

Recent Changes in FDI Regulations

Organiser
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Outline

- ❑ Major Regulatory Changes
- ❑ Mode of Investment
- ❑ Planning India Investment

ON THE ANVIL

Major Regulatory Changes

Understanding Regulatory Environment

- ❑ Most laws originate from British Laws
- ❑ Procedure Driven
- ❑ Failures to comply usually leads to penalty and sometimes prosecution
- ❑ Stacked in favor of labour (*blue collar staff*)
- ❑ Fine reading and interpretation is the norm

Policy Framework – In the horizon

- ❑ Direct Tax Code **(April 1, 2011)**
- ❑ New Companies Law Amendment Bill **(awaited)**
- ❑ Indirect Taxes - Goods & Services Tax **(April 1, 2011)**
- ❑ International Financial Reporting Standards (IFRS) **(April 1, 2011)**
- ❑ Insurance Laws (Amendment) Bill
- ❑ Banking Regulations (Amendment) Bill

Direct Tax Code (DTC)

- ❑ **Tax rates** rationalized - corporate to pay a reduced tax of 25 per cent
- ❑ Tax on **royalties** enhanced - 20 per cent on gross payment
- ❑ Domestic companies to still pay a *dividend distribution tax* at 15 per cent. Similarly, foreign companies to pay **branch profits tax** at 15 per cent of post tax profits
- ❑ Fresh tax **exemptions** to be 'investment linked' rather than 'profit linked'

Direct Tax Code (DTC)

- Introduction of **General Anti Avoidance Rule** ('GAAR') wherein commercial expediency of international transactions can be challenged by the authorities; primarily to check contentious issues viz. check round trip financing, lifting of corporate veil etc
- Provisions of DTC to have overriding effect over past **tax treaties** signed by India

New Companies Law Amendment Bill 2008

- Introduction of **One Person Company (OPC)**

OPC can be formed for charitable purpose as well

- Companies can be struck off if **business not commenced** within 180 days of incorporation
- One **Resident Director** mandatory for all companies
- A **Whole-Time Director** not to hold office in more than one company unless permitted by the company

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Indirect Taxes

- Central Sales Tax/ VAT & Service Tax – to be merged into a single **Goods & Service Tax** ('GST') by April 1, 2011

International Financial Reporting Standards (IFRS)

