

# Diversify to Differentiate Think India, *Think Next!*

Doing Business in India guide

2023 Edition



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# Foreword

India's economy has demonstrated resilience despite a challenging external environment, says the World Bank in its latest India Development Update. India is projected to grow at an average rate of 6.5% in 2023-24, backed by robust domestic demand and strong macroeconomic fundamentals. Additionally, India has one of the world's largest holdings of international reserves at US\$ 560+ billion as of March 2023. Gold reserves have also risen to US\$ 44.1 billion. A well-crafted and prudent policy response to global spill overs is helping India navigate international and domestic challenges.

The recent announcements in India's Union Budget 2023 are also a testament to the government's emphasis on growth and its drive to boost capital spending, much-needed infrastructure with connectivity projects, and port modernization. Subsequently, India also stands focused on green and renewable energy, upskilling and job creation, and improving technology.

In demographic terms, India has the largest young population in the world. With new programs for healthcare, national digital libraries for children, physical libraries in rural areas, and a dedicated program for training teachers, the government aims to empower the youth to reach new heights in terms of skills, knowledge, and innovation. Being the third largest ecosystem for startups globally, India currently houses 75,000+ startups and is home to 107 unicorns with a total valuation of US\$ 340.79 bn. India continues to make amendments to ease doing business by digitizing manual processes and interventions and reducing the burden of redundant compliances. It has also put a red carpet for investors through its National Single Window System for business approvals.

Digital India is more pronounced now with the launch of 5G services. Ranked 2nd internationally with over 1.17 billion subscribers and being the world's largest data consumer, India now opens opportunities in healthcare, education, banking, agriculture, factory automation, and many life-changing innovations.

India is likely to witness increased foreign direct investment and trade in the coming decade, with a recent slew of MOUs, bilateral agreements, and trade negotiations being signed with the USA, UK, Australia, Germany, UAE, Japan, and France in defence, space, healthcare, innovation,

energy, academia, economic cooperation and trade, tourism, etc. Demographic factors, including India's educated population and multi-lingual capabilities, will likely augment these partnerships and enable the sustainability of foreign investments, making India a lucrative investment destination and a safe bet considering the evolving global landscape.

India's presidency of the G20 is also a testimony of the government's rigorous efforts to achieve accelerated, inclusive, and resilient growth, achieving SDG targets, transforming technology and digital public infrastructure, women-led development, and expanding green sectors to meet climate action targets. The 20-member club account for 85% of the world's GDP, and India's self-styled "Voice of the Global South" stresses the importance of powerful developing countries coming together and prioritizing multilateralism.

Going into 2023 marks the beginning of "Amritkaal", the 25-year period beginning from the 75th anniversary of its independence on 15 August 2022, leading up to the centenary of its independence, towards a futuristic, prosperous, inclusive, and developed society, distinguished by a human-centric approach at its core. India looks forward to making itself more business-friendly, and its efforts are driven towards becoming a US\$1 trillion digital economy by 2025.

Handcrafted through decades of experience in assisting foreign businesses in India, Nexdigm's Doing Business in India publication is a guide meant to facilitate your India entry strategy and give international investors an overview of the local business, regulatory, and tax environment. It aims to provide the reader with knowledge of critical regulations and changes in the country while providing an overview of the demographic and key statistics. We hope you find our compilation informative and useful in understanding the dynamic business environment of India.



**Manoj Gidwani**  
Vice President  
Global Marketing



01

# Introducing India

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- 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: 1.38 billion (2020 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 Climate<sup>1</sup>

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 System<sup>2</sup>

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). Ms. Droupadi Murmu 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>, as accessed on 17 July 2023

