



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

**Breaking Asian Barriers –
Media & Entertainment Industry in
India
Opportunities for UK Businesses**

25th August 2020





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Overview: Media & Entertainment Industry



Media and Entertainment Industry

- The Indian Media and Entertainment industry is the 5th largest in the world.
- Market size was USD 22.93 Billion in 2019 and is expected to reach USD 34 Billion by 2022 at a CAGR of 10%
- The industry is constituted of:
 - The front-end players who interface with the viewers
 - Supported by backend service providers who provide the content, the technology and the equipment to reach out to the viewers

The front end of the Media and Entertainment Industry is constituted of:

- Films
- Television
- Music
- Radio
- Print
- OTT Platforms
- Online Education
- Online Gaming
- Event Management

Media and Entertainment Industry

Business to Business

Rapid technological advancements have opened up myriad opportunities for the service providers to the front end of the Media and Entertainment Industry, like :

- Equipment manufacturing, sale and rental. Cameras, Sound creation, mixing and recording, Computers, Lighting, dish antennae, set top boxes, projectors, etc.
- Software creation
- Content creation
- Animation and VFX
- Web design
- Satellite uplink and downlink
- Video Editing Software,
- Visual effects through Computer Generated Imagery (CGI), Colour grading, Stereoscopic 3D conversion, etc
- Sound design, sound effects, sound mixing, ADR, Foley, etc
- Screen equipment and technologies for image and sound projection

Media and Entertainment Industry

Relevant Government Ministries

- Ministry of Information and Broadcasting
- Ministry of Culture
- Ministry of Electronics and Information Technology
- Ministry of Human Resource Development
- Ministry of Corporate Affairs
- Reserve Bank of India

Industry Associations

- Association of Radio Operators of India
- Producers Guild of India
- Indian Motion Pictures Producers Association of India
- Indian Music Industry
- Newspaper Association of India
- All India Gaming Federation
- Events and Entertainment Management Association

Films



Films

Market Overview

- Largest producer of films globally with **more than 1800 films** produced every year in various languages.
- **Size of the market** - Indian film industry reached USD 1.43 Billion in 2019 and is expected to touch USD 3.41 Billion by 2023 at a CAGR of 7.60%
- **400 production and corporate houses** involved in film production. Some of the **key domestic players** are Yash Raj Films, Viacom18, UTV Motion Pictures, Eros International Media Ltd, Reliance Entertainment, Raj Kamal Films, Shree Venkatesh Films.
- With international films being dubbed in Indian languages their market share is rapidly increasing. Seeing this trend, International Film Studios have set up office in India
- The Film Industry **provides employment** to 248,600 people in all aspects of film making.

Films

Regulatory framework

- **Ministry of Information and Broadcasting**
 - Lays down policy and regulates the function of the Media and Entertainment Industry in India
 - Promotes, subsidises and supports films which disseminate social messages, provide a clean and healthy environment and encourage the arts, through **The Films Division, National Films Development Corporation and National Centre for Children's and Young Peoples Films**
 - Regulates the viewership of films by categorizing and certifying films, through the **Central Board of Film Certification (CBFC)** in accordance with prevailing public policy as modified from time to time.

Films

Impact of COVID-19

- **Cinema halls** were the first to **shut down**, even before the lockdown started, and are expected to be amongst the last to reopen
- **Loss of employment** is rampant in all spheres of film making
- Film producers have chosen to release films on TV Channels and OTT Platforms to, at least partially, recover costs.
- The financial losses incurred across the industry have crippled many producers and exhibitors, some of whom may not survive going forward.
- Even when theatres open, social distancing norms and weakened livelihoods are likely to prevent people from thronging to cinema halls to watch movies.
- Open air Drive-In Theatres have re-opened in some cities
- Production of films has now resumed. However, as per ICRA (Investment Information and Credit Rating Agency of India) estimates a 60%-65% YoY **fall in revenues** in 2021 is expected.

Television



Television

Market Overview

- Approximately 900 Satellite TV Channels, 6000 Multi System Operators, and around 60,000 local cable TV Operators.
- Television industry broadcasted to 100 Million homes in 2018.
- **Second largest TV market in the world.** Shipment of TVs in India increased 15% annually to reach the **highest-ever** level of 15 Million units **in 2019**.
- Direct-to-home (**DTH**) **subscription** has been **growing rapidly**, driven by content innovation and product offerings.
- **Key Players** - Zee Entertainment Enterprises, Multi Screen Media, Sun Group, Star TV, HBO, Movies Now
- **Size of the Market:** The television industry reached USD 10.22 Billion in 2019 from USD 7 Billion in 2017. The industry is projected to grow at a CAGR of 12.60% during 2018-2023.

