

Diversify to Differentiate Think India, Think next!

Doing Business in India 2020

November 2020



Contents

1. Introducing India	04
2. Government Policies and Business Regulatory Environment	11
3. Banking and Finance	33
4. Business Entities	37
5. Company Formation and Administration	43
6. Financial Reporting and Audit Requirements	52
7. Company Taxation	59
8. Personal Taxation	95
9. Indirect Taxation	102
10. Labor Regulations, Welfare and Social Security	107

Foreword

The post-pandemic era will define how we conduct business and inherently shape our economy. With nations battling the largest healthcare crisis of recent times, the global economy has suffered. The suspension of global trade highlighted the gaps in the supply chain, and the need to diversify sourcing and production. Despite the challenging time, India appears as an optimistic hotspot for investment.

The Indian Government has relaxed certain reforms to enable higher Foreign Direct Investment (FDI) in varied sectors and digitally optimized the business environment for ease of doing business. After the successful introduction, establishment and subsequent amendments of Goods and Services Tax (GST), indirect taxes have now been streamlined to bring in greater transparency and simplification. The country continues to follow the initiative of 'Make in India' and 'Aatmanirbhar Bharat', a self-reliant blueprint that encourages consumption of home-grown brands (Indian or foreign).

India has also witnessed sustained growth over the past few years. The United Nations Conference on Trade and Development (UNCTAD) reported that India was among the top 10 recipients of FDI in 2019, attracting USD 49 billion in inflows, a 16% increase from the previous year.

According to the World Bank Group, India ranks 63rd in Ease of Doing Business 2020 (which contains data sourced from 2019), making it one of the top-rated countries amongst the emerging economies. Other factors that enhance the business opportunities is the high literacy rate, a comparatively large and young workforce, and increased consumption patterns. Besides, there are also various reforms that have been recently introduced to scale down bureaucracy, thereby facilitating the set-up of businesses in India.

Doing Business in India serves as a guide to India's business, regulatory and tax environment. It seeks to provide the reader with knowledge of the critical regulations and changes in the country. We hope you find this information useful and helps you understand the dynamic business environment of India.



Manoj Gidwani
Vice President
Global Marketing



01

Introducing India

- At a Glance
- Geography and Climate
- Political System
- Legal System
- Population
- Language
- Currency
- Business Hours
- Public Vacation Days
- Economy

At a Glance

Location: North of the Equator
 (Latitude: 8° 4' to 37° 6' North;
 Longitude: 68° 7' to 97° 25' East)
 Capital: New Delhi
 Population: 1.29 billion (2015 -16 estimate)
 Area: 3.3 million sq km
 Indian Standard Time: GMT + 5:30
 Telephone Country Code: +91
 Official Language: Hindi is one of the 22 official
 languages (English is used for official communication)

Geography and Climate¹

Covering an area of 3.3 million sq km, India is the seventh-largest country in the world, occupying a major portion of the South Asian subcontinent. Extending from the Himalayas in the north, it stretches southwards to the Tropic of Cancer and tapers off into the Indian Ocean between the Bay of Bengal on the east and the Arabian Sea on the west.

India's climate varies significantly from the permanently snow-capped Himalayas in the north to the tropical south. In spite of much of the north of India lying beyond the tropical zone, the entire country has a tropical climate marked by relatively high temperatures and dry winters. There are four seasons in India: winter (December-February), summer (March-June), south-west monsoons (June-September), and the post-monsoon season (October-November).

Political System²

India is a sovereign, socialist, secular, and democratic republic with a parliamentary system of government. It is governed by the Constitution of India, which came into force on 26 January 1950. It has a federal government with 28 states and eight union territories

and is the largest democracy in the world. The Central/ Union Government is further divided at the state and local levels. The government is divided into three structural segments: the executive, the legislature, and the judiciary.

Executive: The executive branch comprises the President as the head of state, the Vice President, and the Council of Ministers. The Council, headed by the Prime Minister, aids and advises the President. Thus, the real executive power is vested in the Council of Ministers and the Prime Minister (head of the government). Mr. Ram Nath Kovind is the current President of India, and Mr. Narendra Modi is the Prime Minister.

Legislature: The Parliament is the supreme legislative body of India. It consists of the President and the two Houses— Rajya Sabha (Council of States) and Lok Sabha (House of the People). Elections to the Lok Sabha are held every five years, after which the Prime Minister is appointed by the President.

Judiciary: The Supreme Court is the apex body of the Indian legal system, followed by the High Courts and subordinate courts. The judiciary is independent of the executive and legislative branches of the government.

The current ruling coalition is the National Democratic Alliance (NDA), which is an alliance of over 30 parties led by the Bharatiya Janata Party (BJP). The former ruling alliance, the United Progressive Alliance was led by the Indian National Congress. Other major political parties in India include the Nationalist Congress Party, Bahujan Samaj Party, Aam Aadmi Party, Communist Party of India, and the Communist Party of India (Marxist).

1. India at a Glance, National Portal of India, <https://www.india.gov.in/india-glance/profile>, accessed 23 September 2020

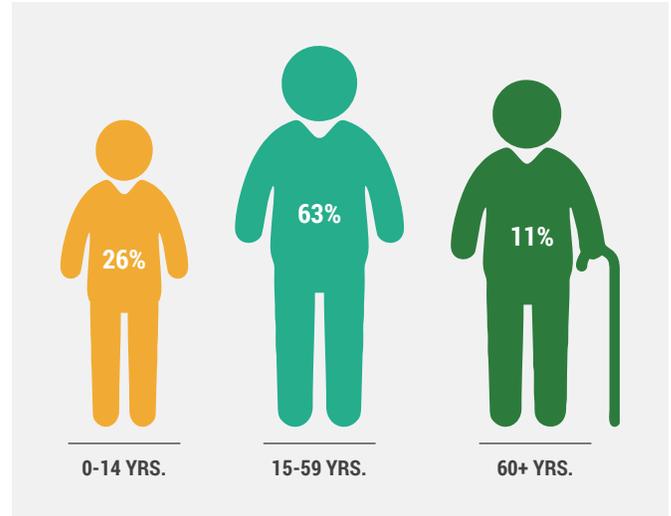
2. Constitution of India, National Portal of India, <https://www.india.gov.in/my-government/constitution-india>, accessed 23 September 2020

Legal System³

India has one of the oldest legal systems in the world. The Constitution of India is the supreme law of the country; it gives due recognition to statutes, case laws, and customary laws consistent with its dispensations. There is also a vast body of laws known as subordinate legislation in the form of rules, regulations, and bylaws made by the Central and State Governments and local authorities.

The Constitution has generally provided for a single integrated system of courts to administer both union and state laws. As mentioned previously, the judiciary is divided into various levels, with the courts forming a strict hierarchy of importance: the Supreme Court of India, High Courts (of respective states/groups of states), District Courts, followed by other subordinate courts.

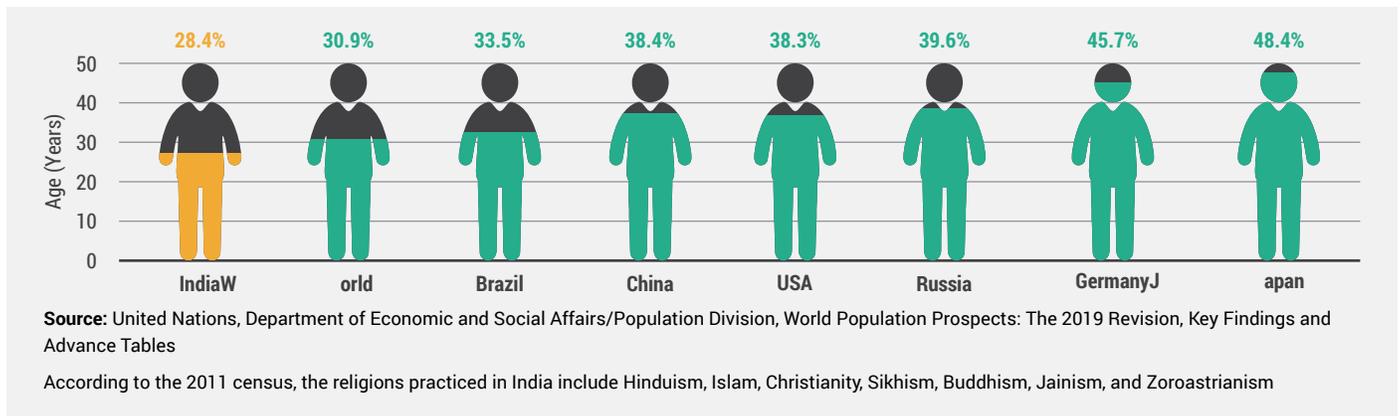
Population Distribution by Age Group: 2020



Population

India is currently the second-most populous country in the world, with an estimated 1.38 billion people in 2020⁴. With 67% of the population in the age range of 15–64 years, India has a favorable demographic dividend⁵. It will soon have the largest and youngest workforce in the world.

Median Age of the Total Population: 2020



3. Constitution, Supreme Court of India, <https://main.sci.gov.in/constitution>, accessed 23 September 2020

4. World Population Prospects 2019, Comprehensive Tables, United Nations, Department of Economic and Social Affairs, Population Division (2019), https://population.un.org/wpp/Publications/Files/WPP2019_Volume-I-Comprehensive-Tables.pdf, accessed 30 September 2020

5. Population by Broad Age Groups (Both Sexes), World Population Prospects 2019, United Nations, Department of Economic and Social Affairs, Population Division, <https://esa.un.org/unpd/wpp/Download/Standard/Population/>, accessed 30 September 2020

Language

The Constitution of India recognizes 22 different local languages, of which Hindi is used for official communication along with English at a national level. Other Indian languages recognized by the Constitution are Assamese, Bengali, Gujarati, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telugu, and Urdu. However, according to the 2011 census, approximately 32 languages are spoken by more than a million native speakers, and 122 are spoken by more than 10,000 speakers. According to the 2011 census, literacy rates stand at 74.04% (82.14% for males and 65.46% for females).

Currency

The currency of India is the Rupee (ISO code: INR; symbol: ₹). The Reserve Bank of India, which is the central bank of the country, has the sole authority to issue banknotes and coins.

Business Hours

Typically, a workday is 8 hours long extending, from 9 am to 5 pm IST (GMT + 05:30), and working days vary between 5 to 6 days a week. Business hours vary from 8 to 10 hours a day, depending on the type of organization, i.e., government, private company, multinational corporation, etc.

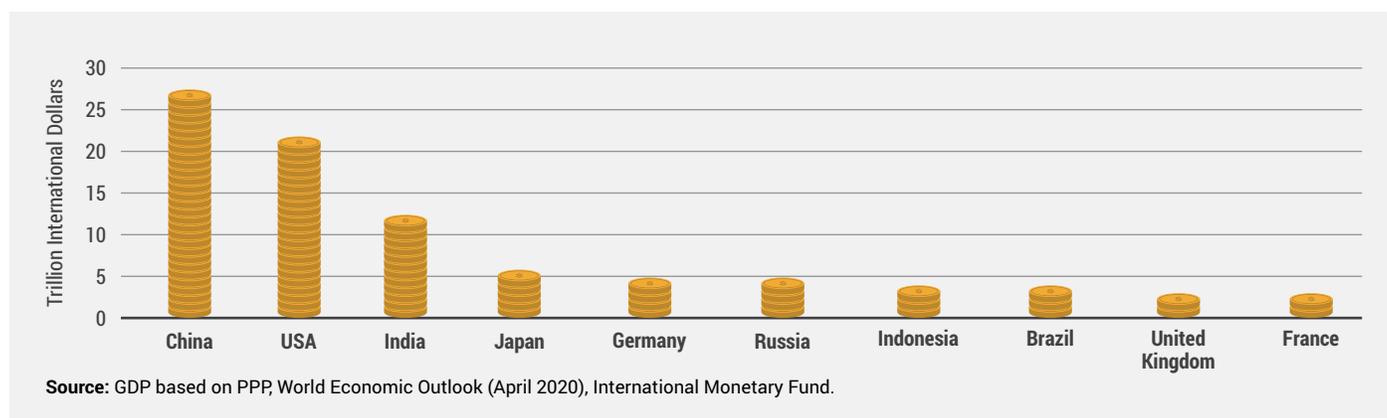
Public Vacation Days⁶

India has three Federal vacation days:

- Republic Day - 26 January
- Independence Day - 15 August
- Mahatma Gandhi's Birthday - 2 October

In addition, there are 14 gazetted vacation days and 31 restricted holidays in the official calendar.

The World's Largest Economies by GDP (PPP): 2020



6. Profile, National Portal of India, <https://www.india.gov.in/india-glance/profile>, accessed 30 September 2020

Economy

India is the third-largest economy in terms of Gross Domestic Product (GDP) based on Purchasing Power Parity (PPP). India has been one of the fastest-growing economies over the last decade.

The service sector has been driving economic growth in India, accounting for 56.60% of Gross Value Added (GVA) growth (at constant prices), followed by the industry sector with a 28.80% share, and agriculture accounting for 14.60%.⁷ However, agriculture still has the largest share in employment (approximately 42% of the total workforce).⁸

Many new initiatives have been taken up by the government to facilitate investment and ease of doing business in the country. Some of the noteworthy initiatives are Atmanirbhar Bharat, Make-in-India, Startup India, and Digital India, among others. Furthermore, to combat the economic catastrophe of COVID-19, the Government of India announced a stimulus package amounting to INR 21 trillion (~10% of India's GDP) to boost economic growth.

India's global ranking of 'Ease of Doing Business', as published in the World Bank Group's Doing Business 2020 study, has risen by 14 positions to the 63rd rank in 2019 due to a slew of reforms and initiatives introduced by the government.⁹ The current business-friendly government's policies are expected to accelerate foreign investments as it aims to:

- Revive growth by fueling investments in infrastructure and manufacturing
- Promote Foreign Direct Investment (FDI) in key sectors
- Promote the public-private partnership model in critical sectors such as healthcare, defense, and others
- Open up all sectors (strategic and non-strategic) to the private sector with public/state-owned facilities only in strategic sectors

- Introduce administrative and policy reforms to expedite project implementation
- Have a stable, predictable, and investor-friendly taxation regime
- Increase transparency and establish systems to eliminate corruption
- Strengthen and expand India's trade network with regional, bilateral, and multilateral trade agreements
- Develop human resources within the country to match the industry's fast-changing needs

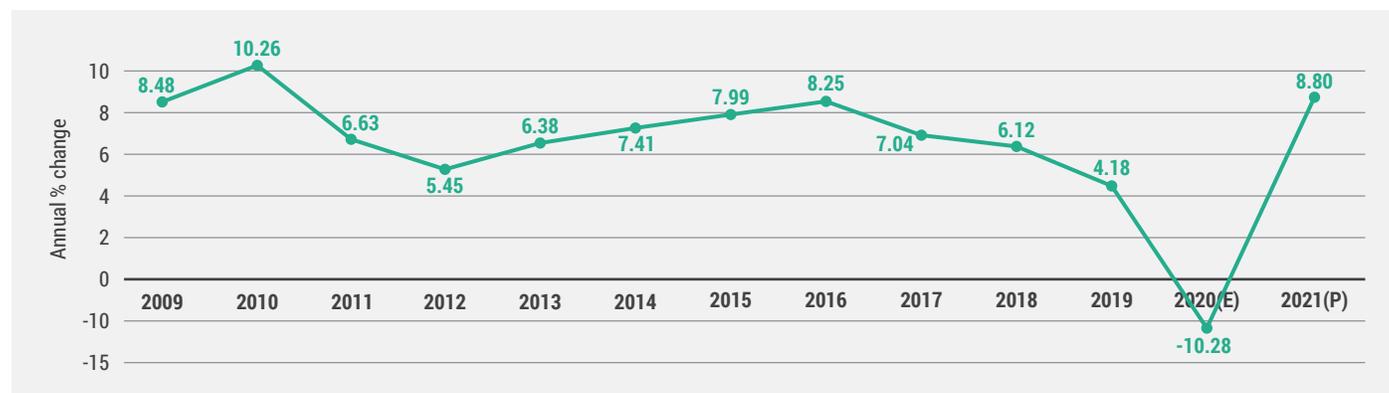
The growth of India's economy in the latter half of 2019 was held back by sector-specific weaknesses in the automobile, real estate, and banking sectors due to the general weakening of the supply side, as well as slow fixed capital formation. Industrial productivity was further arrested since the beginning of 2020 due to the COVID-19 pandemic, which led to a nationwide lockdown and disruption in supply chains around the world. Recovery post the pandemic is expected to be gradual, due to the continued social distancing norms and a slow multiplier effect of the liquidity infusions in the economy. However, the new initiatives, policies, and regulations are expected to augment current capabilities

7. National Account Statistics 2020, Ministry of Statistics and Program Implementation, <http://mospi.nic.in/publication/national-accounts-statistics-2020>, accessed on 30 August 2020

8. Employment in agriculture (% of total employment), World Bank Data, <https://data.worldbank.org/indicator/SL.AGR.EMPL.ZS>, accessed on 30 August 2020

9. Doing Business 2020 Report, World Bank, <https://www.doingbusiness.org/en/reports/global-reports/doing-business-2020>, accessed on 30 August 2020

Real GDP Growth in India: 2009–2021



Foreign trade: India's services sector registered an export of USD 220.73 billion in FY 2019-20 from USD 208 billion in FY 2018-19, with an annual growth of 6.1%.¹⁰ India's goods sector registered a decline of -5.11% in exports from USD 330.07 billion in 2018-19 to USD 313.22 billion in FY 2019-20¹¹

India's services sector registered an import of USD 140.65 billion in FY 2019-20 from USD 126.10 billion in 2018-19, with an annual growth of 11.5%. India's goods sector registered a decline in imports of -7.8% from USD 514.08 billion in FY 2018-19 to USD 473.99 billion in FY 2019-20

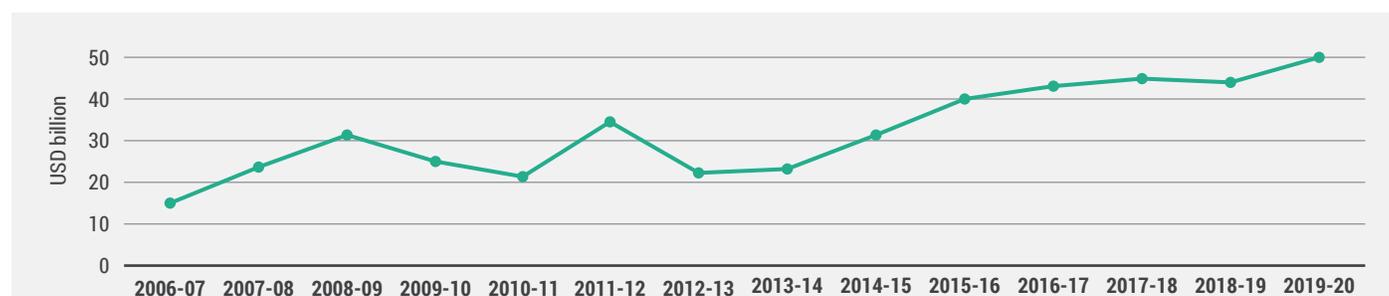
India's top export commodities¹² include mineral fuels and oils, gems and jewelry; textiles and apparel; nuclear reactors, boilers, machinery, and mechanical

appliances; chemicals; vehicles and parts and accessories; iron and steel; pharmaceuticals; electrical machinery; and cereals. These account for more than 65% of India's exports.

Foreign Direct Investment (FDI): According to UNCTAD's World Investment Report 2020, India is the eighth-most preferred destination for FDI, with growth in FDI inflow over 20% from USD 42 billion in 2018 to USD 51 billion in 2019.¹³

From April 2000–March 2020, cumulative FDI inflows into India stood at USD 680.919 billion. FY 2019-20 witnessed FDI equity inflows of USD 49.98 billion, registering a rise of 13% over FY 2018-19 which witnessed USD 44.37 billion in equity inflows.¹⁴

Annual FDI Equity Inflows into India: Financial Years 2006-07 to 2019-20



Source: Department of Industrial Policy & Promotion, FDI Statistics, January to March 2019.

10. Monthly Press releases on India's international Trade in Services, RBI https://www.rbi.org.in/Scripts/Pr_DataRelease.aspx?SectionID=352&DateFilter=Year, accessed on 30 Aug 2020

11. Export Import Data Bank, Ministry of Commerce & Industry, <https://commerce-app.gov.in/eidb/default.asp>, accessed on 30 August 2020

12. Ibid

13. World Investment Report 2020, UNCTAD, https://unctad.org/en/PublicationsLibrary/wir2020_en.pdf, accessed on 30 August 2020

14. FDI Statistics, Department of Promotion of Industry and Internal Trade, https://dipp.gov.in/sites/default/files/FDI_Factsheet_March20_28May_2020.pdf, accessed on 30 August 2020

Country-Wise FDI Equity Inflows: 2019-20

From April 2000 to March 2020, cumulative FDI equity inflows from Mauritius stood at USD 142.71 billion, making it the largest source of FDI into India. During FY 2019-20, Singapore was the top investor with USD 14.67 billion, followed by Mauritius, Netherlands, the USA, Cayman Islands, Japan, France, UK, Cyprus, and Germany.¹⁵ It is pertinent to note that some of the key countries mentioned here are favorable jurisdictions to make investments into India.

Sector-wise FDI Equity Inflows: 2018-19

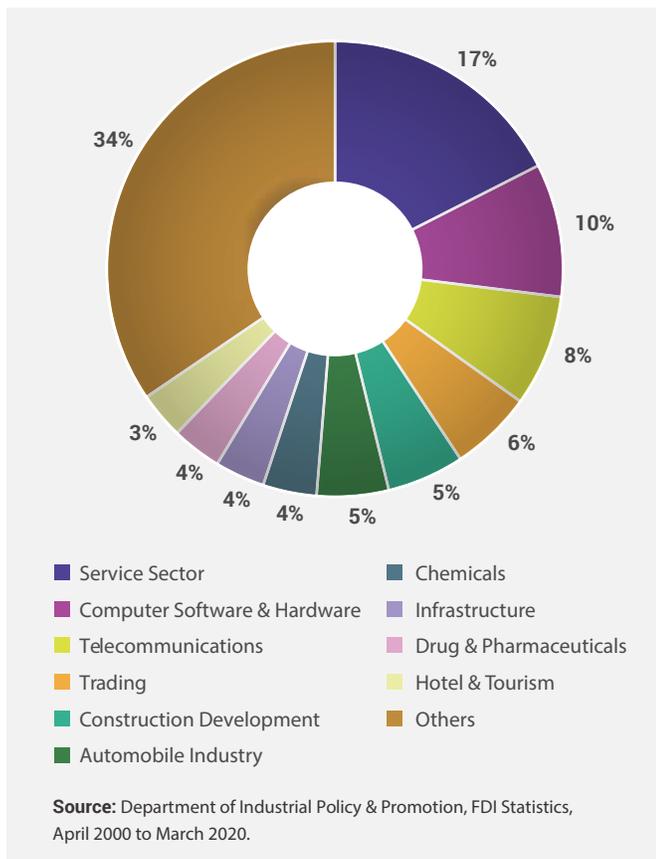
Considering sector-wise inflows, the services sector attracted the highest amount of FDI in India and

accounted for 17% of the total inflows from April 2000–March 2020. In FY 2019-20, the services sector continued to receive the highest amount of FDI equity inflows followed by computer hardware and software, trading, telecommunications, hotel & tourism, automobile industry, construction (infrastructure) activities, chemicals, construction development, and the drugs and pharmaceuticals sectors in that order.¹⁶

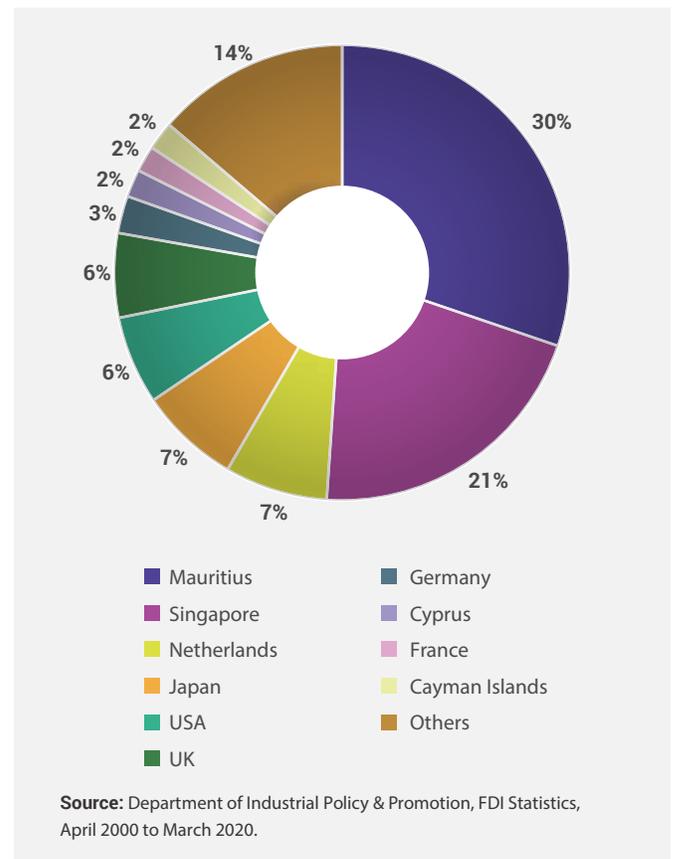
Foreign Exchange Reserves

As of 21 August 2020, India's foreign exchange reserves stood at USD 537.55 billion.

Sector-wise FDI equity inflows (April 2000 - March 2020)



Country-wise FDI equity inflows (April 2000 - March 2020)



15. Ibid.
 16. FDI Statistics, Department for Promotion of Industry and Internal Trade, https://dipp.gov.in/sites/default/files/FDI_Factsheet_March20_28May_2020.pdf, accessed on 30 August 2020

17. Weekly Statistical Supplement, Reserve Bank of India, https://www.rbi.org.in/Scripts/BS_ViewWssExtractdetails.aspx?id=50273, accessed on 30 August 2020



02

Government Policies and Business Regulatory Environment

- **Business Regulations**
- **Recent changes in FDI Policy**
- **Government Agencies Supporting Business Growth**
- **The 'Make in India' Program**
- **Government Response to the Pandemic**
- **Trade Policy and Import/Export Controls**
- **Bank Accounts**
- **Intellectual Property**
- **Privacy**
- **Cross-Border Transactions**
- **Competition Law - Regulating Combinations**
- **Consumer Protection**
- **Environment, Pollution and Waste Management**

Business Regulations

Companies Act

The Ministry of Corporate Affairs (MCA) regulates corporate affairs in India through the Companies Act, 2013 and other allied Acts, Rules, and Regulations. The Companies Act consolidates and amends the law relating to companies. This Act regulates a wide range of activities, including incorporation, operationalization, governance, liquidation, and winding up of companies.

The MCA has a three-tier organizational structure with its headquarters in New Delhi; 7 offices of Regional Directors in Ahmedabad, Chennai, Hyderabad, Kolkata, Mumbai, New Delhi, and Shillong; 19 Offices of Registrars of Companies; and 24 Official Liquidators in States and Union Territories of India.¹ Other attached/subordinate offices/organizations of the MCA include:

- The Serious Fraud Investigation Office, which is a multi-disciplinary investigation agency
- The Competition Commission of India (CCI), which was established under the Competition Act, 2002 for the administration, implementation, and enforcement of the Act
- The Insolvency and Bankruptcy Board of India, which oversees insolvency and bankruptcy legislation in India
- The National Company Law Tribunal (NCLT), which is a quasi-judicial body as per the Companies Act, 2013. Following the Constitution of the NCLT, the Company Law Board (CLB) stands dissolved and all the powers of the CLB are vested in the NCLT. Furthermore, the powers vested with the High Court in respect of matters pertaining to the merger, amalgamation, capital reduction, winding up, etc. will be exercised by the NCLT
- The National Company Law Appellate Tribunal (NCLAT) is a quasi-judicial body as per the

Companies Act, 2013. The NCLAT entertains appeals against the directions or decisions of the NCLT and CCI.

Companies in India are broadly classified into public and private companies. A public company may further be listed or unlisted. Listed public companies have to additionally comply with the regulations issued by the Securities and Exchange Board of India (SEBI).

Foreign Direct Investment²

A foreign company planning to set up business operations in India can incorporate a company under the Companies Act, 2013 as a joint venture or a wholly-owned subsidiary. A foreign company could also set up a liaison office/representative office, project office, or branch office of the foreign company, which can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000.

A foreign company may also invest in a Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008 - a relatively new but popular concept in India. Please see Chapter 4: Business Entities to know more about LLPs in India.

FDI in India is governed by the Foreign Exchange Management Act, 1999, and is undertaken in accordance with the FDI Policy, formulated and announced by the government.

The Department for Promotion of Industry and Internal Trade (DPIIT), earlier known as the Department of Industrial Policy & Promotion (DIPP), is a part of the Ministry of Commerce and Industry functioning under the Government of India. The DPIIT usually issues a 'Consolidated FDI Policy Circular' on a yearly basis elaborating on the policy and process with respect to FDI in India. The most recent consolidated FDI Policy was published on 15 October 2020.³

1. Regional Directors, Ministry of Corporate Affairs, <https://www.mca.gov.in/MinistryV2/regional-directors.html>, accessed on 15 September 2020

2. Foreign Investments in India, RBI, <http://www.rbi.org.in/scripts/FAQView.aspx?Id=26>, accessed on 30 August 2020

3. Consolidated FDI Policy, 2020, Department for Promotion of Industry and Internal Trade, https://dipp.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_0.pdf, accessed on 30 October 2020

An Indian company may receive FDI either under the automatic route or the government (approval) route subject to the conditions laid down for this route. FDI is allowed under the automatic route without prior approval of the government or of the Reserve Bank of India (RBI) in certain activities/sectors as specified in the 'Consolidated FDI Policy Circular' and amended via Circulars and Press Notes released from time to time. FDI in activities not covered under the automatic route requires prior approval of the government. The Foreign Investment Facilitation Portal (FIFP) is the new online single point interface of the government created to facilitate FDI for investors⁴. This portal is being administered by the DPIIT. This portal will continue to facilitate the single-window clearance of applications that are made through the government route. Upon receipt of the FDI application, the concerned Administrative Ministry/Department shall process the application as per the Standard Operating Procedure (SOP). If the online filing of the application contains a digital signature by an authorized signatory, the physical submission of the copy is not required. For applications without a digital signature, once the e-filing of the application is completed, the applicant is required to file/courier only a single signed copy of the printed version of the online application, along with the duly authenticated copy of the documents attached with the application, to the Nodal Officers of the concerned Administrative Ministry/Department as per the SOP.

FDI is prohibited in lottery businesses, including government/private lottery, online lotteries; gambling and betting including casinos; chit funds; Nidhi

companies (borrowing from members and lending to members only); trading in Transferable Development Rights (TDRs); real estate businesses (other than construction development, real estate broking services and Real Estate Investment Trusts (REITs)) or construction of farm houses; manufacturing of cigars, cheroots, cigarillos, and cigarettes, or tobacco or of tobacco substitutes. The activities/sectors not open to private sector investment are namely atomic energy and railway transport (other than construction, operation, and maintenance of (i) suburban corridor projects through a public-private partnership, (ii) high-speed train projects, (iii) dedicated freight lines (iv) rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities (v) railway electrification (vi) signaling systems (vii) freight terminals (viii) passenger terminals (ix) infrastructure in industrial parks pertaining to railway line/sidings including electrified railway lines and connectivity to the main railway line, and (x) mass rapid transport systems).⁵

Depending on the nature of the business to be carried out by the Indian entity, specific registrations, approvals, and licenses, such as Permanent Account Number (PAN), Tax Deduction and Collection Account Number (TAN), Shops and Establishments Registration/Factories License, Goods and Service Tax Identification Number (GSTIN), etc. are required to be obtained.

4. Foreign Investment Facilitation Portal, <https://www.fifp.gov.in/>, accessed on 30 August 2020

5. Prohibited Sectors, FDI Policy, InvestIndia, <https://www.investindia.gov.in/foreign-direct-investment>, accessed 30 August 2020

Sector-wise FDI Limits

Sector	Automatic route	Government route
Railway infrastructure	100%	-
Construction development: Townships, housing, built-up infrastructure	100%	-
Telecom Services (including Telecom Infrastructure Providers Category-I)	Up to 49%	beyond 49%
Agriculture and Animal husbandry	100%	-
Manufacturing of medical devices	100%	-
Mining and Exploration of Coal and Lignite for captive consumption	100%	-
Mining and Exploration of Titanium bearing minerals	-	100%
White label ATM projects	100%	
Automobiles	100%	
Auto Components	100%	
E-commerce: marketplace model	100%	
Plantations: tea, coffee, rubber, cardamom, palm oil tree and olive oil tree plantations	100%	
Duty-free shops located and operated in Customs bonded areas	100%	
Limited liability partnerships (LLP) operating in sectors/activities where 100% FDI is allowed	100%	
Credit information companies	100%	
Broadcasting Carriage Services (Teleports (setting up of up-linking HUBs/Teleports), Direct to Home (DTH), Cable Networks , Mobile TV, Headend-in-the Sky Broadcasting Service (HITS) and Cable Networks)	100%	
Broadcasting content services		
1. Up-linking of 'Non-news & Current Affairs' TV Channels/Down-linking of TV Channels	100%	
2. Terrestrial Broadcasting FM (FM radio)		Up to 49%
3. Up-linking of 'News & Current Affairs' TV Channels.		Up to 49%
Civil aviation		
1. Greenfield and Existing Projects	100%	-
2. Scheduled air transport service/ domestic scheduled passenger airline and regional air transport service	49% (Up to 100% for NRIs)	100%
3. Non-scheduled air transport service	100%	-
4. Helicopter services/seaplane services requiring DGCA approval	100%	-
Private security agencies	Up to 49%	Up to 74%
Pharmaceuticals (greenfield)	Up to 100%	

Sector	Automatic route	Government route
Pharmaceuticals (brownfield)	Up to 74%	Up to 100%
Defense	Up to 74%	Up to 100%
Insurance companies	100%	
Insurance Brokers / Third-party administrators / Surveyors & Loss assessors and Other Insurance Intermediaries	100%	
Trading of food products manufactured or produced in India, including through e-commerce		100%
Print Media (Publishing of newspaper and periodicals or Indian editions of foreign magazines dealing with news and current affairs)		100%
Publication of facsimile edition of foreign newspapers		100%
Single Brand Retail Trading	100%	
Multi Brand Retail Trading		51%
Satellites: Establishment and operation		100%
Banking (Private sector)	49%	74%
Banking (Public sector)		20%

Recent changes in the in FDI Policy

The DPIIT recently released the Consolidated Foreign Direct Investment Policy (FDI Policy) for FY 2020-21 on 15 October 2020.