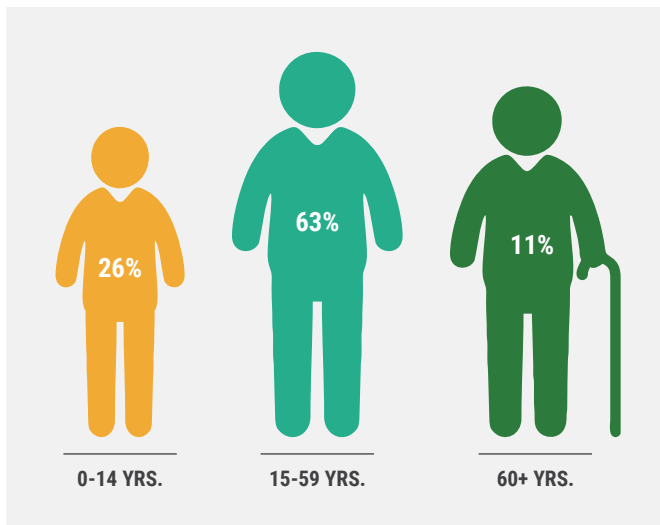
2. Constitution of India, National Portal of India, <https://www.india.gov.in/my-government/constitution-india>, as accessed on 17 July 2023

## Legal System<sup>3</sup>

India has one of the oldest legal systems in the world. The Constitution of India is the foundation of laws in 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.

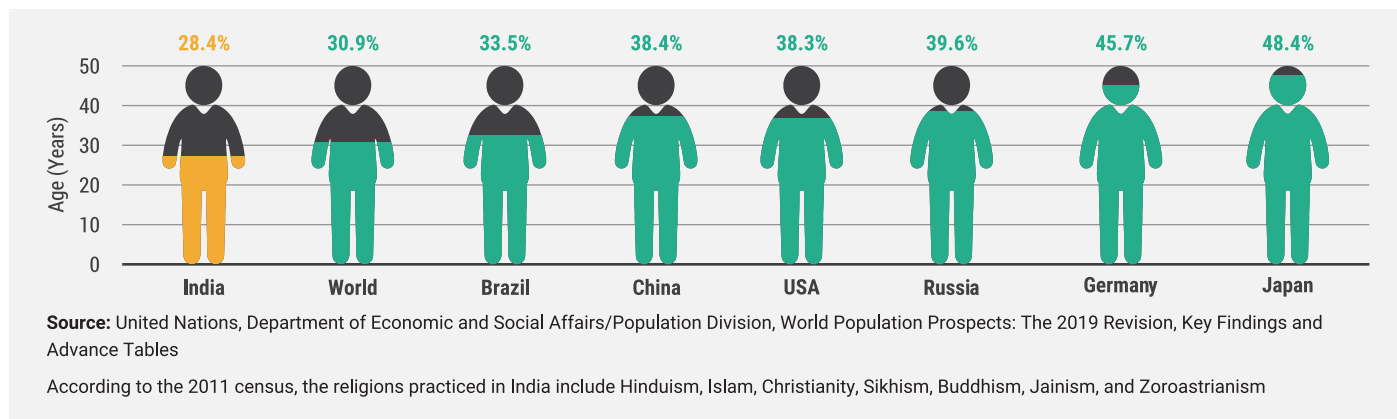
### Population Distribution by Age Group: 2020



## Population

India's population was speculated to reach 1.425 B by the end of April 2023, surpassing the population of mainland China<sup>4</sup>. With 67% of the population in the age range of 15–64 years, India has a favorable demographic dividend<sup>5</sup>. 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>, as accessed on 16 May 2023

4. World Population Prospects 2019, Comprehensive Tables, United Nations, Department of Economic and Social Affairs, Population Division (2019), <https://www.un.org/en/desa/india-overtake-china-world-most-populous-country-april-2023-united-nations-projects>, accessed 16 May 2023

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/>, as accessed on 16 May 2023

## Language<sup>6</sup>

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, Bodo, Dogri, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Maithili, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu, 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).<sup>7</sup>

