Startup | solicitors
Corporate, Tax, IPR and Immigration

# TAX PLANNING IN INDIA

## Fiscal Architecture & Regulatory Advisory Manual

A definitive blueprint for Direct/Indirect Tax Optimization, Transfer Pricing, and GAAR Compliance.

**Strictly Confidential & Privileged**

**Prepared By:**
**Startup Solicitors LLP**

47 B, Shipra Path, SMS Colony,
Mansarovar, Jaipur, Rajasthan 302020

**Helpline:** +91-9461620002
**Email:** info@startupsolicitors.com

# Contents

## 1. Executive Summary: Fiscal Fiduciary Duty

Corporate tax planning in India requires a sophisticated balance between aggressive EBITDA optimization and rigorous adherence to statutory compliance frameworks. The Indian Income Tax Act, 1961, augmented by the General Anti-Avoidance Rules (GAAR), heavily penalizes artificial tax evasion while actively rewarding structured, legitimate tax planning.

**STRATEGIC FISCAL INSIGHT**

Effective tax architecture must be implemented *before* the execution of corporate actions (incorporation, M&A, capital raises). Retroactive tax mitigation is inherently flawed and highly susceptible to scrutiny by the Central Board of Direct Taxes (CBDT). A robust tax strategy directly increases operational cash flow and elevates entity valuation during institutional due diligence.

This manual provides a Big-4 grade roadmap for corporate tax structuring, executive compensation optimization, cross-border remittance, and Input Tax Credit (ITC) maximization under the GST regime.

## 2. Corporate Tax Regimes: The Optimal Election

The Taxation Laws (Amendment) Act introduced concessional tax regimes to spur domestic growth. Entities must strategically evaluate and elect the optimal regime based on their capital expenditure, expected losses, and MAT (Minimum Alternate Tax) applicability.

| Parameter | Standard Regime | Section 115BAA | Section 115BAB |
|---|---|---|---|
| **Base Tax Rate** | 25% (if turnover $\leq$ 400 Cr) or 30% | **22%** | **15%** |
| **Effective Rate (with max surcharge & cess)** | 29.12% or 34.94% | **25.17%** (Fixed Surcharge) | **17.16%** (Fixed Surcharge) |
| **Target Entities** | Legacy Entities | All Domestic Companies | New Manufacturing Co's |
| **MAT Applicability** | Applicable (15%) | **Exempt** | **Exempt** |
| **Exemptions & Deductions (Chapter VI-A)** | Fully Available | **Forfeited** (e.g., SEZ, Additional Dep.) | **Forfeited** |

**Strategic Recommendation:** For SaaS, IT, and Service-based startups with minimal capital asset depreciation or Special Economic Zone (SEZ) benefits, transitioning to Section 115BAA is almost universally mathematically superior, primarily due to the permanent exemption from MAT.

## 3. Startup India (DPIIT) Specialized Tax Architecture

Recognized tech and innovative startups unlock sovereign fiscal advantages that dramatically alter early-stage cash burn rates.

### 3.1. Section 80-IAC: The 100% Tax Holiday

Eligible DPIIT-recognized startups (incorporated between April 2016 and March 2025) may apply to the Inter-Ministerial Board (IMB) for a 100% deduction of profits.

- **Benefit:** Zero corporate income tax for any **3 consecutive years** out of the first 10 years since incorporation.
- **Strategy:** Defer election until the company breaks even and achieves substantial EBITDA, maximizing the absolute rupee value of the tax holiday.

### 3.2. Section 79: Carry Forward of Losses

Standard corporations forfeit accumulated losses if there is a $>$ 51% change in shareholding (typical during VC funding). Eligible startups are exempt from this stricture, allowing them to carry forward and set off losses against future profits even after massive dilution, provided the original founders remain shareholders.

## 4. Executive Compensation & ESOP Tax Optimization

The remuneration of Directors, Founders, and Key Managerial Personnel (KMP) must be structured to minimize the combined tax burden on both the Company and the Individual.

### 4.1. Salary vs. Professional Fees vs. Dividend

- **Director Remuneration (Section 192 vs. 194J):** If a founder is an Executive Director on payroll, TDS is deducted as Salary (Sec 192), and the company claims it as a business expense. If operating as a Non-Executive Consultant, TDS is at 10% (Sec 194J), triggering GST applicability under reverse charge.
- **Dividend Distribution:** Dividends are no longer subject to Dividend Distribution Tax (DDT) at the company level. They are entirely taxable in the hands of the shareholder at their applicable slab rates, making heavy dividend payouts highly inefficient for founders in the 30%+ surcharge bracket.

