SKP

At a glance

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FOREWORD

India is among the fastest growing economies in the world. It is the third largest economy in terms of Gross Domestic Product (GDP) based on Purchasing Power Parity (PPP) and the seventh largest by nominal GDP as reported by the International Monetary Fund (IMF). According to the India's Central Statistics Office, the country's GDP for the year 2015-16 stood at 7.6%. In addition, India has a large consumer base and according to the World Bank, it will soon have the largest and youngest workforce in the world.

India ranked amongst the top 10 Foreign Direct Investment (FDI) destinations according to the United Nations Conference on Trade and Development (UNCTAD) World Investment Report 2015. The country saw an increase in FDI equity inflows of 29% from USD 30.93 billion in the year 2014-15 to USD 40 billion in the year 2015-16.

In the last two years, the Indian government has focussed on reducing red tape and increasing transparency to make the country more investor-friendly and ease doing business in India. The flagship initiative, the Make in India Campaign, has facilitated investments and aims to make India a global manufacturing hub. Recently, the Centre has also made significant changes to the FDI policy, easing norms across 15 sectors including defence, banking, construction, single brand retail, broadcasting and civil aviation. State governments have also undertaken various reforms to ease doing business in their respective states to attract investments. These initiatives amongst others has helped India jump by 12 places from 142 to 130 on the World Bank's Ease of Doing Business 2016 list.

Doing Business in India – At a glance discusses FDI and trade policies, government incentives, entity structures and tax and labour regulations and highlights key considerations for investing in India.

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FOREIGN DIRECT INVESTMENT [1]

Foreign Direct Investment (FDI) in India is governed by the Foreign Exchange Management Act, 1999. FDI in India is undertaken in accordance with the FDI Policy which is formulated and announced by the Government of India on a yearly basis. The latest Consolidated FDI Policy Circular came into effect on 7 June 2016.[2]

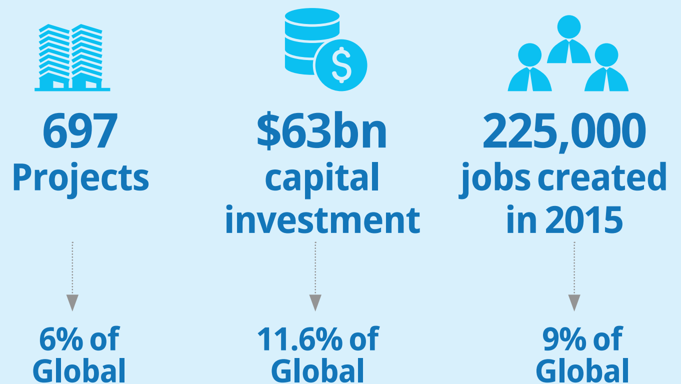
An Indian company may receive FDI either under the automatic route or the government (approval) route, as specified in the Consolidated FDI Policy Circular. For those sectors not specified in the FDI Policy, FDI is allowed 100% under the automatic route without prior approval either of the government or of the Reserve Bank of India (RBI). [3]

FDI Equity Inflows

Year	FDI Equity Inflows
2010-11	$21.4bn
2011-12	$35.1bn
2012-13	$22.4bn
2013-14	$24.3bn
2014-15	$30.9bn
2015-16	$40bn

Source: DIPP

1 India overtakes China as the top FDI Greenfield capital investment destination



6% of Global

11.6% of Global

9% of Global

Source: FDI Intelligence

100% FDI through automatic route

- Manufacturing
- Mining
- Pharmaceuticals
- Agriculture & Animal Husbandry
- Plantation Sector
- Civil Aviation Airports Greenfield projects
- Construction Development: Townships, Hsg., Built-up Infra

Sector/Activity	FDI allowed	Automatic route	Government route
Telecom Services	100%	✓	>49%
Civil Aviation Airports existing projects	100%	✓	>74%
Broadcasting Carriage Services	100%	✓	>49%
Single Brand product retail trading	100%	✓	>49%
Banking- Private Sector	74%	✓	>49%
Infrastructure Company in the Securities Market	49%	✓	-
Insurance	49%	✓	-
Pension Sector	49%	✓	-
Power Exchanges	49%	✓	-
Defence	49%	✓	>49%
Satellites-establishment and operation	100%	-	✓
Pharmaceuticals Brownfield	100%	-	✓
Multi Brand Retail Trading	51%	-	✓
Broadcasting Content Services (except Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels)	49%	-	✓
Private Security Agencies	49%	-	✓
Print Media	26%	-	✓
Banking- Public Sector	20%	-	✓

- **Industrial Parks**
- **Cash & Carry Wholesale Trading**
- **E-commerce activities (only B2B)**
- **Duty-free Shops**
- **Railway Infrastructure**
- **Asset Reconstruction Companies**
- **Credit Information Companies**
- **White Label ATM Operations**
- **Non-Banking Finance Companies**
- **Pharmaceuticals Greenfield**

GOVERNMENT INITIATIVES AND INCENTIVES

To promote India as an important investment destination and a global hub for manufacturing, design and innovation

To transform the country into a digitally empowered society and knowledge economy by bringing in public accountability

To create 100 smart cities to enhance the quality and performance of urban services

To train more than 400 million people with different skill sets

These incentives are governed by both central and state government legislation, providing capital and interest subsidies for investments in specified industries.

