

India

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1. NON-TAX ISSUES

1.1 Domestic law

1.1.1 The Indian legal system

The origins of the Indian legal system can be traced back to the Harrappan and Dravidian civilisations which date back to as early as 2500 BC, the former being in North India and the latter in the south. The influence of these civilisations can be seen over 1,000 of years of settlement that happened thereafter in various parts of India in practically everything ranging from social and religious structures to architectural planning and civic and legal control exercised therein.

The ancient books such as the *Vedas* were the supreme source of authority and set out the code of conduct, which was considered as the law or the 'Dharma' which governed the behaviour of the settlements, leading to the evolution of Hinduism. The country was divided into various sections, with each such sect/princely state being governed by a king, who was considered as next to God himself. In each such princely state, the justice was administered through a system of local courts at the village level known as *panchayats* at the first level, where the village headman and his advisers presided as the court. The *panchayats* dealt with both, civil and criminal matters as per the guidelines provided in the *Manusmirti* (one of such ancient books), final appeal from which fell to the king's court which comprised of the king, a number of judges and his advisers. Arbitration, as a system, was also prevalent to resolve family disputes or where no other means of justice was available. This led to various diverse legal systems being set up in India each such region or princely state having its own set of rules and governing laws.

The British, who came to India in the seventeenth century and ruled India for nearly 200 years thereafter, brought about changes in administrative system and enacted laws in order to bring about uniformity in the diverse customs and laws which governed various sects in India.

Most Indian laws such as the Indian Contract Act, 1872 can be traced back to the late nineteenth century. The current Indian legal system and laws are largely based on the common-law principles of justice and equity as were enacted during the British era, although certain civil law influences, particularly European and American, can be seen in various contemporary Indian laws.

The Indian constitution, which is lengthiest constitution in the world, shows an assimilation of various superior and sophisticated laws which were

taken from Ireland, Britain, France and the United States and thus reflects western influence in its very essence.

The preamble of the Indian constitution defines India as a sovereign, socialist, secular, democratic republic. Traditionally, a quasi-federal form of government with strong centre and weaker states, it has become increasingly federal since 1990s. Indian laws also adhere to the United Nations guidelines on human rights and the environmental law. Certain international trade laws, such as those on intellectual property, are also enforced in India¹.

Of all the laws in India, the Indian succession laws are the most complex, with each religion having its own specific laws which they adhere to, some of which are codified, while some are not.

In 1925, an attempt was made by the British government to consolidate and bring under its purview the broad customary laws governing estate succession among different religious groups in India by enacting the Indian Succession Act. This attempt being unsuccessful, the Indian government, in the post-British era, made another attempt by designing the Indian constitution to implement a uniform civil code to apply to all religious groups uniformly.

However, different religious groups in India still subscribe to different laws and the Indian legal system continues to exist and function. Hindus have their own uncodified (part) and codified law (Hindu Succession Act, 1956), the Muslims have their own textual law of inheritance (Islamic Law on Succession), Parsee law, Christian law and optional secular for others (eg spouses following different religious faiths and married under The Special Marriage Act), who are covered under the Indian Succession Act. Regardless, all wills, except Muslim wills, are governed under the Indian Succession Act, 1925 for the purposes of execution, probate, etc.

The only exception to this is the state of Goa, which is governed by the Portuguese uniform civil code, wherein all religions have a common law regarding marriages, divorces and adoption.

As a background, Article 26 of the Indian constitution guarantees freedom to manage religious affairs for every recognised religious denomination or sect. The difficulty in reconciling the constitutional protection of the rights of religious minorities and the Directive Provision of Article 44 has meant that legal uniformity is far from being achieved.

Succession in India is of two types: testate and intestate. The freedom of testation in India, a legacy of English law, gives unfettered freedom to Hindus, Christians and Parsees under their testamentary succession laws to will away property in any manner, even in violation of the family's moral claim over such property. There is no concept of forced heirship in Indian succession laws, which is an incongruity with comparative jurisprudence which advocates forced heirship rules eg: legal systems of France, Japan, Germany, etc. Muslim/Sharia law and the Goan Civil Code are the exceptions to this rule.

Under Muslim/Sharia laws, a Muslim can only will away one third of his property while the remaining two thirds is retained for the family,

¹www.commonlii.org/in/legis/num_act/ as accessed on March 20, 2010

irrespective of a will to the contrary. This restriction can be waived by all the members of the family in favour of the testator willing away his entire property as per his desires.