- India to fully converge with IFRS by **April 1, 2011**

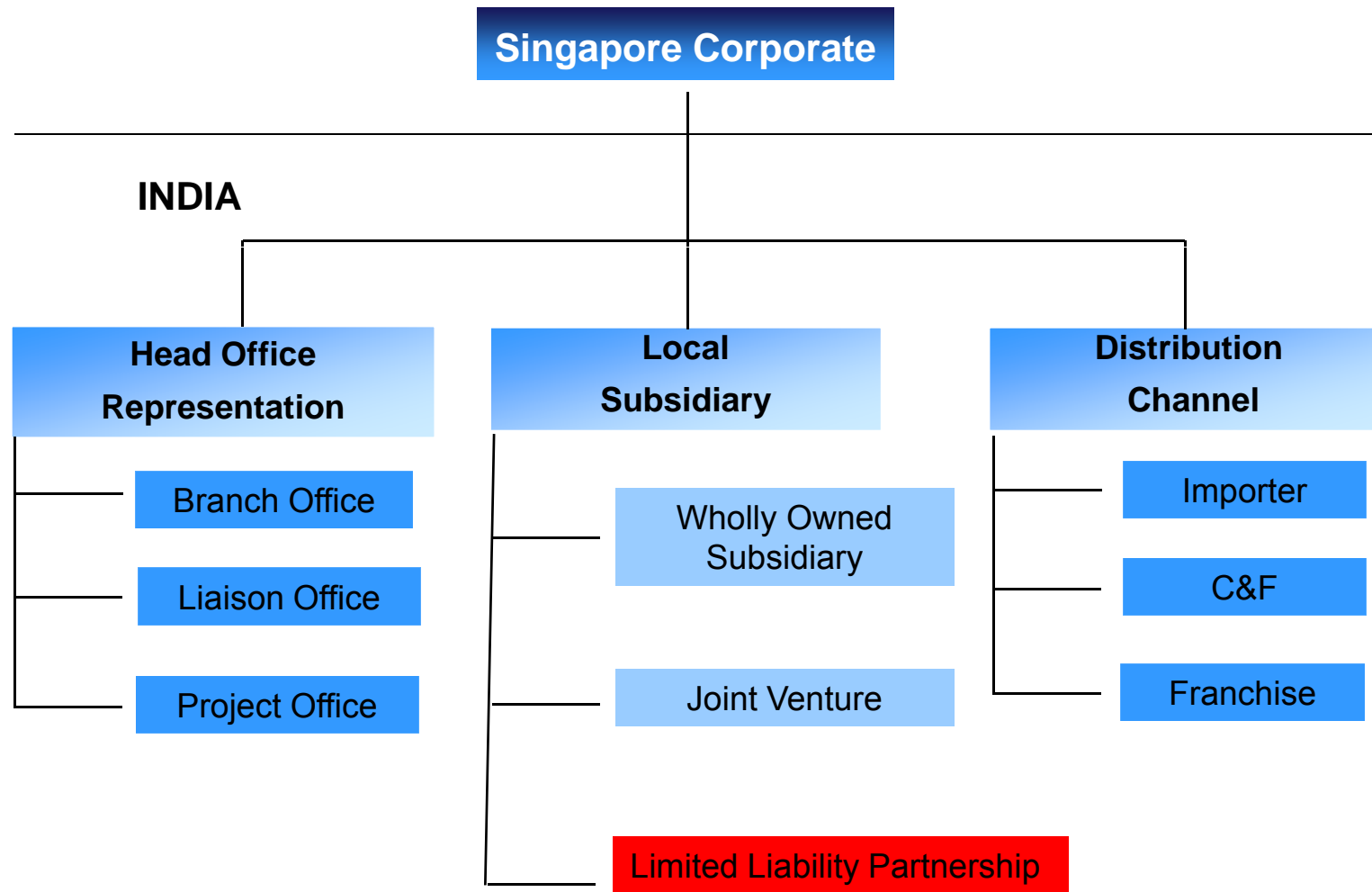
- Will apply to all **public listed companies** and those with turnover exceeding USD 25 million

- Paradigm shift in the basis of recording transactions
 - Impresses substance over form
 - Adequacy of disclosures

INDIA ENTRY

Mode of Investment

INDIA ENTRY - Mode of Investment



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INDIA ENTRY - Alternate Entity Comparison

	Corporate [CO]	Liaison Office [LO]	Project Office [PO]	Branch Office [BO]
Characteristics	Share capital owned by parent company	No commercial activities allowed	Temporary site office, specific projects	Commercial activities allowed
Status	Shareholders	Foreign Company	Foreign Company	Foreign Company
Tax Rate	30% +	Non Taxable	40% +	40% +
Control	Board of Directors	Parent Company	Parent Company	Parent Company
Set-up	FIPB Approval / Automatic Route (4-6 weeks)	RBI approval (4 weeks)	RBI approval (4 weeks)	RBI approval (4 weeks)
Closure	ROC (6-9 months)	RBI (3 months)	RBI (3 months)	RBI (3 months)

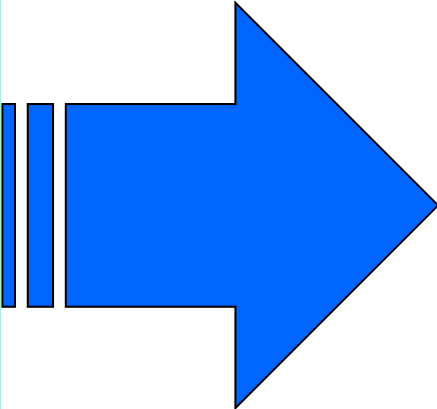
RBI – Reserve Bank of India
FIPB – Foreign Investment Promotion Board
ROC – Registrar of Companies