These incentives are mainly in the form of a VAT/Central Sales Tax refund, interest subsidies, power tariff/electricity duty exemptions, stamp duty exemptions, etc.

TRADE POLICY AND IMPORT-EXPORT CONTROLS

In India, exports and imports are regulated by the Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade Policy. The new Foreign Trade Policy 2015–2020 (FTP) was announced on 1 April 2015. It aims at creating an 'Export Promotion Mission', which will provide an institutional framework to work with state governments to boost India's exports.

Free Trade Agreements (FTAs) are an important element of India's trade strategy. A web portal on FTAs, indiantradeportal.in, provides the most-favoured nations and preferential tariff rates, rules of origin, Sanitary and Phytosanitary (SPS) standards and Technical Barriers to Trade (TBT) under various FTAs signed by India. It also captures the trade flows from major trading partners. A comprehensive list of India's FTAs can be viewed on the Department of Commerce's website[4].

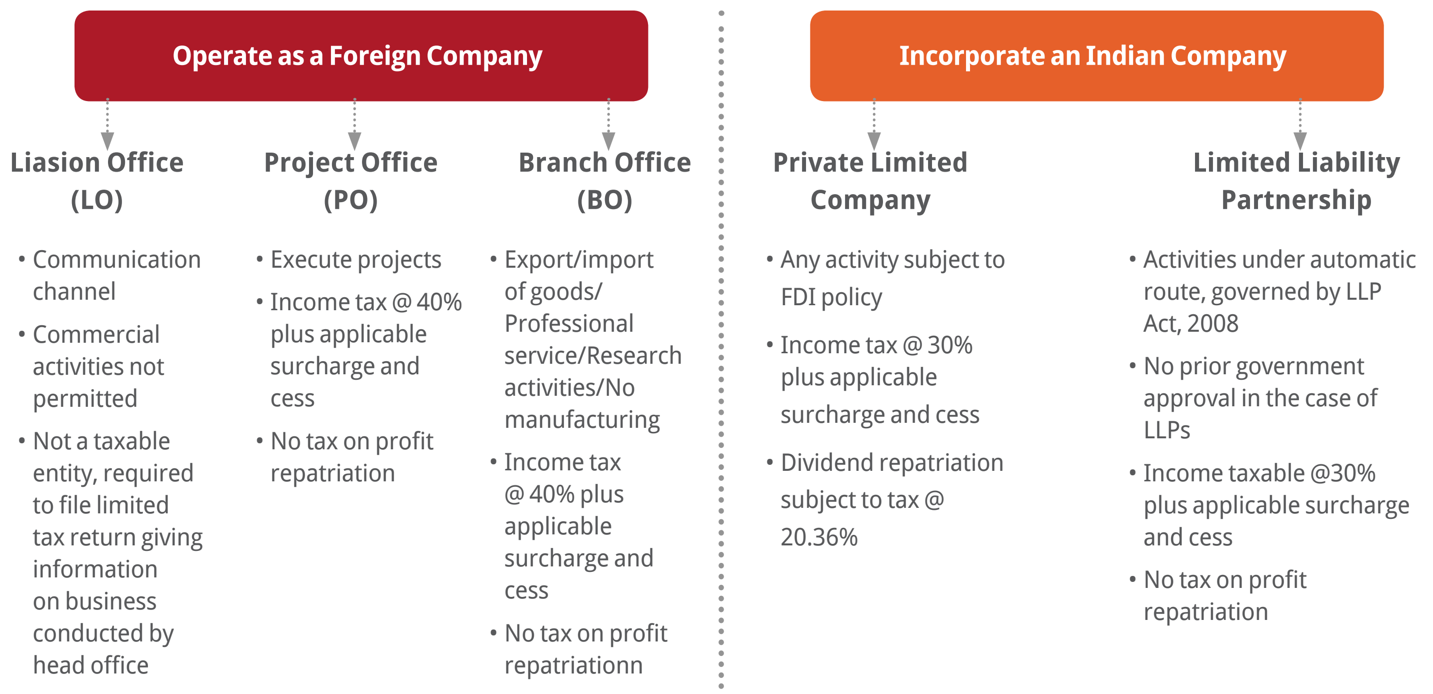
Export incentives: Special Economic Zones (SEZs) and Export Oriented Units (EOUs): The SEZ Act, 2005 aims at attracting larger foreign investments into India by providing quality infrastructure complemented by an attractive fiscal package at the centre and the state level, with minimal regulations. Incentives provided to units in an SEZ differ from state to state but may include duty-free imports of specified goods, exemptions from income tax, service tax, Central Sales Tax (CST), Minimum Alternate Tax (MAT), etc.[4]

Duty exemption schemes enable duty-free import of inputs required for export production. These include Advance Authorisation and Duty-Free Import Authorisation (DFIA). A duty remission scheme enables post-export replenishment/remission of duty on inputs used in export products and includes the Duty Drawback (DBK) scheme.