The Goan Civil Law is a version of Portuguese Civil Law. Ergo, the rules of forced heirship, community property, etc become applicable to all residents of Goa regardless of the religious group they may belong to. Upon a person dying intestate, 50 per cent of the estate of the deceased is automatically transferred to the spouse of this individual, while the remaining 50 per cent devolves upon the legal heirs.

India also gives due regard to private international law, as a consequence of which in the case of an intestate succession, the inheritance of movable property is governed by the 'law of the domicile' of the deceased, while for immovable property, the 'law of situs' is applied. The local law of the state in which the property is situated determines the stamp duty and court fees applicable for transfer of such property.

Furthermore, when a foreign citizen inherits from a deceased Indian citizen who has died intestate, the religious law of the deceased applies. If the deceased is a foreign citizen, then the personal law of his religion or nationality applies. In the instance where the law of the nation to which the deceased foreigner belonged to at the time of death refers the inheritance issues back to India (ie the place where his/her estate is situated), then the applicable law which governs the deceased's estate in India takes precedence. The Indian courts do assume jurisdiction in respect of disputes that may arise in respect of the abovementioned situations.

The Indian Code of Civil Procedure, 1908 deals with the enforcement of foreign judgments universally and gives due recognition to the principle of *res judicata* with respect to a judgment delivered by a foreign court. It recognises the fact that even though the private international rules between countries may differ, the international comity between nations assumes that certain rules are recognised as common to civilised jurisdictions. There are, however certain conditions stipulated for enforcement of such judgments, viz: (i) that the same need to be pronounced by a court of competent jurisdiction on merits; and (ii) the ruling shouldn't violate public policy or principles of natural justice. The Indian courts have always given due regard to this principle and observed and enforced judgments pronounced by foreign courts.

2. TAXATION

2.1 Criteria for liability to main taxes: whether statutory or other tests

Indian tax structure is divided into direct taxes and indirect taxes; levy and collection of which has been divided between the central, state and municipal authorities.

Taxation of income in India is governed by the provisions of the Income Tax Act, 1961 (ITA) as amended by the Finance Act. The ITA lays down elaborate provisions in respect of chargeability to tax, determination of residency, computation of income etc.

The main criteria for liability to taxes in India, being income tax, arise

out of the residential status of an assessee during the previous year. If the assessee is a resident of India, he has to pay tax on his worldwide income, wherever received or accrued.

The concept of residence is discussed under section 6 of the ITA, which provides that an individual is considered to be resident in India if he has been present in India for a period exceeding 182 days or more, or if he, having spent more than 365 days in the four preceding years in India, spends 60 days or more in India in the relevant previous year.

As per section 6(3) of the ITA, a company is considered to be a tax resident of India, if it is incorporated in India or the control and management is situated wholly in India. This is also true for a foreign company that may be wholly controlled or managed from India.

With respect to a non-resident person, who is a resident of a country with which India has signed a Double Tax Avoidance Agreement (DTAA), the provisions of the ITA apply only to the extent they are more beneficial to such assessee.

India considers the financial year, 1 April to the succeeding 31 March, as its tax year. Taxable income is generally computed after deduction of expenses in accordance with the provisions laid down in the ITA.

2.2 Taxes

2.2.1 Income Tax

Per the ITA, every person which is an assessee and whose total income exceeds the maximum exemption limit shall be chargeable to the income tax at the rate or rates prescribed in the Finance Act. Such income tax shall be paid on the total income of the previous year in the relevant assessment year.

Section 4 of the ITA, which stipulates the basis of charge of income tax, lays down that 'total income' of a person is subject to income tax. Total income is discussed in section 5 of the ITA, as per which residents are taxable in India on their worldwide income, whereas non-residents are taxed only on Indian source income, ie income received or deemed to be received in India, income that accrues or arises to them in India or is deemed to accrue or arise in India.

2.2.2 Capital gains tax

If any capital asset is sold or transferred, the profits arising out of such sale are taxable as capital gains in the year in which the transfer takes place. Capital gains arising to a non-resident are taxable in India only in respect of transfer of capital assets situated in India. However, this may be altered by the beneficial provisions of an applicable tax treaty (eg Mauritius) in which case the gains arising from alienation of a particular class of capital assets (situated in India) may be tax exempt in India (eg Indian company shares held by a Mauritius company).