Joint Venture Project vs Wholly Owned Subsidiary

- PROS
 - Operating Infrastructure
 - Ready Distribution Channel
 - Government Dealing
 - Labor Management
- CONS
 - Management and Control
 - Dilution of Profits
 - Protection of Technology, Trademarks and Trade Names

Significant Issues & Changes Planning India Investment

LO/BO – Change in Regulatory Compliance

Permission	Existing Rules		New Policy
Applications for Setting-up a BO/LO In India	Submit with RBI		submit with your banker who shall verify, recommend and forward to the RBI.
Extension of LO	LO which are initially allowed for a period of 3 years, to seek RBI approval for further extension.		Your banker can verify and directly permit an extension.
Closure of LO/BO	Approval from RBI to repatriate funds		Your banker can permit repatriation of funds
Activity Report	submitted with RBI		submitted with your banker and with Directorate General of Income Tax (International Taxation)

INVESTMENT STRATEGY

Existing Collaboration(s) in India can restrict your entry plans

- ❑ Do you have an existing joint venture with an Indian partner for the very field in which you now intend to set-up business in India?
- ❑ Do you have an existing technology collaboration with an Indian partner for the same field in which you intend to do business in India?

Press Note 1 (2005 Series)

If yes, a 'No Objection Certificate' is mandatory from the existing Indian Partner and prior approval is required from the Foreign Investment Promotion Board of India

Prior Approval For Foreign Investment

Foreign Investment	Existing Rules	New Policy
Where total project cost < / = Rs 6 billion and sectoral caps apply	Foreign Investment Promotion Bureau ('FIPB') approval	FIPB Approval still needed
Where total project cost > Rs 6 billion upto Rs 12 billion	Cabinet Committee on Economic Affairs ('CECA') approval	Only FIPB Approval would be required upto USD 261 million
Investment in any sector / activity earlier under approval route and approval granted	Further investment required FIPB / CECA approval	No approval from FIPB / CECA
Investment in sector / activity where prior approval (Press Note 18/98 or 1/2005 obtained) granted	Further investment still required prior approval from FIPB / CECA	No further approval to be obtained from FIPB/ CCEA for undertaking new ventures in the same field

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TRANSFER PRICING

□ Arm's Length price ('ALP')

Any income arising from an international transaction between associated parties to be computed having regard to ALP

ALP means a price which is applied in a transaction between persons other than associated enterprises

