Israel is a marriage made in heaven. With similar legal, cultural and ideological playing field there has always been a lot of synergy between the two nations. Now with both the economies growing to become the future engines of the global economy, a commercial harmony between the two is ever increasing.

India provides the market and capital that is required for Israeli technology to flourish, while Israel provides the technological solutions a developing economy like India needs.

While business will keep growing, it is extremely important that forward looking and holistic legal and tax strategies are made well before diving into a venture to ensure business profits are not diluted owing to lack of planning and outlook.

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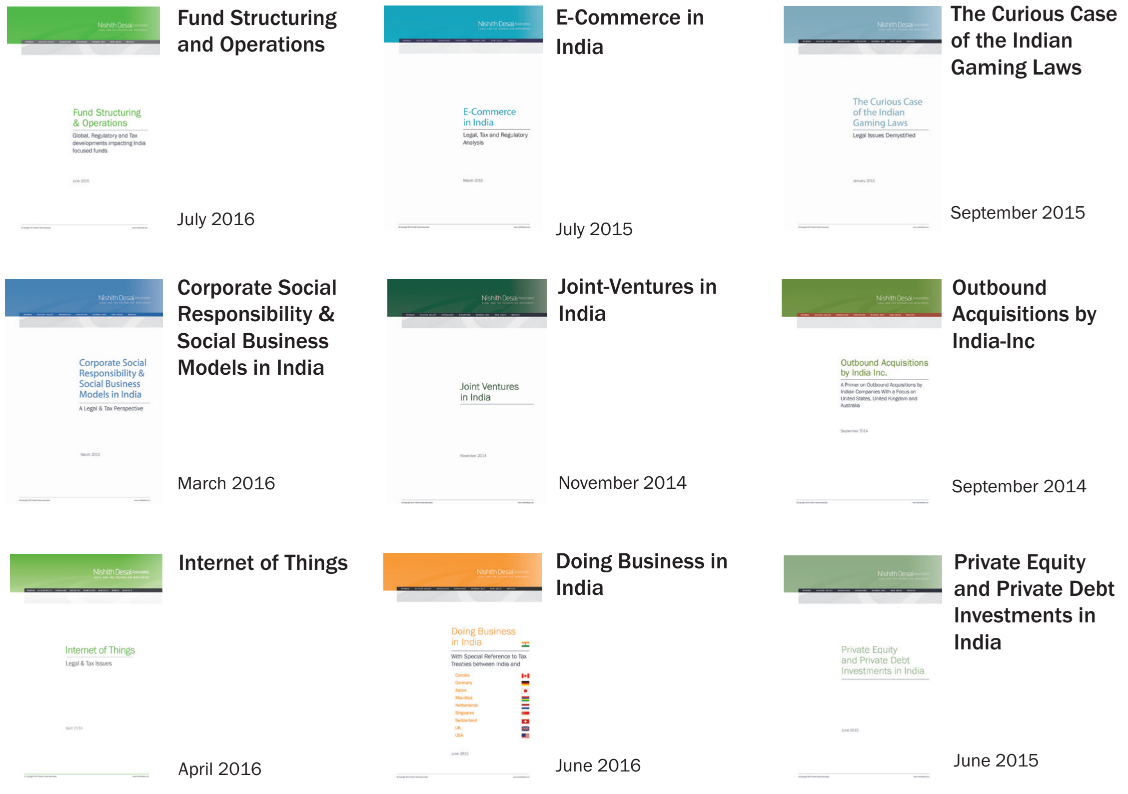

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Research @ NDA

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.

Research has offered us the way to create thought leadership in various areas of law and public policy. Through research, we discover new thinking, approaches, skills, reflections on jurisprudence, and ultimately deliver superior value to our clients.

Over the years, we have produced some outstanding research papers, reports and articles. Almost on a daily basis, we analyze and offer our perspective on latest legal developments through our "*Hotlines*". 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 *NDA Insights* 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 papers and disseminate them through our website. Although we invest heavily in terms of associates' 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.

Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with a much needed comparative base for rule making. Our *ThinkTank* discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged.

As we continue to grow through our research-based approach, we are now in the second phase of establishing a 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. The center will become the hub for research activities involving our own associates as well as legal and tax researchers from world over. It will also provide the platform to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear from you about any suggestions you may have on our research reports.

Please feel free to contact us at
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