The key changes between the previous Consolidated FDI Policy 2017 and the current Consolidated FDI Policy 2020 are listed below:

Financial Institutions

As per an amendment in 2018, foreign investment in investing companies registered as Non-Banking Financial Companies (NBFC) with the RBI, being overall regulated, would be available up to 100% under the automatic route. Additionally, foreign investments in Core Investment Companies (CIC) and other investment companies are permitted under the government approval route. However, these CICs must comply with RBI's regulatory framework for such investments.

Real Estate Broking Services

The Union Cabinet has clarified that 'Real-estate broking services' does not amount to 'Real estate businesses', and hence, the FDI policy has now been amended to allow 100% foreign investment through automatic routing for companies functioning under the ambit of 'Real-estate broking services'.

Mining Activities

The new FDI Policy allows 100% FDI via the automatic route for 'Coal and lignite mining' for captive consumption, setting up of coal processing plants, and the sale of coal and coal mining activities, including associated processing infrastructure as permitted under and subject to the provisions of Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957.

Contract Manufacturing

100% FDI is permitted under the automatic route for manufacturing by both the investee entity and contract manufacturing entity in India through a legally tenable contract, whether on a Principal-to-Principal or Principal-to-Agent basis.

Insurance

100% FDI is allowed through the automatic route for insurance intermediaries, including insurance brokers, reinsurance brokers, insurance consultants, corporate agents, third party administrators, surveyors and loss assessors, etc. as notified by the Insurance Regulatory and Development Authority of India (IRDAI). Earlier, the FDI limit was capped at 49% under the automatic route.

Civil Aviation

As per the present FDI Policy and conditions within, 100% FDI is permitted in scheduled Air Transport Services/Domestic Scheduled Passenger Airlines (upto 49% through the automatic route while investments beyond 49% would go through the government route). For NRIs, 100% FDI is permitted under the automatic route in Scheduled Air Transport Services/Domestic Scheduled Passenger Airlines subject to a few exceptions.

Digital Media

26% FDI is allowed through the government route for uploading or streaming activities of news and current affairs through digital media.

Addressing opportunistic takeovers during the COVID-19 pandemic:

Special measures were put in place to curb the possibility of opportunistic takeovers of Indian entities resulting from the economic turmoil during the COVID-19 pandemic through a recent amendment. Currently, any entity of a country that shares a land border with India can invest in India only under the government route. This will also be applicable for any transfer of ownership of any existing or future FDI in an entity in India.

Single Brand Product Retail

100% FDI through the automatic route is allowed in e-commerce activities working via a marketplace model between buyers and sellers (with less than 25% of the inventory held by the marketplace entity of the e-commerce company). 30% local sourcing norms are applicable for foreign investments beyond 51%.

In order to meet the 30% local sourcing norm, all procurements made from India by a Single Brand Retail Trading (SBRT) entity for their single brand shall now be counted towards local sourcing, irrespective of whether the goods procured are sold in India or exported. SBRT entities are also permitted to set off sourcing of goods from India for global operations against the mandatory sourcing requirement of 30%.

The new amendment also states that an SBRT entity operating through brick and mortar stores can also undertake retail trading through e-commerce, even prior to the opening of brick and mortar stores, subject to the condition that the entity opens brick and mortar stores within two years from the start date of online retail.

Government Agencies supporting Business Growth

With an aim to provide ease of access to business providers and clear paths for setting up businesses in India, the Government of India has improved many departments and created bodies to handhold business growth in India. The Department for Promotion of Industry and Internal Trade (DPIIT) is responsible for determining the Industrial Policy at a Central Government level. The role and functions of the DPIIT include:

- Productivity in Indian industry
- Industrial Management
- Matters related to e-commerce and start-ups

- Facilitating Ease of Doing Business (EoDB)
- Promotion of internal trade, including retail trade, the welfare of traders and their employees
- Administration of Industries (Development and Regulation) Act, 1951, grant of Industrial Licenses (IL), and acknowledging Industrial Entrepreneurs Memorandum (IEM).

The DPIIT handles matters related to the protection of Intellectual Property Rights (IPR) in the fields of Patents, Trademarks, Copyrights, Industrial Designs and Geographical Indications of Goods and administers Acts, Regulations, and Rules made under them. The department also handles matters related to Foreign Direct Investment (FDI) and investment by NRIs, as well as undertakes the promotion of investment for the country's industrial development.

In addition, the DPIIT is also responsible for the promotion and development of sectors related to Cables, Light Engineering Industries, Light Industries, Light Electrical Engineering Industries, Paper & Newsprint, Tyres & Tubes, Salt, Cement, Ceramics, Tiles & Glass, Leather Goods, Soaps & Detergents and industries not covered by other Ministries/ Departments.⁶

InvestIndia is the country's official Investment Promotion and Facilitation Agency, serving as the first point of reference for potential investors. Their domain and functional experts provide sector- and state-specific inputs and hand-holding support to investors through the entire investment cycle, from pre-investment decision-making to policy impact analysis and expansion advisory. They assist with location identification, expediting regulatory approvals, facilitating meetings with relevant government/ corporate officials, and also provide after-care services that include initiating remedial action on problems faced by investors.

InvestIndia is a non-profit venture functioning under the DPIIT that works together with the various State Governments and the Federation of Indian Chambers of Commerce & Industry (FICCI).⁷

With a focus on building and improving infrastructure in the country, the government set up a National Investment and Infrastructure Fund (NIIF) to attract domestic and international investment into infrastructure development projects. The NIIF acts as a fund manager to become a key channel of investment into Indian infrastructure with a focus on transportation (roads, ports, and airports), energy, urban planning, and other infrastructure and allied segments through Alternate Investment Funds (AIFs), each with a unique investment strategy.⁸ The initial corpus is approximately USD 6 billion, with the government holding a 49% share.

To realize the government's dream of India becoming a USD 5 trillion economy by FY 2024-25, the Union Cabinet has set up two independent committees, namely the 'Empowered Group of Secretaries' (EGoS) and the 'Project Development Cells' (PDCs) for investor facilitation and attracting investments to the country.

Additionally, the Government of India promotes thrust sectors and formulates policies in each sector through their think-tank, the National Institution for Transforming India (also known as NITI Aayog) in conjunction with the bodies mentioned above for sustainable and progressive growth.

- The EGoS comprises of the Cabinet Secretary, the CEO of NITI Aayog and the Secretaries of the DPIIT, the Department of Commerce, the Department of Revenue, and the Department of Economic Affairs
- The EGoS committee is responsible for clearances from ministries. They must also evaluate investments and facilitate them while bringing synergy to ensure collaboration of all departments
- The PDC is accountable for the development of investible projects in coordination between the Central Government, State Governments, and the FDI pipeline
- The PDC aims to create projects with all approvals along with detailed schematics. It also aims to bridge gaps and identify issues in the system to resolve investment decisions and remove lags

6. Role and Functions of the Department for Promotion of Industry and Internal Trade, Department for Promotion of Industry and Internal Trade, <https://dipp.gov.in/about-us/role-and-functions-department-promotion-industry-and-internal-trade>, accessed on 30 August 2020

7. About Us, InvestIndia, <https://www.investindia.gov.in/about-us>, accessed on 30 August 2020

8. National Investment and Infrastructure Fund, <https://niifindia.in/>, accessed on 30 August 2020

Other government agencies include state industrial corporations, investor facilitation centers, and bilateral chambers of commerce, which assist with industry- and state-specific incentives.

The 'Make in India' Program

In September 2014, the government launched the Make in India campaign, focusing on initiatives to facilitate investments into India and promoting it as a global manufacturing hub.⁹ The program aims to improve the ease of doing business in India by reducing red tape, improving infrastructure, opening up more sectors to FDI, and most importantly, changing the image of the government from a 'permit-issuing authority' to a true business partner. The program has been a stellar success with India reducing dependency on imports and turning many sectors into domestic manufacturing hubs that cater to global demand. The Make in India program dismantled outdated frameworks and brought in transparent mechanisms that disbanded investor complaints and helped drive investment in the Indian market.

During the COVID-19 pandemic, the Prime Minister announced his vision of Atmanirbhar Bharat (translated to Self-reliant India). In line with the Make in India program, the government has appealed to the citizens to focus on being self-reliant and vocal for local products. The Aatmanirbhar Bharat program has five pillars, namely economy, infrastructure, system, vibrant demography, and demand.

The Aatmanirbhar Bharat program aims to achieve self-reliance through a five-stage plan:¹⁰

Phase-I: Businesses including MSMEs

Phase-II: Poor, including migrants and farmers

Phase-III: Agriculture

Phase-IV: New Horizons of Growth

Phase-V: Government Reforms and Enablers

Broadly, this program provides thrust in the form of government reforms relaxing state borrowing limits, plans to privatize Public Sector Units (PSUs), redefining Micro, Small and Medium Enterprises (MSMEs) to be more inclusive, reducing tax deduction rates and support in managing working capital amongst others.

Atmanirbhar Bharat is not intended to promote protectionism or isolationism by erecting trade barriers but instead seeks to make the Indian economy robust in the long run by scaling up manufacturing, accelerating infrastructure development, attracting investments, and promoting consumption-led growth.

Farm Bills 2020

In September 2020, the Upper House of the Parliament introduced three new Bills as reforms to the agricultural and farming sector, which aim to liberalize the farming ecosystem significantly. These three Bills, namely, the Farmers Produce Trade and Commerce Bill (Promotion and Facilitation), the Farmers Agreement of Price Assurance and Farm Services (Empowerment and Protection) Bill, and the Essential Commodities (Amendment) Bill, aim to revolutionize the way farm operations are carried out in India.

The introduction of these Bills is in line with the government's vision of doubling farmers' incomes by 2022. The Bills broadly focus on providing access to direct marketing mechanisms, reducing farm wastage and price stability, creating an open ecosystem, enabling contractual agreements for large orders, opening up the sector for FDI, etc.

The Bills were passed on 22 September 2020 and is currently in the process of being implemented.

9. About, Make in India, <https://www.makeinindia.com/about>, accessed on 30 September 2020

10. Building Aatmanirbhar Bharat & Overcoming COVID-19, National Portal of India, <https://www.india.gov.in/spotlight/building-atmanirbhar-bharat-overcoming-covid-19>, accessed on 30 August 2020

Government Response to the Pandemic

Due to the COVID-19 pandemic, from early 2020, manufacturing suffered greatly on both the supply and demand side. The Indian government imposed one of the longest lockdowns mandated by any country so far. The enormity of the lockdown has affected manufacturing activities and took a toll on the supply chains as well as the overall economy.

Knowing the economic risks associated with such a nationwide lockdown, the Government of India has provided an impetus to local businesses and domestic manufacturing by introducing a stimulus package of 10% of India's GDP (INR 20 trillion). The stimulus package provides loans to potential businesses, protection against the pandemic, and technology upgradation via employment. The package focused on land reforms, labor reforms, MSMEs, and industry incentives.

The government also distinctly identified key sectors, which are the pillars of the Indian economy, such as the electronics sector, and in April 2020, announced a package of INR 500 billion worth of incentives based on production and employment. Major players in this sector, both domestic and international, have already begun talks to leverage these incentives. Similarly, the government has provided incentives in the power supply, social infrastructure, and healthcare sectors worth several billion as a proactive response to the importance of industry in the midst of the COVID-19 pandemic.

The RBI has also introduced liquidity measures listed below to help counter the pandemic slowdown. These measures are mentioned below:

- Repo rate: Cut by 75 bps from 5.15 to 4.4
- Reverse repo rate: Cut by 90 bps
- Loan moratorium: Loan moratorium available to lenders up to a period of 6 months
- CRR: Reduced by 100 bps to 3%, which injected INR 1.37 trillion

These announcements injected nearly 3.2% of the GDP in terms of liquidity into the Indian economy.

With the new measures, India's manufacturing infrastructure is poised for phenomenal growth with smart cities and industrial corridors being developed. Youth-focused programs and novel institutions are being dedicated to developing specialized skills. Innovation is being encouraged through better management of patent and trademark registration. A striking indicator of progress is the opening up of key sectors, including railways, defense, insurance, and medical devices, to dramatically increase the amount of FDI. These factors will result in stronger growth for the Indian economy and its populace and will lead to a rise in the investments in the country.

Industry-specific incentives:

These incentives can be governed by both Central and State Government legislation and could include capital and interest subsidies, tax incentives, R&D incentives, export incentives, and area-based incentives.

State-level incentives:

These are governed by State Industrial Policies and depend on the amount of investment and location of the industrial project. The incentives include rebates in land cost, relaxation in stamp duty, exemption on sale or lease of land, power tariff incentives, concessional interest rates, investment subsidies, tax incentives, backward-area subsidies, and special incentive packages for mega projects.

Trade Policy and Import and Export Controls

In India, exports and imports are regulated by the Foreign Trade (Development and Regulation) Act, 1992, and the Foreign Trade Policy. The Department of Commerce, Ministry of Commerce and Industry, formulates, implements, and monitors the policy.

The Directorate General of Foreign Trade (DGFT) runs various schemes for trade promotion and facilitation. The Foreign Trade Policy 2015–2020 (FTP) announced on 1 April 2015, provides a framework for foreign trade in goods and services as well as employment generation and increasing value addition.¹¹ It aims to link the rules, procedures, and incentives for exports and imports with other initiatives such as Make in India and Digital India to create an 'Export Promotion Mission', which will provide an institutional framework to work with State Governments to boost India's exports. The focus of the policy is to support both the manufacturing and services sectors with a special emphasis on improving the ease of doing business in India.

On 31 March 2020, the FTP was extended for one year to continue to provide relief under various export promotion schemes in view of the novel COVID-19 pandemic.¹²

Some key features of the current FTP are mentioned below:¹³

- The FTP simplified various incentive schemes by merging them into two new schemes, Merchandise Exports from India Scheme (MEIS) for the export of goods and the Services Exports from India Scheme (SEIS) for exports of notified services. Duty credit scrips issued under these schemes and the goods imported against them are fully transferable.
- The new FTP also introduced a scheme to incentivize exports of goods through courier or foreign post offices using e-commerce under MEIS.

As the regulatory structure of e-commerce export is still evolving, the scope of the scheme was kept limited.

- The number of mandatory documents required for exports and imports has been reduced to three, which is comparable to international standards.
- Measures have been taken to boost exports of defense and hi-tech items.
- Manufacturers (who are status holders) are able to self-certify their manufactured goods in phases, as originating from India with a view to qualify for preferential treatment under bilateral and regional trade agreements. This 'Approved Exporter System' will help manufacturing exporters get quicker access to international markets.
- 108 MSME clusters have been identified for focused interventions to boost exports.
- Several steps are being taken to move towards a paperless, digital environment. A robust Electronic Data Interchange (EDI) system has been set up to facilitate the overall ease of exports and good governance. Various documentation-related activities, including import and export authorizations, which requires interacting with other administrative departments, such as customs, banks, and Export Promotion Councils (EPCs), can be done online. This has reduced the physical interaction of exporters and importers with the government and will help bring greater transparency and reduce transaction costs.
- The Council for Trade Promotion and Development was constituted to make the states active partners in boosting India's exports and create an environment conducive to international trade¹⁴. The Board of Trade was reconstituted in order to have continuous discussion and consultation with trade and industry, and advise the government on policy measures to boost India's trade.

11. Foreign Trade Policy 2015-2020, Directorate General of Foreign Trade, <http://dgftcom.nic.in/exim/2000/FTP-2017//ftp17-051217.pdf>, accessed on 30 September 2020

12. Foreign Trade Policy 2015-2020 extended for one year; Other immediate relief measures also announced, Press Information Bureau, <https://pib.gov.in/PressReleasePage.aspx?PRID=1609704>, accessed 25 September 2020

13. Foreign Trade Policy 2015-2020, Directorate General of Foreign Trade, <http://dgftcom.nic.in/exim/2000/FTP-2017//ftp17-051217.pdf>, accessed on 30 September 2020

14. Advisory Board, Ministry of Commerce and Industry, <https://commerce.gov.in/InnerContent.aspx?Id=12>, accessed 25 September 2020

Free Trade Agreements (FTAs) are an important element of India's trade strategy. The Indian Trade Portal, www.indiantradeportal.in, provides the most-favored nation and preferential tariff rates, rules of origin, sanitary and phytosanitary (SPS) standards, and Technical Barriers to Trade (TBT) under the various FTAs signed by India. It also captures the trade flows from major trading partners, among other resources. A comprehensive list of India's FTAs can be viewed on the Department of Commerce's website, www.commerce.gov.in. Such FTAs and Preferential Trade Agreements (PTAs) provide customs duty exemption benefits to importers based on criterion such as Rules of Origin. In a move to curb the practice of abuse of the benefits, Indian customs officers have the power to deny the customs duty exemption benefit if they are satisfied that the criteria laid down in the relevant FTAs and PTAs have not been met in relation to any import shipment.

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 center and the state level, with minimal regulations. This Act, along with the SEZ Rules, drastically simplified procedures and provided single-window clearance on matters related to the Central and State Governments¹⁵. 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, Central Sales Tax (CST), etc¹⁶. The government has decided to extend the benefits of both the MEIS and SEIS reward schemes to units located in SEZs as well.

Units that export their entire production of goods and services may be set up under the EOU scheme, Electronics Hardware Technology Park (EHTP) scheme, Software Technology Park (STP) scheme, or Bio-Technology Park (BTP) scheme for the manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, agriculture, etc.

For such units, 100% FDI is permitted through the automatic route, similar to SEZ units¹⁷.

With the intention to encourage manufacturing and exports under the 100% EOU/EHTP/STPI/BTP schemes, these units have been provided with a fast-track clearance facility. These units are also allowed to share infrastructure, transfer goods and services between units, set up warehouses near the port of export, and use duty-free equipment for training.

The Export Promotion Capital Goods (EPCG) scheme allows import of capital goods for pre-production, production, and post-production at zero customs duty. Measures have been adopted to increase procurement of capital goods from indigenous manufacturers under this scheme by reducing the specific export obligation from 90% to 75% of the normal export obligation.

Duty exemption schemes:

The duty exemption scheme enables the duty-free import of inputs for export production. These include Advance Authorization and Duty-Free Import Authorization (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.

Challenges to India's export promotion schemes and the proposed RoDTEP scheme:

The World Trade Organisation (WTO) panel in its report has held that India's export promotion schemes viz. MEIS, SEZ, EHTP, BTP, etc. are inconsistent with the agreement on Subsidies and Countervailing Measures (SCM) and accordingly should be withdrawn. The report, which was issued on 31 October 2019, gave India a time limit of around 90 to 120 days for the withdrawal of these schemes. The report has already been challenged by the Indian government before the appellate forum and is pending adjudication.

15. About us, Introduction, Special Economic Zones in India, <http://sezindia.nic.in/cms/introduction.php>, accessed 25 September 2020

16. Facilities and Incentives, SEZs in India, <http://sezindia.nic.in/cms/facilities-and-incentives.php>, accessed 25 September 2020

17. Foreign Trade Policy 2015-2020, Directorate General of Foreign Trade, <http://dgftcom.nic.in/exim/2000/FTP-2017/ftp17-051217.pdf>, accessed 25 September 2020

Meanwhile, the Indian government is also in advanced stages of issuing a new WTO-compliant Remission of Duties or Taxes on Export Products (RoDTEP) scheme to replace the existing MEIS and other export promotion schemes. The scheme intends to provide exporters with incentives against the tax cost embedded in the supply chain. Such tax costs usually include electricity duty, excise duty on petrol, etc. which have not been subsumed under GST and thus remain a cost in the supply chain.

The introduction of a new comprehensive scheme such as RoDTEP involves various complexities and requires the collection of comprehensive data from exporters to arrive at fair rates of incentives. The onset of the COVID-19 pandemic and the subsequent lockdown announced by the government resulted in severe business disruption in India. In this backdrop, the validity of the FTP 2015-20 and the various existing incentive schemes (which are under dispute before the WTO appellate authority) has been extended up to 31 March 2021.

In view of the COVID-19 pandemic, the government has also announced various relaxations in the compliance and procedural aspects associated with the incentive schemes such as extension in time limits for application under MEIS and SEIS, extension in validity of expiring licenses, and Letter of Permission (LOP) in case of EPCG, EOUs, etc.

Customs regulations:

The Customs Act, 1962 provides for the levy and collection of customs duty on imports and exports, import/export procedures, prohibitions on the trade of certain goods, penalties, offenses, etc. The Central Government levies customs duty on the import and export of goods at the rates and on the basis of the classification under the Customs Tariff Act, 1975.

Central Board of Indirect Taxes and Customs (erstwhile Central Board of Excise & Customs) is a part of the Department of Revenue under the Ministry of Finance, Government of India. It deals with the tasks of

formulation of policy concerning levy and collection of Customs, Central Excise duties, Central Goods & Services Tax and IGST, prevention of smuggling and administration of matters relating to Customs, Central Excise, Central Goods & Services Tax, IGST and Narcotics to the extent under CBIC's purview.¹⁸ The customs/import tariff for various goods can be viewed on the CBIC website, www.cbic.gov.in.

Bank Accounts

India has a well-developed banking system regulated by the Reserve Bank of India (RBI), the Central Bank of India. Public and private sector banks are subject to the control and supervision of the RBI. The Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949 are the core legislations pertaining to the banking sector in India.¹⁹

A foreign company setting up in India typically opens a current (checking) account with an Authorized Dealer (AD) bank. An AD bank functions under the direction and supervision of the RBI and handles both current and capital account transactions. Current account transactions, such as payments in the course of foreign trade and banking and credit facilities in the ordinary course of business, are usually freely permitted. Capital account transactions, such as transfer or issue of any foreign security by an Indian resident, transfer or issue of a security by a non-resident, any borrowing or lending, acquisition of immovable property by a non-resident, and giving of a guarantee in respect of a debt or liability are regulated by the RBI. The ease with which banking account transactions can be carried out is also dependent on whether an entity is operating under the automatic route or government route.

18. Who We Are, Central Board of Indirect Taxes and Customs, <https://www.cbic.gov.in/ht-docs-cbec/whoweare/whoweare>, accessed 30 September 2020

19. About Us, RBI, <http://www.rbi.org.in/scripts/AboutusDisplay.aspx>, accessed 30 September 2020

Intellectual Property

The Intellectual Property Rights (IPR) framework in India is stable and well established in the legal, judicial, and administrative aspects. India is a member of the World Trade Organization and is fully compliant with the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). India is also a member of the World Intellectual Property Organization (WIPO), a body responsible for the promotion of the protection of intellectual property rights throughout the world. India is also a signatory to several important WIPO-administered international treaties and conventions related to intellectual property.²⁰

The Acts covering IPR in India include the Patents Act, 1970 (as amended in 2005); Copyright Act, 1957 (as amended); Trade Marks Act, 1999 (as amended in 2010); Designs Act, 2000; and Geographical Indications of Goods (Registration & Protection) Act, 1999. Intellectual property needs to be registered with the Copyright Office of Controller General of Patents, Designs and Trademarks, whichever is relevant.

On 12 May 2016, the government released the National Intellectual Property Rights Policy that seeks to promote a holistic and conducive ecosystem to catalyze the full potential of intellectual property for India's economic growth and socio-cultural development, while protecting the public interest. Its objectives include creating public awareness, stimulating the generation of IPRs, having strong and effective IPR laws, and strengthening the enforcement and adjudicatory mechanisms for combating IPR infringements.²¹

The Minister of Commerce and Industry launched the Intellectual Property (IP) mascot – IP Nani – at the conference on National Intellectual Property Rights Policy in New Delhi on 16 May 2018 to create awareness amongst children. The Cell for IPR Promotion and Management (CIPAM), a professional

body under the Department for Promotion of Industry and Internal Trade (DPIIT), collaborated with the European Union Intellectual Property Office (EU-IPO) to produce a series of animated videos on IPRs for children with IP Nani as their central character. CIPAM has been conducting IPR awareness workshops for school students since April 2017. Till date, CIPAM has reached out to over 100 schools sensitizing over 8,000 students on IPRs. Additionally, CIPAM also engaged with the National Council of Educational Research & Training (NCERT) to curate content on IPRs. As a result, for the first time, IPRs have been exclusively included in the NCERT textbook for the Class 12 school syllabus. These efforts are aimed at inspiring the next generation of creators and innovators to become proud IP owners.²²

Patents

A patent is granted for an invention that is a new product or a process involving an inventive step and capable of industrial application. 'New invention' means the subject matter has not fallen in the public domain or that it does not form part of state-of-the-art technology. One of the inventive steps taken are the feature(s) of the invention that involves technical advancement as compared to existing knowledge, and that makes the invention not obvious to a person skilled in the art. Industrial use means that the invention is capable of being made or used in industry.²³

Patents are governed by the Patents Act, 1970, as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003, as amended by the Patent (Amendment) Rules, 2016.

20. Intellectual Property Facts, Make in India, <http://www.makeinindia.com/policy/intellectual-property-facts>, accessed 30 September 2020

21. National Intellectual Property Rights Policy, Department for Promotion of Industry and Internal Trade, <https://dipp.gov.in/policies-rules-and-acts/policies/national-ipr-policy>, accessed 25 September 2020

22. Suresh Prabhu launches Intellectual Property mascot – IP Nani, Department for Promotion of Industry and Internal Trade, https://dipp.gov.in/sites/default/files/Press-Release-IP%20Mas-coT_16052018%20.pdf, accessed 25 September 2020

23. Intellectual Property Facts, Make in India, <http://www.makeinindia.com/policy/intellectual-property-facts>, accessed 25 September 2020

Normally, a patent obtained in India is not enforceable in another country, as patent protection is a territorial right. However, as India is a signatory to the Patent Cooperation Treaty (PCT), applicants can file a single international patent application under the PCT and simultaneously seek protection for an invention in more than 153 countries.²⁴

India is also a signatory to the Paris Convention for the Protection of Industrial Property. The convention provides for the right of priority, due to which, based on a regular first application filed in one of the contracting states, the applicant may, within a certain period of time (12 months for patents), apply for protection in any of the other contracting states.

These subsequent applications will be regarded as if they had been filed on the same day as the first application, i.e., they will have priority over applications filed by others during that period.²⁵

India follows a first-to-file patent system. A patent application can be filed either by the true and first inventor or his/her assignee, either alone or jointly with any other person, or the legal representative of a deceased person. An applicant can file a patent application if they have a place of residence, business, or domicile in India. A patent application can be filed with the Patent Office at any of its four locations (Kolkata, Delhi, Chennai, or Mumbai) depending on territorial jurisdiction, or online through its official website, www.ipindia.nic.in.²⁶ Foreign applicants who do not have a place of business or domicile in India can file their applications through an Indian patent agent.

All the records are digitized and freely available through the website. The entire processing of patent applications is electronic, and information relating to processing is made available on the website in real-time, thereby providing valuable information to the applicants. A patent is granted for a uniform period of

20 years from the filing date of the patent application, for inventions in all fields of technology, and it is a territorial right.²⁷

The Patents Act, 1970, provides for the enforcement of patents by way of suits on infringement. The patentee may file an action for patent infringement in either a District Court or a High Court. The relief that a court may grant includes an injunction and, at the option of the patentee, either damages, or an account of profits. The court may also order that the infringing goods be seized, forfeited, or destroyed without payment of any compensation.²⁸

The improvement in IP administration during the last two years, along with amendments of Patents and Trademarks Rules, digital reforms, and re-engineering of IP procedures has resulted in improved performance, decreased pendency, and higher rates of dispensing of IP applications

Copyright

The Copyright Act, 1957, protects original literary, dramatic, musical, and artistic works and cinematograph films and sound recordings from unauthorized use. Unlike patents, copyright protects the expression and not ideas. There is no copyright protection for ideas, procedures, methods of operation, or mathematical concepts as such. It is not necessary to register a work to claim copyright in India. Acquisition of copyright is automatic – it comes into existence as soon as a work is created and requires no formalities. However, a certificate of registration of copyright and the entries made therein serve as prima facie evidence in a court of law with reference to disputes on ownership of copyright.²⁹

24. World Intellectual Property Organization, <http://www.wipo.int/pct/en/>, accessed 25 September 2020

25. Summary of the Paris Convention for the Protection of Industrial Property (1883), WIPO, http://www.wipo.int/treaties/en/ip/paris/summary_paris.html, accessed 25 September 2020

26. Filing of Patent Application, http://www.ipindia.nic.in/writereaddata/Portal/IPOGuidelinesManuals/1_28_1_manual-of-patent-office-practice_and-procedure.pdf, accessed 25 September 2020

27. Intellectual Property Facts, Make in India, <http://www.makeinindia.com/policy/intellectual-property-facts>, accessed 25 September 2020

28. Section 108: Reliefs in suit for infringement, Patents Act, 1970, <http://ipindia.nic.in/writereaddata/Portal/ev/sections/ps108.html>, accessed 25 September 2020

29. A Hand-Book of Copyright Law, Ministry of Human Resource Development, <http://copyright.gov.in/documents/handbook.html>, accessed 25 September 2020

The Copyright Office has been set up to provide registration facilities for all types of works and is headed by a Registrar of Copyrights. The Copyright (Amendment) Act, 2012 extends copyright protection in the digital environment, ensuring the right to receive royalties for authors and music composers, exclusive economic and moral rights to performers, equal membership rights in copyright societies for authors and other right owners, and exception of copyrights for the physically disabled to access any works.³⁰

In order to ensure smooth and flawless compliance of the Copyright Act in the light of technological advancement in the digital era and to bring them in parity with other relevant legislations, the Department for Promotion of Industry and Internal Trade, Government of India has now proposed to introduce the Copyright Amendment Rules, 2019. The proposed amendment is seen as a clarification by the government that the statutory licensing scheme under Section 31D applies to all types of broadcasting, including internet broadcasting, and is not restricted to only radio and internet broadcasting.

Cinematography

The Ministry of Information and Broadcasting, Government of India has introduced the Cinematograph Act (Amendment) Bill, 2019, in Rajya Sabha in order to check film piracy.

The Bill proposes to criminalize unauthorized use of an audio-visual recording device for making or transmitting a copy of a film or any part of it, with a punishment of three years of imprisonment or a fine of INR 1 million or both.³¹

Trademarks³²

Under the Trade Marks Act, 1999, a person who is the proprietor of the trademark can apply to the Registrar of Trademarks for the registration of its mark for goods and services. A trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one undertaking from those of another undertaking. A

trademark can be a device, brand, heading, label, ticket name, packaging, sign, word, letter, number, drawing, picture, emblem, color or combination of colors, the shape of goods, signature, or a combination thereof.

Though the registration of a trademark is not compulsory, registration is prima facie proof of title and gives the registered proprietor the exclusive right to use the trademark and take legal action in case of infringement. If a trademark is not registered and if someone not having a right in the trademark uses that trademark, the proprietor of the trademark can take the common law action of passing off.

The initial registration is valid for a period of 10 years, which is renewable for an indefinite period of time. India also acceded to the Madrid Protocol, which allows applicants to file an application for international registration in other countries that are members of the protocol through a simple form and by payment in one foreign currency. Applicants can also file indicating India as the designated country in forms. This enables the time-bound processing of trademark applications.

With several new initiatives, the first examination of trademark applications, which previously took 13 months, has been brought down to just one month as of January 2017.

Design³³

The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in industries. The existing legislation on industrial designs in India is contained in the Designs Act, 2000.

The essential requirements for the registration of a 'design' under the Designs Act, 2000 are as follows:

- The design should be new or original, not previously published or used in any country before the date of application for registration.
- The design should relate to features of shape, configuration, pattern, or ornamentation applied or applicable to an article.

30. Ibid.

31. Public comments sought on Cinematograph Act (Amendment) Bill, Ministry of Information and Broadcasting, <https://mib.gov.in/sites/default/files/Public%20Notice%20-%20Amendment%20of%20Cinematograph%20Act%20Bill.pdf>, accessed 25 April 2020

32. Intellectual Property Facts, Make in India, <http://www.makeinindia.com/policy/intellectual-property-facts>, accessed 25 September 2020

33. Designs, Controller General of Patents, Designs and Trademarks, <http://www.ipindia.nic.in/faq-designs.htm>, accessed 25 September 2020

- The design should be applied to any article by any industrial process.
- The features of the design in the finished article should appeal to and be judged solely by the eye.
- Any mode or principle of construction or operation or anything which is, in substance, a mere mechanical device cannot be registered as a design.
- The design should not include any trademark or property mark or artistic works as defined under the Copyright Act, 1957.