Television

Regulatory framework

- The **Cable Television Networks (Regulation) Act, 1995** mandates that programmes as well as advertisements on TV must adhere to the codes stated therein (prohibition of attack on religions or communities, obscenity, defamation, contempt of court, among others)
- **Telecom Regulatory Authority of India (TRAI)** frames the **pricing mechanism of DTH channels**. It also **caps the time for advertisements** through Standards of Quality of Service Regulations, 2012,
- News channels are governed by the **News Broadcasters Association (NBA)**

Television

Impact of COVID-19

- **TV viewership** has **increased**, with so many people being homebound during lockdown.
- However, lack of new content has forced the channels to repeat old content. Whilst rerun of some old popular shows have led to all time high TV viewership, viewers have migrated to digital media like OTT Platforms and other internet-based channels to seek variety.
- News Channels have experienced high viewership with people wanting to keep abreast with the situation caused by the virus.
- The **Indian Broadcasting Foundation** has claimed that **advertisement** bookings have gone **down by almost 50%**. This has had a major impact on the revenues of the channel operators.
- However, with the lockdown having been lifted and new content creation having resumed, advertisers are returning, leading to a revival of the industry.
- There is also danger that post lockdown, television channels could face increased competition from digital platforms.

Radio



Radio

Market Overview

- All India Radio (AIR) is the national public radio broadcaster of India.
- The Government alone runs 450 FM channels
- There are **243 private FM channels** in India and recently, permission has been given to another 162 FM channels to operate.
- Indian policy currently states that these broadcasters are assessed a one-time entry fee (OTEF), for a license period of 10 years. Under the Indian accounting system, this amount is amortised over the 10-year period at 10% per annum. The annual license fee for private broadcasters is either 4% of revenue share or 10% of reserve price, whichever is higher.
- Private operators are allowed to own multiple channels in a city subject to a limit of 40% of total channels in the city.
- Private operators cannot broadcast news. They can only rebroadcast news from AIR as long as they do so without any changes
- **Key Players** - Prasar Bharti, Reliance Broadcast Network, Entertainment Network India, Times of India, Hindustan Times, etc
- **Size of the Market** - In 2019, radio accounted for a market size of USD 400 Million and is expected to grow at a CAGR of 16%

Radio

Regulatory framework

- **Ministry of Information and Broadcasting** invites applications for auction of FM channels and allocates radio frequencies
- Adoption of revenue sharing model by **Copyright Board** requires FM radio companies to share 2% of their net advertising revenue with music companies.
- **Impact of COVID-19**
- Radio too has suffered on account of dwindling Advertising revenue during the lockdown. Though, relatively less than the other media. Mainly because the cost of advertising on Radio is lesser than on other media.
- To support the industry, Information and Broadcasting Ministry allowed three-month extension of license fee payments without interest.

Music



Music

Market Overview

- The Indian music industry is a consortium of **142 music companies**.
- **Key Players** - Super Cassettes, Tips Industries, Saregama India, Balaji Music, Universal Music, Sony Music Entertainment
- **Digital Music Streaming Apps** - JioSaavn, Gaana, Wynk, Hungama Music, Spotify, and countless more on the internet
- Almost all music streaming apps offer free subscription with advertisements. The paid subscriptions are advertisement free. This has contributed significantly to the rapidly growing subscriber base in India.
- The aim of the music app operators is to attract as many advertisers as possible, based on a large subscriber base. This is necessary to pay the royalties to the music companies from whom they procure premium content, even for the free subscribers.
- **Size of the Market** - Music entertainment market size in 2019 was USD 246 Million and is expected to touch USD 507 Million by 2024

Music

Regulatory framework

- **Ministry of Culture** looks after music and dance in India and has setup Sangeet Natak Academy, an autonomous body to promote music, dance and drama, among other objectives.
- **The (Indian) Copyright Act, 1957**, pursuant to the amendments in 1999, 2002 and 2012 strengthens the royalty claims of musicians, lyricists and others in the field.
- Adoption of revenue sharing model by **Copyright Board** requires FM radio companies to share 2% of their net advertising revenue with music companies.

