

**Make the most
of where you live !**



Publication: Economic Times Mumbai; Date: 2007 May 18; Section: Starting Up; Page Number 17



ASK THE PROS

Setting Up Shop In India

Q : Though Indian by origin, I am currently running a US-based software company. My company wants to open a branch in Bangalore for sales & marketing. I would appreciate if you can guide on the following issues:

1 What type of arrangement/setup we have to think of to open a branch office in India? 2 What would be the tax liabilities/benefits that we can claim through this office in India? 3 What are the basic documents required to open a branch office? 4 Who is the appropriate authority to contact/apply to get the approval (for government purposes)? 5 How much time it will take to get an approval? Please advise — Name withheld on request You have to consider various aspects such as the nature of activities intended to be carried out, tax implications and applicable exchange control regulations before identifying the nature of presence that would be most suitable to your needs. Any foreign entity can choose between subsidiary, branch and liaison office. Branch and liaison office can carry out certain limited activities in India. For example, a branch can carry on only the following activities: a. Export/import of goods; b. Rendering professional or consultancy services; c. Carrying out research, in which the parent is engaged; d. Promoting technical or foreign collaborations between Indian companies and parent or overseas group company; e. Representing the parent company in India; f. IT services and development of software in India; g. Technical support to products supplied by parent/group co; h. Airlines and shipping activities. Please consider whether your outfit will be restricted to these activities. If not, creating a subsidiary may be better.

The type of arrangement or set-up required:

You will have to comply with provisions of Foreign Exchange Management Act, 1999 (FEMA) and the Indian Companies Act, 1956 ("the Co's Act"). In the Co's Act, a branch office is defined, inter alia as "any establishment carrying on either the same or substantially the same activity as that carried out by the head office of the company". While there is no 'Setup' required in order to establish an office in India, once you have obtained approval in this regard, you can acquire office space in India from which you can carry out your operations.

Tax liabilities/benefits that can be claimed:

A branch of a foreign company would be considered an extension of the non-resident tax payer into India, and would be taxable in India at the rate of 42.23% on net basis (as against 33.99% in case of an Indian company), on its business income attributable to its operations in India. Significant controversies arise in determination of the "attributable profits". Indian income tax authorities often require the foreign company to provide global balance sheets and profit & loss accounts and information regarding transactions with related parties for the purposes of such determination. Here, it would also be pertinent to note that India does not levy a branch profit tax. Further, under the Income Tax Act, 1961 there are certain restrictions

on availability of tax deduction for head office expenses.

Further, profits/surplus of branch office (net of taxes to be paid in India) can be repatriated by submitting documents such as audited balance-sheet and profit and loss account of the branch for the relevant year; a chartered accountant's certificate certifying the manner of arriving at the remittable profit and that the proceeds have been derived from permissible activities.

A branch office structure is not very popular in India one should envisage a structure which maximises their commercial objectives whilst minimising tax and regulatory hurdles.

Basic documents required to open a branch office:

As per FEMA, a foreign company desiring to set up a branch office would have to obtain prior approval of the Reserve Bank of India (RBI) by submitting Form FNC 1. Such approval (on a case-to-case basis) is granted only if the activities of the branch are restricted to the activities laid out by the RBI (which I have listed above). With this form the certificate of incorporation /memorandum and articles of association attested by the Indian Embassy/notary public in the country of registration, and latest copy of audited balance sheet are to be submitted to RBI. Further, the foreign company may be required to provide a justification for establishing a branch office in India. The office is required to deliver to the Registrar of Companies (RoC), Bangalore the charter/registration documents of the parent and will also have to file Annual Accounts every year with RoC.

Time taken to get an approval from regulatory authority:

RBI ordinarily takes around four to five weeks to grant the approval. However, such an approval may not be easily available as the RBI is generally cautious about granting a foreign company approval to set up a branch office in India. All the best!