The registration of a design confers upon the registered proprietor a 'copyright' on the design for the period of registration. It gives the proprietor the exclusive right to apply it to any article in the registered class. A registered proprietor of the design is entitled to better protection of his intellectual property. He can sue for infringement (recoverable amount cannot exceed INR 200,000), and license or sell his design as legal property for a consideration or royalty.

Any person (including a firm, partnership, or body corporate) claiming to be the proprietor of the design can apply for its registration. The application can be filed by the applicant directly or through an agent. The duration of the registration of a design is initially 10 years from the date of registration, which may be extended by five years through the relevant application.

Geographical Indications

Geographical Indications (GI) are covered as an element of intellectual property under the Paris Convention as well as the TRIPS agreement. A geographical indication identifies agricultural/natural/manufactured goods as originating or manufactured in the territory of a country/region/locality in that territory, where a given quality, reputation, or other characteristics of such goods is essentially attributable to its geographical origin. In cases where such goods are manufactured goods, one of the activities of either the production or processing or

preparation of the goods concerned must take place in such territory, region, or locality as the case may be. The Geographical Indications of Goods (Registration & Protection) Act, 1999, is the relevant Act in India³⁴ in such matters.

In order to encourage the promotion and marketing of Indian GI products, the government launched a common GI logo, which will act as a certifying mark that can be used to identify all registered GIs irrespective of the categories. The tagline 'Invaluable Treasures of Incredible India' represents the spirit of Geographical Indications of India and will be helpful in effective branding and promotion of GIs. This will also help engage with more people on the subject of GIs and make them aware of the benefits of the GI tag.

Privacy

The Right to Privacy is a fundamental right and is protected under the Indian Constitution. The Privacy rules in India were contained in the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (Privacy Rules) notified under the Information Technology Act, 2000. The Privacy Rules are applicable to bodies corporate across industries and sectors. The introduction of the Privacy and Data Protection Bill has brought India to the forefront globally with respect to the handling of personal information of an individual person.

The proposed bill emphasizes 'consent' to be the most significant acceptable grounds for processing/collecting personal data.

Some of the areas organizations need to adhere to comply with the requirements of the bill:

- Privacy by design throughout the data life cycle - collection, processing, storage, transmission, archival, and data disposal;

- Limit data collection to the minimum required for the purpose of processing;
- Respect the rights of the data principal;
- Organizations will need to store at least one serving copy of the personal data on a server or data center located in India;
- Parental consent is mandatory for processing children's information;
- Provision for notification to the Data Protection Authority (DPA) in case of a data breach;
- Organizations are required to implement appropriate security safeguards to protect personal information.

Under the Rules, a body corporate handling or collecting personal information from any person is required to:

- Provide a privacy policy and make it accessible to the providers of the information;
- Retain information only for such time period as may be required;
- Keep the information secure and not publish it;
- Obtain permission of the provider of information prior to the disclosure of such information, unless required to be disclosed by law or to certain government agencies;
- Permit the providers of information, as and when requested by them, to review the information they had provided and ensure that any personal information or sensitive personal data or information found to be inaccurate or deficient is corrected or amended as feasible;
- Provide an option to the provider of information to not handover the data or information sought to be collected or to withdraw the consent given earlier;
- Address any discrepancies and grievances of the provider of information with respect to the

processing of information in a timely manner. For this purpose, the body corporate has to designate a Grievance Officer and publish his name and contact details on its website. The Grievance Officer will have to redress the grievances of the provider of information expeditiously, within one month from the date of receipt of grievance.

Certain industries, where technology and data transfer are critical, are closely monitored by the government, e.g., licensed defense industries in the private sector.

Cross-border Transactions

India has witnessed an increasing interest in cross-border transactions over the last few years, due to growing confidence in the economy and the various government initiatives designed to build a conducive ecosystem for doing business in India.

The key rationale behind cross-border transactions includes technological collaborations/research and development, contract manufacturing for domestic operations as well as exports, distribution, market acquisition and penetration, etc.

Some of the major regulations to be considered while undertaking an M&A transaction in India are as follows:

Companies Act, 1956 and Companies Act, 2013 (to the extent notified)

- The Companies Act, 1956, has been replaced by the Companies Act, 2013 (to the extent notified). The Act governs mergers and schemes of arrangement, including procedures for approval from the Company Court and various stakeholders, such as shareholders, creditors, etc.

While the Companies Act, 1956, did not permit an Indian company to merge with a foreign company, the Companies Act, 2013, allows such mergers subject to certain rules.

- Acquisitions must comply with the procedure stated in the company's Articles of Association for transfer of shares and the provisions relating to shareholders' approval.
- Sale of an undertaking or part thereof can be undertaken by a company with the approval of at least 75% of its shareholders.

Securities Law (governed by SEBI)

- Takeover Code: Regulates the acquisition of shares and control in listed companies
- Listing regulations: Prescribes certain mandatory conditions and procedures that listing companies must comply with
- Issue of capital and disclosure requirements: Regulates the provisions of preferential allotment for the new issue of shares
- Insider trading regulations: Controls the dispersion of unpublished price-sensitive information

Taxes and duties applicable on the basis of the mode of the transaction (i.e., acquisition, slump sale and asset sale)

- Direct tax provisions: To consider taxes on account of transfer of capital assets and business undertakings, utilization of carried forward losses, and unabsorbed depreciation of the amalgamating company
- Stamp duty: Payable on certain instruments/documents, such as court orders for mergers and demergers, share transfer forms, shareholders' agreement/joint venture agreement, share purchase agreements, and conveyance deeds for the transfer of assets
- FEMA: The recently issued Foreign Exchange Management (Cross-Border Merger) Regulations, 2018 (FEMA Regulations), address various issues that may arise concerning cross-border mergers from an exchange control perspective.

The regulations deal with provisions related to the issue/acquisition of securities, conditions on borrowings, transfer of assets, etc.

- Goods and Services Tax provisions: For transactions under the asset sale mode, supply or acquisition of assets will be liable for taxation under GST, while the transfer of business on a going concern basis will not be taxable. In certain cases, however, the business undertaking may be considered an asset, and therefore, GST may be applicable to such transactions.

Competition Act³⁵

The Act regulates combinations (acquisitions, acquiring of control, and mergers and acquisitions), which cause or are likely to cause an appreciable adverse effect on competition within India. The law has prescribed certain financial thresholds based on turnover/assets to ascertain the applicability of competition law provisions to the merger/acquisition.

With the increase in M&A activities, a robust regulatory framework is required to boost transactions. The recent passage of the Insolvency and Bankruptcy Code, GST legislation, and FEMA regulations mentioned above further strengthen India's regulatory framework. While the bankruptcy law promotes foreign investment and domestic lending by expediting debt recovery, GST promises to boost GDP growth through increasing transparency and efficiency across different sectors of the economy. The FEMA regulations guide foreign companies for ease of mergers with domestic companies. Bolstered by these policy developments, along with liberalized FDI thresholds and relaxed sectoral reforms, both M&A activity and private equity investments are likely to rise in the coming years.

Competition Law - Regulating Combinations

The erstwhile Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) controlled monopolies and prohibited monopolistic and restrictive trade practices in India. The MRTP Act was completely replaced by the Competition Act, 2002, with effect from 1 September 2009.

The Competition Act moved away from the earlier emphasis of curbing monopolies towards promoting and sustaining competition to enhance consumer welfare and support economic growth.

Accordingly, the Competition Commission of India (CCI) was constituted to eliminate practices having an adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in markets through the enforcement of competition law.

The Act prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control, and mergers and acquisitions), which cause or are likely to cause an appreciable adverse effect on competition within India³⁶.

The Competition Commission of India (CCI) made the following amendments to its Combination Regulations in order to further ease doing business in India:

Increase in thresholds: Threshold levels (of assets and turnover) for notifying the proposed combination were increased by 100% through an order passed on 4 March 2016³⁷.

Thresholds for filing notice

Enterprise level	Assets	or	Turnover
India	> INR 20 billion		> INR 60 billion
Worldwide with India leg	> USD 1 billion with at least > INR 10 billion in India		> USD 3 billion with at least > INR 30 billion in India
Group level		or	
India	> INR 80 billion		> INR 240 billion
Worldwide with India leg	> USD 4 billion with at least > INR 10 billion in India		> USD 12 billion with at least > INR 30 billion in India

Increase in thresholds: Threshold levels for exempting the target enterprise from notifying the proposed combination have been raised to INR 3.5 billion in assets or INR 10 billion in turnover from the earlier levels of INR 2.5 billion in assets or INR 7.5 billion in turnover.

The CCI clarified the definition of the term 'other document' in the merger notice, the scope of which

is now limited to a communication conveying the intention to make an acquisition to a Statutory Authority. This amendment clarifies what triggers the requirement to notify the CCI. The previous regulation called for conveying the intention of an acquisition to the Central or State Government or a Statutory Authority. Now, it is limited to a Statutory Authority only.

36. Ibid.

37. Revised Thresholds, Competition Commission of India, https://www.cci.gov.in/sites/default/files/quick_link_document/Revised%20thresholds.pdf, accessed 25 September 2020

The CCI has extended the deadline for completion of the Phase-I review of merger documents from 30 calendar days to 30 working days, providing ample time for dialog between the parties to the merger and the regulator to reach a positive outcome.

The CCI has also removed the existing deadline of 30 days for merger notification. There is no longer an obligation to file the merger notification within 30 days of the trigger event. Transacting parties may choose to file at any time after the trigger event. The only obligation is to obtain the approval from the CCI before the transaction is completed.

CCI amended the Leniency Regulations to provide individuals with leniency benefits as well. The limitation on the number of firms filing for leniency benefits for a given case has been removed, as compared to the earlier allowance of only three applicants (on a first-come-first-serve basis).

As part of its ongoing and regular efforts to ensure faster Merger & Acquisition (M&A) filing approval, the CCI has introduced an automatic system of approval for combinations under the 'Green Channel'. The Green Channel aims to sustain and promote a speedy, transparent, and accountable review of combination cases, strike a balance between facilitation and enforcement functions, create a culture of compliance, and support economic growth. Under this process, the combination is deemed to have been approved upon filing the notice in the prescribed format. Simultaneously, the CCI has also revised its pre-filing consultation guidance note to extend its scope to include a consultation to help the parties determine if their combination is eligible for Green Channel. The parties filing combination notice can now also meet the case team in person.³⁸

Consumer Protection

The Department of Consumer Affairs of the Ministry of Consumer Affairs, Food and Public Distribution is responsible for the implementation of the Consumer Protection Act, 2019, Bureau of Indian Standards Act, 2016, and Standards of Weights and Measures - The Legal Metrology Act, 2009; Essential Commodities Act, 1955 (Supply, Prices, and Distribution of Essential Commodities not dealt with specifically by any other Department); Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980; internal trade; regulation of packaged commodities; consumer cooperatives; and monitoring prices and availability of essential commodities, etc.³⁹

The Consumer Protection Act, 2019, received Presidential assent and came into effect on 9 August 2019. This 2019 Act repeals the previous consumer protection Act 1986, which had been in effect earlier. This prior legislation had been amended from time-to-

time to bring it in accordance with changes brought about by the economic liberalization, globalization of markets, and digitalization of products and services. However, its practical implementation was far from fulfilling its desired objective of being a socio-economic legislation that sought 'to provide for better protection of the interests of consumers.' While using the same phrase in its preamble, the 2019 Act, has substantially enhanced the scope of protection afforded to consumers by bringing within its purview advertising claims, endorsements, and product liability, all of which play a fundamental role in altering the consumer behavior and retail trends in the 21st century.

38. Notification dated 13 August 2019, Notifications for Combinations, Competition Commission of India, <http://www.cci.gov.in/sites/default/files/notification/210553.pdf>, accessed 25 September 2020

39. Notification dated 13 August 2019, Notifications for Combinations, Competition Commission of India, <http://www.cci.gov.in/sites/default/files/notification/210553.pdf>, accessed 25 September 2020

The 2019 Act continues to have Consumer Dispute Redressal Commissions at the district, state, and national levels (Consumer Commissions). However, the pecuniary jurisdiction, i.e., the monetary value of complaints that can be entertained, of each of these commissions have been substantially increased to reduce the burden on the State and National Commissions by encouraging consumers to approach the District Commission for complaints valued up to INR 10 million.⁴⁰

The National Building Code of India, 2005 (NBC), is a comprehensive building code providing guidelines for regulating building construction activities across the country. It serves as a model code for adoption by all agencies involved in building construction, such as the Public Works Departments, government construction departments, local bodies or private construction agencies. The NBC mainly contains administrative regulations, development control rules, and general building requirements, fire safety requirements, stipulations regarding building materials, structural design and construction (including safety), and building and plumbing services⁴¹. Local bylaws are also formulated and adopted by state governments, urban local bodies, and development authorities to regulate construction activities in the area that they are framed for.

The Real Estate (Regulation and Development Act, 2016, aims to protect the interests of a large number of aspiring house buyers while enhancing the credibility of the construction industry by promoting transparency, accountability, and efficiency in the execution of projects. It was enacted to establish an effective regulatory mechanism for the orderly growth of the sector, which is the second-largest employer after agriculture.

The Act's main objectives include:

- To establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure the sale of plots, apartments or buildings, or the sale of real estate projects, in an efficient and transparent manner

- To protect the interest of consumers in the real estate sector
- To establish an adjudicating mechanism for speedy dispute redressal
- To establish the Appellate Tribunal to hear appeals from the decisions, directions, or orders of the Real Estate Regulatory Authority and the adjudicating officer.

With effect from 1 May 2017, all 92 Sections of the Act have come into force wherein all developers shall get all the ongoing projects that have not received a Completion Certificate and the new projects registered with the Regulatory Authorities within three months, i.e., by the end of July 2017. This enables the buyers to enforce their rights and seek redressal of grievances after such registration.

Environment, Pollution, and Waste Management

There are various laws governing environmental and pollution control matters, including the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; the Biomedical Waste Management & Handling) Rules, 1998; the Manufacture, Storage, and Import of Hazardous Chemicals Rules, 1989; and the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008. Contravention of the above Acts attracts a fine and imprisonment. The Ministry of Environment, Forest and Climate Change (MoEFCC) is the nodal agency of the Central Government for planning, promoting, coordinating, and overseeing the implementation of India's environmental and forestry policies and programs⁴². The process of applying for environment and forest clearances can be made online through the MoEFCC's portals www.environmentclearance.nic.in and www.forestsclearance.nic.in.

40. The Consumer Protection Rules and Regulations Under The Consumer Protection Act, 2019, Department of Consumer Affairs, <https://consumeraffairs.nic.in/acts-and-rules/consumer-protection>, accessed 25 September 2020

41. National Building Code of India, 2016, <https://bis.gov.in/index.php/standards/technical-department/national-building-code/>, accessed 25 September 2020

42. About, Ministry of Environment, Forest and Climate Change, <http://moef.gov.in/about-the-ministry/introduction-8/>, accessed 25 September 2020

The Public Liability Insurance Act, 1991, applies to all owners associated with the production or handling of any hazardous chemicals. It provides for damages to victims of an accident that occurs as a result of handling any hazardous substance⁴³.

The Central Pollution Control Board (CPCB) is a statutory organization under the MoEFCC that advises the Central Government on any matter concerning the prevention and control of water and air pollution and coordinates the activities of the State Pollution Control Boards (SPCB) among other things⁴⁴. Each SPCB provides detailed guidelines for necessary approvals and conditions required for setting up operations in the state.

43. Public Liability Insurance, Ministry of Environment, Forest and Climate Change, <http://moef.gov.in/rules-and-regulations/public-liability-insurance/>, accessed 25 September 2020

44. Functions, Central Pollution Control Board, <https://cpcb.nic.in/functions/>, accessed 25 September 2020



03

Banking and Finance

- The Banking System
- Existing Banking Structure
- Legal Framework
- Foreign Banks in India
- Capital Requirements
- Currency Exchange Control
- Foreign Portfolio Investment

The Banking System

The banking and financial sector in India functions under the superintendence and control of the central bank, the Reserve Bank of India (RBI). It was established in 1935 with the main aim of maintaining monetary and financial stability.

The RBI performs the following functions¹:

Monetary Authority

- Formulates, implements, and monitors the monetary policy.
- Objective: Maintaining price stability and ensuring the adequate flow of credit to productive sectors.

Regulator and Supervisor of the Financial System

- Prescribes a broad operational framework for the country's banking and financial system.
- Objective: Maintaining public confidence in the system, protecting depositors' interests, and providing cost-effective banking services.

Manager of Foreign Exchange

- Manages the Foreign Exchange Management Act, 1999.
- Objective: Facilitating external trade and payment and promoting the orderly development and maintenance of the foreign exchange market in India.

Issuer of Currency

- Issues and exchanges/destroy currency and coins that are not fit for circulation.

Other Functions

- Banker and debt manager to the government: Performs a merchant banking function for the Central and State Governments and acts as their banker.

- Banker to banks: Maintains banking accounts of all scheduled banks.

Existing Banking Structure²

Different departments of the RBI oversee the various entities that comprise India's financial infrastructure, such as commercial banks, financial institutions, cooperative banks, and non-banking financial companies.

Types of banks	Number of banks
Public sector banks	20
Private Indian banks	22
Private foreign banks	21
Regional rural banks	45
Scheduled urban cooperative banks	53
Non-scheduled urban cooperative Banks	1485
District cooperatives	362
Scheduled state cooperatives	23
Non-scheduled state cooperatives	10

Legal Framework³

The primary Acts governing this sector are the Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949 [also the Banking Laws (Amendment) Act, 2012]. Several other Acts govern specific functions (e.g., the Foreign Exchange Management Act, 1999), banking operations, and individual institutions.

1. About Us, RBI, <https://www.rbi.org.in/Scripts/AboutusDisplay.aspx#MF>, accessed 15 September 2020

2. Banks in India, RBI, <https://rbi.org.in/commonman/English/Scripts/BanksInIndia.aspx>, accessed 15 September 2020

3. About Us, RBI, <https://www.rbi.org.in/Scripts/AboutusDisplay.aspx#LF>, accessed 15 September 2020 Doing Business in India 2020-21

Foreign Banks in India⁴

With increasing globalization, the presence of foreign banks must expand, mainly because they specialize in providing sophisticated financial products and facilitate the flow of foreign capital. Their increased presence would meet the requirements of the growing Indian economy.

Currently, foreign banks can operate in India through branches, by setting up a Wholly-Owned Subsidiary (WOS), or a subsidiary with aggregate foreign investment up to 74% of the paid-up capital in a private bank (up to 49% under the automatic route). Also, at least 26% of the paid-up capital will have to be held by Indian residents at all times, except with respect to a WOS. A foreign bank can establish a WOS either through conversion of existing branches into a subsidiary or through a fresh banking license.

A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks. Guidelines for setting up a WOS will be issued separately by the RBI.

In the case of NRIs, individual holding is restricted to 5% of the total paid-up capital, and the aggregate limit cannot exceed 10% of the total paid-up capital both on a repatriation and non-repatriation basis. This can be raised to 24% by a special resolution by its General Body.

In the case of Foreign Institutional Investors (FIIs)/ Foreign Portfolio Investors (FPIs), individual holding is restricted to less than 10% of the total paid-up capital. The aggregate limit for all FIIs/FPIs cannot exceed 24% of the total paid-up capital, which can be raised to 74% by the bank through a resolution by its Board of Directors, followed by a special resolution by its General Body. For public sector banks, Foreign Direct Investment (FDI) and portfolio investment is limited to 20%.

Capital Requirements

The RBI has instructed banks to maintain adequate capital on a continuous basis for credit, market, and operational risks, among others. Capital adequacy is measured in terms of the Capital to Risk-Weighted Assets Ratio (CRAR). Basel III Capital Regulations specifying minimum capital requirements have been implemented in India from 1 April 2013 in phases.

With respect to the Basel III liquidity standards, the RBI started phasing in implementation of the Liquidity Coverage Ratio (LCR) from January 2015 and is looking to implement the Net Stable Funding Ratio (NSFR) from 1 January 2018 for banks in India. On 28 May 2015, the RBI released draft guidelines on NSFR for comments.

Currency Exchange Control⁵

The RBI supervises and regulates the foreign exchange market in India through the Foreign Exchange Management Act, 1999 (FEMA). It issues licenses to banks and other institutions to act as Authorized Dealers in the foreign exchange market. The RBI has undertaken substantial elimination of licensing, quantitative restrictions, and other regulatory and discretionary controls.

The foreign exchange market in India comprises of - Authorized Persons (banks, money changers, and other entities) in the foreign exchange business; foreign exchange brokers who act as intermediaries; and customers – individuals as well as companies – who need foreign exchange for their transactions. The customer segment is dominated by major public sector entities, the Indian government, and large private sector companies. FIIs have emerged as an essential constituent in the equity market and, thus, contribute significantly to the foreign exchange market activity. The Indian foreign exchange market primarily comprises two segments – the spot market (the dominant segment) and the derivatives market.

4. Core Principles of Effective Banking Supervision, <http://www.rbi.org.in/upload/publications/pdfs/10115.pdf>, accessed 18 September 2020

5. Reserve Bank of India: Functions and Working, <https://rbidocs.rbi.org.in/rdocs/Content/PDFs/FUNCWWE080910.pdf>, accessed 18 September 2020

A unified, single, market-determined exchange rate system based on the demand and supply of foreign exchange has been effective from 1 March 1993. The RBI's exchange rate policy focuses on ensuring orderly conditions in the foreign exchange market; therefore, it closely monitors developments in financial markets in India and abroad. When necessary, it intervenes in the market by buying or selling foreign currencies. Market operations are undertaken either directly or through public sector banks.

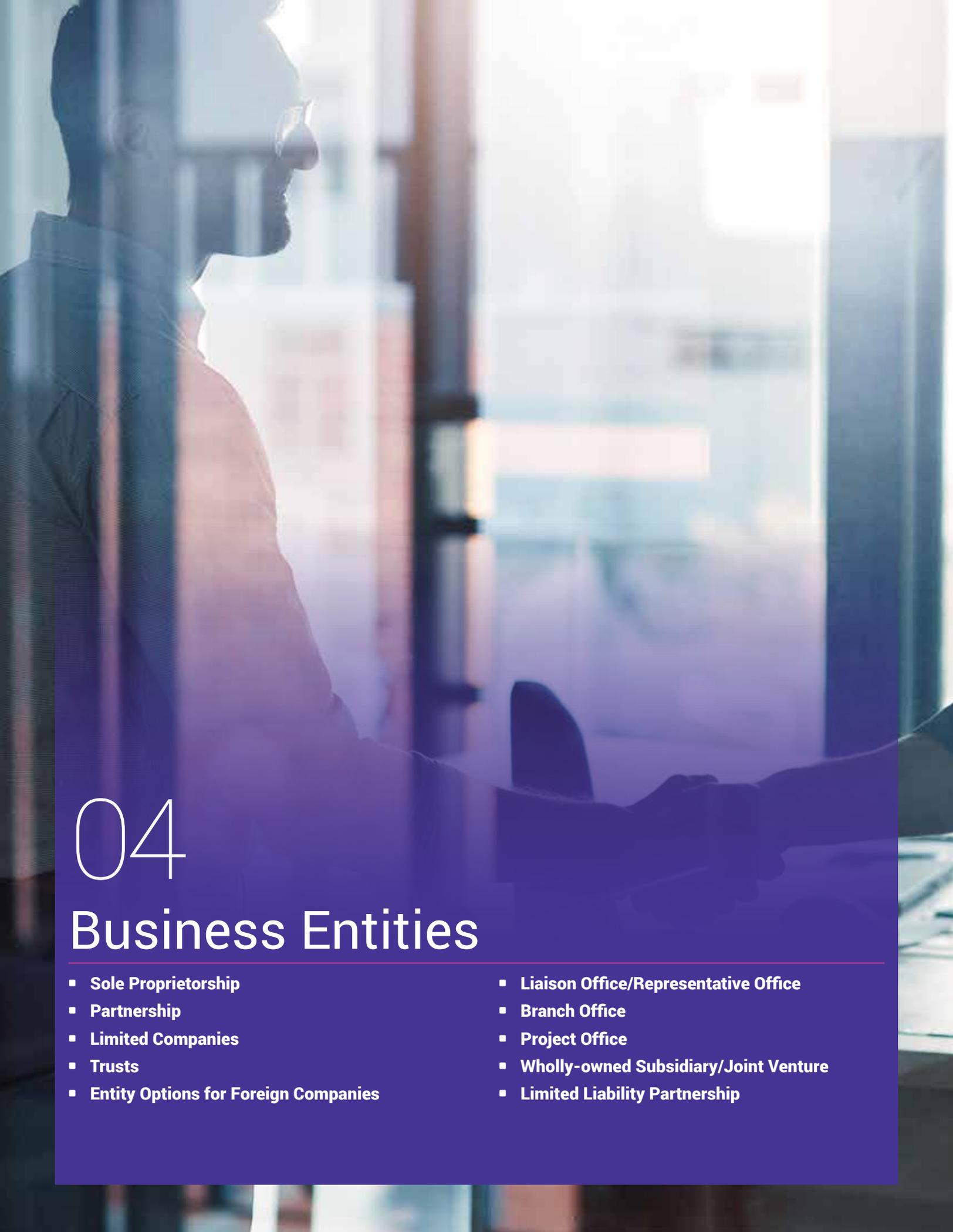
Foreign Portfolio Investment

In addition to the FDI route, foreign investment in India is also permitted under the FPI Route. The FPI route is governed by the prescribed regulations (FPI Regulations) framed by the Securities and Exchange Board of India (SEBI), which is the regulatory body governing the Indian capital market. Under the FPI route, foreign investors are permitted to invest in securities which are listed/to be listed on recognized stock exchanges in India.

FPI regulations require any foreign investor to register with SEBI under one of the three categories provided, before initiating any investment activities in India. The selection of the category mainly depends on the business of the entity in its home country. SEBI's registration fee is different for each category. Furthermore, FPIs are also required to appoint a banker in India as their custodian bank.

Indian tax laws provide for a prescribed tax regime for FPIs in India to bring the maximum level of certainty with respect to FPI taxation. As per the Indian tax laws, FPIs are taxable as per the prescribed tax regime or the provisions of the tax treaty (if any) India has entered into with the home country of the foreign investors (Double Taxation Avoidance Agreement - DTAA), whichever is beneficial. To avail the beneficial provisions of the DTAA, the FPI would need to obtain a Tax Residency Certificate from its home country, and would also need to comply with other requirements of the DTAA, as applicable.

FPIs are also required to appoint a tax consultant in India. The tax consultant in India would issue the remittance certificates for the purpose of repatriation of funds back to the FPI's home country after determining Indian tax liabilities, if any, considering the investment activities carried out by the FPI in India. Furthermore, FPIs are also required to file their annual tax return in India for any financial year (i.e., from 1 April to 31 March any year).



04

Business Entities

- Sole Proprietorship
- Partnership
- Limited Companies
- Trusts
- Entity Options for Foreign Companies
- Liaison Office/Representative Office
- Branch Office
- Project Office
- Wholly-owned Subsidiary/Joint Venture
- Limited Liability Partnership

Sole Proprietorship

A sole proprietorship firm is a form of an entity where a single individual owns, manages, and controls the business. There is no requirement for registration of the firm. The firm has no legal existence separate from its owner. However, the sole proprietor may be required to obtain a license for carrying out business from the local administration. The required capital is supplied wholly by the owner himself, who solely enjoys the profits of the business and bears all the losses. The liability of the proprietor is unlimited, i.e., it extends beyond the capital invested in the firm. This form of organization is suitable for businesses that involve moderate risk¹.

A Non-Resident Indian (NRI) or Person of Indian Origin (PIO) may invest in a sole proprietorship concern (except those engaged in agricultural/ plantation activities or real estate businesses or print media) with repatriation benefits only with the prior approval of the Reserve Bank of India (RBI). No person resident outside India, other than NRIs/PIOs, can make any investment by way of contribution to the capital of a proprietorship concern. However, the RBI may, on an application made to it, make an exception for a person resident outside India subject to terms and conditions as may be considered necessary².

Partnership

A partnership is a bond between two people who have agreed to share the profits of a business carried on by all or any of them acting for all. The individuals who have entered into partnership with one another are individually called 'partners' and collectively termed, 'a firm,' and the name under which their business is carried on is the 'firm name.' A partnership is governed by the Indian Partnership Act, 1932.³

A partnership can be formed by an agreement, which may be either written or oral. If the written agreement is duly stamped and registered, it is known as a 'Partnership Deed.' If the firm is not registered, it will be deprived of certain legal benefits, such as when there are disputes between partners.

The Registrar of Firms is responsible for registering partnership firms. There must be a minimum of two partners, while the maximum number can be 10 in the case of banking business, and 20 for all other types of companies. The firm has no separate legal existence, i.e., the firm and the partners are the same in the eyes of the law. The liability of the partners is unlimited – they are jointly and severally liable for the liabilities of the firm. There are restrictions on the transfer of interest, i.e., none of the partners can transfer their interest in the firm to any person (except to the existing partners) without the unanimous consent of all other partners. The firm must be dissolved on the retirement, lunacy, bankruptcy or death of any partner subject to the provision of the Partnership Deed.⁴

NRIs/PIOs may invest in partnership firms (except those engaged in agricultural/plantation activities or real estate businesses or print media) with repatriation benefits only with the prior approval of the RBI. No person resident outside India, other than NRIs/PIOs, can make any investment by way of contribution to the capital of a firm. However, the RBI may, on an application made to it, permit a person resident outside India subject to such terms and conditions as may be considered necessary⁵.

1. Sole Proprietorship, Types of Businesses, Start Up India, <https://bit.ly/2ZR7meR>, accessed on 18 September 2020

2. Foreign Investments in India – Investment in Proprietorship Concern/ Partnership Firm A.P. (DIR Series) Circular No.39 (December 3, 2003), <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/40493.pdf>, accessed on 15 September 2020

3. Partnership Act, 1932, Ministry of Corporate Affairs, http://mca.gov.in/Ministry/actsbills/pdf/Partnership_Act_1932.pdf, accessed 15 September 2020

4. Ibid.

5. Paragraph 3.2.,2 (iii) of Consolidated FDI Policy 2020, Department for Promotion of Industry and Internal Trade, <http://dipp.nic.in/foreign-direct-investment/foreign-direct-investment-policy>, accessed 15 September 2020

Limited Companies

The Companies Act, 2013 broadly recognizes three types of companies:

- Public Limited Company
- Private Limited Company
- One Person Company

Private Limited Company⁶

A private company is one that restricts (by its Articles of Association):

- The rights of its shareholders to transfer shares
- The number of shareholders (excluding present- and past-employee shareholders) to 200
- The company from making an invitation to the public to subscribe to any shares or debentures of the company
- It requires a minimum of two shareholders to form a private limited company

The name of a private company carries the suffix 'Private Limited'

Public Limited Company

A public company is a company, which is not a private company⁷. The above-mentioned restrictions are applicable to private companies but do not apply to public companies. A minimum of seven shareholders is required to form a public company.

Also, a private company that is a subsidiary of a public company is defined as a public company. The name of a public company carries the suffix 'Limited' (Ltd).

Under the Companies Act, 2013, a private limited company enjoys certain privileges and exemptions from various provisions of the Act, unlike a public company, which is subject to greater scrutiny, transparency, and compliance regulations. Furthermore, a public company (which is listed on a stock exchange in India) is also regulated by the Securities and Exchange Board of India (SEBI).

One Person Company

A 'One Person Company' is a concept introduced by the Companies Act, 2013. As the name suggests, it is formed with just one person as its member. Since such companies have only one member, they enjoy certain privileges and exemptions. Such a company can be formed by a person who is a resident and citizen of India; a foreign national is not eligible to incorporate a One Person Company under the existing regulations.

A company incorporated under the provisions of the Companies Act, 2013, can undertake only those business activities that are specified in its 'Main Objects' under its Memorandum of Association. The proposed business activities to be carried out by an Indian entity owned by non-residents shall be subject to the FDI policy of the Indian government as amended from time to time.

You may also wish to refer to Chapter 5: Company formation and Administration, and Chapter 7: Company Taxation to know more about the rules and regulations pertaining to each type of company.

6. Section 2(68) of the Companies Act, 2013, <http://ebook.mca.gov.in/default.aspx>, accessed 20 September 2020

7. Section 2(71) of the Companies Act, 2013, <http://ebook.mca.gov.in/default.aspx>, accessed 20 September 2020

Trusts⁸

Trusts can be public or private. Public trusts are generally formed for charitable or religious purposes and not for commercial activities. A public charitable trust is one that benefits the public at large, while income from a private trust is available only to specified beneficiaries.

Public and private trusts differ in the process of their creation. In creating a charitable or religious trust, a formal deed or any writing is not necessary, while private trusts are created and governed by the Indian Trusts Act, 1882. In the case of a private trust declared by a will, registration is not necessary, whether it involves movable or immovable property.

In all other cases, registration of a private trust is necessary under the Indian Trusts Act, 1882. For public trusts, registration is optional but desirable.

Trusts (public and private) are subject to taxation under the Income Tax Act, 1961. However, charitable and religious trusts enjoy several tax exemptions and benefits.