Impact of COVID-19

- The pause in recording film and non-film music during lockdown has had some impact on the music companies. Recouping fixed costs have been a challenge
- The impact on music streaming apps has been relatively lesser. Though, to some extent, advertisers have stayed away owing to the economic slowdown.
- With economic revival afoot after the lockdown, it is expected this industry will recover faster than films or television.

Print



Print

Market Overview

- India has **118,239 registered publications** (newspapers and periodicals) in each of the 22 scheduled languages of India and in many of the other languages spoken throughout the country.
- Considering the huge potential in regional print markets, national advertisers are entering these markets to reach out to a large untapped consumer market.
- **Key Players** - HT Media Ltd, Bennett Coleman and Co Ltd, Living Media India Ltd (India Today)
- **Size of the Market** - Print industry was USD 4.76 Billion in 2019 and is expected to reach USD 5.84 Billion by 2024 at a CAGR of 5.90%

Regulatory framework

- Print media in India comes under the jurisdiction of the **Ministry of Information and Broadcasting**
- **The Press Council Act, 1978** provides the legal framework to:
 - maintain and improve the standards of newspapers and news agencies, and
 - preserve and safeguard the freedom of the press

Print

Impact of COVID-19

- Fear of infection has encouraged readers to read newspapers, magazines and journals online. Being eco-friendly and cost saving, this may be of far reaching consequence in the times to come. A win-win situation.
- However, inevitably, the lockdown has had an immediate impact on advertising revenues and consequently on the ability of the print media to cover high fixed costs.
- Various media houses are forced to take extreme steps- from cutting the number of pages and **shutting down** their editions to **layoffs, salary cuts and leave without pay for employees**.
- It remains to be seen, with the lifting of the lockdown, how many readers will revert to physical copies of newspapers, magazines and journals and what impact this will have on the cost profile and revenue streams of the print media

Online Education Industry



Online Education Industry

Market Overview

- The online education market is segmented into
 - Primary and secondary supplemental education,
 - Test preparation,
 - Reskilling and certification,
 - Higher education,
 - Language, and
 - Casual learning
- **Key Players** – BYJU's, Unacademy, Gradeup, Vedantu, Toppr, Dexler, IGNOU, NIIT, Udemy
- **Size of the Market** - India is the second largest market for e-learning and is projected to hit USD 1.96 Billion with 9.5 Million users by 2021.

Online Education Industry

Regulatory framework

- **Ministry of Human Resource Development** is charged with coordination and maintenance of standards of education in India
- An online learning platform providing higher education is verified and approved by the expert committee of the UGC based on following criteria:
 - The online content should have a minimum four quadrant approach– video lectures, e-content, self-assessment, and a discussion forum.
 - Only non-technical courses can be offered online, that is, courses in the fields of engineering, law, medicine, dentistry, pharmacy, nursing, architecture, physiotherapy, applied arts cannot be offered through the online medium.
- Validity of degrees, diplomas and certificates offered through online mode of education are recognised under **University Grants Commission (Online Courses or Programmes) Regulations, 2018** ("Online Education Regulations")

Online Education

Impact of COVID-19

- Schools, Colleges and coaching centres were among the first to close and it is unlikely that they will open anytime soon. It appears the Government may take a cautious approach and wait till a vaccine is found and administered to the children.
- The closure of schools, colleges, and coaching (tutorial) centers has severely affected the revenue streams of these institutions.
- They are also grappling with the challenges of putting together online lectures to carry on with the completion of the syllabi as best as they can.
- The lockdown has accelerated the expansion of online education. Businesses in this segment are flourishing
- It is likely that this is an idea whose time has come. The Government, through the New Education Policy, 2020, recognizes this and is orienting its policies and regulations towards the promotion of online education

Online Gaming



Online Gaming

Market Overview

- India is **among the top five online mobile gaming** countries globally.
- Around 5.6 Billion mobile gaming apps were downloaded in India in 2019, the highest in the world.
- Games of skill permitted but games of chance/gambling not permitted
- **Key Players:** Tencent Games, Supercell, Dream11, Octro
- **Size of Market** - Online gaming was USD 290 Million and is expected to hit USD 1 Billion by 2021 at a CAGR of 22.10%.