Capital assets are of two types, ie long term (held for more than 36 months before they are sold or transferred) and short term (lesser than 36 months) on which differential rates of capital gains tax apply. Exceptions to

this rule are shares, debentures and mutual fund units for which the period of holding required is only 12 months. Gains on short-term capital assets are taxed as regular income. With respect to a long term asset, there is a specific manner in which the gains are calculated which account for increased costs as per a cost inflation index for the year.

Certain exemptions have also been provided from capital gains levy, subject to certain conditions being fulfilled and the sales proceeds being reinvested into certain assets within the prescribed time.

2.2.3 Gift tax

Gift tax in India was introduced in 1958 under the Gift Tax Act and abolished in 1988 making all gifts, made on/after the date, tax free. In 2004, however, gift tax was revived, though partially, by introducing provisions under the ITA under section 56(2) by which the gifts received by any individual or Hindu Undivided Family (HUF) in excess of INR 50,000 in a year would be taxable as regular income, subject to certain exemptions which have been granted in this regard.

2.2.4 Wealth tax

Wealth tax, an important direct tax legislation introduced in 1957, is levied on benefits derived by property ownership and payable annually on such property for the net wealth of corresponding valuation date on every individual, Hindu Undivided Family and company at the rate of 1 per cent of the amount by which net wealth exceeds INR 15 lakhs.

Chargeability of this tax is determined by the residential status and/or citizenship of an assessee. Exemptions for certain assets have been provided in the legislation itself of which it is pertinent to note that productive assets like shares, debentures, bank deposits and investments in mutual funds are exempt from wealth tax.

2.2.5 Corporation tax

Companies resident in India are taxed on their worldwide income arising from all sources in accordance with the provisions of the ITA. Non-resident corporations are essentially taxed on the income earned from a business connection in India or from other Indian sources.

A corporation is deemed to be resident in India if it is incorporated in India or if its control and management is situated entirely in India.

2.2.6 Property tax

Property in India, for purposes of ITA, is considered as a source of income and hence is subject to tax on its value and means and refers to real estate (as listed below). Property tax in India is calculated on the basis of annual value, there being a difference in annual values for self-occupied and let-out properties.

Property tax is levied for maintenance of basic civic services in the cities and levied by the municipal authority of each city/town. The kinds of properties that are liable to be taxed under property tax India are residential

house (self-occupied or let out/rented), office building, factory building, warehouses, residential apartment, shops/stores and land appurtenant to any building/structure. It is pertinent to note that vacant plots of land without any adjoining structure are not liable to be taxed under this head.

2.2.7 VAT/sales tax

Value added tax (VAT), (Sales tax in states where VAT is not yet in force), is levied by state governments in India.

2.3 Enforcement/collection of taxes

In India, income tax is levied on all kinds of income and collected by the Central Government of India except of tax on agricultural income, which is collected by the State Government. The legal administration for tax collection/recovery in India is managed by the Tax and Revenue Department of the central government of India's Ministry of Finance. Tax collection in India is performed under the provisions of the Income Tax Act, 1961 and Income Tax Rules, 1962.

The system of taxation is completely based on personal assessment of income, wherein taxes are filed by a person² on the basis of the assessment done in terms of income earned, losses incurred, etc.

In India, it is virtually impossible to obtain data or statistics with respect to non-compliance or amounts recovered through enforcement/investigations.

However, such non-compliance, when discovered, leads to prosecution and in certain cases, even imprisonment. Sections 275-280 of the ITA provides for imprisonment in cases of fraudulent removal of, or transfer with the intent to thwart, tax recovery, willful attempt to evade tax, falsification of accounts, etc. However, there have been no laws on extradition on commission of such offences.

Recently, the Indian tax authorities have become aggressive in terms of bringing under their purview extra-territorial transactions involving the so called 'indirect transfer' of Indian assets. This new stance of the Indian tax authorities has created a cause of concern among corporations having multi-jurisdictional presence indulging in mergers and acquisitions.

The Government of India has been very actively involved in negotiations with various low/no tax jurisdictions to sign information exchange agreements to track such sham transactions and illegal transfer of monies by Indian residents.

3. EXEMPTION AND/OR EXIT TAXES FOR NEW IMMIGRANTS AND EMIGRANTS

In India, with respect to new immigrants, especially in the case of non-resident Indians (NRIs), there exists a concept of 'resident but not ordinarily resident' (RNOR) under the ITA. RNOR is essentially a transitional status

²Person includes an individual, a Hindu Undivided Family, a company, a firm, an association of persons or a body of individuals, whether incorporated or not, a local authority, and every artificial juridical person, not falling within any of the preceding sub-clauses. Ref: Government of India Portal

between being a NRI and becoming a full-fledged resident of India.