Entity Options for Foreign Companies

A foreign company planning to set up business operations in India can⁹:

- Set up a liaison office/representative office, project office or branch office of the foreign company to undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000;
- Incorporate a company under the Companies Act, 2013; or
- Invest in a Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008

Liaison Office/Representative Office¹⁰

A Liaison Office (LO) can undertake only liaison activities, i.e., it can act as a channel of communication between the Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office outside India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers.

The RBI allows LOs to undertake the following activities in India:

- Represent the parent company/group companies in India
- Promote export/import from/to India
- Promote technical/financial collaborations between parent/group companies and companies in India
- Act as a communication channel between the parent company and Indian companies

Permission to set up LOs are initially granted for a period of three years, and this may be extended from time to time by the Authorized Dealer in whose jurisdiction the LO is set up. No extension would be considered for LOs of entities that are Non-Banking Financial Companies (NBFCs) and those engaged in construction and development (excluding infrastructure development companies). Upon expiry of the validity period, these entities must either close or be converted into a company, in conformity with the current FDI policy.

8. Indian Trusts Act, 1882, Income Tax Department, <https://www.incometaxindia.gov.in/pages/acts/indian-trusts-act.aspx>, accessed 20 September 2020

9. Foreign Investments in India, RBI, <https://www.rbi.org.in/scripts/FAQView.aspx?id=26>, accessed 15 September 2020

10. Master Direction - Establishment of Liaison/Branch/Project Offices in India by Foreign Entities, RBI, https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10404, accessed on 15 September 2020

Branch Office¹¹

Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices (BO) in India with specific approval of the RBI. Such BOs are permitted to represent the parent/group companies and undertake the following activities in India:

- Export/import of goods
- Render professional or consultancy services
- Carry out research work in areas in which the parent company is engaged
- Promote technical or financial collaborations between Indian companies and the parent or overseas group companies
- Represent the parent company and act as a buying/selling agent in India
- Render services in information technology and development of software in India
- Render technical support to the products supplied by the parent/group companies
- Represent a foreign airline/shipping company

A BO is not allowed to carry out manufacturing or processing activities in India, directly or indirectly, or any retail trading activities. Profits earned by BOs can be freely remitted from India, subject to the payment of applicable taxes.

Foreign entities that want to set up a LO/BO in India are required to submit their application (Form FNC) to the Foreign Investment Division of the RBI through an Authorized Dealer bank. The applications will be considered by the RBI under two routes:

- Reserve Bank route: Where the principal business of the foreign entity falls under sectors where 100% FDI is permissible under the automatic route

- Government route: Where the principal business of the foreign entity falls under sectors where 100% FDI is not permissible under the automatic route. Applications from entities in this category and those from non-government organizations/non-profit organizations/government bodies/departments are considered by the RBI in consultation with the Ministry of Finance.

The following additional criteria are also considered by the RBI while sanctioning an LO/BO of foreign entities:

Track record

- For LO: A profit-making track record during the immediately preceding three financial years in the home country.
- For BO: A profit-making track record during the immediately preceding five financial years in the home country.

Net worth

- For LO: Not less than USD 50,000 or its equivalent
- For BO: Not less than USD 100,000 or its equivalent.

Project Office¹²

The RBI has granted general permission to foreign companies to establish Project Offices (PO) in India if they have secured a contract from an Indian company to execute a project in India, if:

- The project is funded directly by inward remittance from abroad
- The project is funded by a bilateral or multilateral international financing agency
- The project has been cleared by an appropriate authority

11. Ibid.

12. Master Direction - Establishment of Liaison/Branch/Project Offices in India by Foreign Entities, RBI, https://www.rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10404, accessed 20 September 2020

- The company or entity in India awarding the contract has been granted a term loan by a public financial institution or a bank in India for the project.

However, if the above criteria are not met, the foreign entity will be required to obtain RBI approval.

Without prior permission of the RBI, no citizen or company registered in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, or Macau can establish a BO/LO/PO or any other place of business in India.

Wholly-Owned Subsidiary (WOS)/Joint Venture¹³

A foreign company may set up a WOS in sectors where 100% FDI is permitted under the FDI policy. Alternatively, it could enter into a joint venture with an Indian partner, which may entail the following advantages for a foreign investor:

- Established distribution/marketing set-up of the Indian partner
- Available financial resources of the Indian partner
- Established contacts of the Indian partner, which help smoothen the process of setting up operations

A WOS of a foreign company is treated at par with any domestic Indian company within the scope of approval and subject to all Indian laws and regulations as applicable to other domestic Indian companies.

Limited Liability Partnership

A Limited Liability Partnership (LLP) is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. It is governed by the provisions of the Limited Liability Partnership Act, 2008, and not the Indian Partnership Act, 1932.

An LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name. It is a separate legal entity and is liable to the full extent of its assets, but the liability of the partners is limited to their agreed contribution in the LLP. Furthermore, no partner is responsible for the independent or unauthorized actions of other partners. Thus, individual partners are shielded from the joint liability created by another partner's wrongful business decisions or misconduct. Mutual rights and duties of the partners within an LLP are governed by an agreement between the partners or between the partners and the LLP, as the case may be.

An LLP, however, is not relieved of the liability for its other obligations as a separate entity. Also, an LLP will have more flexibility and lesser compliance requirements compared to a company¹⁴.

FDI is permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed through the automatic route, and there are no FDI-linked performance conditions. An Indian company or an LLP having foreign investments is also permitted to make downstream investments in another company or LLP in sectors in which 100% FDI is allowed under the automatic route, and there are no FDI-linked performance conditions. FDI in LLPs is subject to the compliance of the conditions of the LLP Act, 2008.¹⁵

13. Entry Strategies for Foreign Investors, Reserve Bank of India, https://www.rbi.org.in/scripts/FS_FAQs.aspx?Id=32&fn=5, accessed on 15 September 2020

14. FAQs on Nature of LLPs, Ministry of Corporate Affairs, <https://www.mca.gov.in/MinistryV2/natureoflimitedliabilitypartnershiplp.html>, accessed on 15 September 2020

15. Consolidated FDI Policy 2020, Department for Promotion of Industry and Internal Trade, https://dipp.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_0.pdf, accessed 30 October 2020

A close-up photograph of a person's hand holding a yellow pencil, poised over a document. The document features a bar chart with several bars of varying heights. The background is blurred, showing other people in a meeting setting. A semi-transparent purple overlay covers the bottom half of the image, containing text and a list of topics.

05

Company Formation and Administration

- **Forming a Company**
- **Shares and Capital Structures**
- **Directors**
- **Types of Directors**
- **Duties of Directors**
- **Other Statutory Requirements**
- **Meetings**
- **Liquidations**
- **Insolvency and Bankruptcy Code**
- **Corporate Social Responsibility**

Forming a Company

The process of incorporating a company in India can broadly be divided into the following four steps¹:

1. Digital Signature Certificate (DSC)

The first step is to obtain a DSC for all proposed directors of the company.

2. Application for name availability

Select a few suitable names, up to a maximum of six names, indicative of the main objectives of the company. The proposed name should not resemble the name of any other company already registered, and should not violate the provisions of the Name Availability Guidelines issued by the Ministry of Corporate Affairs (MCA). The application for reservation of name must be submitted online with the Registrar of Companies (ROC) for their approval. Filing a name application in advance is optional and can be clubbed with the application form.

3. Drafting the Memorandum and Articles of Association

The Memorandum of Association and Articles of Association (the governing charter) of the proposed company must be drafted in accordance with the applicable provisions of the Companies Act, 2013 and are subject to the Foreign Direct Investment (FDI) policy of the Indian government, as amended from time to time.

4. Application for company incorporation

The fourth step is to apply for the registration of the company. After the name is approved, a request for allotment of director identification number (up to three directors), reservation of title, incorporation of company and appointment of Directors shall be filed in the SPICe+(Simplified Proforma for Incorporating Company Electronically Plus) form. This must be submitted online along

with the prescribed filing fees, stamp duty, Memorandum and Articles of Association and other supporting documents duly signed and certified. The ROC, after scrutiny of documents submitted online, approves the company incorporation application and issues the digitally signed Certificate of Incorporation, and allots the Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN). All companies in India are required to have a PAN and TAN for filing income tax and other tax returns with the regulatory authority.

AGILE-PRO (Application for Goods and Services Tax Identification Number, Employees State Insurance Corporation registration plus Employee Provident Fund Organization registration)²

The Ministry of Corporate Affairs introduced e-form AGILE-PRO vide notification dated 29 March 2019 where the incorporation application, (SPICe+) shall be accompanied by e-form AGILE-PRO containing an application for registration of the following numbers:

- a. Goods and Services Tax Identification Number (GSTIN)
- b. Employees Provident Fund Organisation (EPFO) registration
- c. Employees' State Insurance Corporation (ESIC)

1. Steps to be taken to incorporate a new company, MCA<http://www.mca.gov.in/MinistryV2/SPICePlusFAQs.html>, accessed on 15 September 2020

2. Ibid.

With the objective of improving the ease of doing business, the MCA, in January 2016, set up the Central Registration Center (CRC) for processing the e-Forms for Name Availability and Incorporation. This Government Process Reengineering (GPR) initiative is expected to result in speedier processing of incorporation-related applications, uniformity in the application of rules, and will help eradicating discretion. It will also be supplemented by intensive monitoring aimed at processing these e-forms in one or two days

Timeline: The entire process of incorporation can be completed in four to five weeks.

Formation cost: The cost of formation depends upon the authorized capital of the company. Also, the total statutory fees payable to the regulatory authority vary depending on the state in which the registered office will be situated.

Shares and Capital Structures

The requirement of minimum share capital has been withdrawn in the Companies (Amendment) Act, 2015. Hence, a company can carry on business activities with any amount of share capital from inception.

Classification of Share Capital³

The share capital of a company limited by shares can be classified into equity and preference. Preference share capital is that part of the issued share capital of a company limited by shares, which gives the concerned shareholder preference rights in respect of payment of dividend and repayment in case of winding up. Equity share capital means all share capital that is not preference share capital. Preference share capital can be:

- Redeemable or irredeemable

Redeemable preference shares can be redeemed on or after a period fixed for redemption, under the terms of issue or after giving proper notice of redemption to preference shareholders.

The Companies Act, 2013, however, imposes certain restrictions for the redemption of preference shares. Irredeemable preference shares are those shares, which cannot be redeemed during the lifetime of a company.

As per the provisions of the Companies Act, 2013, a company limited by shares cannot issue irredeemable preference shares. Furthermore, except in the case of infrastructure projects, only preference shares that are liable to be redeemed within a period not exceeding 20 years from the date of issue can be issued.

- Convertible or non-convertible

Preference shares that are convertible into equity shares are convertible preference shares, and the ones that are not convertible into equity shares are non-convertible preference shares.

Shares or debentures or any other interest of any member in a company shall be movable property, transferable in a manner provided by the Articles of the company. A company may, if so, authorized by its Articles, pay dividends in proportion to the amount paid upon each share.

Directors⁴

Every company must have a Board of Directors that is responsible for the conduct of its business. According to the Companies Act, 2013, the minimum number of directors required in the case of private companies is two; and in the case of public companies, it is three. The maximum number of directors a company can have is 15.

3. Section 43 of the Companies Act, 2013, Ministry of Corporate Affairs, <http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>, accessed on 20 September 2020

4. The Companies Act, 2013, Ministry of Corporate Affairs, <http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>, accessed on 20 September 2020

Every company (belonging to prescribed classes as listed in the Companies Act, 2013) shall have the following full-time key managerial personnel:

- Managing Director or Chief Executive Officer, or manager, and in their absence, a whole-time director
- Company Secretary
- Chief Financial Officer

Role of Directors

The Companies Act, 2013 empowers the Board to do activities in accordance with the company's Memorandum and Articles of Association, as the company is authorized to do, unless any law or the Memorandum requires any act to be done by the company by way of resolution of the shareholders in their general meeting.

As the directors are acting as agents of a company, all acts are done by them and contracts entered into by them are binding on the company unless such actions are outside the scope of authority of such directors.

Since directors occupy a fiduciary position and are persons responsible for the management of the affairs of the company, they are subject to duties and liabilities, including penal liabilities in case of default or misconduct on their part, in the circumstances mentioned under the Companies Act, 2013.

Appointment of Directors

- Unless the Articles provide, individuals who are subscribers to the Memorandum of Association shall be deemed to be the first directors of the company until the directors are duly appointed.
- Every proposed director shall have a Director Identification Number (DIN).

Disqualification for the appointment of Directors

A person shall not be eligible for appointment as a director of a company if he/she:

- Is of unsound mind and stands so declared by a competent court;
- Is undischarged insolvent;
- Has applied to be adjudicated as an insolvent and his application is pending;
- Has been convicted by a court of any offense, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for at least six months, and five years have not elapsed from the expiry of the sentence;
- Has been convicted of any offense and sentenced in respect thereof to imprisonment for seven years or more;
- Has been disqualified as a director by an order passed by a court or tribunal and the order is in force;
- Has not paid any calls of any shares held by him, and six months have lapsed from the last day fixed for the payment;
- Has been convicted of related-party transactions during the last preceding five years; or
- Has not obtained a Director Identification Number (DIN).

Removal of Directors

- A company may remove a director before the expiry of the period of his office through an ordinary resolution;
- On receipt of notice of the resolution, the company shall send a copy of the notice to the concerned director, who shall be entitled to be heard on the resolution at the meeting.

- A vacancy shall be filled by the company in the meeting in which he was removed by the appointment of another director in his place but a special notice is required. The director so appointed shall hold office until the date up to which his predecessor would have held office if he had not been removed;
- A director who is removed from office shall not be re-appointed as a director by the Board.

Resignation of Directors

- A director may resign from office by giving notice to the company, who shall intimate the ROC within 30 days of receiving the notice;
- The resignation shall be mentioned in the Board's report in the next general meeting of the company;
- The director shall also forward his resignation along with specific reasons for the resignation to the ROC within 30 days of departure;
- The resignation shall take effect from the date on which the notice is received by the company or the date specified by the director in the notice, whichever is later;
- A director who has resigned shall be responsible for offenses that have occurred during his tenure even after his resignation.

Types of Directors

First Directors: The number of directors and the names of the first directors shall be determined in writing by the subscribers of the Memorandum or a majority of them. However, where no provision is made in the Articles of a company for the appointment of first directors, the subscribers to the Memorandum, who are individuals, shall be deemed to be the first directors of the company until the directors are duly appointed, in accordance with provisions of the Companies Act, 2013.

Executive and Non-executive Directors: Directors who are in full-time employment or are entrusted with the day-to-day operations of the company are termed as executive directors. Non-executive directors are from outside the company. They do not take part in the every-day activities of the company.

Resident Director: As per the Companies Act, 2013, at least one of the directors of a company must be a person who has stayed in India for a total period of not less than 182 days during the financial year. In the case of a newly incorporated company, the requirement shall apply proportionately at the end of the financial year in which it is incorporated.

Independent Directors: As per the Companies Act, 2013, the appointment of an independent director is mandatory to certain classes of companies. Every listed public company shall have at least one-third of the total number of directors as independent directors. However, private limited companies need not appoint an independent director.

Woman Director: The Companies Act, 2013, requires certain classes of companies to appoint at least one woman director on the Board of the company. This is not mandatory for private limited companies.

Director Elected by Small Shareholders: Under the Companies Act, 2013, only listed companies may appoint a small shareholders' director. Shareholders holding shares of nominal value of not more than INR 20,000 or such other prescribed sum may appoint one director from amongst them.

Additional Director: The Board may appoint an additional director at any time if the Articles confer such powers.

- A person who fails to get appointed in a general meeting cannot be appointed as an additional director.

- An additional director shall hold office up to the date of the next Annual General Meeting (AGM) or the last date on which the AGM should have been held, whichever is earlier.

Alternate Director: The Board may appoint an alternate director at any time if the Articles confer such powers.

- The person to be appointed as an alternate director shall not hold another alternate directorship in any other company;
- An alternate director can only be appointed in case a director leaves India for a period of at least three months;
- An alternate director to an independent director should also satisfy the criteria for an independent director;
- The office of the alternate director shall be vacated if and when the director in whose place he has been appointed returns to India;
- Provisions of automatic re-appointment of the retiring director shall apply to the original director and not to the alternate director.

Nominee Directors: Subject to the Articles, the Board may appoint any person as a director nominated by an institution as a nominee director, in pursuance of any law or agreement or by the Central or State Government, by virtue of its shareholding in a government company.

Permanent Directors: The Articles may also provide for the appointment of permanent directors. Such directors continue to be lifetime directors subject to other provisions of the Companies Act, 2013.

Duties of Directors

Fiduciary Duties⁵

The Companies Act, 2013 enlists the specific fiduciary Duties of a director. A director of a company shall:

- Act in accordance with the Articles of the company;
- Act in good faith to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community, and for the protection of the environment;
- Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;
- Not get involved in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;
- Not achieve or attempt to obtain any undue gain or advantage either to himself or to his relatives, partners, or associates, and if found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company;
- Not assign his office, and any assignment so made shall be void.

A director who contravenes the provisions of this section (Section 166) shall be punishable with a fine not less than INR 100,000, which may extend to INR 500,000.

Compliances by Directors under the Companies Act, 2013

- Obtain a Director Identification Number (DIN);
- Give a declaration that he is not disqualified to become a director under the Act;
- Disclose his interest in any company or body corporate, firms, or other association of individuals at the first Board meeting, at the first Board meeting in every financial year, or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change;
- Mention his DIN while furnishing any return, information, or particulars, as required under the Act;
- The total number of companies in which a person can hold office as a director shall not exceed:
 - 10 in public companies
 - 20 in private companies
 - 20 in both public and private companies

Company Secretary

The functions of the Company Secretary include:

- To report to the Board about compliance with the provisions of the Companies Act, 2013, the rules made thereunder, and other applicable laws;
- To ensure that the company complies with the applicable secretarial standards;
- To discharge such other duties as may be prescribed.

Other Statutory Requirements

The Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. The committee shall consist of a minimum of three directors with independent directors forming a majority, provided that a majority of members should be able to read and understand financial statements.

The Board of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute a Nomination and Remuneration Committee consisting of three or more non-executive directors, of which not less than one-half shall be independent directors. This committee shall formulate the criteria for determining qualifications, positive attributes, and independence of a director, and recommend to the Board a policy relating to the remuneration for the directors, key managerial personnel, and other employees.

The Board of a company that has more than 1,000 shareholders, debenture-holders, deposit-holders, and any other security holders at any time during a financial year, shall constitute a Stakeholders' Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. This committee shall consider and resolve the grievances of the security holders of the company.

Meetings

One of the statutory requirements under the Companies Act is to conduct meetings.

Meetings of Directors⁶

Board Meetings: Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and after that hold a minimum number of four meetings of its Board of Directors every year in such a manner that the gap between two consecutive Board meeting should not be more than 120 days. Directors are allowed to participate in person, through video conferencing or other audio-visual means capable of recording and recognizing the participation of the directors and recording and storing the proceedings along with the date and time.

Committee Meetings: The Board may delegate any of its powers to committees if authorized and in accordance with its Articles of Association, and such committees must conform to any regulations that may be imposed upon it by the Board.

Shareholders'/Members' Meetings

Annual General Meeting (AGM)⁷: The Companies Act, 2013 states that every company must hold one AGM in each calendar year and not more than fifteen months shall elapse between the date of one AGM of a company and that of the next.

In case of the first AGM, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year. Furthermore, a One Person Company is not required to hold an AGM.

Extraordinary General Meeting⁸: Any general meeting held between two AGMs is called an Extraordinary General Meeting. Business arising between two AGMs that is urgent and cannot be deferred until the next AGM is transacted at an Extraordinary General Meeting.

Class Meetings: These are meetings of shareholders holding a particular class of shares. Resolutions passed at such meetings bind only the members of the concerned class.

Liquidations

A company can be closed in the following ways:

- **Strike off a company under Section 248 of the Companies Act, 2013:** Any defunct company wanting to strike off its name from the Register of Companies can apply by filing Form STK-2. Similarly, the ROC also has the power to strike off any defunct company after being satisfied with the need to strike it off and has reasonable cause
- **Winding up of a company** is a process by which the business of the company is wound up, and the company ceases to exist. All the assets of the company are sold, and the proceedings collected are used to discharge the liabilities on a priority basis. The winding-up of a company may either be a compulsory winding up by the tribunal, a voluntary winding up by its members or creditors, or subject to the supervision of the court.

7. Section 96 of the Companies Act, 2013

8. Section 100 of the Companies Act, 2013

The Insolvency and Bankruptcy Code, 2016

The Insolvency and Bankruptcy Code, 2016 (Code), came into force on 28 May 2016 and consolidated several laws relating to the insolvency and bankruptcy of individuals, corporates and partnership firms. The key feature of the Code is that it allows the creditors to assess the viability of the debtor's business and formulate a resolution plan.

In case the resolution plan fails, the debtor goes into liquidation. Apart from the insolvency provisions, the new Code also provides a closure option to solvent corporates by way of voluntary liquidation. The new Code has established an institutional framework of insolvency professionals, an adjudicating system, and information utilities, which will help in facilitating time-bound insolvency processes and liquidation.

Corporate Social Responsibility

According to the Companies Act, 2013, every company having a net worth of INR 5 billion or more, or turnover of INR 10 billion or more, or a net profit of INR 50 million or more, during any financial year, shall constitute a Corporate Social Responsibility (CSR) Committee of the Board, consisting of three or more directors, of which at least one must be an independent director. Every company, its holding or subsidiary company, or a foreign company having a branch or project office in India, which individually fulfills any one of the criteria mentioned above will be considered a 'qualifying company' and would then need to mandatorily perform all the CSR activities specified in Section 135 of the Companies Act, 2013 read with the CSR Rules during any financial year.

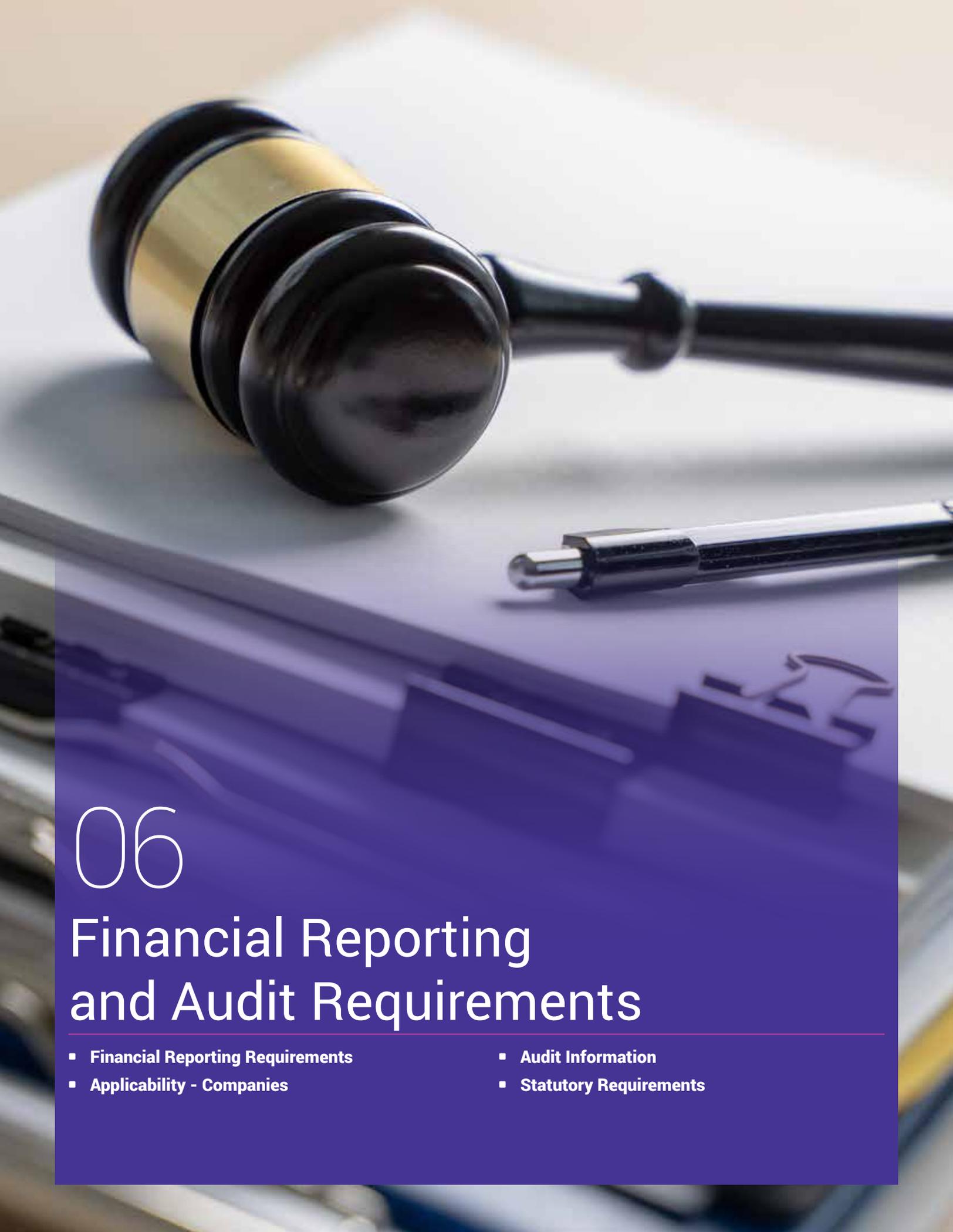
The CSR Committee must:

- Formulate and recommend to the Board, a CSR Policy that shall indicate the activities to be undertaken by the company;
- Recommend the amount of expenditure to be incurred on these activities;
- Monitor the CSR Policy of the company from time to time.

The Act expressly states that during the implementation of the CSR Policy, preference must be given by the company to the local area and the area around which it operates. The CSR Rules lay down the method of implementation of CSR activities.

The Act provides the following roles and responsibilities (in regard to CSR) for the Board of Directors:

- Approval of the CSR Policy of the company;
- Disclosing the content of the Policy in the report of the Board of Directors;
- Placing the Policy on the company's website;
- Ensuring that the CSR Policy is implemented, and the activities undertaken by the company are carried out;
- Ensuring that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding fiscal years;
- Ensuring that, if the earmarked amount is not spent, the same is specified in its report along with the reasons for not spending and taking steps to subsequently spend the CSR amount;
- The Board shall have the power to make any change(s) in the constitution of the CSR Committee.

A close-up photograph of a gavel with a black handle and a brass head, resting on a white surface. A silver pen lies horizontally to the right of the gavel. The background is a blurred white document. A semi-transparent purple rectangle covers the bottom half of the image, containing text and a list of topics.

06

Financial Reporting and Audit Requirements

- Financial Reporting Requirements
- Audit Information
- Applicability - Companies
- Statutory Requirements

Financial Reporting Requirements

In India, financial reporting requirements for different types of entities are governed by relevant statutes. A brief summary of this is given below:

Types of entities	Preparation of financial statements mandatory or not	Relevant statute*	Reporting standards of accounting records	Remarks	Reporting timeline
Proprietorship	Yes ¹	Income Tax Act, 1961	Accounting Standards as issued by the Institute of Chartered Accountants of India (ICAI)	Applicable only if the turnover exceeds the limits specified under the relevant statute ²	30 September** 31 July (without audit)
Partnership Firm	Yes	Income Tax Act, 1961	Accounting Standards as issued by the ICAI	Applicable only if the turnover exceeds the limits specified under the relevant statute ³	30 September** 31st July (without audit)
Limited Liability Partnership	Yes	Limited Liability Partnership Act, 2008	Accounting Standards as issued by the ICAI	Only if the turnover exceeds the limits specified under the relevant statute ⁴	30 September**
Listed Public Limited Company	Yes	Companies Act, 2013, Securities and Exchange Board of India Guidelines, and any other relevant statute depending upon the nature of business and activities of the company	Ind AS as notified under the Companies Act, 2013 or such other accounting standards as may be applicable under the relevant statute	In case the company falls under a special statute, then the requirements of such special statute shall prevail	60 days from the end of the financial year. Additionally, listed companies are also required to furnish quarterly financial results within 45 days from the end of the quarter except for the last quarter

1. When the turnover of a proprietorship is less than a specified threshold, financial reporting is not applicable.

2. INR 10 million in the case of business and INR 5 million – in the case of profession.

3. Ibid

4. As per the Limited Liability Partnership Act, 2008, the audit of books of account would be mandatory when the turnover exceeds INR 4 million and contribution exceeds INR 2.5 million.

Types of entities	Preparation of financial statements mandatory or not	Relevant statute*	Reporting standards of accounting records	Remarks	Reporting timeline
Unlisted Public Company	Yes	Companies Act, 2013	Accounting Standards or Ind AS ⁵ as notified under the Companies Act, 2013, or such other accounting standards as may be applicable under the relevant statute	In case the company falls under a special statute, then the requirements of such special statute shall prevail ⁵	Six months from the end of the financial year.
Private Company	Yes	Companies Act, 2013	Accounting Standards or Ind AS ⁵ as notified under the Companies Act, 2013, or such other accounting standards as may be applicable under the relevant statute	In case the company falls under a special statute, then the requirements of such special statute shall prevail ⁵	Six months from the end of the financial year.
Charitable Trust	Yes	Relevant Trust Act and Income Tax Act, 1961 ⁶	Accounting Standards as issued by the ICAI		30 September
Societies	Yes	Respective Society Act and Income Tax Act, 1961			30 September
Liaison Office/ Branch Office/ Project Office	Yes	Foreign Exchange Management Act, Insurance Regulatory and Development Authority of India (IRDAI) and The Companies Act, 2013	Accounting standards as notified under the Companies Act, 2013		30 September ⁷

5. Banking, financial services, insurance and electric companies where the form and contents of the financial statements are governed by respective statutes

6. Depending upon the territory of registration and the purpose of the trust

Types of entities	Preparation of financial statements mandatory or not	Relevant statute*	Reporting standards of accounting records	Remarks	Reporting timeline
Banks	Yes	Banking Regulation Act, 1949	Accounting Standards or Ind AS ^{**} as notified under the Companies Act, 2013, or such other accounting standards as may be applicable under the relevant statute		60 days from the end of the financial year.
Non-Banking Financial Institutions (NBFC)	Yes	Reserve Bank of India (RBI) and the Companies Act, 2013	Accounting Standards or Ind AS ^{**} as notified under the Companies Act, 2013, or such other accounting standards as may be applicable under the relevant statute	Applicable only if the turnover exceeds the limits specified under the relevant statute	(Please refer to the paragraph on applicability of Ind AS to NBFCs given below)

* The Preface to the Statements of Accounting Standards issued by the ICAI states the following - "Efforts will be made to issue Accounting Standards which are in conformity with the provisions of the applicable laws, customs, usages and business environment of our country. However, if due to subsequent amendments in the law, a particular Accounting Standard is found to be not in conformity with such law, the provisions of the said law will prevail, and the financial statements should be prepared in conformity with such law." For e.g. - Banks need to prepare financial statements as per the Banking Regulation Act, 1949.

** This shall be extended to 30 November where transfer pricing regulations become applicable.

7. Where form no. 49C and annual activity certificate is required to be filed/furnished, then the date of furnishing such form and certificate shall be within 60 days from and six months from the end of the financial year respectively.

^ Ind AS

Ind AS are the Indian Accounting Standards converged with International Financial Reporting Standards (IFRS). Hence, Ind AS is primarily based on IFRS issued by the International Accounting Standard Board (IASB) with certain general differences between Ind AS and IFRS.

Applicability - Companies

- On a voluntary basis, for financial statements for accounting periods beginning on or after 1 April 2015 with the comparatives for the period ending 31 March 2015 or thereafter.
- On a mandatory basis, for accounting periods beginning on or after 1 April 2016 with the comparatives for the period ending 31 March 2016 or thereafter, for companies with a net worth of INR 5 billion or more and holding, subsidiary, joint ventures or associates of such companies.
- On a mandatory basis, for accounting periods beginning on or after 1 April 2017 with the comparatives for the period ending 31 March 2017 or thereafter for:
 - Listed companies (irrespective of net worth)
 - Unlisted companies with a net worth of INR 2.5 billion or more
 - Companies whose equity and/or debt security are in the process of being listed with a net worth of less than INR 5 billion
 - Holding, subsidiary, joint ventures or associates of the companies mentioned above

However, companies that are listed or in the process of being listed on Small and Medium Enterprise (SME) exchanges shall not be required to apply Ind AS.

Once a company opts to follow Ind AS, it shall be required to follow these standards for all subsequent financial statements

Companies not covered by the above criteria shall continue to apply existing accounting standards prescribed in the annexure to the Companies (Accounting Standards) Rules, 2006.

Applicability - NBFCs

- 1 April 2018 onwards
 - NBFCs with net worth >INR 5 billion
 - Holding/subsidiary/joint venture/associate companies of the above mentioned NBFCs. If such companies were covered by the corporate roadmap, they would have to follow the timeline specified in the corporate roadmap
- 1 April 2019 onwards
 - NBFCs having a net worth < INR 5 billion and whose equity and/or debt securities are in the process of listing or are listed on any stock exchange in India or outside India
 - Unlisted NBFCs having a net worth > INR 2.5 billion but net worth < INR 5 billion.
- Holding/subsidiary/joint venture/associate companies of the above mentioned NBFCs. If such companies were covered by the corporate roadmap, they would have to follow the timeline specified in the corporate roadmap.