Regulatory Framework

- Skill-based games are permitted under most laws,
- Games of chance are prohibited under **The Public Gambling Act, 1867** and the various gaming laws enacted by different states in India.

Impact of COVID-19

- During the pandemic, more people have turned to online games. Mobile games have seen a surge in the number of downloads and the average time spent on games has also increased.

Online Streaming Platforms



Online Streaming Platforms

Market Overview

- Online video audiences have grown from 225 million in 2018 to 400 million in 2020. Viewership is expected to hit 550 million by 2023.
- **Size of the OTT Market** India grew from USD 180 Million in 2018 to USD 227 Million in 2019.
- **Key Players** – MX Player, Disney+ Hotstar, Netflix, Amazon Prime Video, Sony Liv, Eros Now
- Nearly 95% of the video consumption in India is in the regional languages
- Online video streaming market is driven by
 - growing internet penetration (nearly 700 Million),
 - rising smartphone users (500 Million),
 - affordable data charges INR 6.70 (USD 0.09) per 1 GB vs USD 8.03 per 1 GB in the US, USD 1.40 in the UK and global average of just over USD 5.0 per 1 GB

Online Streaming Platforms

Regulatory framework

- As of now OTT platforms are **not regulated by any statutory body** and are broadcasting uncensored content .
- However, recently the government has asked streaming companies to adopt self-regulation and set up an adjudicatory body

Impact of COVID-19

- This is one industry which has benefitted by the lockdown. Viewership has increased manifold during this period.
- Multiple platforms are providing subscription-free usage of their services to induce habit formation, in the hope that this will lead to greater number of subscribers as we return to normalcy

Events Management Industry



Event Management Industry

Market Overview

- The industry was USD 750.80 million in 2017 and is expected to cross USD 1.33 Billion in 2021 at a CAGR of 16%.
- Key growth drivers are digital activation, sports leagues, rural expansion, personal events, product launches, expansion of mini-metros and below the line spends, based on a survey of 64 event management companies and 31 marketers.
- Event management has now transformed into experience creation with amalgamation of technology, innovative ideas and creative content.
- Major event management companies in India are Wizcraft, Percept, Tafcon, Cineyug, Pegasus, Procam Running, Showtime Group, WOW Events.
- This Industry employs 10 million people directly and 50 million people through allied sectors and service providers.

Event Management Industry

Impact of COVID-19

- If the film industry has it bad, then imagine the plight of an industry that is completely based on gatherings like award shows, meetings, conferences, exhibitions, competitions, music festivals, etc.
- With huge events such as Indian Premier League suspended or canceled, the event management sector is looking at huge losses.
- A survey conducted by the Events and Entertainment Management Association (EEMA) with 170 companies, found that more than 50 per cent of organizations had 90 per cent of their business canceled between March and July 2020.
- More than 100 companies, of those surveyed, had faced a revenue reduction of INR 1 crore.
- One report sees business-to-business events picking up before business-to-consumer ones, expecting a 12-16-week delay post 'normalcy' for content supply and holding of events to resume.

FDI Policy



FDI Policy: Media and Entertainment

In India, FDI can be made under two routes — the **automatic route** (i.e. no approval of Government is required) and under the **Government route** (i.e. approval of the Government is required). Under the Government route, it is necessary to obtain a prior approval of the relevant Ministry. In August, the Indian Government has further liberalized the FDI policy for the Media and entertainment industry. The current FDI sectoral limits for the Media and entertainment industry are tabulated as follows:

Sector	Limit	Route
DIGITAL MEDIA		
Uploading/ Streaming of News & Current Affairs through Digital Media	26%	Government approval (Ministry of Information & Broadcasting)
BROADCASTING CARRIAGE SERVICES		
Teleports(setting up of up-linking HUBs/Teleports);	100%	Automatic Route
Direct to Home (DTH)		
Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability);		
Mobile TV		
Headend-in-the Sky Broadcasting Service(HITS)		

FDI Policy: Media and Entertainment

Sector	Limit	Route
BROADCASTING CARRIAGE SERVICES (Con'td)		
Cable Networks(Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)). <i>Note: Infusion of fresh foreign investment, beyond 49% in a company not seeking license/permission from sectoral Ministry, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require Government approval.</i>	100%	Automatic
BROADCASTING CONTENT SERVICES		
Terrestrial Broadcasting FM(FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	49%	Government
Up-linking of 'News & Current Affairs' TV Channels		
Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels	100%	Automatic