Having the status of RNOR, for the most part, has its perks. It allows a NRI to continue availing of the tax benefits that he was entitled to as a NRI for a period of two years, even after coming back to India. Ergo, foreign income *viz*: interest or dividends that the NRI may earn from his investments abroad, will continue to remain tax-free even after he has become an Indian resident.

This is, of course, subject to certain conditions being fulfilled by the NRI being that the person needs to be an NRI for nine out of 10 years or has spent less than 729 days in India in the last seven years.

In terms of exit taxes, Indian emigrants are not subject to any exit taxes in India at the time of emigrating.

4. USE OF ASSET HOLDING VEHICLES

Various business families in India have their assets held in various types of holding vehicles such as trusts and companies for tax planning and asset protection purposes. While holding companies are used to consolidate family holdings in various commercial entities during the lifetime, wills and trusts are used to pass on the property post the demise.

Large business families and/or multinational Indian families are nowadays veering towards using trusts instead of the conventional wills for estate and succession planning in order to facilitate devolution of assets bypassing the probate process, asset protection, distribution of income earned as desired, etc.

Trusts, in India, are formed under the Indian Trusts Act, 1882 and can be set up as private family trusts being either:

- (i) Revocable or Irrevocable; and
- (ii) Discretionary or Specific/Determinate

A trust can be created *inter vivos*, ie a non-testamentary trust or under a will ie a testamentary trust. The Indian Trusts Act, 1882, governs creation of such private trusts. The choice of the appropriate trust structure adopted for each family depends upon the strategic objectives to be achieved by the family. For example, one may set up a discretionary trust in order to safeguard the assets from creditors' claims, while another may set up a revocable trust to retain control on the assets during his life time and thereafter to ensure distribution of assets bypassing the probate process.

Various permutations and combinations while charting out a structure for the flow of family assets can be explored, wherein onshore and offshore trusts (testamentary or *inter vivos*) can be created for separate assets, while certain assets can be passed on under a will. Provisions can also be made for allotting a portion of the assets to philanthropic purposes.

In case of an Indian family which may have members with individual/joint holdings in various asset classes in India and abroad *viz*: shares, immovable property, etc., apart from the Indian succession and trust laws, various other aspects will also be need to be taken into consideration *viz*: regulatory and tax. The transfer of Indian shares will be governed by the Companies Act, 1956 and in the event of the shares being that of a listed

entity, disclosures and compliances under the regulations as enacted by the securities regulatory authority, the Securities and Exchange Board of India (SEBI), will become applicable. These restrictions may range from the quantum of equity being transferred in a listed company, which may trigger off the takeover code, to the extent of holding that a foreign transferee may acquire in the Indian company. Foreign exchange regulatory issues [Foreign Exchange and Management Act (FEMA)] will come into play while effecting distribution/ transfer of income and assets, India and offshore³, to various family members, either under a will or through a trust. While there is a restriction on ownership of immovable property in India by a foreigner, prior approval from the appropriate regulatory authority⁴ may have to be obtained while effecting transfer of capital assets held by Indian residents globally. Further, limitations for remittances of assets received on account of legacies, bequests, gifts, settlement⁵, etc. from an Indian resident also need to be looked into in this regard.

Various Indian residents are also exploring setting up offshore trusts in order to carry out international investments and house them in offshore trusts or companies, whose shares are settled in the offshore trust. An Indian resident can set up an offshore trust by sending funds abroad under the Liberalised Remittance Scheme (LRS) under the FEMA to the tune of \$200,000 per individual every financial year. In this manner, a family of five people could expatriate \$1,000,000 every financial year under the LRS for investments abroad. Most trusts abroad being set up as discretionary trusts, the Indian resident beneficiaries in this regard would be taxed in India only to the extent of any distributions made by the trust to them.

Foundations and life insurance policies as tools for asset holding are not popular concepts and have not yet been explored in India. India had the concept of only general partnerships until last year when the legislation for limited liability partnerships (LLPs) was introduced. Many general partnerships have been exploring the option of converting to a LLP since it allows them to have limited liability in terms of their business dealings as opposed to unlimited liability under the general partnership.

This in turn can be used to safeguard assets from the creditors. Also, apart from the favourable tax treatment, the LLP also allows flexibility in terms of free transfer of interests, which may allow such interest to be settled into a trust and achieve absolute asset protection and succession for the same.