Applicability - Banks

- The Reserve Bank of India (RBI) has decided to defer the implementation of Ind AS until further notice.

Applicability - Insurance companies

Insurance companies must comply with Ind AS for financial statements for accounting periods beginning from 1 April 2018, onwards, with comparatives for the periods ending 31 March 2018.

- The IRDA deferred the implementation of Ind AS in the insurance sector in India for a period of two years Accordingly, Ind AS for Indian insurance companies would be applicable from 1 April 2020 (instead of 1 April 2018).

Audit Information

The complete set of financial statements comprises of the following:

1. Balance Sheet as at the end of the reporting period
2. Statement of Profit and Loss/Income and Expenditure account for the reporting period
3. Statement of Cash Flows[#]
4. Notes forming the part of the financial statements, a summary of significant accounting policies, other explanatory information that may be required under relevant statutes

[#]The following companies are exempt from preparing a Statement of Cash Flows:

- One Person Company
- Small company
- Dormant company
- A private company which is a start-up company.

Statutory Requirements

The following key records are to be maintained by most entities:

5. All sums of money received and expended, and the matters in respect of which the receipt and expenditure take place
6. All sales and purchases of goods/services by the entity
7. The assets and liabilities of the entity
8. In case of an entity engaged in manufacturing, processing, mining, etc., such particulars relating to the utilization of material or labor or other items of cost.

In addition to the above, there may be requirements to maintain additional records under relevant statutes.

The types of mandatory audits to be conducted by an independent practicing chartered accountant

Type of audit ⁸	Timeline	Applicability
Audit under Section 139 of the Companies Act, 2013: Statutory audit##	Within 60 days from the end of the financial year for listed companies and within six months from the end of the financial year for other companies	For listed and other companies
Limited reviews	Within 45 days from the end of the quarter (except the last quarter wherein the reporting is required within 60 days)	Listed companies
Audit of financial statements for tax purpose	30 September in case transfer pricing regulations are not applicable, else 30 November	Companies where the statutory year-end is different from the tax year-end and where tax audit is applicable ⁹
Tax audit certification	30 September in case transfer pricing regulations are not applicable, else 30 November	(refer footnote 8 for tax audit applicability)

Important changes in regulatory information:

1. Rotation of Auditors:

The provisions of rotation have come into effect from 1 April 2014. The Companies Act, 2013 provides a transition period of three years in order to ensure compliance with the rotation-related provisions. As per the provisions, an individual cannot be appointed as a statutory auditor for more than one term of five consecutive years; and an audit firm cannot be appointed as statutory auditor for more than two terms of five consecutive years, in respect of the companies falling under any one of the following categories: (This rotation provisions apply to the following categories of the companies)

- a. Listed companies
- b. Unlisted public companies having paid-up share capital of INR 100 million or more
- c. All private limited companies having paid-up share capital of INR 500 million or more

d. All companies having paid-up share capital of below the threshold limit mentioned in (b) and (c) but having public borrowings from financial institutions, banks or public deposits of INR 500 million or more

2. The auditors of the company are required to disclose the operating effectiveness of the internal controls of the company in their audit report about, which is known as Internal Control over Financial Reporting (ICFR). Exemptions are provided to private limited companies from ICFR if they fulfill the following criteria:
 - i. A company which is a One Person Company or a small company; or
 - ii. A company which has a turnover less than INR 500 million as per the latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than INR 250 million

8. . This does not include any other audits which are specifically needed under special statutes

9. In India, companies are allowed to follow a different statutory year-end than the fiscal year-end (31 March), provided they satisfy the condition of Section 2(41) of the Companies Act, 2013

07

Company Taxation

- **Company Taxation**
- **Resident Companies**
- **Foreign Companies**
- **Tax Returns and Assessment**
- **Profits Subject to Tax**
- **Employee Taxes**
- **Calculating Trading Profits**
- **Income Computation and Disclosure Standards (ICDS)**
- **Interest Deduction**
- **Capital Assets**
- **Double Taxation Relief**
- **Withholding Tax**
- **Capital Gains Tax (CGT)**
- **Tax Losses**
- **Transfer Pricing**
- **Secondary Adjustment**
- **Planning Points for Foreign Investors**
- **Recent Changes**

Company Taxation

In India, all domestic companies are liable to tax 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 which accrues or arises in India or income which is deemed to accrue or arise in India. The effective corporate tax rate (base rate + surcharge + cess) depends on the type of the company (domestic or foreign) and the quantum of its taxable income in the previous year. The year refers to the Financial Year (FY), which begins on 1 April and ends on 31 March, while the previous year refers to the previous financial year. The rate of tax, surcharge, and cess could be changed by the Finance Act passed by the Indian government every year.

After the Finance Act, 2019 received its presidential assent, in view of economic circumstances, the government announced sweeping tax reforms through The Taxation Laws (Amendment) Act, 2019. The most important aspect of which was a significant reduction in tax rates to boost the Indian economy

The key amendments as introduced by The Taxation Laws (Amendment) Act, 2019 are as follows¹:-

1. Introduction of Section 115BAA:- (applicable from FY 2019-20 onwards)

- All domestic companies shall have an option to pay income tax at the rate of 22% (plus applicable surcharge and cess), provided the below-mentioned conditions are complied with. Such companies should not avail of any exemptions/incentives under different provisions of income tax. Therefore, the total income of such company shall be computed without:

- a. Claiming any deduction especially available for units established in special economic zones under Section 10AA

- b. Claiming additional depreciation under Section 32 and investment allowance under Section 32AD towards new plant and machinery made in notified backward areas in the states of Andhra Pradesh, Bihar, Telangana, and West Bengal
 - c. Claiming deduction under Section 33AB for tea, coffee and rubber manufacturing companies
 - d. Claiming deduction towards deposits made towards site restoration fund under Section 33ABA by companies engaged in extraction or production of petroleum or natural gas or both in India
 - e. Claiming a deduction for expenditure made for scientific research under Section 35
 - f. Claiming a deduction for the capital expenditure incurred by any specified business under Section 35AD
 - g. Claiming a deduction for the expenditure incurred on an agriculture extension project under Section 35CCC or on a skill development project under Section 35CCD
 - h. Claiming deduction under Chapter VI-A except for deduction under Section 80JJAA and Section 80M
 - i. Claiming a set-off of any loss carried forward from earlier years, if such losses were incurred in respect of the aforementioned deductions.
- Such companies will have to exercise this option to be taxed under Section 115BAA on or before the due date of filing income tax returns, i.e., usually 30 September of the assessment year. Once the company opts for Section 115BAA in a particular financial year, it cannot be withdrawn subsequently.

1. The Taxation Laws (Amendment) Act, 2019, Income Tax Department, <https://www.incometax-india.gov.in/Pages/acts/taxation-laws-amendment-act-2019.aspx>, accessed on 21 September 2020

- Section 115JB of the Act relating to the Minimum Alternate Tax (MAT) states that the provisions of said section shall not apply to a person who has exercised the option referred to under the newly inserted Section 115BAA.
 - Domestic companies opting for Section 115BAA will not be able to claim MAT credits for taxes paid under MAT during the tax holiday period. The companies would not be able to reduce their tax liabilities under Section 115BAA by claiming MAT credits.
2. Introduction of Section 115BAB:- (applicable from FY 2019-20 onwards)
- A domestic company will be entitled to the benefit of the low corporate tax rate (15% plus applicable surcharge and cess) if the domestic company has been incorporated and registered on or after 1 October 2019 and has commenced manufacturing on or before 31 March 2023. The company should be engaged in the business of manufacture or production of any article or thing, and research in relation to such article or thing. The company can also be engaged in the distribution of such article or thing manufactured or produced by it. Such a company should satisfy the following conditions:
 - a. Not be formed by the splitting up and reconstruction of a business already in existence except in case of a business re-established under Section 33B;
 - b. Does not use any plant or machinery previously used for any purpose. However, the company can utilize the plant and machinery used outside India and used in India for the first time;
 - c. The company can use old plant and machinery if its value of which does not exceed 20% of the total value of the plant and machinery used by the company;
 - d. Does not use a building previously used as a hotel or a convention center. A 'hotel' means a hotel of two-star, three-star or four-star category as classified by the Central Government. 'Convention center' means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number, and having such other facilities and amenities, as may be prescribed.
 - The total income of such company shall be computed without:
 - a. Deduction under Section 10AA for units in Special Economic Zones
 - b. Deduction for additional depreciation under Section 32 and investment allowance under Section 32AD towards new plant and machinery made in notified backward areas in the states of Andhra Pradesh, Bihar, Telangana, and West Bengal
 - c. Deduction under Section 33AB for tea, coffee and rubber manufacturing companies
 - d. Deduction towards deposits made towards site restoration fund under Section 33ABA by companies engaged in the extraction or production of petroleum or natural gas or both in India
 - e. Deduction for expenditure made for scientific research under Section 35
 - f. Deduction for the capital expenditure incurred by any specified business under Section 35AD
 - g. Deduction for the expenditure incurred on an agriculture extension project under Section 35CCC or on a skill development project under Section 35CCD

- h. Claiming deduction under Chapter VI-A except for deduction under Section 80JJAA and Section 80M
- i. Set-off of any loss carried forward from earlier years if such losses were incurred in respect of the aforementioned deductions.
- Such companies will have to exercise this option to be taxed under the Section 115BAA on or before the due date of filing income tax returns, i.e., usually 30 September of the assessment year. Once the company opts for Section 115BAA in a particular financial year, it cannot be withdrawn subsequently.
- Applicability of transfer pricing provisions
 - a. In a case where due to a close connection between the company and any other person, or for any other reason, the business between them is so arranged such that the company earns more than ordinary profits, the Assessing Officer may ignore the excess profits. The Assessing Officer will take only the amount of profits reasonably deemed to be derived from the business.
 - b. In a case where the business transaction involves a specified domestic transaction referred to in Section 92BA, the profits of the transaction will be determined with regards to the arm's length price.
- Applicability of MAT provisions
 - a. Section 115JB of the Act related to Minimum Alternate Tax (MAT) provides that the provisions of the said section shall not apply to a person who has exercised the option referred to under the newly inserted Section 115BAB.
 - b. The domestic companies opting for Section 115BAB will not be able to claim MAT credits for taxes paid under MAT during the tax holiday period. The companies also would not be able to reduce their tax liabilities under Section 115BAB by claiming MAT credits.

The Finance Act 2020 has not altered the tax rates applicable for corporates, and the same remains in line with rates announced in Finance Act 2019 read with The Taxation Laws (Amendment) Act, 2019.

The tax rate applicable for FY 2020-21 in case of domestic companies not opting for the beneficial regime and having a turnover or gross receipts in FY 2018-19 not exceeding INR 4 billion is 25% of the total income plus the applicable surcharge and health and education cess. For all other domestic companies (not opting for the beneficial regime and have turnover

exceeding INR 4 billion), the base tax rate shall continue to be 30% plus applicable surcharges and the health and education cess.

Furthermore, up till FY 2017-18, Education Cess at the rate of 2% and Secondary and Higher Education Cess at the rate of 1% was payable on the base tax rate and surcharge. The Finance Act, 2018, has discontinued the same from FY 2018-19, and a new cess, namely the Health and education cess at the rate of 4% has been introduced.

The corporate tax rates applicable for FY 2019-20 are outlined below:-

Particulars	Taxable income > INR 100 million	INR 10 million < taxable income < INR 100 million	Other cases
Domestic company (not opting for lower tax rates and having turnover exceeding INR 4 billion in FY 2018-19)	34.944% (30% base rate + 12% surcharge + 4% Health and education cess)	33.384% (30% base rate + 7% surcharge + 4% Health and education cess)	31.20% (30% base rate + 4% Health and education cess)
Domestic company (not opting for lower tax rates and having turnover not exceeding INR 4 billion in FY 2018-19)	29.12% (25% base rate + 12% surcharge + 4% Health and education cess)	27.82% (25% base rate + 7% surcharge + 4% Health and education cess)	26.00% (25% base rate + 4% Health and education cess)
Domestic company (opting for lower tax rates)	25.168% (22% base rate + 10% surcharge + 4% Health and education cess)	25.168% (22% base rate + 10% surcharge + 4% Health and education cess)	25.168% (22% base rate + 10% surcharge + 4% Health and education cess)
New domestic manufacturing companies*	17.16% (15% base rate + 10% surcharge + 4% Health and education cess)	17.16% (15% base rate + 10% surcharge + 4% Health and education cess)	17.16% (15% base rate + 10% surcharge + 4% Health and education cess)
Foreign company	43.68% (40% base rate + 5% surcharge + 4% Health and education cess)	42.432% (40% base rate + 2% surcharge + 4% Health and education cess)	41.60% (40% base rate + 4% Health and education cess)

*Domestic companies which have been incorporated and registered on or after 1 October 2019 and has commenced manufacturing on or before 31 March 2023

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 standard provisions of the ITA. This is commonly known as MAT, which is charged at a rate of 18.5% on book profits plus applicable surcharge and 4% Health and education cess on the tax and surcharge. The limits for the applicability of the surcharge are the same as mentioned in the table above.

The Taxation Laws (Amendment) Act, 2019, has reduced the MAT rate from 18.5% to 15%. Furthermore MAT provisions will not be applicable for domestic companies opting for beneficial tax regime (i.e., domestic companies opting for 22% base tax rate or new manufacturing companies opting for 15% base tax rate).

Credit for MAT paid can be carried forward and claimed against standard corporate tax payments arising in the future, subject to a limitation period of 15 years instead of 10 years as provided earlier.

However, as per The Taxation Laws (Amendment) Act, 2019, credit for MAT is not available for companies opting for beneficial tax regime. The Act expressly amends the MAT Credit provisions to deny MAT Credit to any company which opts for the reduced tax rate.

In the case of income earned by Foreign Institutional Investors/Foreign Portfolio Investors (FIIs/ FPIs) and foreign companies from various sources, such as capital gains, interest, royalty, and fees for technical services, MAT provisions will not be applicable from FY 2015–16 onwards. Also, MAT shall not apply to foreign companies not having any Permanent Establishment (PE) in India or which are not required to be registered under the Companies Act in India.

Apart from the above, foreign companies engaged in the business of shipping, exploration of mineral oils, operation of aircraft, and civil construction concerning

turnkey power projects can opt for presumptive taxation. In such a case, income is first taxed at a certain fixed percentage of the gross receipts, and then the above-referred corporate tax, surcharge, and health and education cess shall be applicable.

Abolishment of Dividend Distribution Tax (DDT)

The Finance Act, 2020, states that the provisions of Section 115-O of the Act relating to levy of DDT on companies declaring dividend would be applicable only to those dividends that are declared, distributed or paid on or before 31 March 2020. This means that companies declaring or distributing dividends after 1 April 2020 no longer have to pay DDT. The key impacts of this amendment are as follows:-

- a. Any dividends received on or after 1 April 2020 will no longer be exempt in the hands of the shareholders, and the same would be taxable as per the rates applicable to the recipient
- b. The company shall be liable to deduct Tax Deducted at Source (TDS) @ 10% while making a payment of dividend to a shareholder being a person residing in India, as per Section 194, if the amount of dividend exceeds INR 5,000
- c. The company shall be liable to deduct TDS @ 20% while making payment of dividends to a shareholder being a person non-resident in India plus surcharge and cess as applicable. However, provisions of the tax treaty with the country of residence would apply if it is more beneficial
- d. The Finance Act, 2020 has also clarified that dividend income, which is subject to DDT and received after 1 April 2020, shall be exempt in the hands of the shareholder/ unitholder
- e. No cascading effect will occur on the taxation of dividends by providing deduction of dividend received by one domestic company from another domestic company, or foreign company, or from a business trust, to the extent of dividend distributed or actual dividend received, whichever is lower.

Relaxation of Buyback Tax Provisions:

The Finance Act (No. 2), 2019 extended the scope of Buyback Tax as per Section 115QA to listed companies as well. In order to provide some relief, The Taxation Laws (Amendment) Act, 2019 has provided that provisions of Section 115QA shall not apply to such buy-back of shares on listed companies, who have made a public announcement in this regard, on or before 5 July 2019.

Resident Companies

A company incorporated in India under the Companies Act, 1956/2013, would always be a 'resident' in India. With effect from 1 April 2016, a foreign company is regarded as a 'resident' in India only if, during the previous year, the Place of Effective Management

(POEM) of the company was in India (i.e., key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made in India). Certain guidelines have been issued in connection with the determination of POEM.

The Tax Incidence of companies depends on their residential status. Therefore, a foreign company can avoid taxation of its global income if it can prove that its POEM is not in India. In that case, only its income accruing or arising in India or deemed to accrue or arise in India or received in India would be taxable in India.

It would be essential to note that POEM rules would not apply to a foreign entity if its turnover or gross receipt is less than INR 500 million.

Particulars	Resident	Non- resident
Income received or deemed to be received in India	Taxable	Taxable
Income accruing or arising or deemed to accrue or arise in India	Taxable	Taxable
Income accruing or arising outside India from:		
• Business controlled in India or profession set up in India	Taxable	Taxable
• Any other source	Taxable	Non-Taxable

Foreign Companies

Income Tax

Under the ITA, a foreign company is liable to income tax in India on income received or deemed to be received in India or income accruing or arising in India or deemed to accrue or arise in India.

Income deemed to accrue or arise in India would include:

- Income arising from a business connection in India or property or asset or source of income in India
- Capital gains from the transfer of capital assets situated in India
- Interest, royalties, and fees for technical services paid to a non-resident².

An asset or capital asset being any share or interest in a foreign company is deemed to be situated in India if it derives its value, directly or indirectly, substantially from assets located in India.

Accordingly, any indirect transfer of such shares would also be taxable in India. To provide clarity, the criteria for when such taxation would be triggered has been laid down from FY 2015-16 onwards. The criteria are as follows:

- Share of a foreign company shall be deemed to derive substantial value from Indian assets if the fair value of the Indian assets:
 - exceeds INR 100 million
 - the said value is equal to or greater than 50% of the value of all assets owned by the foreign company.
- The fair value of assets (without deduction of liabilities against such assets) is to be decided as per rules laid down in Rule 11UB, 11UC, and 114DB. Furthermore, the requirements under Form 3CT and Form 49D must also be complied with.

- The amount to be taxed in India should be proportional to the value of Indian assets to the global assets of the foreign company
- An exemption has been provided from indirect transfers to:
 - small shareholders, i.e., shareholders who hold less than 5% voting power/share capital and do not have management or control
 - foreign amalgamations and demergers, subject to certain conditions
 - Category-I* and Category-II* FPIs under the SEBI Act³:-

*As mentioned above, there is an exemption from indirect transfer provisions applied to Category-I or Category-II FPIs under the SEBI Act. With SEBI coming up with SEBI (FPI) Regulations, 2019, it has been provided for the current exemption to be grandfathered and protected.

*Furthermore, a similar exemption is proposed to be extended to investments by only Category-I FPIs under the SEBI (FPI) Regulations, 2019

- An Indian company whose ownership or control outside India gets transferred directly or indirectly would be required to report such a transaction to the tax authorities and:
 - failure of reporting will attract a penalty of 2% of the transaction value in case the transfer has the effect of transferring the right of management or control
 - in other cases, the penalty will be INR 5,000.

2. This income would be taxable in India whether or not the non-resident has a residence or place of business in India or has rendered services in India.

3. Security and Exchange Board of India Act, 1992.

Exemption to non-residents from the filing of income-tax returns

- Under the current regime, a non-resident is exempt from filing tax returns if the total income consists only of a certain dividend or interest income, and the due taxes are provisionally withheld;
- It is now proposed to employ this benefit even in cases where the total income of non-residents consists of Fees for Technical Service/ Royalty and due taxes under the provisions of the Act are withheld.

Taxability of Business Income

In case non-residents have a business connection or PE (Permanent Establishment) in India, income attributable to such business connection or PE would be taxable in India at the rate of 40% (plus applicable surcharge and Health and education cess).

However, while calculating the taxable income, a deduction for expenses incurred for earning such income and some part of general administrative expenses are allowed as an expense.

In line with ongoing international discussions, 'Income attributable to the operations carried out in India,' has been defined as:

- a. Advertising revenues from ads that target Indian customers or customers who access the advertisement through an Indian IP address;
- b. Income from the sale of data collected from an Indian resident or from anyone through an Indian IP address;
- c. Income from the sale of goods and services using data collected from an Indian resident or from anyone through an Indian IP address.

The business connection includes any business activity carried out by a non-resident through a person acting mainly or wholly on their behalf. Furthermore, keeping in mind the challenges of taxation in a digital economy, the Finance Act, 2018 has introduced the

concept of 'Significant Economic Presence' (SEP) for business connections in India. This relates to virtual business connections of non-residents in India without any physical presence. PE means some presence in India in the form of a fixed place, employee presence, and more through which business activities are carried out in India by the non-resident. Where a non-resident constitutes a business connection or PE in India, it is required to carry out compliances as expected of a domestic company (i.e., maintaining books of accounts, getting accounts audited, various regulatory filings, etc.)

Presently, SEP of a non-resident in India constitutes 'business connection' in India. However, because of the ongoing discussion in the G20-OECD (Organization for Economic Co-operation and Development) Base Erosion and Profit Shifting (BEPS) Project, the threshold to determine SEP of a non-resident has not yet been notified.

Hence, it is proposed to defer the applicability of the provision with respect to SEP to FY 2021-22

As mentioned earlier, if a foreign company has a PE in India, the tax authorities may try to subject that company to the provisions of MAT— this view of the tax authorities may, however, be subject to litigation.

Fund Managers in India not to constitute a Business Connection or PE

Before the Finance Act, 2015, the presence of a fund manager in India was deemed to constitute a business connection in India even though the fund manager was an independent person. Thus, when a manager located in India undertook any fund management activity with respect to investments outside India for an offshore fund, the profits earned by the fund from such investments could be liable to tax in India.

In the Finance Act, 2015, it was clarified that the presence of a fund manager in India would not give rise to a business connection/PE in India with respect to offshore funds subject to the fulfillment of specific conditions and compliances by both the offshore fund and the fund managers.

With a view of introducing a relaxation, for calculating the aggregate investment, a provision was made to exclude the contribution of fund managers during the first three years up to INR 250 million.

For funds which are incorporated during any relevant previous year, it is proposed to extend the applicability of the monthly average of the corpus to INR 1,000 million, to be fulfilled within twelve months from the last day of the month of its establishment.

Presumptive Taxation

As stated earlier, the ITA also provides for a mechanism wherein income in the case of specified businesses, such as shipping, aircraft, civil construction, etc. is computed on a presumptive basis, which results in a lower effective tax rate.

Taxability of income (other than business income) under the Income Tax Act:

- **Royalty/Fees for Technical Services:** Income earned by a foreign company in the nature of royalty/fees for technical services is taxable in India on a gross basis at the rate of 10% (plus applicable surcharge and Health and education cess).
 - Presently, the definition of 'Royalty' excludes the sale, distribution, or exhibition of cinematographic films. As such, non-residents are not taxed in respect of such income, although a Double Taxation Avoidance Agreement (DTAA) may provide India the right to impose a tax.
 - In order to avoid such discriminatory situations for Indian residents, it is proposed to amend the definition of 'Royalty' and make the sale, distribution, or exhibition of cinematographic films taxable for non-residents.
- **Interest:** Interest income earned by non-residents for loans provided in a foreign currency is taxable in India at the rate of 20% (plus applicable surcharge and Health and education cess).

However, the interest from foreign currency loans and any long-term bonds would be taxable at a concessional rate of 5% (plus applicable surcharge and Health and education cess) provided the loan or bonds are acquired during a specified period and subject to specified conditions. Furthermore, the said concessional rate of 5% (on the interest income of such bonds) would apply even if the non-resident does not have a Permanent Account Number (PAN) in India. The benefit of 5% taxation has also been extended to interest earned from Rupee Denominated Bonds.

- **Transfer of carbon credits:** The Transfer of carbon credits is taxable on a gross basis at the rate of 10%.
- **Dividend:** Dividend income received from an Indian company on which DDT has not been paid, is taxable in the hands of foreign companies @ 20% as per Section 115A.
- **Other income:** Other income earned by foreign companies would be liable to be taxed at the maximum rate (i.e. 40% plus applicable surcharge and Health and education cess).

However, with respect to the above, where a beneficial rate/provision is prescribed under any treaty entered into by India with a foreign country, a non-resident can claim such beneficial rate/provision subject to conditions mentioned under the treaty with the respective country.

Equalization Levy

An equalization levy of 6% shall be charged on the amount of consideration for any 'specified service' received/receivable by the non-resident person from a person resident in India and carrying on business or profession; or from a non-resident having a PE in India. The term 'specified service' means an online advertisement, any provision for digital advertising space, or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this regard.

The equalization levy shall not be charged where the non-resident providing the specified service has a PE in India, and the specified service is effectively connected with such PE, or the aggregate amount of consideration does not exceed INR 100,000 in the previous year, or the payment made is not for the purpose of carrying out business or profession of the taxpayer.

Specific exemptions provided under Section 10 (50) of the ITA for income arising from any specified service is prescribed in this 'Equalization Levy' chapter. This chapter has become effective from 1 June 2016.

The Finance Act, 2020 has extended the scope of equalization levy, and the new amendments to the same are as follows:-

- a. Applicability - E-commerce supply of goods or services on or after 1 April 2020
- b. E-commerce supply or service will include online sale of goods or online provision of services or both facilitated/owned by the e-commerce operator
- c. E-commerce operator means a non-resident who owns, operates, or manages a digital or e-facility or platform for the online sale of goods or online provision of services or both
- d. The equalization levy will be applicable at the rate of 2% of the consideration received or receivable on e-commerce supply of goods or services or both by the e-commerce operator
- e. It will be applicable for the sale or facilities provided to a resident in India or a non-resident in specified circumstances or to a person who buys goods or services or both using the internet protocol address located in India
- f. Specified circumstances means sales of advertisements which target a customer who is resident in India, or a customer who accesses the advertisement through an internet protocol address located in India, and sale of data collected from a person who is resident in India, or from a person who uses an internet protocol address located in India
- g. The equalization levy will not be applicable where the e-commerce operator has a PE in India, or it is leviable @ 6% as per the existing provision, or the sales of such goods/services is less than INR 20 million during the previous year
- h. The equalization levy will be paid by every e-commerce operator by the due date to the Central government as follows

Quarter Ending	Due date for the quarter
30 June	7 July
30 September	7 October
31 December	7 January
31 March	31 March

- i. The interest leviable is @1% and a penalty equal to equalization levy will be applicable in case of failure to pay the equalization levy.

It is also provided that income arising from e-commerce supply or services chargeable to the equalization levy would now be exempt under Section 10(50) of the Income Tax Act, 1961.

Tax Returns and Assessment

The Indian fiscal year, as well as corporation tax year, runs from 1 April to 31 March. All listed companies (irrespective of having made a profit or loss) are required to file their tax returns electronically by 31 October each year. However, for those that have entered into international transactions with Associated Enterprises (AE) or Specified Domestic Transactions (SDT) (see Transfer Pricing), the due date to file tax returns electronically is 30 November.

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 dividends, specified interest, and due taxes have been withheld on the same. Tax returns must be digitally signed by the Managing Director of the company and, in case the company does not have one, then by any director. However, in the case of a foreign company, the tax return can be digitally signed by an individual holding a valid power of attorney.

It is mandatory for the company and the signatory (unless he is a non-resident) to get a PAN in India. The company is also required to obtain and furnish electronically, the report of a Chartered Accountant, concerning transactions with an AE.

Similarly, it must obtain and furnish electronically the report of a Chartered Accountant if its annual turnover exceeds INR 10 million.

In case of any error or omission in the tax returns, the same can be revised within one year from the end of the relevant fiscal year or before the completion of the tax assessment, whichever is earlier. Similarly, a belated tax return can be filed within a period of one year from the end of the relevant fiscal year or the completion of the tax assessment, whichever is earlier. In the case of a belated tax return, the company cannot carry forward its tax losses.

Revenue Audits

Tax returns filed by companies can be subjected to a revenue audit, popularly known as a scrutiny assessment in India. The tax authorities lay down specific parameters every year, and if a company fits those parameters, it would mandatorily be selected for an assessment. For other companies, the same is based on random selection through the Computer-Aided Scrutiny Selection (CASS) system.

In the assessment proceedings, the tax authorities could either accept the income as in the return if they are satisfied with the correctness of the income and expenditure or make adjustments to the income either by increasing revenues or disallowing the expenditure. A company can file an appeal against the adjustments made. There is an exhaustive and robust appeal mechanism and tax judiciary system in India.

The Finance Act, 2018 had introduced a new scheme to carry out the assessments electronically. Recently, the Central Board of Direct Taxes (CBDT), the apex policy-making body of the Income Tax Department, issued a notification proposing the E-assessment Scheme 2019 in connection with e-assessment for specified persons and territories. The Scheme lays down the setting up of various jurisdictional e-assessment centers to implement and facilitate the effective and smooth operation of the Scheme. The Scheme is a progressive step towards faceless assessment intending to achieve higher transparency and curb various malpractices. This path-breaking initiative would radically change the outlook in which Indian tax assessments are perceived and hopefully mitigate protracted litigation, thereby facilitating the ease of doing business in India.

Profits Subject to Tax

The taxable income for a business is computed in accordance with the common business or accounting principles to which necessary tax adjustments in accordance with the ITA are required to be made.

Profits from the business are chargeable to tax on a receipt or accrual basis as per the accounting method adopted by the assessee. However, companies have to offer the profits to tax on an accrual basis as the Indian Companies Act does not allow them to follow the cash system of accounting. Principally, deductions are allowed for all business-related revenue expenses incurred during the fiscal year.

Capital expenses (other than those specifically allowed) and personal expenses are not deductible. The onus of proving that the expenditure has been incurred wholly and exclusively for the business is squarely on the company.

Furthermore, any expenditure that is considered against public policy is not allowable as a deduction. In the case of fixed assets, depreciation is available at prescribed rates and in accordance with the provisions of the ITA. Certain revenue expenditures that are necessary to bring the fixed asset into its existing condition have to be added to the cost of the fixed asset. Certain specified expenses are allowed only on the basis of actual payment irrespective of the accrual system of accounting followed by the company.

The following sections of this chapter cover some specific allowable and disallowable deductions in calculating taxable business profits.

Employee Taxes

An employee is liable to pay taxes on the salary earned by him/her. For income to be regarded as 'salary', it is imperative to have an employer-employee relationship. The income under the head 'salary' is liable to tax

either on a receipt basis or accrual basis, whichever event is earlier. It would also include arrears of salary.

Components of salaries mainly include basic salary, fees, commission, bonus, retirement benefits, a contribution to social security over the specified limits, allowances, perquisites, etc.

Perquisites are benefits provided in-kind and would, inter alia, include rent-free accommodation, interest-free loans or subsidized loans, provision of movable assets for use or transfer of such assets to the employees at a subsidized cost, free or concessional education, provision of motor cars, provision of domestic help, club membership, etc. The Finance Act 2020, in the case of start-up employers, has provided to defer the time limit to deposit TDS on Employee Stock Option Plans to within 14 days from the expiry of 48 months from the end of the relevant assessment year or the date of sale of such ESOP shares or the date on which the assessee ceases to be an employee.

The ITA also provides for several exemptions and deductions while computing income under the head 'salaries.' These, among other things, include professional taxes paid, house rent allowance subject to specified limits and conditions, etc.

Furthermore, the Finance Act, 2019, has increased a standard deduction to INR 50,000 to replace the earlier transport allowance and medical reimbursements. The mechanism of calculating the exempt allowances is based on Rules. However, the quantum of deduction and/or exemption is not very significant, and most of the limits specified in the ITA/Rules have outlived their utility.

Employers are required to compulsorily withhold tax on taxable salary if income exceeds the minimum exemption limit. Tax is to be withheld at an average rate based on the estimated income of the employee for the whole year at the time of actual payment of salary every month. While calculating the estimated income of the employee, the applicable deductions and exemptions are also considered.

Calculating Trading Profits

Trading profits represent profits as per the Profit and Loss Account which are drawn as per the provisions of the Indian Companies Act, which is further adjusted considering the admissible/ inadmissible expenses as per the provisions of the ITA (see Profits subject to tax).

According to the ITA, for the purpose of calculating profits, all incomes accrued/earned during the fiscal year should be considered. Capital receipts are not considered while calculating trading profits. However, what constitutes a capital receipt is a matter of considerable litigation.

As explained earlier, capital expenses are not deductible. However, the ITA has prescribed certain capital expenses that can be allowed as deductions, but over a period of time. For example:

- Preliminary expenses incurred prior to the set up of, or in connection with the extension of the business, are allowed over a period of five years subject to certain conditions
- Expenditure incurred on amalgamation is allowed over a period of five years
- Expenditure on the prospecting of certain minerals is allowed over a period of 10 years
- Expenditure on obtaining a telecommunication license over the license period.

Furthermore, according to the ITA, certain capital expenditures are allowed in the year that they are incurred. For example:

- Capital expenditure (except on land) on scientific research related to the business carried on by the company
- The entire capital expenditure (except on land, goodwill, and financial instruments) in case of specified businesses that have commenced operations in the specified time period

- Weighted deduction of 150% in the case of expenditure on an in-house scientific research and development facility as approved by the prescribed authority, which inter alia includes capital expenditure, except that on land and building. This deduction has been reduced to 100% from 1 April 2020 onwards.