### 4.2. ESOP Taxation Deflection

Employee Stock Ownership Plans face dual taxation:

1. **At the time of Exercise:** Taxed as "Perquisite" (Salary) on the difference between Fair Market Value (FMV) and Exercise Price.
2. **At the time of Sale:** Taxed as "Capital Gains" on the difference between Sale Price and FMV at the time of exercise.

**STRATEGIC FISCAL INSIGHT**

For DPIIT-eligible startups, the government permits the **deferment of TDS on the perquisite tax** for up to 48 months, or until the employee leaves the company, or until the shares are sold—whichever is earliest. This prevents the severe cash-flow crisis of an employee paying massive taxes on illiquid shares.

## 5. Cross-Border Taxation & Transfer Pricing

With globalization, cross-border remittances face intense scrutiny.

### 5.1. DTAA & Withholding Tax (TDS under Section 195)

Any payment made to a non-resident (e.g., US-based software servers, foreign marketing agencies) triggers Section 195 withholding tax.

- **Optimization:** To avoid the draconian 20% default TDS, the foreign vendor must provide a **Tax Residency Certificate (TRC)** and Form 10F. This allows the Indian entity to apply the beneficial rates (often 10% or 15%) stipulated in the Double Tax Avoidance Agreement (DTAA) between India and the vendor's country.

### 5.2. Transfer Pricing (Arm's Length Principle)

If an Indian company bills a foreign parent/subsidiary (e.g., an Indian dev center billing a US C-Corp), the transaction must occur at an **Arm's Length Price (ALP)**.

- **Requirement:** Form 3CEB must be filed by a Chartered Accountant, backed by a robust Transfer Pricing Study comparing the margins with unrelated market comparables. Artificial profit shifting out of India will trigger massive penalties under Section 271AA.

## 6. Indirect Tax (GST) Architecture

Goods and Services Tax (GST) optimization is entirely reliant on the seamless flow of Input Tax Credit (ITC).

| GST Mechanism | Strategic Advisory |
|---|---|
| **ITC Reconciliation** | Ensure vendors file GSTR-1 on time. ITC cannot be claimed if it does not reflect in the company's GSTR-2B, leading to severe working capital blockage. |
| **Export of Services (LUT)** | Software/Services provided to foreign clients qualify as "Zero-Rated Supplies". File a Letter of Undertaking (LUT) in Form GST RFD-11 annually to export without paying IGST upfront. |
| **Cross-Charge / ISD** | For companies with branches in multiple states under different GSTINs, corporate office expenses (e.g., HR, IT servers) must be cross-charged to branch offices to legally distribute ITC. |
| **Reverse Charge (RCM)** | Legal fees, sponsorship, and certain import of services require the company to pay GST directly to the government under RCM, which can immediately be claimed back as ITC. |

## 7. The Fiduciary Tax Calendar

Delayed tax remittances do not merely incur 1%-1.5% monthly interest; they invite systemic audits.

| Statutory Payment / Return | Strict Deadline | Default Consequence |
|---|---|---|
| **TDS Remittance** | 7th of Next Month | 1.5% per month interest. |
| **GST Remittance (GSTR-3B)** | 20th of Next Month | Interest + Input Tax Credit blockade. |
| **Advance Income Tax** | 15th (Jun, Sep, Dec, Mar) | 1% per month under Sec 234B/234C. |
| **TDS Quarterly Returns** | 31st (Jul, Oct, Jan, May) | INR 200 per day late fee (Sec 234E). |
| **Corporate Income Tax Return** | 31st October | Disallowance of loss carry-forward. |
| **Transfer Pricing Audit** | 30th November | 2% of international transaction value. |

**GAAR & REGULATORY ALERT**

**The GAAR Mandate:** The General Anti-Avoidance Rules allow tax authorities to disregard any corporate arrangement whose "main purpose" is obtaining a tax benefit and lacks "commercial substance." Incorporating shell entities in tax havens solely for routing investments will result in immediate voiding of treaty benefits under the Principal Purpose Test (PPT).

## Architect Fiscal Resilience

As a premier consulting and legal advisory firm, **Startup Solicitors LLP** merges Big 4 tax structuring methodology with agile legal compliance. We provide end-to-end architecture for corporate tax optimization, cross-border M&A structuring, and defensive litigation before the Income Tax Appellate Tribunal (ITAT).

**HQ:** 47 B, Shipra Path, SMS Colony, Mansarovar, Jaipur 302020
**National Presence:** New Delhi | Mumbai | Dehradun

**Direct Tax Partner Helpline: +91-9461620002**
**Email: info@startupsolicitors.com**