5. PHILANTHROPIC/CHARITABLE OPTIONS

In India, a public charitable or religious institution can be formed either as a

- (i) Charitable trust settled by a settlor by a trust deed or a will; or
- (ii) A society registered under the Societies Registration Act, 1860; or

³FEMA (Acquisition and transfer of immovable property outside India) Regulations, 2000;

FEMA (Transfer or issue of security by a person resident outside India) Regulations, 2000;

FEMA (Transfer or issue of any foreign security) Regulations, 2000;

FEMA (Current Account Transactions) Rules, 2000; FEMA (Permissible Capital Account Transactions) Rules, 2000;

FEMA (Insurance) Regulations, 2000; FEMA Liberalised Remittance Scheme;

⁴The Reserve Bank of India is the regulatory authority;

⁵FEMA (Remittance of Assets) Regulations, 2000; FEMA (Current Account Transactions) Rules, 2000; A non-resident Indian may remit an amount up to \$1million per financial year out of his Non-Resident (Ordinary) Rupee account (NRO) account/sale proceed of assets (inclusive of assets acquired by way of inheritance, settlement).

(iii) A company registered under Section 25 of the Companies Act, 1956 as a non-profit company.

A public charitable or religious trust settled under the Charitable and Religious Trusts Act, 1920 is not required to be registered unless such a trust relates to immovable property⁶. Furthermore, a trust settled in the state of Maharashtra is required to be registered under the Bombay Public Trusts Act, 1950.

In order to claim exemption on the income earned, charitable or religious trusts, societies and companies are required to obtain registration under Sections 11 and 12 of the ITA. This exemption is available to all incomes including income received from offshore property held by the trust, which tends to promote international welfare in which India is interested.

Any charitable trust, society, company, desirous of receiving any foreign contribution from a foreign source, is required to obtain registration under section 6(1) of Foreign Contribution (Regulation) Act, 1976. Any such association which is not registered or which has been denied registration, can receive foreign contribution only after obtaining prior permission from home ministry of the Central Government under section 6(1A) of the Act.

6. REGULATORY ENVIRONMENT

India, as an investment destination, has been very popular with global investors since the late 1990s, the current investment regimes in terms of funds being mutual funds and collective investment schemes. While mutual fund industry started in 1963 at the initiative of the Government of India and Reserve Bank of India, unregulated collective investment schemes (CIS) were around before and after that but were brought under regulation in 1999. Apart from the abovementioned, there are also venture capital fund (VCF) vehicles that can be set up to raise funds for investments into selected sectors.

All of the abovementioned schemes are governed by the Securities and Regulatory Authority of India (SEBI) viz:

- (i) SEBI (Mutual Fund) Regulations, 1996
- (ii) SEBI (CIS) Regulations, 1999
- (iii) SEBI (VCF) Regulations, 1996

Setting up India operations or investing in India requires conformity with India's foreign exchange regulations, specifically, the regulations governing foreign direct investment (FDI). Most aspects of currency transactions with India, including investments, are governed by the Foreign Exchange Management Act, 1999 (FEMA) and the delegated legislation under the act.

FDI, up to 100 per cent, is permitted in most sectors in India under the 'automatic route'. Under the automatic route, a company investing in India does not require the prior approval of India's central bank, the Reserve Bank of India (RBI) from the FEMA perspective before making such an investment. Certain sectors have caps, while some are completely prohibited. Certain sector and business also have to conform to the minimum capitalisation norms under which a foreign investor intends to invest.

⁶Indian Registration Act, 1908

Foreign investment is usually in the form of subscription to or purchase of equity shares and/or convertible preference shares/debentures of the company. The investment amount is normally remitted through normal banking channels or into a Non-Resident External Rupee (NRE)/Foreign Currency Non-resident (FCNR) account of the Indian company with a registered Authorised Dealer (a designated bank authorised by the RBI to participate in foreign exchange transactions).

The anti-money laundering legislation in India viz: Prevention of Money Laundering Act, 2002 and the rules framed there under, amended recently in 2009, requires every banking company, financial institution and intermediary (intermediary would include the trustees to the trust deed) to maintain record of prescribed transactions, furnish information of the transaction to the specified authority and verify and maintain records of the identity of all the clients in a prescribed manner.