ENTRY OPTIONS FOR FOREIGN INVESTORS

A foreign company planning to set up business operations in India can incorporate a company under the Companies Act as a Private Limited Company or a Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008, a relatively new but popular concept in India.

A foreign company could also set up a liaison office/ representative office, project office or branch office, which can undertake activities permitted under the Foreign Exchange Management Regulations, 2000.



Entry through Mergers & Acquisitions (M&A)

International M&As are becoming an increasingly popular entry route as it allows a business to expand into a new market through an already established company in that region. Key rationales observed for M&As include technological collaborations/research and development, distribution and market penetration etc.

Along with enhancing the company's current business or diversifying into a new business, the added benefits of this route include easy access to a new market, established infrastructure, resources and capabilities, and know-how of the local regulatory and tax environment.

The regulations governing M&A transactions include:

1. FDI Policy, 2016
2. FEMA regulations, 1999
3. Approvals under Companies Act 1956 (Companies Act, 2013 to the extent notified)
4. Securities Law and regulations governed by Securities and Exchange Board of India (SEBI)
5. Competition Act
6. Aplicability of taxes under the Income Tax Act, 1961 and stamp duty under the Stamp Act, 1899.

While there are several positives, post-deal integration remain critical to M&As.

TAXATION

Indirect taxes

In India, indirect taxes levied by the central government include customs duty, excise duty, service tax, CST, etc. and those by the state governments include sales tax or VAT, entry tax, etc. Since the power to levy state taxes lies with the respective state governments, the tax rate and compliances of state-level taxes vary across states. In addition, there are a few local taxes, duties, cess, etc. at the municipal level such as octroi, local body tax, cess, profession tax, etc.

Payment, returns and audit

VAT, CST, excise or service tax returns must be filed monthly/quarterly/half-yearly/yearly as per the period prescribed under the respective laws.

In certain cases, it is mandatory for a registered person to get the books of accounts audited by an independent auditor (e.g. a Chartered Accountant), provided the turnover exceeds the prescribed limit (typically INR 10 million). The audit report must be submitted to the tax authorities in the specified format.

Outside India

Import of goods

Within India

1% - 20%

Entry tax/ Octroi

Customs duty

29.44%

Mfg. goods

Service Tax

15%

Service providers

Excise Duty

12.5%

Mfg. of goods and removal from factory

Central Sales Tax

0% - 2%
(against declaration form)

Inter-state sale

Sale of goods

Sale within state

0% - 20%

Value Added Tax

- Central levy
- State levy

Company taxation

All domestic companies are liable to tax in India on their global income, while foreign companies are liable to tax in India with respect to income received or deemed to be received in India, or income accruing or deemed to be accruing in India. The effective corporate tax rate (base rate + surcharge + education cess) depends on the type of the company i.e. domestic or foreign and the quantum of its taxable income in the previous Financial Year (FY) beginning on 1 April and ending on 31 March. The rate of tax surcharge and cess could be changed by the Finance Act passed every year by the Indian government.

The corporate tax structure for FY 2016-17 is as follows[6]:

Particulars	Taxable income > INR 100 mn	INR 10 mn < taxable income < INR 100 mn	Other cases
Domestic company	34.608% (30% base rate + 12% surcharge + 3% education cess)	33.063% (30% base rate + 7% surcharge + 3% education cess)	30.90% (30% base rate + 3% education cess)
Foreign company	43.26% (40% base rate + 5% surcharge + 3% education cess)	42.02% (40% base rate + 2% surcharge + 3% education cess)	41.20% (40% base rate + 3% education cess)

As per the Finance Act, 2016, in the case of a domestic company, if the turnover or gross receipts in the previous year (2014-15) does not exceed INR 50 million, the base rate of income tax shall be 29% of the total income.

Furthermore, as per the Finance Act, 2016, in order to provide relief to newly set up domestic companies in the manufacturing sector which are incorporated on or after 1 March 2016, the base tax rate will be 25% at the option of the company, if certain conditions are complied with.