- In the above sector, detailed conditions specified in FDI policy should be complied with*

FDI Policy: Media and Entertainment

Sector	Limit	Route
ONLINE GAMING		
Foreign Direct investment and foreign technology collaboration in any form, including licensing for franchise, trademark, brand name, and management contract is prohibited for lottery business, gambling, and betting activities	-	Prohibited
ONLINE EDUCATION		
FDI is permitted in Online education sector subject to compliance with guidelines prescribed by Ministry of Human Resource Development	100%	Automatic
Up-linking of Non-‘News & Current Affairs’ TV Channels/ Down-linking of TV Channels	100%	Automatic
SATELLITE – ESTABLISHMENT AND OPERATION		
Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100%	Government
PRINT MEDIA		
Publishing of newspaper and periodicals dealing with news and current affairs		
Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government

FDI Policy: Media and Entertainment

Sector	Limit	Route
PRINT MEDIA		
Publishing/printing of scientific and technical magazines/specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government
Publication of facsimile edition of foreign newspapers	100%	Government

- Foreign investment (FI) in companies engaged in all the afore stated services will be subject to relevant regulations and such terms and conditions, as may be specified from time to time, by the Ministry of Information and Broadcasting.
- Further, Investment from countries which share Land border with India, require prior approval of Government.
- The foreign investment (FI) limit in companies engaged in the afore stated activities shall include, in addition to FDI, investment by Foreign Institutional Investors (FIIs), Foreign Portfolio Investors (FPIs), Qualified Foreign Investors(QFIs), Non-Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entities
- **In case of Broadcasting carriage services, i) majority of Directors on the Board of the Company shall be Indian citizens. (ii) The Chief Executive Officer (CEO), Chief Officer in-charge of technical network operations and Chief Security Officer should be resident Indian citizens.**
- **100% Foreign direct investment under automatic route is permitted in sectors not specified above, such as equipment manufacturing, web content, animation and VFX, sound and screen equipment manufacturing/trading.**

Tax Regime



Taxation in the Media and Entertainment Industry

Direct Tax

- Income Tax is leviable:
 - On the profits earned by both domestic and foreign companies and
 - On income earned by individuals, whether resident or non-resident
 - At the rates prescribed in the Finance Act every year
- Foreign corporations earning income in the nature of Royalty, copyright fee, franchisee fee, fee for technical services:
 - are subject to tax at the rate of 10% or beneficial rate as prescribed under Tax treaty.
 - If tax is paid at the rate of 10% on gross income, then foreign companies (not having permanent establishment in India) are not required to file annual tax return in India.
- Taxes are required to be deducted at source and deposited with the tax department at varying rates for payments made for different services. The details are given in Annexure-1
- In the case of related parties, Transfer Pricing considerations will come into play. Details are given in Annexure – 1
- Tax rates, Withholding Tax Provisions and other Direct Tax matters are given in Annexure - I

Taxation in the Media and Entertainment Industry

Indirect Tax/Goods and Services Tax

- GST is leviable on services consumed in India. GST is charged by supplier, recovered from receiver of service and deposited with the Government on due dates
- Services supplied by a foreign entity to an Indian consumer attract GST on reverse mechanism basis. That is, the receiver of service pays the GST to the Government.
- At present there are 5 rates of GST: 0%, 5%, 12%, 18% and 28%
- Most services in the Media and Entertainment Industry attract either 12% or 18% GST
- Detailed provisions of GST are given in Annexure - II

Conclusion



Media and Entertainment Industry

Conclusion

- Almost all Business to Consumer segments of the Media & Entertainment industry are expected to grow robustly in the near term, as shown in the presentation, notwithstanding the impact of COVID-19
- This is principally due:
 - Young population, with median age 26, seeking variety in entertainment, presenting a huge market for robust growth
 - Free subscription or low cost subscription to DTH Channels, OTT Platforms, Music Apps, etc, making them accessible to a large consumer base
 - Cheap internet access
- This robust growth in the front end of the industry will drive the growth in the Business to Business segment who provide the equipment, the technology and the support to create content, produce it and present it to the audiences/viewers.
- Being aware of this burgeoning growth and its potential to generate revenue and employment, the Indian Government is continuously reviewing its FDI and Tax policies to make the sector attractive for foreign investors in the times to come

