

Tax - considerations for a foreign listing

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- Tax considerations for a foreign listing
- Comparison of stock exchanges
- Relevant matters in case of listing
- Key challenges for Indian Companies
- Structuring Issues – Key considerations

Indian companies investing abroad

- **New Direct Tax Code**

Has proposed **Controlled Foreign Corporation (CFC) rules** which include if a foreign company is listed on stock exchange it is expected to be exempt from CFC regime but details have not spelt out.

- **Example**

An Indian company investing abroad and having a holding company for example listed in the United Kingdom, the holding company is expected to be exempt from CFC regime. It is not clear yet what the exact conditions are.

Foreign companies investing in India

- **New Direct Tax Code**

Has proposed **General Anti Avoidance Rules (GAAR) rules** which include if foreign company is listed on stock exchange it is expected to be exempt from GAAR regime but details have not spelt out.

- **Example**

An US company investing in India and having a holding company for example in Mauritius. If the Mauritius holding company is listed it is expected to be exempt from GAAR regime. It is not clear yet what the exact conditions are.

Question(s)

- **Listing on a regulated stock exchange**

CFC and GAAR provisions would not get triggered a.o. in case the foreign company is listed on a **regulated stock exchange** for example London Stock Exchange (LSE) but not Alternative Investment Market (AIM).

- LSE is an EU regulated market
- AIM is an exchange regulated market

Comparison of stock exchanges

Key global listing venues

- London Stock Exchange
- NY Euronext (Europe)
- Nasdaq
- HKSE

Comparison of stock exchanges



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Overview of regulatory comparisons

- Corporate Governance
- Free float
- Accounting Standard
- Accounts
- Working capital statement
- Sponsor
- Remuneration
- Reports
- Competent Authority
- Inside Information

Relevant matters in case of listing



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Listing requirements: AIM vs Main Market

- Corporate Governance
- Free float
- Accounting Standard
- Accounts
- Working capital statement
- Sponsor
- Remuneration
- Reports
- Competent Authority
- Inside Information

Key challenges for Indian Companies



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Key challenges

- Dual listing requirement in India
- What is in and what is out – listing perimeter and group separation
- Working capital
- Reporting systems and controls
- Corporate governance
- Audit implications

Part 1

- Foreign Exchange Regulations
 - Setting up of an overseas structure
 - Setting up of an overseas company – RBI approval?
 - Liberalised remittance scheme
 - A non resident can setup the overseas structure
 - Investment into operational company
 - Compliance with pricing guidelines
 - Acquisition for consideration
 - Funding
 - NBFC regulations
 - Compliance with FDI guidelines

Structuring Issues – Key considerations

Part 2

- SEBI Regulations (for Indian listed companies)
 - Investment into operational company
 - Trigger of open offer / availability of exemptions under SEBI Takeover code
 - Trigger of disclosure requirements under Listing Agreement and other SEBI Regulations (incl. SEBI Takeover code)
 - New takeover regulations – future compliance requirements

Part 3

- Income tax
 - Investment into operational company
 - Transaction costs
 - Setting up of overseas structure
 - New tax regime: CFC provisions
 - Entire structure
 - Anti avoidance generally and section 93 (divestment)
 - New tax regime: GAAR regime

Part 4

- Indian tax – recent trend
 - Entire structure
 - Judgements of Indian authorities require substance: Hutch-Vodafone, Aditya Birla
 - Substance required for tax treaty benefits
 - GAAR and CFC provisions also targeted towards this approach
 - Investment through “tax havens” under scrutiny

Part 5

➤ Jurisdictional concerns

- Entire structure

- Overseas companies - tax efficiency of income streams: dividend, interest, capital gains
- Relevant company law regulations (formation, winding up, liquidation, etc)
- Foreign exchange control regime, if any
- Incorporation and annual compliance / maintenance cost

Part 6

➤ Others

- Entire structure
 - Stamp duty implications
 - Compliance under Companies Act, 1956
 - Accounting aspects – standalone and consolidated financials

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