## 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.

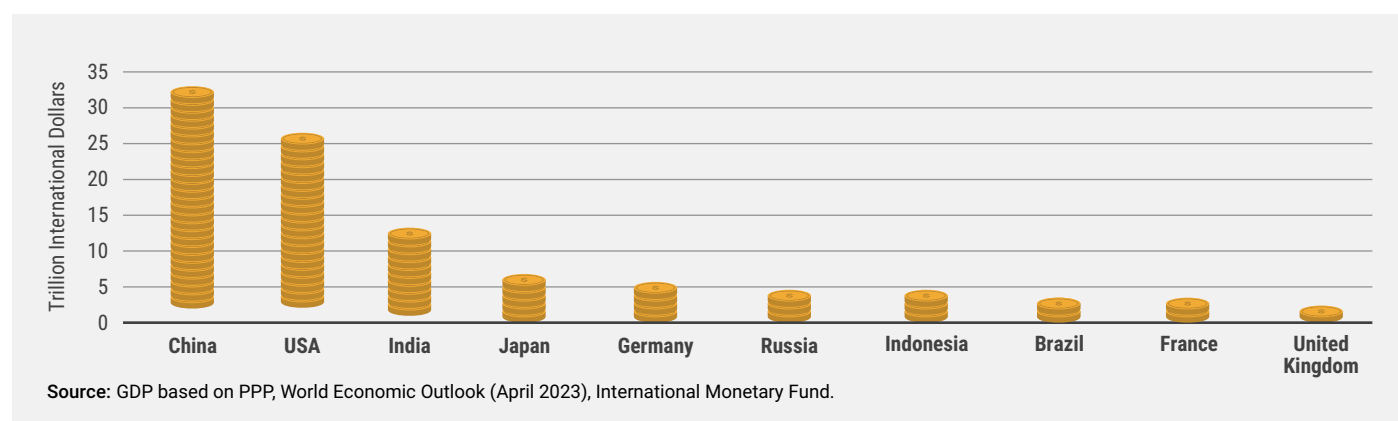
## Public Vacation Days<sup>8</sup>

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): 2023



6. <https://rajbhasha.gov.in/en/languages-included-eighth-schedule-indian-constitution>

7. <https://knowindia.india.gov.in/profile/literacy.php>

8. Profile, National Portal of India, <https://www.india.gov.in/india-glance/profile>, as accessed on 16 May 2023

## 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 52.5% of Gross Value Added (GVA) growth (at current prices), followed by the industry sector with a 26.5% share, and agriculture accounting for 21.0%<sup>9</sup>. However, agriculture still has the largest share in employment (approximately 44.3% of the total workforce)<sup>10</sup>.

The Indian economy staged a full recovery from the pandemic in 2022 ahead of many other countries and is now positioned to resume pre-pandemic growth in 2023. Significant initiatives have been taken up by the government to enhance the overall manufacturing capabilities of the economy, facilitate investment and improve ease of doing business in the country. Some of the noteworthy initiatives are Atmanirbhar Bharat, Make-in-India, Startup India, Digital India, UMANG, SAMARTH Udyog Bharat 4.0, and PM Gati Shakti among others.

With a focus on improving the local manufacturing ecosystem, and incentivizing domestic and foreign investments, the government also announced Production Linked Incentives (PLI) schemes across 14 key sectors worth USD 24.6 billion under Atmanirbhar Bharat. As of September 2022, more than 650 applications have been approved under this scheme. Further, PLI scheme for Large-Scale Electronics Manufacturing has itself attracted investment of USD 0.59 billion with total production of 24.8 billion.<sup>11</sup>

In recent years, India has implemented a slew of reforms and initiatives aimed at improving the country's attractiveness to foreign investors. This is clearly envisioned in the Global Innovation Index (GII) report 2022, where India entered the top 40 innovative

countries in terms of political environment, education, infrastructure, and knowledge creation of economy.<sup>12</sup>

This trend will continue as the current business-friendly government policies are expected to accelerate foreign investments in order to:

- Revive growth by fueling investments in infrastructure and manufacturing
- Promote Foreign Direct Investment (FDI) in key sectors
- Promote the Public-Private Partnership (PPP) 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

Despite severe global economic headwinds, industrial production in India expanded during 2023, backed by sustainable demand. Structural reforms such as the introduction of the Goods and Services Tax (GST), Insolvency and Bankruptcy Code (IBC), Real Estate Regulation and Development Act (RERA), Single Window Clearance system, etc. has boosted the efficiency and transparency of the economy, ensuring financial discipline and improved compliance.

