

## **TAXATION & COMPLIANCES BY INDIAN BRANCH OF FOREIGN COMPANY**

### **MEANING OF BRANCH OFFICE**

1. It is an extension of Head Office with the right to accrue income in India and has no separate legal standing of its own.
2. It can export/import goods, render professional/consultancy and information technology services, carry out research work in line with parent activities, promote technical & financial collaboration, represent the parent company in India, act as buying/selling agent, and render technical support for the products of the parent company.
3. The liability of the Branch is unlimited. The assets of the parent company are at risk of attachment if the liability of the branch exceeds its assets.
4. Branch offices are managed by an Authorized Representative, resident in India (Country Manager).
5. From taxation perspective, a branch of a foreign company is deemed to be a 'business connection' of its parent, and thereby constitutes a taxable permanent establishment of the foreign enterprise.
6. The entire expenses in India will be met either out of the funds received from head office through normal banking channels or through income generated by it in India.
7. It cannot expand its activities or undertake any new trading, commercial, or industrial activity other than expressly approved by the RBI.

### **PERMITTED ACTIVITY OF BRANCH OFFICE IN INDIA**

1. Export/Import of goods
2. Rendering professional or consultancy services.
3. Carrying out research work, in which the parent company is engaged.
4. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
5. Representing the parent company in India and acting as buying/selling agent in India.
6. Rendering services in Information Technology and development of software in India.
7. Rendering technical support to the products supplied by parent/group companies.
8. Foreign Airline/shipping Company.

### **PROHIBITED ACTIVITY OF BRANCH OFFICE IN INDIA**

1. Retail trading activities of any nature is not allowed for a Branch Office in India
2. A Branch Office is not allowed to carry out manufacturing or processing activities in India, directly or indirectly.
3. Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes.

### **COMPLAINCE FOR ESTABLISHMENT OF THE BRANCH OFFICE IN INDIA**

#### **➤ RBI Master Circular Jan 2016:**

1. The permission to set-up a BO has to be obtained by the RBI under the FEMA, 1999 provisions. RBI provides guidelines to be followed for establishing a BO; the former also reserves the right to reject an application on the non-fulfilment of the same. The Applications are to be made in form FNC and

are considered by the RBI under two routes determined by the degree of Foreign Direct Investment (FDI):

- The Reserve Bank Route: taken when the principal business of the foreign company falls under sectors where 100% FDI is permissible.
  - The Government Route: when the sectors do not permit 100% FDI investment. The RBI considers applications under this in consultation with the Ministry of Finance of India.
    - The branch office does not have any ownership.
    - Must have a three-year record of profitable operations in the home country; and,
    - Must have a minimum net worth verified by the most recent audited balance sheet or Financial Statement:
      - ✓ For Branch Office — not less than USD 100,000 or its equivalent.
      - ✓ For Liaison Office — not less than USD 50,000 or its equivalent.
  - Audited Balance Sheet or Account Statement Certified by a Certified Public Accountant or any “Registered Accounts Practitioner”.
2. The RBI Master Circular of 2016 provides two of the documents that have to be attached:
- English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy / Notary Public in the Country of Registration.
  - Latest Audited Balance Sheet of the applicant entity.”
3. The BO hence, once approved by the RBI, will be allotted a Unique Identification Number (UIN). Once the offices have been set up, the BO must also obtain a Permanent Account Number (PAN) from the Income Tax Authorities. This should be reported in the Annual Activity Certificate (AAC) that the BO is required to present at the end of each year to show that the activities are undertaken in the permitted categories only.

### **Process of Registration**

1. **STEP – I:** The application for registration in **Form FNC- 1** (As attached in PDF) in three copies along with all the above mentioned documents should be forwarded to the RBI by a designated **AD Category – I Bank**.
2. **STEP – II:** the liaison office must also obtain a Permanent Account Number (PAN) from the income tax department and a Unique Identification Number (UIN) from the RBI.
3. **STEP – III:** Approval process generally takes 20 to 24 weeks and permission to operate a liaison office is granted for a three-year period, which can be extended at a later date (maximum three year extension).

### **PROCEDURE AFTER GETTING THE RBI APPROVAL:**

Every BRANCH office registered with RBI shall get itself registered with the Ministry of Corporate Affairs; it is a registration by the BRANCH office as an establishment of foreign company in India. On such registration a CIN i.e. Corporate Identity Number is allotted by the Registrar of Companies.

**The following documents shall be filled with the Registrar of Companies:**

1. Form FC-1
2. Charter, statutes or memorandum and articles of association or other Instrument constituting or defining the constitution of the company
3. If the above documents are not in English then the translated version of the documents.
4. Director(s) details – individuals
5. Director(s) details – bodies corporate
6. Reserve bank of India approval letter
7. Secretary(s) details
8. Power of attorney or board resolution in favor of the authorized representative(s).
9. Companies have to file annually and periodically documents as mentioned above.

**PERIODIC REPORTING BY BRANCH OFFICE:** Need to inform ROC of certain changes as and when made in form FC-2

1. Intimating any change in constitution of Foreign Company to RBI & ROC
2. Intimating any change in Directors of Foreign Company to RBI & ROC
3. Intimating each and every change in the BRANCH office to RBI & ROC
4. No additional place of business can be started unless approval is taken from RBI.
5. No additional activity can be started unless approval is taken from RBI.

**REPATRIATION OF FUNDS**

1. Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes.

**CLOSURE OF BRANCH OFFICE**

Branch office licenses is given for three years, if at any time the Company plans to close the BRANCH office setup in India it shall file the necessary documents with the Authorized Dealer, and the application for the closure shall be forwarded by the Authorized Dealer.

1. Copy of the Reserve Bank's permission/ approval from the sectoral regulator(s) for establishing the BO / LO.
2. Auditor's certificate- I) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets; ii) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc., of the Office have been either fully met or adequately provided for; and iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained un- repatriated to India.
3. No-objection / Tax Clearance Certificate from Income-Tax authority for the remittance/s.
4. Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending and there is no legal impediment to the remittance.
5. A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 1956, in case of winding up of the Office in India.
6. Any other document/s, specified by the Reserve Bank while granting approval.

**TAXATION AND ACCOUNTING OBLIGATIONS**

1. Branch office is liable to pay minimum base rate of tax @ 41.2%
2. Dividend distribution is free for a branch office.

3. Tax Obligations applicable are Income Tax, withholding taxes etc. for branches.
4. Provisions of Transfer pricing are applicable for branches.
5. AnnualAccounts of Branches are required to be audited by a Chartered Accountant of India.

#### **STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH**

1. Yearly filings include the filing of audited accounts of Branch Office, World Accounts with Registrar of Companies.
2. Yearly submission of Activity Certificate with RBI and AD Bank.
3. Annual return with the Income Tax Department.
4. Filing of Quarterly/ Monthly TDS returns, GST Returns

• **Other Legal Obligations / Provisions:**

1. The Branch Office will not accept any deposits in India
2. The commission earned by the Branch Office from parties abroad for any agency business will be repatriated to India through normal banking channels.
3. The Branch office shall not undertake any retail trading activity
4. A Branch Office is not allowed to carry out manufacturing or processing activities in India, directly or indirectly.
5. The Branch Office is not allowed to borrow locally unless the prior approval of RBI is given.