Thank You





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Tax Regime

Direct Tax – Annexure - I



Annexure –I: Direct Tax Considerations in Media and Entertainment

Income tax rates

Corporations

- Companies (Foreign company or a Domestic Company) are subject to tax on net income/profits as per applicable Corporate tax rate for the subject financial year. The recent tax rate are as follows:

Type of company	Income upto INR 10 million		Income above 10 million upto 100 million		Above 100 million	
	Surcharge	Effective tax rate	Surcharge	Effective tax rate	Surcharge	Effective tax rate
Domestic - turnover not exceeding INR 4,000 million in FY 2018-19 (claiming exemption/ incentives)	Nil	26%	7%	27.82%	12%	29.12%
All domestic companies not claiming exemption/incentives	10%	25.17%	10%	25.17%	10%	25.17%
New domestic manufacturing (set up and registered on or after 1 March 2016)	Nil	26%	7%	27.82%	12%	29.12%
New domestic manufacturing (set up and registered on or after 1 October 2019)	10%	17.16%	10%	17.16%	10%	17.16%
Other domestic companies	Nil	31.2%	7%	33.8%	12%	34.94%
Foreign	Nil	41.6%	2%	42.43%	5%	43.68%

Direct Tax Considerations in Media and Entertainment

Income tax rates

Individuals

- Taxation of individuals in India is primarily based on their residential status in the relevant tax year. The residential status of individuals is determined independently for each tax year and is ascertained on the basis of their physical presence in India during the relevant tax year and past years. Individuals are taxed as per Slab rates prescribed for each financial year by the Finance Budget.
- The following types of residential status are envisaged for an individual:
 - Resident in India, which is further divided into the following two categories:
 - Resident and ordinarily resident (ROR).
 - Resident but not ordinarily resident (RNOR).
 - Non-resident in India (NR).
- Under Indian tax laws, the scope of taxation differs as per the residential status of an individual:
 - RORs are subject to tax in India on their worldwide income, wherever received.
 - RNORs are subject to tax in India only in respect to income that accrues/arises or is deemed to accrue/arise in India or is received or deemed to be received in India or is from a business controlled in or a profession set up in India.
 - NRs are subject to tax in India only in respect to income that accrues/arises or is deemed to accrue/arise or is received or deemed to be received in India.
 - RNOR and NR individuals are not subject to tax in respect to their income earned and received outside of India.
- Taxability of sportspersons/artists, entertainers is covered under Article 17 of tax treaties (Taxation of entertainers and sportsperson). The income from personal activities of artists, as such, performed in India (i.e. performance in India) should be taxable in India irrespective of whether or not such person is an employee [Article 17(1)]. In case performance income of such person accrues not to such person but to another person/entity, such income should still be taxable in India [Article 17(2)]. This is an anti-avoidance provision part of tax treaties.

Direct Tax Considerations in Media and Entertainment

Sector	Tax
BROADCASTING	
<p>TV Advertisements</p> <ul style="list-style-type: none"> • Payment made by advertiser to advertising agency subject to <u>withholding tax</u> • Payment made by advertisement agency to broadcaster not subject to <u>withholding tax</u> • Amount retained by Advertisement agency for booking, procuring and canvassing advertisements while making payment to broadcaster not subject to withholding tax 	<p>Withholding tax (WT) rate of 2%</p> <p>No Withholding tax rate</p> <p>Nil tax rate</p>
<p>Band placement fees</p> <p>Fee paid by Broadcasters to multi-system operators/cable operators- withholding tax is applicable , however, dispute in rate (Royalty as per revenue and contractual payment as per taxpayer)</p>	<p>As per Revenue- WT of 10%</p> <p>As per Taxpayer- WT of 2%</p>
<p>Content Payment</p> <ul style="list-style-type: none"> • Payment by broadcasters to production houses for production of <u>specified content-</u> subject to <u>withholding tax as contractual payment</u> • Payment by broadcasters to production houses for production of purchase of <u>predeveloped content-</u> Subject to <u>withholding tax as royalty or fee for technical services</u> 	<p>WT of 2%</p> <p>WT of 10%</p>