The DPIIT's Business Reform Action Plan (BRAP) 2020, released in 2022, states that 7,496 reforms were

9. Sector-wise GVA Data, MOSPI, <https://mospi.gov.in>, as accessed on 16 May 2023

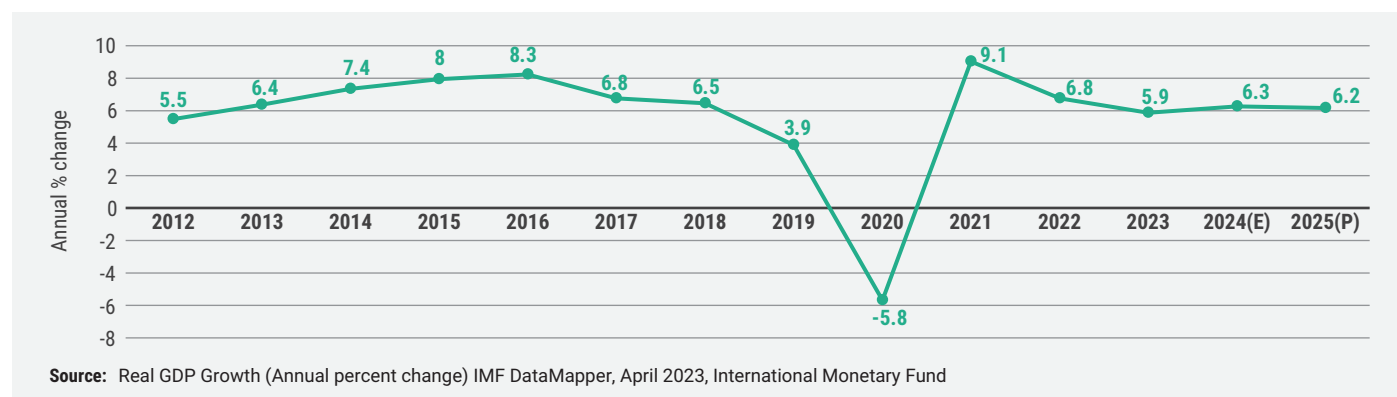
10. Country Profiles – India, Data, International Labour Organization, <https://ilostat.ilo.org/data/country-profiles/>, as accessed on 16 May 2023

11. Invest India, <https://www.investindia.gov.in/production-linked-incentives-schemes-india>, as accessed on 16 May 2023

12. Global Innovation Index, 2022, <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-2000-2022-section1-en-gii-2022-at-a-glance-global-innovation-index-2022-15th-edition.pdf>, as accessed on 16 May 2023



## Real GDP Growth in India: 2012–2025



implemented across all States and Union Territories, and more than 39,000 compliances have been reduced to enhance transparency and improve Ease of Doing Business across the country.<sup>13</sup> The new initiatives, policies, and regulations are expected to augment current capabilities with the Indian economy displaying better signs of growth. As a whole, the convergence of physical and digital infrastructure will be one of the defining characteristics of India's future growth story.

**Foreign trade:** India's services sector registered a growth of 26.8% in exports from USD 254.53 billion in FY 2021-22 to USD 322.72 billion in FY 2022-23. India's goods sector also registered a growth of 6.0% in exports from USD 422.00 billion in 2021-22 to USD 447.46 billion in FY 2022-23.<sup>14</sup>

India's services sector registered a growth of 21.0% in imports from USD 147.01 billion in FY 2021-22 to USD 177.94 billion in FY 2022-23 whereas India's goods sector registered a growth in imports of 16.5% from USD 613.05 billion in FY 2021-22 to USD 714.24 billion in FY 2022-23. Moreover, GDP is expected to grow at approximately 5.9% for FY 2023-24 which will majorly be driven by trade.<sup>15</sup>

India's top export commodities<sup>16</sup> include mineral fuels, natural or cultured pearls, electrical machinery, nuclear reactors, chemicals, vehicles and parts and

accessories, pharmaceuticals, cereals, iron and steel, textiles and apparels, aluminum and articles thereof. These account for more than 72% of India's exports.