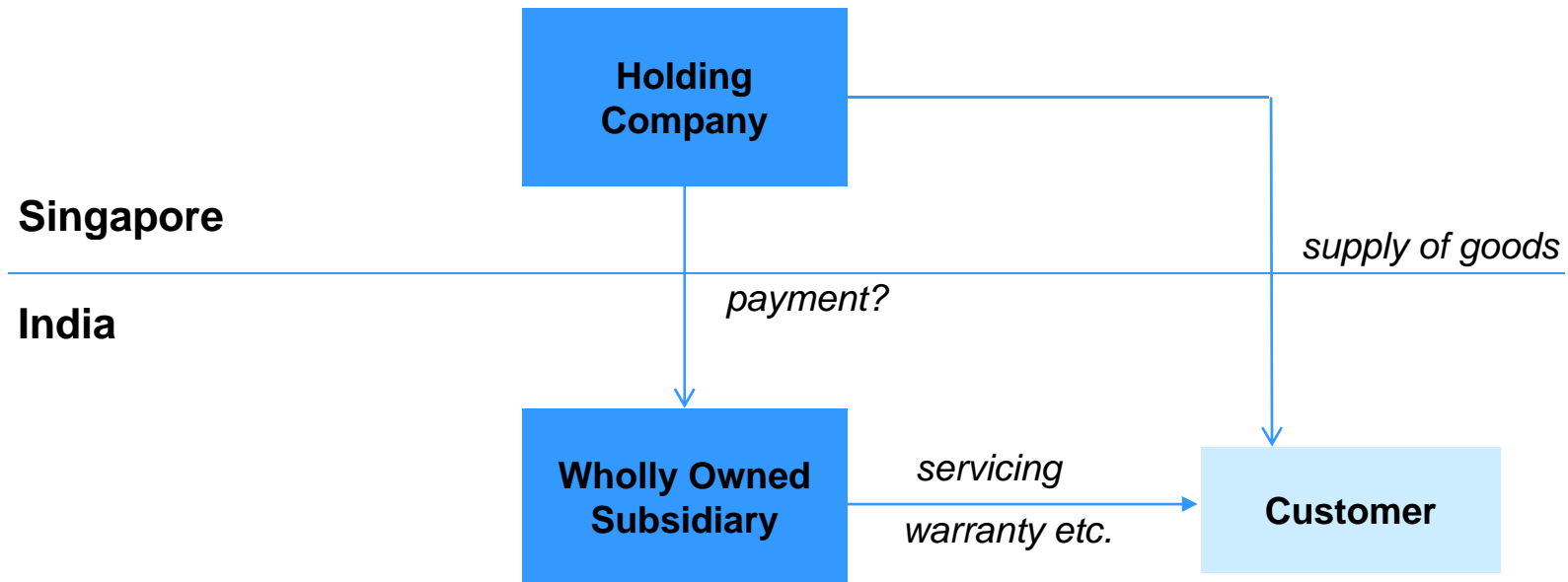
□ Associated Enterprise ('AE')

Participation in management or control or capital of other enterprise

Directly through intermediaries

TRANSFER PRICING

Determining the appropriate pricing for intra - group transactions



Transfer Pricing Issue –
what should be the profit
margin of the Wholly
Owned Subsidiary?

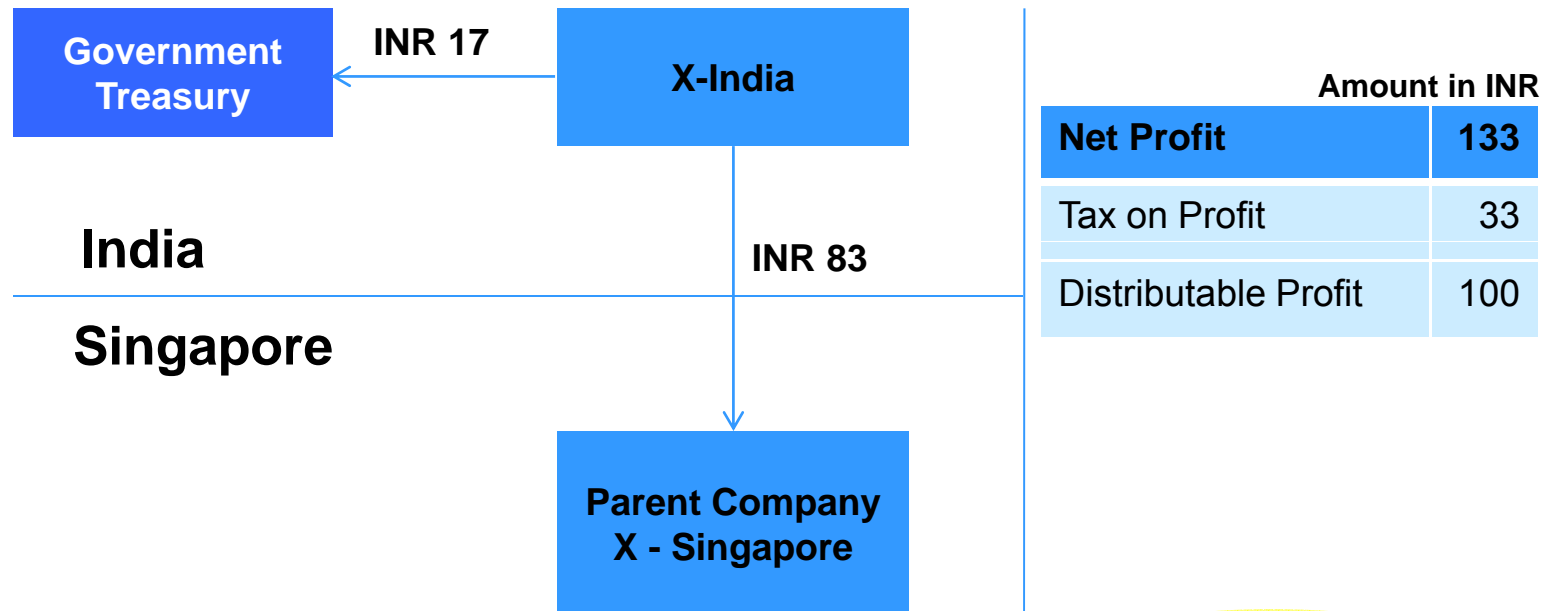
PERMANENT ESTABLISHMENT (PE) - Risk of exposure