Direct Tax Considerations in Media and Entertainment

Sector	Tax
BROADCASTING	
<p>Transponder Fees Payment made by broadcasters to satellite companies for transmission of television signals- transponder fees- royalty subject to withholding tax</p>	WT rate of 10%
<p>Foreign Telecasting Companies A foreign broadcaster telecasting its channel in India is mandatorily required to appoint an Indian company as its representative in view of the guidelines issued by the Ministry of Information and Broadcasting. Income is taxable as “Royalty”. Courts have held, that operations have created Dependent Agency Permanent Establishment and net income is taxable as per the rate applicable to foreign companies.</p>	<p>WT at 10% if Royalty WT at 40% if PE is created on profits attributable to PE</p>
PRINT	
<p>Foreign News Agency Income not taxable in India if activities are confined to collection of news and views in India for transmission out of India</p>	Exempt

Direct Tax Considerations in Media and Entertainment

Sector	Tax
FILMS	
<p>Indian film shot overseas With regard to Indian film shot in overseas jurisdiction, the fee paid by Indian producer to the line producer for assisting in shooting in respective jurisdiction is not subject to tax in India.</p>	No WT
<p>Foreign film shot in India</p> <ul style="list-style-type: none"> Income of foreign producers not be taxable in India in respect of operations confined to shooting of a film in India for transmission out of India. Foreign actors: Taxability of foreign actors under Article 17 or 18 of tax treaties (<u>Taxation of entertainers and sportsperson</u>). Income from personal activities, performed in India (i.e. performance in India) is taxable in India irrespective of whether or not such actor is an employee. In case performance income accrues not to the actor but to another person/entity, such income still taxable in India [Article 17(2)]. This is an anti-avoidance measure included in tax treaties. Individuals (e.g., foreign film actors), not domiciled in India, who visit India for purposes of business/profession and earn income from a source in India, are required to obtain a tax clearance certificate from the Revenue authorities before departing India. 	No WT Tax as per residential status of actor in India
<p>Co-production of Films Co-production of films by two separate entities may constitute an Association of Persons (AoP) which is considered a separate entity for tax purposes. The term AoP not defined under tax laws and hence, tax treatment may vary for each case.</p>	
<p>Film distribution Rights Film distribution typically involves grant of license i.e. film distribution rights. The film intellectual property continues to be owned by the film producer under this model. This right is excluded from definition of “Royalty” and no withholding tax is applicable.</p>	

Direct Tax Considerations in Media and Entertainment

Sector	Tax
ADVERTISEMENT	
<p>Equalization levy</p> <ul style="list-style-type: none"> An equalisation levy of 6% is introduced in respect of online advertisement and digital advertising space (or any other facility or service for the purpose of online advertisement) payments to non-residents, who do not have a permanent establishment in India. This levy is to be deposited by resident payers and non-residents payers having a permanent establishment in India. Equalisation levy is applicable if the aggregate amount payable to the nonresident exceeds INR 100,000 in a year. The corresponding income would be exempt from income-tax in the hands of such non-resident in India. <p>With regard to Indian film short in overseas jurisdiction, the fee paid by Indian producer to the line producer for assisting in shooting in respective jurisdiction is not subject to tax in India.</p>	<p>Equalization levy of 6%</p>
SPORTS	
<p>Sponsorship fees</p> <ul style="list-style-type: none"> Sponsorship fees is one of the key revenue streams for sports bodies/teams/players. Sponsorship arrangements include title/event sponsorship, team sponsorship, personal sponsorship of players, venue advertising etc. Sponsorship fees are business income not subject to withholding tax in the absence of a permanent establishment in India. 	<p>No withholding tax on payment to non-residents</p> <p>WT at 2% on payment to residents</p>

Direct Tax Considerations in Media and Entertainment

Sector	Tax
SPORTS	
Live coverage <ul style="list-style-type: none">• Payment for live coverage by broadcasters acquiring the broadcasting rights (including for live coverage) in respect of sports events from sports bodies/commercial rights holders, is in the nature of copyright and hence, subject to withholding tax as royalty.• There are decisions upholding the taxpayer's position that live rights do not amount to copyright and, hence, are not in the nature of royalty under the domestic tax laws/tax treaty	Withholding tax at 10% as royalty payments

Transfer Pricing Considerations in Media and Entertainment

Matter

ROYALTY PAYMENTS

Royalty paid to associated enterprises (AE) for licensing distribution rights, use of brand name etc. is aggressively scrutinized by the Revenue authorities. The onus is on the taxpayer to substantiate that the licensing rights obtained benefits the payer and ultimately, meets the arm's length principle.