Minimum Alternate Tax (MAT) (also known as book profits tax)

The Income Tax Act, 1961 (ITA) also provides for tax on 'book profits' in case the tax on the company's book profit (post certain adjustments) is greater than the tax on income computed as per the normal provisions of the ITA. This is commonly known as MAT which is charged @ 18.5% on book profits plus applicable surcharge and 3% education cess on the tax and surcharge. The limits for applicability of the surcharge are the same as mentioned in the table. Credit for MAT paid can be carried forward and claimed against normal corporate tax payments arising in the future subject to a limitation period of 10 years.

Dividend Distribution Tax (DDT) is levied on all companies on the payment or distribution of dividend. The effective rate of DDT is 20.36% (17.65% base rate + 12% surcharge + 3% education cess).

Double taxation relief

Unilateral relief: A resident of India deriving income from a country with which India does not have a tax treaty is eligible to claim credit for taxes paid in the foreign country. However, such credit would be restricted to Indian taxes on such foreign income or actual foreign taxes paid, whichever is less.

Bilateral relief: India has a comprehensive tax treaty network with more than 120 countries to avoid double taxation of income. Under the Indian tax laws, a taxpayer can avail the provisions of the tax treaty or domestic tax laws through the 'credit method' or 'exemption method'. To avail beneficial provisions of a tax treaty, non-resident companies and entities are required to obtain a valid Tax Residency Certificate (TRC) from the government of the country of residence along with other prescribed documents and information.

Withholding tax

Withholding tax, known as Tax Deducted at Source (TDS) in India, aims to collect revenue at the very source of income. Its significance to the government lies in the fact that this tax is collected in advance, it ensures a regular source of revenue, provides for a greater reach and widens the tax base. The ITA requires the payer to withhold tax at source at:

- the appropriate rate considering the nature of payment and status of the recipient i.e. corporate or non-corporate assessee; and
- the time of payment or credit of the amount, whichever is earlier, except salary payments where tax is required to be deducted only on actual payment of salary.

A person availing the treaty benefit is required to furnish the TRC and is also required to give a declaration in the specified form.

Tax returns and assessment

The Indian fiscal year as well as corporate tax year runs from 1 April to 31 March. All companies (irrespective of having made a profit or loss) are required to file their tax returns electronically by 30 September each year.

Even foreign companies are required to file tax returns with respect to income earned in India except in certain specified circumstances where income consists of dividend, specified interest and due taxes have been withheld on the same.

The company is also required to obtain and furnish electronically the report of a Chartered Accountant in respect of its transaction with the Associated Enterprise. Similarly, it must obtain and furnish electronically the report of a Chartered Accountant if its annual turnover exceeds INR 10 million.

Transfer pricing

Transfer pricing refers to inter-company pricing arrangements between related business entities and commonly applies to inter-company transfers of services and tangible/intangible properties. In India, detailed provisions relating to transfer pricing were introduced by the Finance Act, 2001 in order to facilitate the computation of reasonable, fair and equitable profits and tax in India in the case of businesses carried on by multinational companies. Simply put, transfer pricing is the process of adjusting the prices of cross-border transactions between related/associated parties.

Section 92 of the ITA provides that the price of any transaction between Associated Enterprises, either or both of whom are non-residents for tax purposes (international transaction), shall be computed having regard to the arm's length principle. Subsequently, the Finance Act, 2012 also brought 'specified domestic transactions' where transactions are carried out between two related Indian entities under the purview of transfer pricing.

COMPLIANCES

Companies are required to follow and comply with various acts, laws and rules such as the Income Tax Act, 1961, the Companies Act, 2013, the Foreign Exchange Management Act, labour laws, etc. Companies also have to adhere to due dates for various compliances (e.g. return filings, tax payments, etc.) throughout the year.

However, the government's approach is rapidly changing the dynamics of the regulatory and tax compliance environment. While the number of compliances have not reduced, undertaking the compliances is being made easy. Almost all compliances can now be done electronically saving the taxpayer substantial time in visiting the required government office. This has also facilitated speedier processing of compliances through computer systems and the discrepancies, if any, can also be done through electronic means.

LABOUR REGULATIONS

Under the Constitution of India, labour is a subject on the concurrent list[7] where both the central and state governments are competent to enact legislations. As a result, India has a plethora of laws (44 labour related statutes by the central government alone[8]) addressing various aspects such as industrial relations, safety and health, child and woman labour, accidental and social security, labour welfare, employment and training, minimum wages, conditions of employment, disciplinary action, formation of trade unions, etc. India is a founder member of the International Labour Organisation (ILO) and has ratified 45 conventions and one protocol, of which 42 are in force and four conventions have been denounced.[9]

In order to bring in transparency and accountability leading to better enforcement of the Labour Laws, Shram Suvidha Portal was launched in October 2014 to issue unique Labour Identification Number (LIN), submission of common electronic returns under 8 Labour Acts and facilitate risk based inspections.

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