- ❑ Foreign company operating through an agent, branch etc regarded as having a PE in India
- ❑ In certain cases, an Indian subsidiary can be classified as a PE

Where work linked to India,
India tax office can prove
existence of PE, part or entire
portion of India linked
transactions can be brought to
tax in India

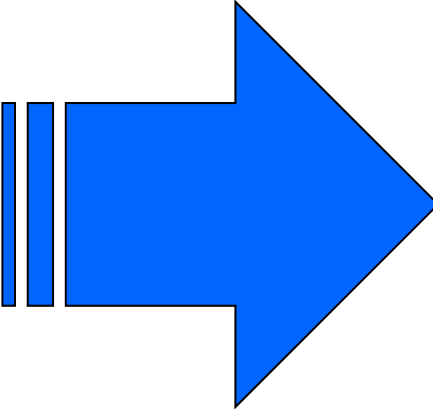
REPATRIATING PROFITS

The menace of Dividend Distribution Tax

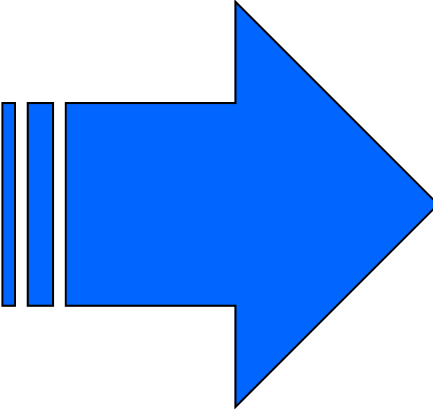


Whether the credit in respect of Dividend Distribution Tax (DDT) of INR 17 is available in the Parent Country?

Royalty / Fee for Technology / Trademark

Royalty Payment	Under existing rules, prior approval required		New Policy
Recurring royalty payments	in excess of 5% on domestic sales and 8% on exports		No approval required for one time lumpsum fee or recurring royalty payments
Lumpsum fee for transfer of technology	in excess of USD 2 million		Subject to FEMA (Current Account Transaction) Rules, 2000; Post-reporting system
Payments for use of trademark/brand name	in excess of 1% on domestic sales and 2% on exports		

Direct Receipt / Remittance of Salary

Procedure	Existing Rules		New Policy
Foreign national Resident in India / India citizen employed with foreign companies on deputation to India	Permitted to open, hold and maintain a foreign currency account with an overseas bank and receive 75% of his salary by credit to such account subject to tax. The balance salary was required to be paid in rupees in India		RBI has now permitted receipt of full salary subject to payment in taxes in India
Foreign national Resident in India			RBI has now permitted remittance of full salary subject to payment in taxes in India