CONTENT DEVELOPMENT

In case any content is being developed or localised for a third-party in India where the Associated Enterprise (AE) of the Indian content developer is also involved, the nature and degree of involvement of the AE vis-à-vis the third party needs to be examined to ascertain whether such transaction with the third-party is a 'deemed international transaction' as these transactions would then have to meet the Indian transfer pricing compliance requirements.

Tax Regime

GST – Annexure - II



Annexure II: GST Considerations in Media and Entertainment

Goods and Services Tax (GST)

INTRODUCTION

- GST is levied at the time of supply of services. Time of supply of services is the earliest of the following:
 - Date of issue of invoice
 - Date of receipt of advance/payment.
 - Date of provision of services (if invoice is not issued within prescribed period)
- Under reverse charge, the time of supply of services is the earliest of the following:
 - Date of payment
 - 30 days from date of issue of invoice for goods (60 days for services)

PLACE OF SUPPLY

- **Place of Supply of Goods**
In case of sale of food & food products in a movie hall, the place of supply is the movie hall itself.
- **Place of Supply for Services**
Place of supply of services is the location of the service recipient. In cases where the services are provided to an unregistered dealer and their location is not available, the location of the service provider will be the place of provision of service.
- **Place of Supply at Movie Halls**
Place of supply is place where the service are actually performed. i.e., movie hall itself.

Indirect Tax/GST Considerations in Media and Entertainment

Goods and Services Tax (GST)

PLACE OF SUPPLY

- Place of Supply in Events

Nature of Supply	Place of Supply
Admission to an event or amusement park or any other place. Services ancillary to above	Place where the event is held or place where the amusement park is located
Entertainment events and services ancillary to the above	Supply to: Registered person – Location of the registered person Unregistered person – Location of the event

VALUE OF GOODS AND SERVICES

The amount collected by the seller / service provider from the buyer or service recipient respectively is the value of supply.

Indirect Tax/GST Considerations in Media and Entertainment

Goods and Services Tax (GST)

ONLINE SUPPLY OF DIGITAL CONTENT (MUSIC, MOVIES, TELEVISION SHOWS ETC)

Online supplies of Digital Content (Music, Movies, Television Shows, etc.) are known as OIDAR i.e. Online Information Database Access and Retrieval services.

- **CASE 1: Both Service Supplier and Service Recipient are in India**
GST @ 18% i.e. the Service Supplier should be registered in India and shall collect GST@ 18% from the Service Recipient.
- **Case 2: Service Supplier is outside India and Service Recipient is in India**
Place of supply would be India The manner of levy of GST on such transactions would depend on whether the Service Recipient is a Business or is a Consumer i.e. Non-Business.
 - I. Service Recipient is a Business entity registered under GST**
The service recipient is liable to tax under the Reverse Charge Mechanism
 - II. Service Recipient is not registered under GST**
Service provider would also be required to get registered in India under the GST Law, collect GST from the service recipient and then deposit GST with the Govt.

EXHIBITION OF MOVIES

- Sale of Movie tickets: Where price of tickets is Rs.100 or less : 18% GST Where price of tickets is more than Rs.100 : 28% GST
- Television: GST on broadcasting services (D2H / Cable TV services) : GST at 18%
- Supply of Food and Beverages at theaters is to be treated as restaurant services GST rate of 18% in case of supply at A/c counters and 12% at non- A/c counters

Indirect Tax/GST Considerations in Media and Entertainment

Goods and Services Tax (GST)

FILM DISTRIBUTION

- Transfer of copyright for exhibition in Theatre: Treated as supply of services GST rate of 12%
- Transfer of copyright for exhibition in Television: Treated as supply of services GST rate of 12%
- Transfer of Intellectual Property (IP) right in respect of Information Technology software: GST at the rate of 18% Transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software: GST at the rate of 12%

SERVICES BY ARTISTS AND OTHER TECHNICIANS

- Services rendered by Artists: GST @ 18% on forward charge basis
- Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use of a copyright: 18% GST on reverse charge basis

SPONSORSHIP AND BRAND PROMOTION

- Liable to GST @ 18%

ADVERTISEMENT

- Print media: GST @ 5%
- Others: GST @ 18%

Availability of input tax credit on the taxes paid on the advertisements

Besides the above, GST is applicable on virtually all goods and services and the rate of tax is determined as per the subject HSN/SAC code of the product/service in question.

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