Similarly, a company is eligible to claim depreciation on fixed assets according to the rate prescribed in the Income Tax Rules. A company is also eligible to claim bad debts, provided the sales in respect thereof have been offered to tax either in the current financial year or in the previous financial year. Besides allowing the claim for expenditure, the ITA also allows claims for business losses provided they are in the revenue field and discovered in the year under consideration. Examples of business losses are a loss on account of obsolete stock, loss on account of fire/ theft/burglary/ fraud, etc.

The ITA also restricts the allowance of certain revenue expenses if certain requirements are not met:

- If tax is not withheld and deposited in the government treasury within the prescribed time, 30% of the expense claimed by the company shall be disallowed
- Certain statutory expenses like tax, duty, cess or fees are not allowed as deduction unless they are actually paid either during the year or up to the time allowed to file tax returns.

Certain expenses are expressly not allowed while computing taxable income. For example:

- Tax on profits, tax on capital
- Tax paid by an employer on behalf of an employee on non-monetary perquisites
- Expenditure incurred with respect to exempt income – a controversial provision.

Particulars	Amount (INR)	Amount (INR)
A. Net Profit as per Profit and Loss Account		XXX
B. Inadmissible expenses debited to Profit and Loss Account		
• Disallowable expenses/claims	XXX	
• Depreciation as per the Companies Act	XXX	
• Deemed income not credited to Profit and Loss Account	XXX	XXX
C. Total = (A + B)		XXX
D. Admissible deduction allowable claims/deductions	XXX	
• Depreciation as per the Income Tax Act	XXX	
• Incomes chargeable under other heads credited to Profit and Loss Account/Exempt Income	XXX	XXX
E. Profits and Gains of Business or Profession (C – D)		XXX

Income Computation and Disclosure Standards (ICDS)

The Indian government has notified 10 Income Computation and Disclosure Standards (ICDS) that are applicable for computing income chargeable as 'Business income' and 'Income from other sources.' ICDS would apply to both residents as well as non-residents, to individuals as well as companies.

Furthermore, with the introduction of separate standards for income tax, this would not result in maintaining different books of accounts for income tax purposes.

However, a reconciliation statement would have to be prepared to keep track of the differences. In case of any conflict, the provisions of the ITA would prevail over the ICDS. In such a scenario, whether the interpretation of law rendered by higher courts in India would also prevail over ICDS would be a litigation issue. The Finance Act, 2018, has incorporated the provisions of ICDS under the relevant provisions of the ITA with effect from 1 April 2017. Thus, it has settled the controversy on whether the interpretation of law rendered by higher courts in India would prevail over ICDS.

The 10 ICDS that would apply to both residents and non-residents are as follows:

- ICDS I relating to accounting policies
- ICDS II relating to valuation of inventories
- ICDS III relating to construction contracts
- ICDS IV relating to revenue recognition
- ICDS V relating to tangible fixed assets
- ICDS VI relating to the effects of changes in foreign exchange rates
- ICDS VII relating to government grants
- ICDS VIII relating to securities
- ICDS IX relating to borrowing costs
- ICDS X relating to provisions, contingent liabilities, and contingent assets.

The ICDS is effective for computing taxable income from financial years beginning 1 April 2016 and onwards

Interest Deduction

Interest on capital borrowed for business or profession is allowed as a deduction. However, interest payable on capital borrowed for acquiring a capital asset for extension of business or a new business, until the date such asset is first put to use, is not allowable as a revenue deduction.

Such interest shall be loaded on the cost of the capital asset and would be eligible for depreciation. The utilization of loans is an important factor in deciding the allowability of interest on the same. Interest on borrowings utilized for granting interest-free advances to related parties or sister concerns may not be allowed if the business expediency of such advance is not proven. Furthermore, interest on borrowings utilized for the purpose of earning tax-free income (e.g., dividend income) would be disallowed due to particular provisions of the ITA.

Thin Capitalization Rules

Several jurisdictions across the globe have specific thin capitalization rules to deter erosion of the tax base through excessive debt and, thereby, excessive interest payments. There is no specific thin capitalization provision under the ITA. As there are no enabling provisions to question whether a business should have raised funds through equity instead of a loan, interest deduction is allowed solely based on the principles laid down in the paragraph above. Interest payments to overseas related parties and in some specific instances, to domestic related parties would, however, be subject to transfer pricing provisions.

Furthermore, with effect from 1 April 2017, if the transaction of debt is construed by the tax authorities as solely for tax benefits, then the arrangement could be examined and disregarded under the General Anti-Avoidance Rules (GAAR).

Furthermore, a restriction has been introduced in the Finance Act, 2017, for interest deduction to the extent of 30% of EBITDA (Earnings Before Interest,

Taxes, Depreciation, and Amortization) in the case of interest paid by a resident company to a non-resident associated enterprise.

Capital Assets

According to the ITA, capital assets have been defined to mean the property of any kind including, business assets but excluding stock-in-trade and movable personal effects, such as wearing apparel, personal furniture, personal car, etc.

Thus, broadly, 'capital assets' can be classified as business-related assets and personal capital assets, excluding the ones specified above. Business-related capital assets can be further classified as 'depreciable capital assets' and 'non-depreciable capital assets.' The tax treatment of personal capital assets and non-depreciable assets has been dealt with separately in the Capital Gains Tax section. The tax treatment of depreciable capital assets is explained here. According to the ITA, depreciation for tax purposes has to be calculated on the Written Down Value (WDV) of the block of assets at the prescribed rates (except for undertakings engaged in the generation or generation and distribution of power, and which have the option of claiming depreciation on a straight-line basis). A block of assets has been defined as a group of assets falling within a class of assets comprising of tangible and intangible assets for which the same percentage of depreciation is prescribed.

The rates of depreciation are given in the table below:

Asset class	Rate of depreciation (%)
General plant and machinery	15
Cars other than those used in the business of running them on hire	15
Computers (including software)	40
Purely temporary erections	100
Residential buildings	5
Buildings other than the above	10
Furniture and fittings including electrical fittings	10
Ships	20
Intangible assets: Any know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial right of a similar nature	25

The WDV of a block of assets is calculated as under:

First Year:	XXX
Cost of the asset at the time of acquisition of assets	XXX
Less: Depreciation as calculated based on the above rates	XXX
Closing WDV of the block of assets	XXX
Subsequent year:	
Opening WDV of the block at the beginning of the next year	XXX
Add: Actual cost of assets acquired during the year	XXX
Less: Sale proceeds from the disposal of any asset during the year	XXX
WDV for the purpose of calculating depreciation	XXX

With effect from 1 April 2017, the highest rate of depreciation on assets will be reduced to 40% (whether for new or existing assets).

The actual cost of a depreciable asset comprises its purchase price (including import duties and other non-refundable taxes or levies) and any directly attributable cost of bringing the asset to its working condition for its intended use.

The sale of an individual depreciable asset does not result in any capital gains as long as the sales proceeds of those individual assets are less than the WDV of that particular 'block of assets.' If the sales proceeds are more than the WDV of the 'block of assets,' the resultant gain is regarded as a 'deemed short-term capital gain' irrespective of the holding period of the individual assets and would be chargeable to tax at the normal corporate tax rate. The concepts of short-term and long-term capital gains are explained in the section on Capital Gains Tax. This concept of taxation differentiates capital gains on depreciable assets as compared to capital gains on non-depreciable assets and personal assets. Furthermore, an additional or accelerated depreciation at the rate of 20% is allowed to taxpayers engaged in the manufacture or production of any article or product, or in the business of generation, distribution or transmission of power, in the year in which the new plant and machinery acquired is first put to use. If the new plant and machinery is put to use for less than 180 days in the said financial year, half of the additional depreciation would be allowed in the first year of putting the asset to use, and the remaining half will be allowed in the immediately succeeding financial year.

Double Taxation Relief

India allows relief from double taxation of income in the following ways:

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 over 90 countries to avoid double taxation of income. Under the Indian tax laws, a taxpayer can avail of the provisions of the tax treaty or domestic tax laws, whichever is beneficial to the taxpayer.

Typically, bilateral relief is provided through the 'credit method' or 'exemption method.' In order to avail of the 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.

The government has issued comprehensive guidelines about the mechanism for claiming tax credit in India for foreign taxes paid by an Indian resident. The same is effective from 1 April 2017 onwards.

Aligning Double Taxation Avoidance Agreements (DTAA) with Multilateral Instrument (MLI)

India has signed the MLI with representatives of many other countries, and the provisions of the MLI apply to India's DTAA's from FY 2020-21 onwards. The MLI applies alongside existing DTAA's.

Article 6 of MLI provides for modification of the Covered Tax Agreement to include the following preamble text:

“Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions),”

To align the scope under the preamble text of the MLI with the scope mentioned under the Act, an amendment is proposed to Sections 90 and 90A to insert the above modification.

Withholding Tax

Withholding tax, known as Tax Deducted at Source (TDS) in India, aims at collecting 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 taxpayer 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)
- The time of payment or credit of the amount, whichever is earlier, except salary payments where tax is required to be deducted only on the actual payment of salary.

Please see Appendix 1 for TDS rates on payments made to non-residents and foreign companies and Appendix 2 for TDS rates on some common payments to residents.

If the rates prescribed in a tax treaty are lower than the rates in the table in Appendix 1, the lower rates can be adopted.

A person availing the treaty benefit is required to furnish the Tax Residency Certificate (TRC) as stated earlier and is also required to give a declaration in the specified form.

If the recipient does not have a PAN in India, TDS would be the maximum of the:

- Tax rate prescribed in the ITA
- Rates in force (i.e., tax rate specified in the Finance Act or the rate specified in the treaty, whichever is lower)
- However, with effect from 1 June 2016, this higher withholding tax rate of 20% will not apply to non-residents, provided such non-resident furnishes contact details, TRC, Tax Identification Number (TIN), etc. to the taxpayer.

The person deducting the tax has a tedious compliance burden post deduction of tax, namely:

- In case of expenses other than salary, deposit the tax within seven days from the end of the month in which tax has been deducted, except in the case of tax deduction for the month of March. With respect to tax deducted in March, the due date of payment is 30 April
- With respect to TDS on salary, the same timeline as specified above applies, except that even for the month of March, tax needs to be deposited by 7 April
- Apart from the deposit of taxes, a corporate is required to file the statement of TDS on or before the last day of the month succeeding each quarter, specifying the details of taxes paid and the

deductees on whose behalf the taxes were paid. However, for the quarter that ends in March, the due date is 31 May.

This statement is required to be filed separately in three different forms for salary payments, payments to non-residents, and all other payments.

- A corporate is also required to issue a TDS certificate to the persons from whose payments the tax has been deducted within the specified time.

There are stringent penal provisions, including prosecution, for not complying with these TDS provisions.

Capital Gains Tax (CGT)

According to the ITA, an assessee is chargeable to pay CGT on the transfer of 'capital assets.' See the section on Capital Assets for the definition of the term. The rate of CGT depends on whether the capital asset is a short-term or a long-term capital asset.

Any capital asset held for less than 36 months is regarded as a short-term capital asset; otherwise, it is considered to be a long-term capital asset. However, securities listed on a recognized stock exchange in India, units of an equity-oriented mutual fund, and zero-coupon bonds held for more than 12 months are considered long-term assets. With effect from 1 April 2016, a share of an unlisted company will be treated as a long-term capital asset, if held for a period exceeding 24 months (reduced from 36 months).

Furthermore, with effect from 1 April 2017, immovable property being land or building, or both, would be treated as long-term capital assets, if held for a period exceeding 24 months.

Section 49 of the Act provides for the cost of acquisition for the capital asset, which became the property of the assessee under certain situations. Further, clause (42A) of Section 2 of the Act provides the definition of the term 'short-term capital asset.' It also provides for the determination of the period of holding of the capital asset held by the assessee.

As per The Finance Act, 2020, it is proposed to amend Sub-section (42A) of Section 2 of the Act to provide that in the case of a capital asset, being a unit or units

in a segregated portfolio, the period for which the original unit or units in the main portfolio were held by the assessee should also be included.

Furthermore, a new Section 49 (2AG) is proposed to be inserted to provide that the cost of acquisition of a unit or units in the segregated portfolio shall be in the same proportion as the net asset value of the asset transferred to the segregated portfolio bears to the net asset value of the total portfolio immediately before the segregation of portfolios.

The sale of capital assets is taxable based on the following rate structure:

Particulars	Applicable Tax Rate*
1. Sale of short-term capital assets: listed equity shares and units of equity-oriented mutual funds, which have been charged to Securities Transaction Tax (STT) in India	15%
2. Sale of short-term capital assets: other than the above	Based on corporate tax rate/ individual tax rate
3. Sale of long-term capital assets: listed equity shares and units of equity-oriented mutual funds, which have been charged to STT in India and purchase of such assets which have been charged to STT (except certain exceptional situations provided in law such as Initial Public Offering (IPO), bonus, etc.)	10%(If the amount of gains exceeds INR 100,000)
4. Sale of long-term capital assets: listed securities or zero-coupon bonds, which have not been charged to STT, and listed equity shares, where the purchase of such assets have not been subject to STT	If costs are not adjusted for inflation – 10% If costs are adjusted for inflation – 20%
5. Sale of long-term capital assets: other than those mentioned in points 3 and 4 above	20% with adjustment for inflation

*Applicable surcharge and Health and education cess at the rate of 4% shall also be levied

However, certain exceptions in the case of taxability of capital gains in the hands of a non-resident are:

- Capital gains arising from the transfer of a capital asset, being shares and debentures of an Indian company that have been initially purchased and sold in foreign currency, are required to be computed in the foreign currency. The net gain in foreign currency would be converted to Indian Rupees considering the prevailing exchange rate on the last day of the month immediately preceding the month in which the capital asset is transferred. Furthermore, the cost of such capital assets cannot be adjusted for inflation despite the same being a long-term gain;

Long-term capital gains arising from the transfer of unlisted securities would be chargeable to tax at the rate of 10%.

However, the cost of the said asset cannot be adjusted for inflation.

- Transfer of capital assets as a consequence of amalgamation, demerger or business reorganization, in compliance with conditions of the Indian income tax law, is not taxable in India;
- Capital gains arising on account of long-term capital assets are also exempt up to INR 5 million if the profit is invested in specified bonds within six months of the transfer of the long-term capital asset. However, the Finance Act 2018 has restricted this benefit only to the long-term capital assets being land and buildings. Furthermore, the Finance Act, 2018, has increased the lock-in period from three years to five years and also clarified that the exemption would be withdrawn if these investments are sold within five years
- Also, there are a few other avenues available to save tax on capital gains in the case of an individual.

Tax Losses

The ITA deals with losses arising under the following heads of income:

- Losses under the head 'Income from house property'
- Losses under the head 'Business income,' further split into 'Business loss' and 'Unabsorbed depreciation'
- Losses under the head 'Speculation business income'

- Losses under the head 'Capital gains', further classified into 'Long-term capital loss' and 'Short-term capital loss'
- Losses under the head 'Income from other sources'

These losses are computed under the different provisions of the ITA, and there are various provisions governing the set-off and carrying forward of such losses. Also, the losses under the head 'Income from house property' and 'Business income' can be set off against income from any other head computed for the same year. However, losses under the head 'Speculated loss' and 'Capital loss' can be set off only against 'Speculated gain' and 'Capital gain' respectively, computed for the year.

This is shown in the following table:

Loss under the head	Can be set off in subsequent years against						
	Salaries	Income from house property	Business income	Speculated business income	Short-term capital gains	Long-term capital gains	Income from other sources
Loss from house property	✓	✓	✓	✓	✓	✓	✓
Business loss	✗	✓	✓	✓	✓	✓	✓
Speculated business loss	✗	✗	✗	✓	✗	✗	✗
Unabsorbed depreciation	✓	✓	✓	✓	✓	✓	✓
Short-term capital loss	✗	✗	✗	✗	✓	✓	✗
Long-term capital loss	✗	✗	✗	✗	✗	✓	✗
Loss from income from other sources	✓	✓	✓	✓	✓	✓	✓

There are also restrictions on the utilization of tax losses under each head when they are carried forward to subsequent years, as shown in the following table:

Loss under the head	Can be set off in subsequent years against						
	Salaries	Income from house property	Business income	Speculated business income	Short-term capital gains	Long-term capital gains	Income from other sources
Loss from house property	×	✓	×	×	×	×	×
Business loss	×	×	✓	✓	×	×	×
Speculated business loss	×	×	×	✓	×	×	×
Unabsorbed depreciation	✓	✓	✓	✓	✓	✓	✓
Short-term capital loss	×	×	×	×	✓	✓	×
Long-term capital loss	×	×	×	×	×	✓	×
Loss from income from other sources	×	×	×	×	×	×	×

There are specific provisions for carrying forward losses with respect to the head of income against which they can be set off and the time limit for each, which are mentioned below:

Nature of loss	Can be set off against	Number of years that it can be carried forward for
Loss from house property	Income from House Property	8 years
Business loss	Business profits	8 years
Speculated business loss	Speculated business profit	4 years
Unabsorbed depreciation	Business profit	8 years
Short-term capital loss	Capital gain (short term or long term)	8 years
Long-term capital loss	Long term capital gains	8 years

It is pertinent to note that closely held companies are required to satisfy a 51% continuity of ownership criteria for carrying forward business losses.

Transfer Pricing

Transfer pricing refers to the inter-company pricing arrangements between related business entities and commonly applies to intercompany transfers of services and tangible/intangible properties. In India, detailed transfer pricing provisions were introduced by the Finance Act, 2001 to facilitate the computation of fair, reasonable, and equitable profits and tax in India for businesses carried on by multinational companies. Essentially, 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 (AE), either or both of whom are non-residents for tax purposes (international transaction), shall be computed with 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.

Associated Enterprises: Two enterprises are considered to be associated if there is direct/indirect participation in the control, management, or capital of one enterprise by another enterprise or by the same persons in both the enterprises. For the determination of participation in management or control, several factors are considered, including:

- Direct/indirect shareholding with 26% or more of the voting power
- Advancing of loans of 51% or more of the total assets
- Appointment of more than 50% of the Board of Directors
- Goods manufactured sold under influenced prices
- Dependence on intellectual property rights owned by either party, etc.

An additional clarification was issued, highlighting the concept of a 'deemed international transaction', thereby widening the scope of transfer pricing in India. This provision considers a transaction between two residents in India as an international transaction subject to certain conditions.

International Transactions

Apart from trade transactions relating to the purchase and sale of goods and services, transfer pricing in India is applicable to even transactions involving business restructuring, intangibles, goodwill, corporate guarantees, overdue debtors, etc. In India, the authorities have included even Specified Domestic Transactions (SDT) under the ambit to mitigate tax arbitrages in transactions entered into between domestic companies. Initially, the threshold for the applicability of SDT was increased to INR 200 million from INR 50 million.

Obtaining an accountant's certificate in the prescribed format is mandatory and would have to be filed before 31 October (formerly 30 November) of the relevant assessment year, along with the tax return. There is no threshold exemption limit provided for compliance. Strict penal provisions have been established for non-compliance with the prescribed requirements under the new transfer pricing regime.

Determination of 'Arm's Length Price' (ALP)

A crucial aspect of transfer pricing is the process of determining the Arm's Length Price (ALP). The Central Board of Direct Taxes (CBDT) has prescribed six methods for determining the ALP.

- Comparable Uncontrolled Price Method
- Resale Price Method
- Cost Plus Method
- Profit Split Method
- Transactional Net Margin Method
- Other Method (via Notification No. 18/2012 dated 23 May 2012)

The 'other method' has been prescribed to potentially cover transactions involving intangibles and business restructuring for which the above methods may not be the most appropriate.

The choice of the appropriate method is determined with respect to the nature and class of transaction, the classes of associated persons, the functions performed by them, and other relevant factors.

Furthermore, in a move to reduce confusion and offer flexibility to taxpayers, the concept of arm's length range was introduced as opposed to the former arm's length price. The adoption of the arm's length range and allowing the usage of multiple-year data has aligned the transfer pricing rules to global practices to a certain extent.

Safe harbor provisions have been in existence since 2013 and have undergone a conscious revision to rationalize the acceptable profit ranges for a series of transactions such as IT/ITES/KPO, guarantee, etc. Also, a new category of international transactions for 'receipt of low value-adding intra-group services' was added. Safe harbor provisions have been stated to be in force only for the FY 2018-2019. It is yet to be prescribed whether the existing safe harbor provisions would continue to be valid for FY 2019-2020 or if there are any other prescribed rates.

Advance Pricing Agreements (APA)

- In March 2015, the CBDT introduced roll-back provisions according to which, an APA would also be applicable to international transactions undertaken in the previous 4 financial years subject to certain conditions.
 - On 19 December 2014, India signed the first bilateral APA with Japan, which would be valid for five years.
 - The APA had been finalized within a time span of approximately 32 months, which is significantly shorter than the time normally taken to finalize APAs internationally.
 - It should be noted that the total number of applications filed till 31 March 2019 stands at 1155, which consists of 944 Unilateral APAs (UAPAs) and 211 Bilateral APAs (BAPAs). The report issued by CBDT shows that till 31 March 2019, 271 APAs were concluded, which consisted of 240 Unilateral APAs and 31 Bilateral APAs.⁴ The number of APAs signed during 2018-19, included 41 Unilateral APAs and 11 Bilateral APAs, which is lesser as compared to the prior years 2016-17 being the highest.
- The Finance Act, 2012, introduced Advance Pricing Agreements (APAs), which is an agreement between a taxpayer and the tax authorities that specifies the manner in which ALP will be determined with respect to an international transaction.
 - The ALP shall be determined on the basis of the prescribed methods or any other method.
 - An APA would be valid for a maximum of 5 consecutive years, unless there is a change in the provisions or the facts having a bearing on the international transaction.

4. Press Releases, Income Tax Department, https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/754/PressRelease_Indian_Advance_Pricing_Agreement_3_4_19.pdf, accessed on 30 September 2020

Secondary Adjustment

The concept of 'secondary adjustment' was introduced in 2017 to align transfer pricing provisions with international best practices. As a concept, secondary adjustment arises when the taxpayer agrees to a transfer price, which is different from what is recorded in the books of accounts. The taxpayer can agree to this different transfer price, either suo moto at the time of filing a tax return, or once the transfer pricing adjustment is done by the tax officer and not further litigated, or during the APA or Mutual Agreement Procedure (MAP) proceedings. The provisions require Indian taxpayers to repatriate the difference in transfer price as per tax and as per books of accounts (excess money) from the overseas AE within 90 days. In case the repatriation is not made within 90 days, it would be deemed as a loan given by the taxpayer to the AE, and the interest shall be computed till the time the repatriation is made by the AE. However, the Finance Bill (No. 2) of 2019, had provided certain clarifications regarding the effective implementation of these provisions, which are as follows:

- These provisions shall not apply if the primary adjustment does not exceed INR 10 million or the same pertains to AY 2016-17 and earlier years. These two conditions are not cumulative.
- The taxpayer may choose not to make a secondary adjustment by a one-time tax payment at 18% on the amount to be repatriated plus a 12% surcharge on such tax. However, the taxpayer will continue to pay the due interest till the date of such one-time tax, as per the existing provisions.
- The amount of primary adjustment may be repatriated from any of the AEs not resident in India and not necessarily the transacting AEs.

Extensive Transfer Pricing Documentation

- As a notable development, India's transfer pricing documentation requirements are being aligned with the OECD BEPS Project.
- In line with the international consensus on this topic, it is now proposed that companies need to maintain and furnish extensive, group-level details to the Indian tax authorities by way of a Master File (MF) and Country-by-Country (CbC) report, in addition to the current transfer pricing documentation (i.e., local file) requirements in India.

Master File- Rule 10DA: The information to be captured in Master File can be broadly classified in four categories, i.e., (i) Description of the business, (ii) Particulars of intangibles, (iii) Particulars of financing activities, (iv) General information. Additionally, the groups consolidated financial statement is also expected to be included.

The applicability and timelines required for the Master File are as follows:

Entity	Applicability	Form to be filed	Due Date
Indian subsidiary / affiliate of the multinational group	A constituent entity irrespective of: <ul style="list-style-type: none"> Whether the entity has entered in international transactions Threshold applicability Whether the entity is resident or not 	Part A of Form No. 3CEAA	By due date of furnishing the return of Income (i.e., 30 November)
	A constituent entity passing the prescribed thresholds	Part B of Form No. 3CEAA	By due date of furnishing the return of Income (i.e., 30 November)
	The designated entity, where there are multiple constituent entities resident in India	Form No. 3CEAB	At least 30 days before the due date of filing Form No 3CEAA

- CbC Report (CbCR) - Rule 10DB: The CbCR shall include economic information within the multinational group, such as the nature of main business activities, revenues, profit/loss, income taxes paid, stated capitals, accumulated earnings, number of employees, tangible assets, etc. for each country in which the group operates.
- The CbC reporting requirements shall apply to Indian multinational groups having a consolidated revenue above a threshold to be prescribed. It was indicated that the revenue threshold will be INR 5,500 billion (which is meant to be equivalent to the globally adopted EUR 750 million per year).

The applicability and timelines required for CbCR are as follows:

Entity	Applicability	Form to be filed	Due Date
Indian subsidiary/affiliate of the multinational group, wherein the parent entity is not a resident of India	Intimation of details of parent entity/alternate reporting entity which will file the CbCR	Form No. 3CEAC	2 months prior to furnishing the CbCR
Parent entity or alternate parent entity in India	Every parent entity or the alternate reporting entity resident in India	Form No. 3CEAD	The due date for furnishing the CbCR is on or before the due date for filing of Return of Income for the relevant accounting year of the group.
Indian subsidiary/affiliate of the multinational group, wherein the parent entity is not a resident of India	Intimation of multiple constituent group entities in India	Form No. 3CEAE	No timeline mentioned in the rules. This needs to be clarified by the CBDT.

The Finance Bill (No. 2) of 2019, had provided certain clarifications regarding the definition of accounting year:

In the case of an alternate reporting entity of an international group, wherein the parent entity is not a resident of India, the reporting accounting year shall be the one applicable to the parent entity. The amendment will take effect retrospectively from 1 April 2017 and will, accordingly, apply in relation to assessment year 2017-18 and the subsequent assessment years.

Penalty:

From a comprehensive understanding perspective, the penalties prescribed in the Indian Income Tax Act, 1961 with respect to the failure to furnish the enhanced transfer pricing documentation are as follows:

- Failure to furnish information and documentation under the proposed three-tier documentation structure by the due date will attract a penalty of INR 500,000
- Failure to furnish the CbCR by the due date ranges from INR 5,000 to INR 50,000 per day
- For non-furnishing or inaccurate furnishing of the CbCR, a penalty of INR 500,000 would be applicable.

Planning Points for Foreign Investors

According to the Indian exchange control regulations, a foreign business can have a presence in India in the form of a liaison office, branch office, project office, company, and Limited Liability Partnership (LLP).

The factors to be looked at are as follows:

Particulars	Liaison office	Branch office and Project office	Subsidiary company	Limited liability partnership (LLP)
Regulatory approval	Reserve Bank of India (RBI) ⁵ , Registrar of Companies (ROC) and local registrations	RBI, ROC and local registrations	ROC and local registrations	ROC and local registrations
Rate of tax ⁶	Nil (since it is not permitted to carry out any revenue-generating activity)	Normal tax rate - 40% of net taxable income. Minimum Alternate Tax (MAT) ⁷ - 15% of adjusted book profits.	Normal tax rate - 30% of net taxable income. Companies with total turnover in FY 2017-18 less than INR 4000 million: 25% Certain manufacturing companies foregoing specific deductions - 25% MAT - 15% of adjusted book profits. Concessional Tax Regime⁸: New manufacturing company – 15% Special rate for domestic companies foregoing specific deductions and complying with specific requirements – 22%* (MAT is not applicable under concessional tax regime)	Normal tax rate - 30% of net taxable income. Alternate Minimum Tax (AMT) ⁹ - 18.5% of adjusted book profits.

*It may be noted that conditions provided for availing concessional tax rate is likely to be fulfilled by most Indian companies. Accordingly, the virtually corporate tax rate for an Indian company is reduced to 22%.

5. Could be under the automatic or government approval route involving post-facto intimation or prior approval, respectively.

6. Excluding surcharge and Health and education cess.

7. MAT is designed to ensure that no company with substantial accounting income can avoid tax liability by using exclusions, deductions, and incentives available under the Income Tax Act

8. The Taxation Laws (Amendment) Act, 2019, Income Tax Department, <https://www.incometax-india.gov.in/Pages/acts/taxation-laws-amendment-act-2019.aspx>, accessed on 21 September 2020

9. AMT is similar to MAT and applies to non-corporate bodies only if they are claiming incentive-linked or profit-linked deductions.

Particulars	Liaison office	Branch office and Project office	Subsidiary company	Limited liability partnership (LLP)
Long-term capital gain tax rate on exit from business ¹⁰	Not Applicable	Not applicable	10% on the capital gain exceeding INR 100,000 ¹¹ or 20% ¹²	20%
Advance tax payment	Not applicable (since it is not permitted to carry out revenue-generating activity)	To be paid in four installments	To be paid in four installments	To be paid in four installments
Minimum capital norms	Not applicable (funded by head office)	Not applicable (funded by head office/internal accruals)	No minimum capital	No minimum capital
Repatriation of profits	Not applicable	No further tax on repatriation of profits	Dividend distributed to the shareholder would be taxable in the hands of shareholders	No further tax on repatriation
Permanent Establishment (PE)	Generally, do not constitute PE, but litigation exists	Constitutes a PE and a taxable presence under a tax treaty or income tax provisions	An independent taxable entity and not a PE of a foreign company. However, based on the role and function of the Indian entity, PE risk may be evaluated	Should not constitute PE. However, based on the role and function of LLP, PE risk may have to be evaluated
Applicable surcharge and education cess	Not liable to tax	Surcharge: Total income of: Up to INR 10 million - Nil Up to INR 100 million - 2% Above INR 100 million - 5% Health and education cess at the rate of 4%	Surcharge: Total income of: Up to INR 10 million - Nil Up to INR 100 million - 7% Above INR 100 million - 12% Education cess at the rate of 4% Concessional Tax Regime : Surcharge at the rate of 10% Health and education cess at the rate of 4%	Surcharge: Total income of: Up to INR 10 million - Nil Above INR 10 million - 12% Health and education cess at the rate of 4%

10. Excluding surcharge and Health and education cess.

11. Transfer of listed equity shares/unit of an equity-oriented fund which attracts STT and transfer of unlisted shares (without benefit of indexation and foreign currency fluctuation)

12. Other cases

Investment via Shares or Loans

A foreign corporation can fund its Indian subsidiary by infusing share capital (FDI) or by extending a loan (External Commercial Borrowing (ECB)). Both FDI and ECBs can be availed by the Indian subsidiary subject to the fulfillment of prescribed exchange control regulations. The critical tax and regulatory implications of FDI/ECBs are:

- Repatriation of capital: Foreign capital invested in India is generally allowed to be repatriated along with capital appreciation, if any, after payment of taxes due on them, provided the investment was made on a repatriable basis. The repatriation is, however, subject to lock-in conditions in certain sectors.
- Return of dividend: The dividend income is freely repatriable. The same would be taxable in the hands of the shareholder.
- Payment of interest on ECBs: Subject to certain conditions, withholding tax on ECBs (wherever allowed) has been reduced from 20% to 5% (with applicable surcharge and cess) for ECBs availed between 1 July 2012 and 1 July 2023. Further, in case of monies borrowed by the issue of long-term bonds or Rupee Denominated Bonds (RDBs), issued on or after 1 April 2020 but before 1 July 2023, and listed in the stock exchange located in International Financial Service Centers (IFSC), the rate would be 4%. The concessional rate of 5% would apply even if the non-resident does not have a PAN in India.

Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)

The Finance Act (No. 2), 2014 introduced a taxation regime for business trusts - REITs and InvITs. These business trusts give small investors access to large-income-producing real estate and infrastructure assets, much like how mutual funds provide access to stocks. The Securities and Exchange Board of India (SEBI) issued guidelines for regulating such business trusts, and an investor can enter the property market

with as little as INR 200,000. Both these models have the following distinctive elements:

- The trust would raise capital by issuing units, which would be listed on recognized stock exchanges in India
- The trust can raise debt from residents as well as non-residents
- Income-bearing assets would be held by the trust by acquiring controlling or another specific interest in an Indian company (Special Purpose Vehicle (SPV)) from the sponsor (promoters of the SPV)

Furthermore, the taxation regime of such business trusts would, among other things, include the following:

- No capital gains tax on the sponsor at the time of exchange of shares of the SPV with the units of the trust.
- Capital gain on transfer of units shall be taxable at the rate of 10% on an amount exceeding INR 100,000.
- Capital gains on the disposal of other assets by the trust shall be taxable in the hands of the trust. However, the same would not be taxable in the hands of the unit holders at the time of distribution.
- Dividend, interest, and rental income received by the trust from the SPV is accorded a pass-through status. Accordingly, this dividend, interest, and rental income would not be chargeable to tax in the hands of the trust. However, at the time of distribution of this income to investors of the business trust, taxes would be required to be withheld as per the ITA.
- Other income of the trust shall be taxable at the maximum marginal rate (30%).

In addition, certain other reporting compliances like filing of tax returns, etc. would be required to be undertaken by business trusts.

Alternative Investment Funds (AIFs)¹³

An AIF is any fund established or incorporated in India in the form of a trust, company, LLP, or a body corporate that is a privately-pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors.