The company is required to report the details of the amount of consideration received for issuing its securities to the regional office of the RBI in the forms prescribed under the regulations relating to FDI together with copies of the Foreign Inward Remittance Certificate, arranged by the Authorised Dealer evidencing the receipt of the remittance along with the submission of the 'Know Your Customer' report of the non-resident investor. A certificate from the statutory auditors or a chartered accountant indicating the manner of calculating the price of the shares also needs to be submitted. All of these documents must be submitted within 30 days of the receipt of the foreign investment and must be acknowledged by the RBI concerned's regional office, which will subsequently allot a unique identification number for the amount reported. The Indian company is required to issue its securities within 180 days from the date of the receipt of foreign investment. Should the Indian company fail to do so, the investment so received would have to be returned to the person concerned within this timeframe.

There are very detailed and stringent guidelines provided for 'know your customer' (KYC) and 'customer acceptance policy' (CAP) which are strictly followed, since any lapse in this regard could result in heavy penalties and/or loss of licenses/ permissions. The anti money-laundering laws very categorically provide that whosoever directly or indirectly attempts to indulge/knowingly assists/is a party/is actually involved in any process or activity connected with the proceeds of crime (ie property/value of such property derived or obtained, directly or indirectly as a result of criminal activity) and projecting it as untainted property shall be guilty of the offence of money laundering.

In terms of information exchange agreements, India has not entered into any of them and does not have any TIEAs in place. The government of India has been very actively involved in negotiations with various low/no tax jurisdictions to sign information exchange agreements to track such sham transactions and illegal transfer of monies by Indian residents.

Also, most DTAA's entered into by India do have an exchange of information clauses, which were incorporated with a view to ensure that the DTAA was not misused. The thought process involved was that the

DTAA should be used not only to avoid double taxation on overseas income of respective residents but also for a more precise determination of such income for just taxation, the principle idea behind this always being that DTAA's should be used for tax planning and not tax evasion.

India is now looking at moving towards incorporation of such standard information exchange clauses which are in conformity with the relevant UN and OECD guidelines in all their future treaties.

7. KEY PLANNING POINTS FOR LONG TERM RESIDENTIAL FAMILIES

In India, estate planning by families is not a very popular exercise since India does not have any estate or inheritance duties, which is one of the most fundamental reasons for families to resort to estate planning. Essentially, such planning has been popular amongst wealthy business families having numerous businesses and asset holdings in India and abroad.

During the 1980s, a vast majority of wealthy Indian business families were seen involved with interfamilial litigations left behind by the first generation members of the family, which ultimately resulted in family wealth remaining undistributed, and to a large extent, eroded.

The recessionary period of the year 2009 saw a lot of families realizing the importance of asset protection, both personal and business and safeguarding and keeping aside assets for the wellbeing and maintenance of family members.

This has led to various industrial families reorganizing and re-structuring their businesses by consolidating their holdings in a holding company, which may in-turn be held by a trust, with various family members as beneficiaries being entitled to receive income and capital distributions at pre-decided intervals. In order to ensure the smooth running of business, various management and advisory committees are also put into place to advise the trustees on running the family business. Such planning allows the families to achieve the objectives of safeguarding the family legacy and wealth and ensure the flow of assets to the heirs. India has a creditor protection period of two years, on completion of which the assets transferred irrevocably to the trust cannot be attached in case of any proceedings against the settlor.

Such planning becomes even more important for families which have the older generation residing in India and the younger generation studying and taking up employment overseas who may not return to participate in and manage the family business.

Living trusts could also be considered to hold movable property such as passive investments, jewellery as well as immovable property in order for asset protection and succession purposes.

8. KEY POINTS FOR MIGRATING/TEMPORARILY RESIDENT FAMILIES

There are no exit taxes applicable to individuals/families at the time of migration from India.

9. FORTHCOMING LEGISLATION/OTHER CHANGES

The government of India has recently issued a Draft Direct Tax Code Bill (Draft Bill) for discussion purposes. If enacted, the Draft Bill will replace the existing Income Tax Act, 1961 and could have an adverse impact on the taxability of the companies and the returns to the foreign investors. However, it has been indicated by the Ministry of Finance that the Draft Bill may undergo a change before it is introduced.

Also, currently there is no estate duty/inheritance tax levied in India on the estate of an Indian resident on his demise. In 2006, however, the proposition to impose the same again was raised by the Left Government. The proposition has not gained any momentum as yet, but there is a very high possibility that the estate duty/inheritance tax may be introduced in India again.

10. USEFUL REFERENCES

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