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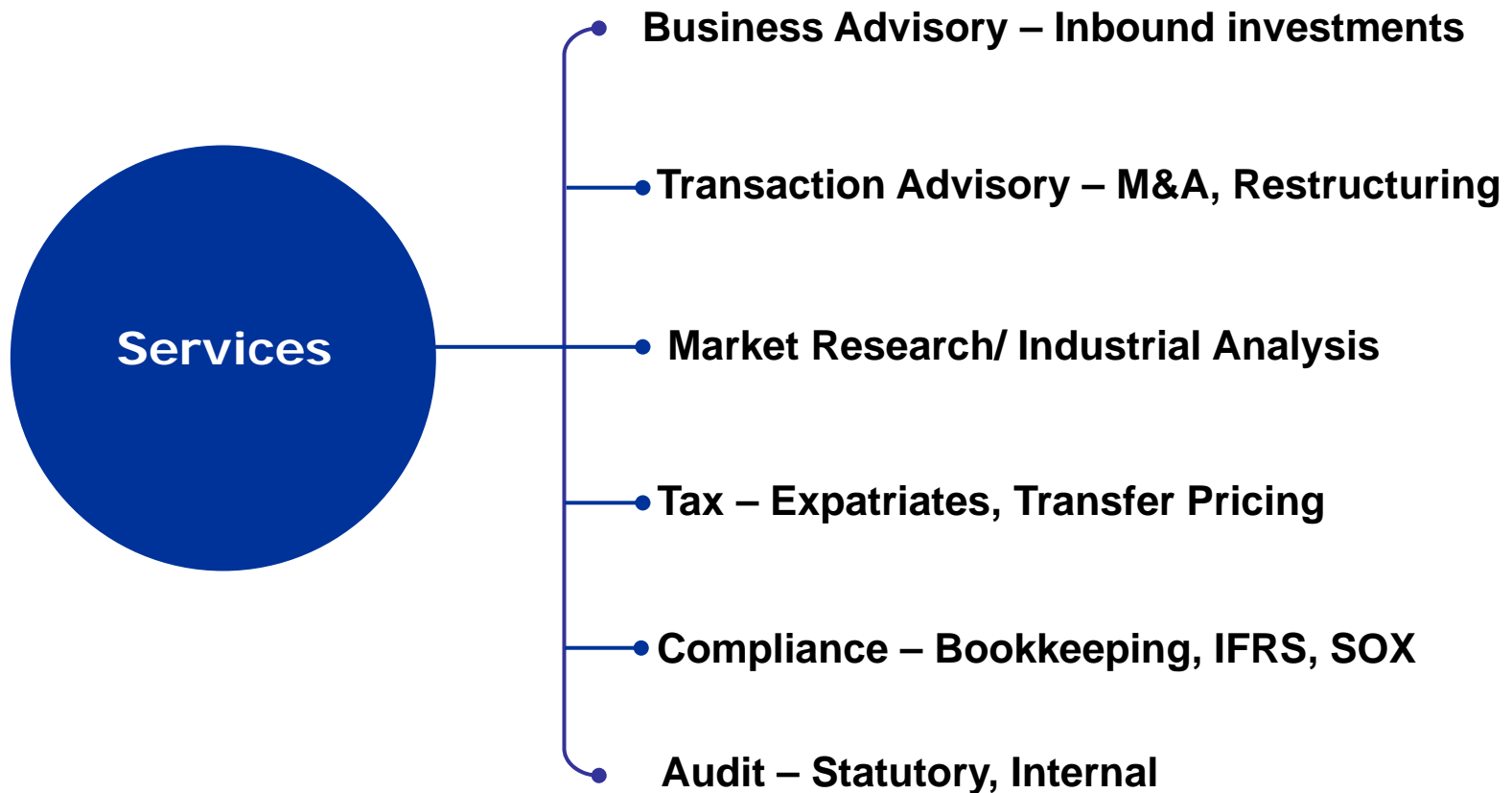
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Our Strengths

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- ❑ **ASA** - member of **NIS Global**, an international association of independent accounting firms
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- ❑ More than 20 years **work experience**
- ❑ Professional **staff strength** of over 150 in India & 1500 through associate network

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