Category I AIFs are those that invest in start-ups or early-stage ventures, social ventures, Small-and Medium-sized Enterprises (SMEs), infrastructure, other sectors or areas that the government or regulators consider as socially or economically desirable and shall include venture capital funds, SME funds, social venture funds, infrastructure funds and such other AIFs as may be specified. AIFs that are generally perceived to have positive spill-over effects on the economy and for which the Board, or government, or other regulators in India might consider providing incentives or concessions shall be included, and such funds that are formed as trusts or companies shall be construed as 'venture capital company' or 'venture capital fund' as specified in the ITA.

Category III AIFs are those that employ diverse or complex trading strategies and may employ leverage, including through investment in listed or unlisted derivatives. AIFs, such as hedge funds or funds which trade with a view to make short-term returns or such other funds which are open-ended and for which no specific incentives or concessions are given by the government or any other regulator shall be included.

Category II AIFs are those that do not fall in Category I and III and do not undertake leverage or borrowing other than to meet day-to-day operational requirements as permitted in the regulations. AIFs, such as private equity funds or debt funds for which no specific incentives or concessions are given by the government or any other regulator, shall be included.

From FY 2019-20 onwards, a special tax regime for Category I and II AIFs have been provided, irrespective of whether they are set up as a trust, company, LLP, or as any other body corporate:

- Any income (other than income from profits and gains of business) of the investment fund will be taxable in the hands of the unitholders and not the investment fund.
- Income from profits and gains of business of the investment fund shall be taxable in the hands of the investment fund only.
- Accumulated losses except business losses as on 31 March 2019 shall be distributed to the unitholders in their investment ratio and shall be allowed to be carried forward in future years. Losses of business shall still be subject to set-off and carried forward to the subsequent years, only at the fund level (i.e. it will not be passed on to the unit holders).
- Any losses, except business loss, shall be distributed to the unit-holders post 1 April 2019 and shall not be eligible to be set-off/carry forward by the investment fund. The unit holder should have held the units for at least a period of 12 months. The share of losses of the unitholders who have held units for a period less than 12 months shall lapse.
- Any income that is not taxable at the fund level and paid to unitholders by the investment fund would be subject to withholding tax at the rate of 10%. According to the Finance Act, 2016, when the unit holder is a non-resident, the withholding tax shall be at the rates in force (depending on the source of income taxable in the hands of unitholders or the price provided under the relevant tax treaty, whichever is lower). However, withholding tax would not be applied if the income is not chargeable to tax under the provisions of the ITA itself.
- Any income of the investment fund would be exempt from TDS requirements. This would be provided by issuing the appropriate notification.

13. This income would be taxable in India whether or not the non-resident has a residence or place of business in India or has rendered services in India.

- It is mandatory for the investment fund to file its Return of Income. The investment fund shall also be required to provide the details of various components of income, etc. for the purpose of the scheme to the prescribed income tax authorities and the investors.

This tax pass-through will enhance the ability of these funds to mobilize higher resources and make higher investments in small and medium enterprises, infrastructure and social projects, and provide the much-required private equity to new ventures and start-ups.

Tax incentives to International Financial Services Centers (IFSCs)

To incentivize the growth of IFSCs into world-class financial services hubs, the following tax benefits are provided to IFSC's:

- Long-term capital gains arising from transactions undertaken in a foreign currency on a recognized stock exchange located in an IFSC (even when the STT is not paid with respect to such transactions) will be exempt from tax¹⁴
- Short-term capital gains arising from an operation undertaken in foreign currency on a recognized stock exchange located in an IFSC (even when STT is not paid with respect to such transactions) will be taxable at a concessional rate of 15% (plus the applicable surcharge and cess)
- In the case of a company, being a unit located in an IFSC and deriving its income solely in convertible foreign exchange, MAT shall be chargeable at the rate of 9%
- The Finance Act, 2018, exempts the transfer of specified bonds or GDRs, RBDs of an Indian company, or derivatives by a non-resident in foreign currency on a recognized stock exchange located in any IFSC. Furthermore, the Finance Act (No. 2), 2019, has also exempted the transfer of any derivatives or such other securities as notified by the Central Government.
- STT/Commodities Transaction Tax (CTT) shall not be levied on the taxable securities transactions/ commodities transactions entered into by any person on a recognized stock exchange located in an IFSC where the consideration for such a transaction is paid or payable in foreign currency (applicable from 1 June 2016)
- Any income by way of interest payable by a unit in an IFSC to a non-resident after 1 September 2019 shall be exempt.
- After 1 September 2019, no additional income tax shall be payable by a specified mutual fund out of its income derived from transactions made in a recognized stock exchange located in an IFSC, and where such consideration is paid in convertible foreign exchange.

Other Tax Incentives

The Indian government offers various types of tax incentives to accelerate economic growth and extend various direct and indirect incentives to the business community. Some incentives available under the ITA are as follows:

- India has robust tax treaties with many countries. Taxpayers have the option of availing benefits under a tax treaty to the extent it is more beneficial vis-a-vis the provisions of the ITA (subject to documentation requirements).
- The rate of withholding tax on interest on ECBs has been reduced from 20% to 5% subject to certain conditions.
- Profit and investment-linked incentives:
 - For units located in Special Economic Zones (SEZs): 100% income tax exemption on export income for the first five years, 50% for the next five years, and 50% on the re-invested export profit for the next five years.
 - For SEZ developers: Income tax exemption on income for a block of 10 years in 15 years.

14. This amendment has been applicable from 1 April 2016.

- Investment-linked incentives are available for specified activities/sectors, such as:
 - Infrastructure
 - Oil and gas
 - Research and development activities
 - Activities in specified geographical areas
 - Cold storage, warehousing facilities for agriculture produce and sugar
 - Hotels, hospitals, and slum redevelopment or rehabilitation with certain restrictions.

However, the company will be liable to pay tax under the provisions of MAT wherever profit- and investment linked incentives are available.

- Accelerated depreciation at the rate of 20% is available on new plant or machinery acquired and installed by an undertaking engaged in the manufacture of any article.
- In addition, an investment allowance of 15% on the cost of machinery is allowed to a manufacturing company that is investing a minimum of INR 250 million within a specified time frame and subject to certain conditions.
- In the case of additional wages paid to new employees across all sectors, the taxpayer will enjoy an additional tax deduction of 30% of the salary paid for a period of three years, subject to certain conditions.
- 100% deduction will be allowed for business income earned by an eligible start-up for a period of three consecutive years. The start-up should be engaged in a business that involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property and should hold a certificate of eligible business from the Inter-

Ministerial Board of Certification notified by the Central Government. The turnover of the business should not exceed INR 250 million in any year from 1 April 2016 to 31 March 2021.

- The taxpayer will have the option of claiming this deduction for three consecutive years from a period of seven years starting from the year of incorporation of the start-up¹⁵. The start-up should not be formed by splitting up or reconstructing a business already in existence. It should also not be formed by using second-hand plant and machinery exceeding 20% of the total value of plant and machinery. From 1 April 2016, an exemption from CGT is also provided in cases where the proceeds from the sale of certain assets are invested in specified funds/shares related to start-ups, subject to conditions.
- In order to encourage indigenous research and development activities and to make India a global R&D hub, the government has decided to put in place a concessional taxation regime for income from patents. Accordingly, an Indian resident earning royalty from a patent developed and registered in India can, subject to conditions, choose to pay tax at the rate of 10% (plus the applicable surcharge and cess) on the gross amount of the royalty. However, no expenditure or allowance of such royalty income shall be allowed. This income is also exempt from the levy of MAT. However, the concessional tax benefit will be available only if at least 75% of the expenditure for patent development is incurred in India.

Recent Changes

The Central Board of Direct Tax (CBDT), in the recent past, had announced a series of measures including the extension of due-dates for various compliances to be done under the Act, a reduction in the rate of interest for delay in compliance, issuance of refunds up to INR 500,000 as well as providing clarifications on the residential status of individuals who are stranded in India because of the pandemic. The major relaxations are highlighted below:

1. The Finance Act, 2020, had amended provisions relating to residential status whereby the period of stay in India had been reduced from 182 days to 120 days for certain categories of individuals. The CBDT has clarified that for FY 2019-20, the number of days of stay of an individual in India from 22 March 2020 till the time they are unable to leave India shall be ignored. Furthermore, it has also been clarified that for FY 2020-21, a separate circular shall be issued for determining the residential status of individuals who are stranded in India - and the circular is expected to be issued when normalcy is restored.
2. It has been conveyed that no coercive action will be taken during this period of lockdown, including the issuance of notices for scrutiny assessments
3. To provide some relief to the businesses and to provide liquidity, the following additional measures were announced: -
 - a. Reduction in TDS/TCS rates to provide liquidity to businesses

With the intention to provide more funds at the disposal of the taxpayers, the Finance Minister

(FM) announced a move wherein the TDS rates for all non-salaried payments to residents, and TCS rates are reduced by 25% of the existing specified rates. This reduction in the rates shall be in operation from 14 May 2020 to 31 March 2021.

Note: - The above reduction in rates shall not be applicable in the following scenarios: -

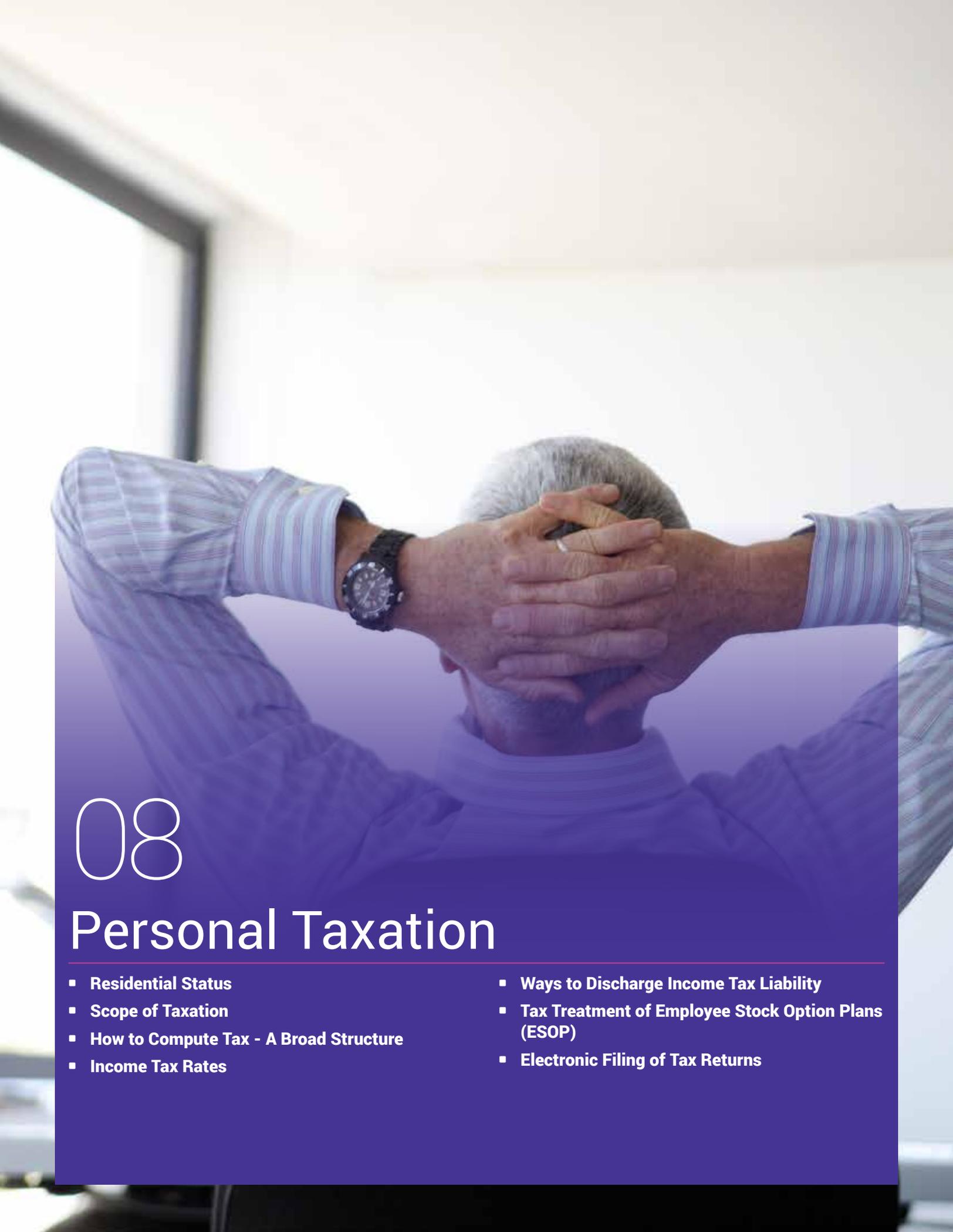
- Where tax is deductible from payments made under the head 'salary' as per provisions of Section 192 of the Income Tax Act, 1961 (the Act).
- Where payment is made to a non-resident, not being a company or to a foreign company
- Where tax is deductible @ 20% on payments made to a person resident in India where he fails to furnish his PAN or Aadhar Card
- Where a lower deduction certificate has been obtained under Section 197 of the Act
- TDS on cash withdrawals under Section 194N and TCS on alcoholic liquor for human consumption, TCS on foreign tours, and TCS on remittances under the Liberalised Remittance Scheme.

- b. Further extension of due dates for various compliances under the Income Tax Act, 1961

Realizing the fact that businesses and the economy may not recover completely and keeping in mind that in some parts of the nation, the lockdown has been extended, the FM had granted some relaxation by extending the due dates of compliances. The FM has further extended the due dates as per table given below.

- c. The time limit for making investments, which are eligible for deduction under Chapter VI-A or claiming exemptions under Section 54 to 54GB, have been extended till 31 July 2020
- d. The due date for making the payment of self assessment tax is 30 November 2020, if the liability does not exceed INR 100,000 and the same is paid by 30 November 2020. In other cases, interest under Section 234A will be applicable.

Particulars	Due date prescribed under the relevant Act/ As per Ordinance	Extended Due date
Extension of time limit for making payment under the Vivad se Vishwas Scheme without the requirement of making 10% additional payment	31 March 2020 / 30 June 2020	31 December 2020
Filing of return of income for AY 2020-21	31 July 2020 or 31 October 2020	30 November 2020
Furnishing of Tax Audit Report under Section 44AB	30 September 2020	31 October 2020
Time limit for completion of assessment proceedings for AY 2018-19	30 September 2020	31 December 2020
Time limit for completion of assessment proceedings, which are becoming time-barred on 31 March 2021	31 March 2021	30 September 2021
Filing of original or revised returns for AY 2019-20	31 March 2020/ 30 June 2020	31 July 2020
Filing of Appeal under the Act	30 June 2020	31 March 2021



08

Personal Taxation

- Residential Status
- Scope of Taxation
- How to Compute Tax - A Broad Structure
- Income Tax Rates
- Ways to Discharge Income Tax Liability
- Tax Treatment of Employee Stock Option Plans (ESOP)
- Electronic Filing of Tax Returns

While companies contribute a considerable amount to the tax collected each year by the Indian government, contributions from individuals also form a vital element of the revenue.

Personal tax as per the Indian Income Tax Act, 1961 (ITA), is levied on individuals. The rates of taxation differ in each financial year (1 April to 31 March), and are usually lower than the rate of taxation for corporates.

Residential Status

It is crucial for an individual to determine their correct residential status since, in India, taxation for a particular year is dependent on the residential status for that year. The Indian tax law categorizes the residential status of an individual as 'resident' or 'non-resident' depending on the duration of stay in India.

An individual is considered to be a resident if they satisfy any of the following conditions:¹

- a. Been in India for a period of 182 days or more during that financial year
- b. Been in India for a period of 60 days or more during that financial year, and at least 365 days during the preceding four years

Further, in condition (b) above, the period of 60 days would be extended to 182 days in the following cases:

- An Indian citizen who leaves India in any year for the purpose of employment
- An Indian citizen who leaves India as a member of the crew on an Indian ship
- An Indian citizen or a person of Indian origin, who has settled abroad, visits India.

The Finance Act 2020, has now amended the residency rules and reduced the number of days from 182 days to 120 days for Indian citizen or a person of Indian origin who has settled abroad and where total income,

excluding foreign sources income, exceeds INR 1.5 million. Furthermore, a new concept of deemed residency has been introduced whereby an Indian citizen who is not liable to tax in any other country by reason of domicile, residence, etc. would be deemed to be a resident of India, and thus, their Indian income would be taxable in India².

In the case of an Indian citizen being a member of the crew of a foreign-bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined as per the rules prescribed.

An individual is classified as a non-resident if they do not satisfy either of the above conditions.

The law has further categorized the residential status of a 'resident in India' into 'resident and ordinarily resident' and 'resident and not ordinarily resident.' A person is said to be 'resident and not ordinarily resident' in India in any year if the person has:

- Been a non-resident in India in 9 out of the preceding 10 years
- Been in India for a period of, or periods amounting in all to, 729 days or less during the preceding 7 years.

Thus, if an individual fulfills any one of the above conditions, he would be regarded as 'resident and not ordinarily resident' in India for that particular financial year.

The Finance Act 2020 has extended the definition of resident but not ordinarily resident to include the following two categories:-

- a. Person of Indian origin or citizen of India having total income, other than income from foreign sources exceeding INR 1.5 million and who has been in India for a period exceeding one hundred and twenty days or more but less than one hundred and eighty-two days
- b. A citizen of India who is not liable to tax in any other country by reason of domicile, residence, etc.

1. Section 6 of the Income Tax Act, 1961-2020, Income Tax Department, <https://www.incometax-india.gov.in/pages/acts/income-tax-act.aspx>, accessed on 17 September 2020

2. FAQs on Provisions useful for non-residents, Income Tax Department, <https://www.incometax-india.gov.in/Pages/faqs.aspx>, accessed 20 September 2020

The actual number of days an individual is present in India is generally determined on the basis of entries in the passport, taking into account the day of entry as well as exit.

An individual considered to be a resident of India as well as another country can determine his residential status as per the criteria specified under the tax treaty entered into by the Indian government with the government of that other country, if any.

Particulars of income	Resident and ordinarily resident	Resident and not ordinarily resident	Non- resident
Income received or deemed to be received in India	Taxable	Taxable	Taxable
Income accrues or arises in or is deemed to accrue or arise in India	Taxable	Taxable	Taxable
Income earned outside India	Taxable	Taxable (only if earned from a business/ profession controlled from India)	Not taxable

Scope of Taxation

Once the residential status has been determined based on the above conditions, and the income of the individual is taxable in India, the computation mechanism is mostly similar for all individuals, irrespective of residential status. However, there could be a few exceptions that must be considered on a case-by-case basis.

How to Compute Tax – A Broad Structure

For tax purposes, income is broadly divided into different heads, and separate computation mechanisms have been prescribed for each head. The heads are:

- Income from employment/salary
- Income from house property (rental income)
- Income from business and profession

- Income from capital gains
- Income from other sources (dividend, winnings from lotteries, gifts, family pensions, etc.)

After aggregating income under the various heads, the taxpayer can then reduce taxable income with certain allowable deductions. For example, an individual could claim deductions with respect to investments made in the Public Provident Fund or payment of life insurance premium, medical health policy premium, certain mutual funds, etc.

After these deductions, the resultant taxable income is required to be offered to tax at the rates prescribed by the law.

Income Tax Rates

The tax rate applicable to an individual would depend on his income bracket. Various income slabs, along with different tax rates, are provided every year in the Union Budget and are generally presented to the Parliament of India on the last day of February.

The slab rates mentioned in the Budget are applicable for the following financial year (April-March).

Furthermore, the law also provides special exemptions to 'resident senior citizens' (individuals who are more than 60 years of age) and 'resident very senior citizens' (individuals who are more than 80 years of age), where the basic exemption limit is INR 300,000 and INR 500,000, respectively.

For instance, the Finance Act, 2019 has introduced the following rates for individual taxpayers (other than senior citizens):

Income	Tax Rate
Up to INR 250,000	Exempt
INR 250,001 to 500,000	5%
INR 500,001 to 1 million	20%
Above INR 1 million	30%

Relief under section 87A up to INR 12,500 is available for resident individuals having a total income of up to INR 500,000. In addition to the above, individuals with a total income exceeding INR 5 million up to INR 10 million in a year are liable to pay a surcharge of 10%. Also, individuals with a total income exceeding INR 10 million up to 20 million in a year are liable to pay a surcharge at the rate of 15%.

Additionally, under the Finance Act, 2019, a surcharge of 25% is leviable in case the income exceeds INR 20 million but does not exceed INR 50 million. Similarly, a surcharge of 37% shall be leviable in case the income exceeds INR 50 million.

The Finance Act 2020 has introduced a new tax regime that individuals and Hindu Undivided Families (HUFs) can opt for instead of the existing structure. The salient features of the new regime are as follows:

Income	Tax rate
Up to INR 250,000	Exempt
INR 250,001 to 500,000	5%
INR 500,001 to 750,000	10%
INR 750,001 to 1 million	15%
INR 1 million to 1.25 million	20%
INR 1.25 million to 1.5 million	25%
Above INR 1.5 million	30%

The new tax rates will be applicable if the individual or HUF complies with all the points mentioned below:

- Forego all deductions and exemptions such as standard deduction, interest on housing loan, PPF and other Section 80 C investments, mediclaim, etc. and are entitled to a deduction in respect to employees' contribution to a pension scheme and a deduction in respect of employment of new employees
- No loss shall be allowed to be set off carried from earlier years if such loss pertains to any specific deductions not allowed or loss under the head income from house property.
- Additional depreciation shall not be allowed and only normal depreciation shall be available
- No exemption or deduction will be available for allowances or perquisites provided under any law for the time being in force.

Individuals and HUFs, having income from business or profession, must opt for the new tax regime before filing their return of income. After opting for this new tax regime, it can only be withdrawn once in a lifetime.

All taxes in India are further increased by a Health and education cess, which is 4% of the total tax payable (tax plus applicable surcharge).

Taxation of Dividend Income

The Finance Act, 2020 has done away with dividend distribution tax, and consequently, any dividend income earned shall be taxable in the hands of the recipient. Furthermore, a clarification is provided in the Act that if DDT has been charged and a dividend is received after 1 April 2020, the same shall not be taxable in the hands of recipients.

Furthermore, a higher surcharge of 25% and 37% is not applicable to the dividend income.

Taxation of excess contribution to specified funds by employers

The Finance Act, 2020 now provides that any contribution by an employer towards a recognized provident fund, national pension scheme, or approved superannuation fund of an employee in excess of INR 0.75 million will be taxable in the hands of the employee.

Furthermore, any accretion to the above fund by way of interest or dividend or anything similar nature, which relates to contribution in excess of INR 0.75 million will also be taxable.

You can know more about individual tax liabilities on the Income Tax Department's website, www.incometaxindia.gov.in.

Ways to Discharge Income Tax Liability

An individual can discharge their income tax liability in either or all of the options mentioned below:

- Advance Tax
- Tax Deducted at Source (TDS)
- Self Assessment Tax

Advance Tax

Advance Tax means the payment of tax before the end of the year. An individual has to estimate their total income for that particular financial year and discharge tax liability in four installments during the year itself, i.e., 15%, 45%, 75%, and 100% of the tax liability, which is due by 15 June, 15 September, 15 December, and 15 March of that year.

However, an individual is liable to pay Advance Tax only under the following conditions:

- The tax liability is more than INR 10,000
- The above liability of INR 10,000 is arrived at after considering TDS (if any) has been deducted by taxpayers who have paid income to such a person.

For individuals with salary as the sole source of income, Advance Tax would not be applicable as the entire tax liability would be taken care of by the employer by way of TDS.

Furthermore, no Advance Tax is payable by a senior citizen if their total income does not include income from business or profession.

Tax Deducted at Source (TDS)

TDS refers to the portion of a payment that is deducted by the taxpayer before making payment of the net amount to the payee. The TDS rate would depend on the nature of the income earned by the individual. For example, TDS from professional fees would be 10% while that from contractual payments would be 2%. The TDS collected by the taxpayer is required to be deposited with the tax authorities within prescribed time limits.

It is crucial to keep in mind that TDS is only a part payment of tax. The final tax liability would be arrived at based on the slab rates applicable to the individual.

For non-residents, TDS is applicable on any sum paid to them. For example, if a foreign individual receives a certain sum from an Indian company, and such amount is taxable in India, then the Indian company is liable to deduct tax at the applicable rates and deposit the same with the authorities within the prescribed time limits.

Self Assessment Tax

In case the Advance Tax paid by the individual and the TDS is not adequate to cover the entire gross tax liability for the year, then the same can be discharged by the individual himself before the tax return is filed. Such tax paid would be regarded as Self Assessment Tax.

Aadhar-related Compliances

In pursuit of promoting ease of compliance, the interchangeability of Permanent Account Number (PAN) and Aadhaar has been permitted for filing of income tax returns and mandatory quoting in prescribed transactions with effect from 1 September 2019.

Currently, it is mandatory for an individual to obtain an Aadhaar number (unique identification number) and link the same with their PAN (Indian tax registration number) of the individual. It is mandatory to quote the said Aadhaar number in the tax return, or the enrollment ID of the Aadhaar application is required to be quoted on the income tax return.

The requirement of linking of PAN and Aadhaar needs to be carried out to avoid inactivation of PAN. A penalty of INR 10,000 is levied in case of non-compliance with provisions of quoting of PAN/ Aadhaar.

New Incentivized Deductions for Interest on Loans

- Deduction up to INR 150,000 is eligible on loan interest for purchase of an electric vehicle, subject to the fulfillment of prescribed conditions.
- To boost the investment in affordable housing, a deduction up to INR 150,000 is eligible on the interest on the loan taken from a financial institution for acquiring residential house property,

whose stamp duty value does not exceed INR 4.5 million, subject to the fulfillment of prescribed conditions.

Tax Treatment of Employee Stock Option Plans (ESOP)

An increasing number of multinational companies prefer granting Employee Stock Option Plans (ESOPs) to their employees wherein they are granted an option to buy the shares of the employer company at a discounted rate, lower than the market value.

The taxation of ESOPs as per Indian laws is carried out in two stages. In the first stage, it is taxable in the hands of the employee as salary (prerequisite given by the employer), which is represented by the difference between the Fair Market Value (FMV) of the shares and the actual price at which they are purchased by the employees. The law lays down the procedure for determining the FMV of the shares.

The point of taxability is the date on which the option is exercised by the employee to subscribe to the shares. Employers are liable to deduct tax at source on this part of the income.

The second stage of taxability arises when the said shares are sold or transferred. The difference

between the sale price and the FMV (calculated in the earlier phase of taxation) is taxable as capital gains. The tax treatment of such capital gains would be as prescribed in the section Capital Gains Tax in Chapter 7.

Electronic Filing of Tax Returns

The past few years have seen a multitude of changes in the process of filing tax returns in India. Now, most taxpayers are expected to file their tax returns electronically instead of manually— a paradigm shift in the tax administration in India. The online filing is linked to an individual's PAN/Aadhar.

The Indian tax department has set up a Central Processing Center (CPC), a state-of-the-art facility in Bengaluru, that processes all tax returns that have been filed electronically. The CPC has been responsible for drastically reducing the time taken to process tax returns and issue refunds. As a result, a large number of taxpayers, particularly individuals, have started receiving their refunds within a few months of filing returns.

The Finance Act, 2019 has included the following additional categories of persons in the mandatory return filing list:

- Persons claiming capital gains tax exemption
- Persons depositing an amount or aggregate of amounts exceeding INR 10 million in one or more current bank accounts
- Foreign travel expense exceeding INR 200,000 for himself or any other person
- Electricity expense of an amount or aggregate of amounts exceeding INR 100,000.

To know more about the e-filing of income tax returns, you can visit www.incometaxindiaefiling.gov.in.

Personal taxation in India is dynamic and complicated, with several interpretational and other issues. However, the scheme of law provides for many relaxations with a view of avoiding unnecessary hassles for individual taxpayers and has simplified the process to encourage timely and accurate tax return filing and payment.



09

Indirect Taxation

- Background and History - Indirect taxes
- Goods and Services Tax (GST)
- Customs Duty

Background and History - Indirect Taxes

Before the advent of the Goods and Services Tax (GST) in India, indirect taxation was broadly divided into the following levies:

- Value Added Tax (VAT)
- Central Sales Tax (CST)
- Service Tax
- Excise Duty
- Customs Duty

Different types of taxes were levied for different activities under the erstwhile Indirect tax regime - for instance, VAT/CST as applicable to the sale of goods, Service Tax as applicable on the provision of services, Central Excise Duty was levied on the manufacturing of goods, etc.

However, with the introduction of GST in India with effect from 1 July 2017, VAT, CST, Service Tax, Central Excise Duty, and other indirect taxes have been subsumed under GST. The implementation of the 'One Vision One Tax' policy is envisaged with GST in India.

Customs Duty

In India, Customs Duty is levied on the import of goods into the country and is payable at the time of clearance of goods for home consumption from the customs station.

With a change in the indirect tax structure, the components of Customs Duty have also reformed. Customs Duty comprised of the following elements up to 30 June 2017:

- Basic Customs Duty (BCD) (with a peak rate of 10%)

- Countervailing Duty (CVD) (with a peak rate of 12.5%, in lieu of Central Excise Duty)
- Education Cess (EC) and Secondary and Higher Education Cess (SHEC) at the rate of 3% of the BCD and CVD
- Special Additional Duty of Customs (SAD) (at the rate of 4%, in lieu of domestic sales tax)

With the introduction of GST, the Customs Law has been amended to levy Integrated Goods and Service Tax (IGST) on the import of goods in lieu of CVD and SAD. BCD will continue to be levied, however, EC and SHEC levied at 3% has been replaced by Social Welfare Surcharge (SWS) at 10%. Customs Duty now comprises of the following elements:

- BCD (typically ranging between 10% to 40%)
- SWS (10% on BCD)
- IGST (same as GST rate applicable on local supply, in lieu of CVD and SAD)
- Compensation cess (Applicable on few goods ranging from 1% to 290%) depending on the nature of the goods

Furthermore, the Union Budget 2020-21 introduced a new levy of 'Health cess' at the rate of 5% of the assessable value on the import of medical equipment falling under Chapter Headings 9018, 9019, 9020, 9021 and 9022 (such as ECG, ultra-sound scanner, etc.). BCD, SWS and Health cess is not available as an input tax credit. However, IGST and Compensation cess are available as an input tax credit under the GST Law (subject to the fulfillment of certain conditions and documentation requirements)

Goods and Services Tax (GST)

India witnessed a transformation in the indirect taxation system in 2017 with the introduction of the Goods and Services Tax (GST) from 1 July 2017¹. GST replaced multiple taxes/duties like VAT, CST, Service Tax, Central Excise Duty, Entry Tax, Entertainment Tax, Luxury Tax, Purchase Tax, etc. prevalent before. It was mainly introduced to bring transparency into the administration, reduce the cascading effect of taxes on the cost of goods and services, and thereby create a common national market.

Furthermore, unlike the erstwhile indirect tax regime, the decisions in the GST regime are taken by a centralized body, i.e., the GST Council, which consists of Union and State Finance Ministers.

The key concepts under the GST legislation have been outlined below:

- **Supply:** GST is levied on the 'supply' of goods or services. The scope of supply is wide and includes sale, transfer, barter, exchange, license, rental, lease, etc. and certain activities are undertaken even without consideration.
- **Administration:** The GST Law is administered by the Center and the respective States/Union Territories. Accordingly, there are three types of taxes under GST:
 - Central Goods and Service Tax (CGST)
 - State Goods and Service Tax (SGST)/Union Territory Goods and Service Tax (UTGST)
 - Integrated Goods and Service Tax (IGST)
- **Inter-state versus intra-state supply:** CGST and SGST/UTGST are levied on all intra-state supply of goods or services, and IGST is levied on inter-state supply of goods or services. The location of the supplier and POS for the goods and services determines whether the transaction is an inter-state or intra-state supply.
- **Place of Supply (POS):** As GST is a destination-based tax, POS provisions have been formed in a manner to determine the territory of a supply transaction where the goods/services will be consumed and accordingly, determine its taxability.
- **Time of supply:** The time of supply provisions have been introduced to determine when GST must be paid for the supply of goods and services so that a certain alignment is achieved for the collection of taxes.
- **Threshold:** The threshold limit under GST is INR 4 million (INR 2 million for a taxable person conducting business in north-eastern states, including Sikkim) of aggregate turnover of goods and/or services during the financial year.
- **Registration:** A person exceeding the prescribed threshold limit of INR 4 million is required to undertake registration under GST, including specified individuals irrespective of their turnover. Registration can also be obtained voluntarily under the facility provided.
- **Composition levy:** Composition levy is an alternative method for levying tax designed for small taxpayers. It is a subsidized rate of GST eligible to taxpayers with an aggregate turnover in a financial year of up to INR 15 million (INR 5 million for service providers).
- **Reverse Charge Mechanism (RCM):** Typically, a supplier of goods/services is liable to pay GST on the supply. However, for the import of services and other notified goods/services, a mechanism has been prescribed wherein the recipient of the supply is liable to pay GST.

1. GST Implementation – Notifications issued by CBEC, Nexdigm, https://www.skpgroup.com/data/mailer/skp_gst_update_1_july_2017_GST_implementation_notifications_issued_by_CBEC.html, accessed 20 September 2020

- **Rate of tax:** The GST legislation provides for the classification of goods and services and applicable tax rates are determined based on the said classification
 - Services Accounting Code (SAC) is used for the classification of services. Each kind of service offered has a unified code for measurement, recognition, and taxation.
 - Harmonized System Nomenclature (HSN) code is used for the classification of goods. (HSN is a globally-adopted product description and coding system)
- **Digitization:** Procedures for different processes such as registration, tax payments, refunds, returns, etc. have been automated and simplified under a unified platform - GSTN (Goods and Services Tax Network). This has facilitated the creation of a platform for swift processing since the interface between the taxpayer and the tax authorities has reduced.
- **E-invoicing:** The e-invoicing system, which will allow generating invoices on the online GST portal, has been approved by the GST Council. The e-invoice will also act as the e-way bill and furthermore, would be auto-populated as outward supplies of the business in the GST returns. The trial phase of e-invoicing of B2B invoices has been rolled out on a voluntary basis from 1 January 2020. However, the mandatory implementation of e-invoicing (and QR code in case of B2C invoices) has been postponed to 1 October 2020. E-invoicing is currently prevalent in Brazil, China, South Korea, etc.

The commodities and services subject to GST are categorized under four tax slabs, viz. 5%, 12%, 18%, and 28%. However, GST is not applicable to certain commodities such as jute, fish, eggs, fresh meat, milk, curd, fresh fruits, buttermilk, vegetables, etc. Most of the goods are covered under the 12% and 18% tax slabs, while services are generally taxable at 18%. The number of products covered in the highest tax slab of 28% has substantially reduced since the inception of GST. Presently the 28% tax slab mostly covers luxury commodities, including motor vehicles, cement, personal aircrafts, yachts, etc.²

In order to avoid an issue for classification of a supply involving both goods and services, a Schedule has been prescribed under the GST legislation to determine if transactions shall be treated as a supply of goods or services.

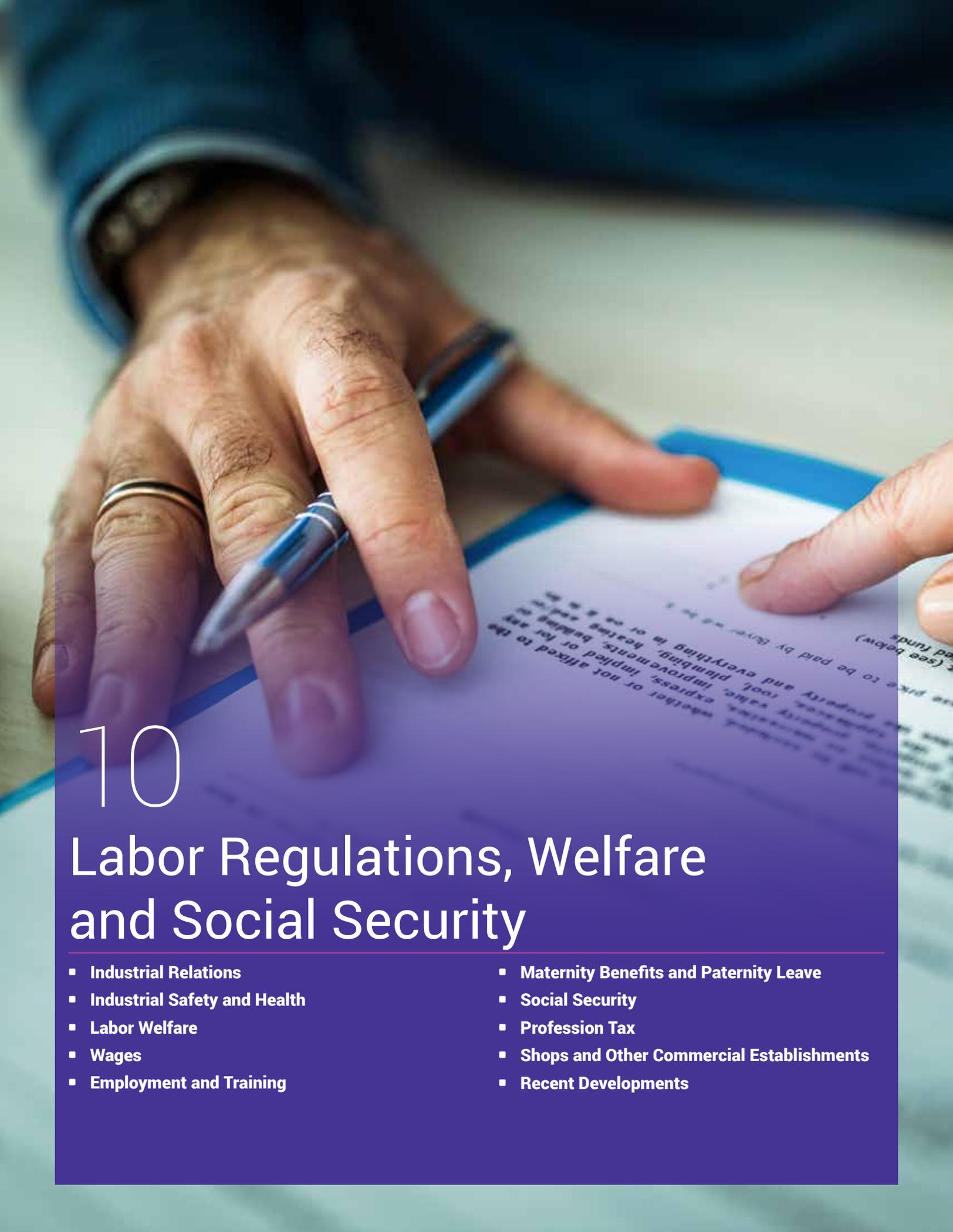
- **Input Tax Credit (ITC):** The recipient of goods or services would be eligible to claim ITC subject to certain restrictions. The ITC availed is eligible to be utilized as a set-off against the payment of taxes.
- **Mismatch of ITC:** A strong mechanism is being set for matching ITC availed by the recipient vis-a-vis GST disclosed by the supplier. Furthermore, to facilitate the transparent flow of ITC, mismatch reports would be generated based on the differences in disclosure by the supplier and the recipient of goods or services to align the flow of credit.

2. The extensive list of GST rates for products and services can be found at the Central Board of Indirect Taxes and Customs, <https://cbic-gst.gov.in/gst-goods-services-rates.html>, accessed on 20 September 2020

- **Compliances:** Compliance is made simpler through the harmonization of tax rates, procedures, and aligned laws. The erstwhile tax regime consisted of Central Excise, Service Tax, and VAT/CST, along with the respective compliances and returns. However, under GST, the various compliances under different laws stand merged, and this has lowered the number of returns as well as the time spent on tax compliances. Under GST, the compliance mechanism is undergoing a transition in a phased manner wherein the ITC of recipients will be intrinsically linked with the declaration made by the suppliers. As a precursor to this, the government implemented a new Rule in October 2019, whereby the ITC available to a business is restricted to 110% of the total ITC available to it as per the invoices uploaded by its vendors. This is intended to encourage companies to source their inputs only from GST-compliant businesses and also prepare companies to adapt to a scenario where the ITC will be directly linked at invoice-level, with the details uploaded by the suppliers. This is in line with one of the stated objectives of GST to detect and minimize tax frauds.
- **Anti-profiteering:** An anti-profiteering measure is incorporated under the GST Law to ensure that any benefits due to the fungibility of ITC between goods and services or the reduction of the tax rate on supply of goods or services would

result in a commensurate reduction in the prices of such goods/services. The government has also constituted the 'National Anti-Profiteering Authority' to examine whether this provision has been adhered to by businesses. The tenure of this authority was recently extended by two years till 30 November 2021.

The GST regime has largely stabilized since its implementation approximately three years back. Businesses did face certain issues while transitioning to GST, which was expected from a change of this magnitude. The GST Council has been responsive to representations made by the industry and has constantly announced amendments and measures to simplify the GST regime and minimize any adverse impact on trade and industry. As the GST regime completely stabilizes, India should move closer towards the 'One Nation, One Market' goal.



10

Labor Regulations, Welfare and Social Security

- Industrial Relations
- Industrial Safety and Health
- Labor Welfare
- Wages
- Employment and Training
- Maternity Benefits and Paternity Leave
- Social Security
- Profession Tax
- Shops and Other Commercial Establishments
- Recent Developments

Under the Constitution of India, labor is a subject on the Concurrent List, where both the Central and State Governments are competent to enact legislation.¹ As a result, India has a plethora of laws (44 labor-related statutes by the Central Government alone) addressing various aspects, such as industrial relations, the formation of trade unions, occupational safety and health, labor welfare, minimum wages, conditions of employment, disciplinary action, employment and training, accidental and social security benefits, etc.²

The Ministry of Labor and Employment aims to simplify, rationalize, and amalgamate these 44 labor laws into four Labor Codes in line with the recommendations of the Second National Commission on Labor:

- Code on Wages;
- Code on Industrial Relations;
- Code on Social Security and
- Code on Occupational Safety, Health, and Working Conditions.

The Code on Wages has been approved by both the houses of parliament and received the assent of the President on 8 August 2019, but the effective date is yet to be notified, and the Code on Occupational Safety, Health, and Working Conditions has been introduced in the Lok Sabha³.

India is a founding member of the International Labor Organization (ILO) and has ratified 47 conventions and 1 protocol, of which 39 are in force, 5 conventions have been denounced, and 4 instruments abrogated⁴.

Industrial Relations⁵

The Industrial Disputes Act, 1947, stipulates provisions for the investigation and settlement of industrial disputes and for providing certain safeguards to workers. It contains the following:

- The procedure, power, and duties of authorities constituted under the Act (e.g. labor courts, conciliation officers, tribunals, etc.)
- Provisions to prohibit strikes and lockouts without appropriate notice, declaration of strikes and lockouts as illegal in certain cases, etc.
- Provisions relating to lay-off, retrenchment, and closure
- Provisions covering unfair labor practices
- Penalties for various defaults under the Act

As per the Act, an 'industrial dispute' means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labor of any person.

This Act applies to every industrial establishment carrying on any business, trade, manufacture, or distribution of goods and services, irrespective of the number of workmen employed. It covers every person employed in an establishment (including contract labor, apprentices, and part-time employees) to do any manual, clerical, skilled, unskilled, technical, operational, or supervisory work for hire or reward. It does not apply to persons employed mainly in a managerial or administrative capacity, or in a supervisory capacity drawing a salary exceeding what is prescribed under this Act, etc.

1. Constitutional Provision, Ministry of Labor & Employment, <http://labour.gov.in/constitutional-provision>, accessed 18 September 2020

2. About the Ministry, Ministry of Labor & Employment, <http://labour.gov.in/about-ministry>, accessed 18 September 2020

3. The Code on Wages, Ministry of Labor & Employment, <https://labour.gov.in/sites/default/files/THE%20CODE%20ON%20WAGES%2C%202019%20No.%2029%20of%202019.pdf>, accessed

on 18 September 2020

4. Ratifications for India, International Labor Organization, <https://labour.gov.in/lcandilasdivision/india-ilo>, accessed on 18 September 2020

5. Acts and Rules, Industrial Relations, Ministry of Labor & Employment, <http://labour.gov.in/> & Employment, <http://labour.gov.in/industrial-relations>, accessed 18 September 2020

The Industrial Employment (Standing Orders) Act, 1946, requires employers to clearly define and publish standing orders (service rules) and to make them known to the workmen employed by them. It applies to every industrial establishment where 100 or more workmen (50 or more in many states) are/were employed on any day of the preceding 12 months. The Industrial Employment (Standing Orders) Central Rules, 1946, cover the classification of workmen, working hours, holidays, paydays, wage rates, payments, shifts, attendance, leave, termination of employment, disciplinary action for misconduct, complaints, etc.

The Plantations Labor Act, 1951, provides for the welfare of plantation labor and regulates the conditions of work in plantations. It applies to all tea, coffee, rubber, and cinchona plantations, but State Governments may extend it to other plantations as well. The Act is administered by the State Governments and is applied to any land used as a plantation, which measures five hectares or more where 15 or more persons are employed or were employed on any day of the preceding 12 months.

The Trade Unions Act, 1926, deals with the registration of trade unions (including associations of employers), their rights, liabilities, and responsibilities, as well as ensures that their funds are utilized properly. It gives legal and corporate status to registered trade unions. An employer cannot prevent workers from forming a union. Trade unions are formed to promote and protect the interest and welfare of workers by enabling collective bargaining.⁶

Industrial Safety and Health⁷

The Factories Act, 1948, provides for the health, safety, welfare, service conditions, and other aspects of workers in factories. It applies to all factories employing more than 10 people and working with the aid of power or employing 20 people and working without the aid of power. The Act aims at protecting workers employed in factories from unfair exploitation by the employer and improving working conditions in factories. The Act also covers the following:

- Provisions relating to hazardous processes
- Permissible levels of certain chemical substances in the work environment
- Facilities and conveniences
- Working hours
- Overtime wages
- Employment of women and adolescents, and night shifts
- Weekly offs and annual leaves
- Notice of accidents, diseases, etc.

Each State Government is empowered to make rules for the purpose of this Act. The Factories Act, 1948, should be read with the respective State Rules. State legislation, such as the the Shops and Establishments Acts, do not apply to workmen in a factory or in an establishment attached to a factory to whom the benefits of the Factories Act, 1948, are applicable.

6. The Trade Unions Act, 1926, Ministry of Labor & Employment, <https://labour.gov.in/sites/default/files/TheTradeUnionsAct1926.pdf>, accessed 18 September 2020

7. Industrial Safety & Health, Acts and Rules, Ministry of Labor & Employment, <https://labour.gov.in/industrial-safety-health>, accessed 18 September 2020

Labor Welfare⁸

The Contract Labor (Regulation & Abolition) Act, 1970, regulates the employment of contract labor in certain establishments and by contractors and provides for its abolition in certain circumstances. It applies to all establishments and contractors employing 20 or more contract laborers. The Rules

for implementing the provisions of the Act vary from state to state. This Act covers the following:

- Registration of the principal employer
- Licensing of contractors
- Responsibility for payment of wages
- Welfare and health of contract laborers (canteens, restrooms, first aid, etc.)
- Submission of returns
- Maintenance of records (register of contractors)

Wages⁹

The Payment of Wages Act, 1936, regulates the payment of wages¹⁰ to workers employed in a factory and earning up to INR 24,000 per month. This Act ensures that wages payable to employed persons covered by the Act were not withheld by the employer and were disbursed within the prescribed time limit without any unauthorized deductions.¹¹ The Payment of Wages (Amendment) Act, 2017, has made it mandatory for the employers to remit wages of the employees either through check or by direct transfer of wages in the employees' bank account.

The Minimum Wages Act, 1948, provides for fixing minimum wages in certain employments and reviewing and revising the rates at appropriate intervals, not exceeding five years. The Act covers the norms and procedures for fixing and revising minimum wages, fixing hours for a normal working day, fixing an overtime rate, etc.

The Payment of Bonus Act, 1965, provides for the payment of bonuses (linked with profit or productivity) to persons employed in certain establishments. It applies to all factories and establishments that employ 20 or more persons on any day during an accounting year. Every employee receiving salary or wages up to INR 21,000¹² per month and engaged in any kind of work – whether skilled, unskilled, managerial, supervisory, etc. - is entitled to a bonus for every accounting year if he has worked for more than 30 working days in that year.

This Act covers factors such as the bonus payable, the time limit for payment, calculation of bonus, etc. This Act provides that every employer is bound to pay a minimum bonus of 8.33% of the salary earned by the employee during the accounting year or INR 100, whichever is higher. The maximum bonus payable under this Act is 20% of the annual salary, which has to be determined on the basis of the profits of the establishment.

For calculation of the bonus, the salary of the employee is to be considered as INR 7,000 per month even if his/her salary is more than INR 7,000.

8. Acts and Rules, Chief Labor Commissioner, <https://clc.gov.in/clc/acts-rules/acts-and-rules-0>, accessed 18 September 2020

9. Ibid

10. Excludes bonus, the value of house accommodation, the contribution made by employer to pension fund/provident fund, travel allowance, special expenses, and gratuity

11. Payment of Wages Act, 1936, Chief Labor Commissioner, <https://clc.gov.in/clc/acts-rules/payment-wages>, accessed 18 September 2020

12. As per the Payment of Bonus (Amendment) Act, 2015, with effect from 1 April 2014

The Code on Wages Act, 2019, was passed by the parliament and received the assent of President on 8 August 2019. It will come into force upon notification by the Central Government to this effect. This Act enables the Central Government to set minimum statutory wages based on skills and geography rather than on employment, which will benefit millions of workers across the country. The Act ensures timely payment of minimum wages to all employees and workers, including but not limited to workers of the unorganized sector who were outside the ambit of the minimum wages.

Once the Code on Wages Act, 2019 is enforced, it will repeal four acts as follows:

- The Payment of Wages Act, 1936,
- The Minimum Wages Act, 1948,
- The Payment of Bonus Act, 1965 and
- The Equal Remuneration Act, 1976.

Employment and Training

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, provides for compulsory notification of vacancies to employment exchanges. It applies to all establishments in the public sector and to such establishments in the private sector as may be notified by the appropriate government from time to time.¹³ The Apprentices Act, 1961, aims to provide practical training to technically qualified persons in various trades. The objective is the promotion of new and skilled manpower. The scheme is also extended to engineers and diploma-holders. The Act requires employers to hire apprentices in certain designated trades as notified by the government. The Act specifies the obligations of employers and apprentices, the standard of education/physical fitness, duration of the training, terms, and conditions of the contract, payment, health, safety, welfare, working hours, etc

Maternity Benefits and Paternity Leave

The Maternity Benefit Act, 1961, regulates the employment of women in factories and other establishments for a certain period before and after childbirth. It provides for maternity benefits, including maternity leave with wages, medical bonus, nursing breaks, etc. There is no wage limit for coverage under this Act nor any restriction with regard to the type of work a woman is engaged in. This Act applies to women who work in factories, mines, plantations, shops, and establishments in which more than 10 people are employed.¹⁴

This Act provides for paid maternity leave of 26 weeks for up to two children and paid maternity leave of 12 weeks for more than two children. Adoptive and commissioning mothers are also entitled to 12 weeks of maternity leave from the date of adoption. A crèche facility is mandatory for every establishment employing 50 or more employees.

While 15 days of paternity leave is authorized for male employees working within the government/ public sector, it is not obligatory for the private sector. Large private companies tend to have their own policies specifying the paternity benefits extended to their male employees.

Social Security¹⁵

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952, provides for the retirement/ old-age benefits in the form of a provident fund, superannuation pension, invalidation pension, family pension and deposit-linked insurance for employees in factories and other establishments. Furthermore, the Act provides for the payment of terminal benefits in various contingencies such as retrenchment, closure, retirement on reaching the age of superannuation, voluntary retirement, and retirement due to incapacity to work.

13. Employment & Training, Acts and Rules, Ministry of Labor & Employment, <https://labour.gov.in/sites/default/files/THEEMPLOYMENTACT1959.pdf>, accessed 18 September 2020

14. The Maternity Benefit Act, 1961, Social Security, Ministry of Labor & Employment, [https://labour.gov.in/sites/default/files/Maternity%20Benefit\(Amendment\)%20Act,2017.pdf](https://labour.gov.in/sites/default/files/Maternity%20Benefit(Amendment)%20Act,2017.pdf), accessed

18 September 2020

15. Social Security, Acts, and Rules, Ministry of Labor & Employment, <http://labour.gov.in/social-security>, accessed 18 September 2020

The minimum contribution as a percentage of the wage is shown below¹⁶:

Scheme	Employer's contribution (ER)		Employee's contribution (EE)	
	Contribution accounts	Administration accounts	Contribution accounts	Administration accounts
Provident fund	Difference of EE share and Pension Contribution	0.50% [w.e.f. 1 June 2018]	12%/10%	0
Pension fund	8.33%	NA	Nil	NA
Deposit-linked insurance fund	0.50%	0 [w.e.f. 1 April 2017]	Nil	0

It applies to every factory and other establishments engaged in any industry employing 20 or more persons. This Act applies to all employees, including contract labor and part-time labor, drawing salaries up to INR 15,000 per month.

However, an employee who draws salary beyond INR 15,000 can also become a member of the fund voluntarily upon fulfillment of certain formalities by the employer.

For any establishment to be eligible for benefits,

- i. The establishment or factory should already be covered and registered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- ii. The total number of employees employed in the establishment should be up to 100 (one hundred), where 90% or more of such employees should be drawing monthly wages less than INR 15,000¹⁷.

Applicability for Expatriates and International Social

The Indian Government, vide Notifications GSR 705(E) and GSR 706(E) dated 1 October 2008, extended the Employees' Provident Fund (EPF) and Pension Scheme to all 'international workers.' Besides Indian employees working overseas, an 'international worker' also includes an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the EPF Act applies. The EPF contribution is to be calculated on the total salary earned by the employee, whether received in or outside India. The expatriate will be required to contribute 12%, and the employer needs to contribute a similar amount.

Currently, India had signed social security agreements with 18 countries: Belgium, Germany, Switzerland, Denmark, Luxembourg, France, South Korea, Netherlands, Hungary, Finland, Sweden, Czech Republic, Norway, Canada, Japan, Austria, Portugal, and Australia. Six proposals are in the pipeline (with Spain, Thailand, Sri Lanka, Russia, Cyprus, and the USA).¹⁸ These agreements help workers by exempting them from social security contributions in case they are working on short-term contracts and allows for easy remittance of pension in case of relocation. Such agreements also prove beneficial for companies as exemption from social security contribution for their employees substantially reduces costs.

16. Present Rates of Contribution, Employees' Provident Fund Organization, India, https://www.epfindia.gov.in/site_docs/PDFs/MiscPDFs/ContributionRate.pdf, accessed 18 September 2020

17. FAQs on Central Government Relief for employees' and employers' contribution for three months to low-wage earning EPF members, Employees' Provident Fund Organization, India, https://www.epfindia.gov.in/site_docs/PDFs/Circulars/Y2020-2021/FAQonSchemeFor-

3months.pdf, accessed on 18 September 2020

18. Press releases, Media Center, Ministry of External Affairs, https://www.mea.gov.in/press-releases.htm?dtl/28182/Social_Security_Agreement_between_India_and_Brazil, accessed 18 September 2020

In the case of winding up of a company to which this Act applies, the amount due from such company, whether in respect of the employee's or employer's contribution, is included among the debts to be paid on priority to all other debts. This payment will be preferential, provided the liability has accrued before the order of winding up is made.

The Payment of Gratuity Act, 1972, provides for the payment of gratuity to employees. Gratuity is a lump sum payment to an employee on superannuation/retirement, termination of service, resignation or on death or disablement due to accident or disease of the employee. Every employee, irrespective of his wage, is entitled to receive gratuity if he has rendered continuous service for five or more years.

However, in the case of death or disablement of an employee, the gratuity is payable even if the employee has not completed five years of service. This Act applies to every establishment employing 10 or more persons at any time during the year.

The rate of gratuity payable to employees is 15 days' salary for every completed year of service or a part thereof exceeding six months, subject to a maximum amount prescribed under the Act from time to time, which is currently INR 2 million¹⁹. However, the employer has the liberty to provide better terms of gratuity to the employee under the contract for employment.

Wages/salary under this Act means the last drawn wages and includes all payments earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment, excluding bonus, commission, house rent allowance, overtime wages, and any other allowance. The formula to calculate gratuity is as follows:

Gratuity = Monthly wage/26 x 15 days x Number of years of service

The Employees' Compensation Act, 1923, earlier known as the Workmen's Compensation Act, provides for the payment of compensation to workmen for injury by accident arising out of and in the course of his employment.

This Act is applicable to factories and other risk-based industries as stated in the schedule of the Act.

However, in some states, this Act is also applicable to all other establishments. The amount of compensation varies depending on the age of the employee, whether the injury results in death or permanent disablement, nature of disablement, etc.

This Act requires the employer to send reports to the commissioner of any accident occurring on his premises that result in death or serious bodily injury, except in cases where the factory is covered under the Employees' State Insurance Act, 1948.

The Employees' State Insurance Act, 1948, provides for benefits to employees in case of sickness, maternity, disablement, and death due to an employment injury or occupational hazard and provides for medical care to the insured employees and their families. It covers all employees including casual, temporary, and contract employees. This Act applies to factories using power and employing 10 or more people, and other establishments as notified by the appropriate government.

Presently, shops, hotels, restaurants, cinemas (including preview theaters), road-motor transport undertakings, newspaper establishments, and private medical and educational institutions are covered under the Act. The existing wage limit for coverage under the Act is INR 21,000 per month (with effect from 1 January 2017).²⁰

The contribution payable to the Employees' State Insurance Corporation with respect to an employee comprises the employer's contribution and the employee's contribution at a specified rate, which is revised from time to time. Currently, the employer is required to contribute 4.75% of the employee's wages, and the employee's contribution is 1.75% of his wages. Wages mean all remuneration paid to the employee excluding the contribution paid by the employer to any pension or provident fund, traveling allowance, any amount paid to defray special expenses, and gratuity payable on discharge.

19. Recent Initiatives of the Department of Pension & Pensioners' Welfare (DoPPW) to promote Ease of Living, Press Information Bureau, <https://pib.gov.in/PressReleaselframePage.aspx?PRID=1607144>, accessed on 18 September 2020

20. Employees' State Insurance Corporation, <http://www.esic.nic.in/coverage>, accessed 18 September 2020

Profession Tax

As profession tax varies from state to state (it is not imposed by all State Governments), in order to get an overview, we will discuss the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975. An employer must register under the Act and obtain a registration/enrollment Certificate under which the payment in respect of taxes can be deducted from employees' salaries (currently up to a maximum of INR 2,500 per year). In Maharashtra, profession tax is applicable to both individuals and organizations (a company, firm, proprietary concern, Hindu Undivided Family (HUF), society, club, an association of people, corporation, or any other corporate body in Maharashtra).

Shops and Other Commercial Establishments

Every state has its own Act with regard to shops and commercial establishments. For example, the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017, which has replaced the Bombay Shops and Establishment Act of 1948 is applicable to shops and commercial establishments in Maharashtra.

These Acts regulate the conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theaters, and other places of public amusement or entertainment.

The Shops and Establishments Act is applicable to all persons employed in a shop or commercial establishment with or without wages, except members of the employer's family. It does not apply to workmen in a factory or in an establishment attached to a factory to whom benefits under the Factories Act, 1948, are applicable. The typical provisions include registration of establishments, working hours, holidays, leaves, penalties, etc.

Recent Developments

In order to improve compliance, catalyze job creation and ensure ease of doing business while safeguarding the health, safety, and social security of workers in both the organized and unorganized sectors, the Central and State Governments have initiated various labor reforms.

Some of the Central Government's labor reforms are highlighted below:

Legislative Initiatives

- Under the Payment of Bonus Amendment Act, the eligibility limit for payment of bonus has been enhanced from INR 10,000 to INR 21,000 per month and the Calculation Ceiling enhanced from INR 3,500 to INR 7,000 or the minimum wages.
- The Payment of Wages (Amendment) Act, 2017 now enable payment of wages to employees by cash or cheque or crediting it to their bank account.
- The Child Labour (Prohibition and Regulation) Amendment Act, 2016, provides for a complete ban on employment of children below 14 years in any occupation or process.
- The Maternity Benefit Amendment Act, 2017, increases the paid maternity leave from 12 weeks to 26 weeks.
- The Employee Compensation (Amendment) Act, 2017, seeks to rationalize penalties and strengthen the rights of the workers under the Act.

- The Payment Of Gratuity (Amendment) Act, 2018, provides flexibility to the Central Government firstly to increase the ceiling limit of gratuity to such amount as may be notified from time to time and secondly to enhance the calculation of continuous service for the purpose of gratuity in case of female employees who are on maternity leave to such period as may be notified from time to time. Vide Notification dated 29 March 2018, the ceiling limit of gratuity has been increased from INR 1 million to INR 2 million.

Governance Reforms

- The Ministry has notified “Ease of Compliance to maintain Registers under various Labour Laws Rules, 2017” on 21 February 2017, which has, in effect replaced the 56 Registers/Forms and 9 Central Labor Laws and Rules with 5 common Registers/Forms. This will save efforts, costs and lessen the compliance burden by various establishments.
- A Model Shops and Establishments (RE&CS) Bill, 2016, has been circulated to all States/ Union Territories for adoption with appropriate modification. The said Bill inter alia provides for freedom to operate an establishment for 365 days in a year without any restriction on opening/ closing time and enables employment of women during night shifts if adequate safety provisions exist.
- Under the Industrial Employment (Standing Orders) Act, 1946, the category, i.e., fixed-term employment, with all statutory benefits, has been extended to all sectors to impart flexibility to an establishment to employ people to meet the fluctuating demands, vide the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018.
- The Ministry has also notified the Rationalization of Forms and Reports under certain Labour Laws Rules, 2017 on 28 March 2017 for the reduction of

the number of Forms>Returns under the 3 Central Acts/Rules from 36 to 12 by reviewing redundant and overlapping fields.

- Unified Annual Return - Unified Annual Returns have been made mandatory in respect to Central Labor Acts (the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965, the Industrial Disputes Act, 1947) on the Shram Suvidha Portal.

The Occupational Safety, Health and Working Condition Code, 2019:

The Code on Occupational Safety, Health and Working Condition Bill was introduced in the Lok Sabha by the Labor Ministry, with the aim of extending safety and healthy working conditions to the entire workforce of the country. The Code is set to enhance the ambit of provisions of safety, health, welfare and working conditions for all establishments having 10 or more employees.

Increase in the rate of interest under the Employees Provident Fund Scheme:

There has been a revision in interest rates being paid under the Employees Provident Fund Scheme, 1952. The Ministry of Labor & Employment has revised the interest rates on EPF to 8.5% for FY 2020.



Appendices

Appendix 1

TDS rates on payments made to non-residents and foreign companies:

Nature of payment	Rate of tax*
a) TDS on interest on infrastructure debt fund, on foreign currency loans (under a loan agreement or by way of issue of long term bonds), on rupee denominated bonds of any Indian company or government security	5%
b) TDS on long term infrastructure bonds issued between 1st July 2012 to 1st October 2014	4%
c) TDS on interest other than (a) and (b)	20%
d) TDS on long-term capital gains on specified assets	10%
e) TDS on long-term capital gains other than (d)	20%
f) TDS on short-term capital gains on listed shares and units of equity-oriented mutual funds	15%
g) TDS on dividend income	20%
h) TDS on short-term capital gains other than (f) and (g)	40%
i) Royalty and fees for technical services	10%
* The rate of TDS shall be increased by applicable surcharge and Health and education cess @ 4%.	

Appendix 2

TDS rates on some of the common payments made to residents:

Nature of payment	Rate of TDS in case of payment to		Threshold limit for aggregate payment p.a
	Individual or HUF	Others, including corporate assessees	
TDS on salaries paid	According to the slab rates applicable to respective employees		NA
TDS on dividend	10%	10%	INR 5,000
TDS on dividend received from business trust if SPV has opted for beneficial tax regime	10%	10%	
TDS on income from mutual funds	10%	10%	INR 5,000
TDS on interest on securities	10%	10%	INR 10,000
TDS on deemed dividends	10%	10%	NA
TDS on interest other than 'Interest on Securities'			
- By banks, co-operative societies, post offices	10%	10%	INR 40,000
- By others	10%	10%	INR 5,000
TDS on winnings from lottery or crossword puzzle	30%	30%	INR 10,000
TDS on winnings from horse races	30%	30%	INR 10,000*
TDS on payments to contractors	1%	2%	INR 30,000 for a single transaction and INR 100,000 for the year
- Paid by individual/HUF not liable to a tax audit	5%#	5%#	INR 5,000,000
TDS on payment of insurance commission	5%#	5%#	INR 15,000
TDS on commission or brokerage	5%#	5%#	INR 15,000
TDS on rent			
- Land, building, furniture and fittings	10%	10%	INR 240,000
- Plant and machinery, equipment	2%	2%	INR 240,000
- TDS on rent (Paid by individual or HUF not covered above)	5%	5%	INR 600,000 (INR 50,000 p.m.)

Nature of payment	Rate of TDS in case of payment to		Threshold limit for aggregate payment p.a
	Individual or HUF	Others, including corporate assessees	
TDS on transfer of immovable property other than agricultural land (Consideration to include incidental and amenities charges)	1%	1%	INR 5,000,000
TDS on transfer of immovable property by an individual or HUF under a redevelopment agreement	10%	10%	N/A
TDS by an e-commerce operator while making payments to an e-commerce participant for sale of goods or providing services or both	1%	1%	INR 500,000 for individuals and HUFs, provided that such individual/HUF furnishes PAN/Aadhar to the e-commerce operator
TDS on technical services and TDS on royalty for consideration for sale, distribution or exhibition of cinematographic films	2%	2%	INR 30,000
TDS on fees for professional or technical services, royalty and non-compete fees	10%	10%	INR 30,000
- Paid by individual/HUF not liable to a tax audit	5%#	5%#	INR 5,000,000
TDS on income from business of operation of call centers	2%	2%	INR 30,000
TDS on remuneration/commission paid to director, other than salary	10%	10%	NA
TDS on payment of compensation on compulsory acquisition of immovable property other than agricultural land	10%	10%	INR 250,000
TDS on cash withdrawal from bank accounts#	2%	2%	INR 2,500,000 to INR 10,000,000
	5%	5%	Exceeding INR 10,000,000

These amendments are applicable with effect from 1 April 2020

These amendments are introduced by The Finance Act, 2020 applicable with effect from 1 July 2020

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Nishant Shah

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USA Canada India UAE Japan Hong Kong

Reach out to us ThinkNext@nexdigm.com

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