**Foreign Direct Investment (FDI)**<sup>17</sup>: According to UNCTAD's World Investment Report 2022, India is the seventh-most preferred destination for FDI.

**FDI Inflow:** From April 2000–March 2023, cumulative FDI inflows into India stood at USD 919.63 billion. FY 2021-22 witnessed FDI inflows of USD 84.84 billion, registering a rise of 3% over FY 2020-21 which amounted to USD 81.97 billion.

13. BRAP 2020, <https://eoddb.dpiit.gov.in/>, as accessed on 16 May 2023

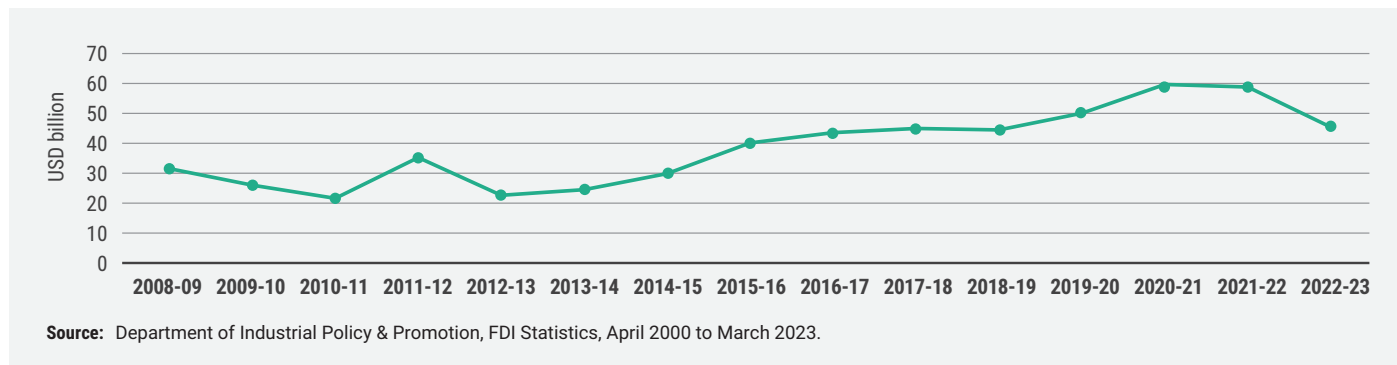
14. Monthly Press releases on India's international Trade in Goods and Services, RBI <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1916220>, as accessed on 15 May 2023

15. Real GDP Growth (Annual percent change) IMF DataMapper, April 2023, International Monetary Fund, <https://www.imf.org/en/Countries/IND#whatsnew>, as accessed on 15 May 2023

16. Export Import Data Bank, Ministry of Commerce & Industry, <https://tradestat.commerce.gov.in/meidb/com.asp?ie=e>, as accessed on 15 May 2023

17. India FDI inflow data, Press Information Bureau, [https://dpiit.gov.in/sites/default/files/FDI\\_Factsheet\\_March\\_23.pdf](https://dpiit.gov.in/sites/default/files/FDI_Factsheet_March_23.pdf), as accessed on 15 May 2023

## Annual FDI Equity Inflows into India: Financial Years 2008-09 to 2022-23



## Country-Wise FDI Equity Inflows: 2022-23

From April 2000 to March 2023, cumulative FDI equity inflows from Mauritius stood at USD 163.87 billion, making it the largest source of FDI into India. Mauritius, Singapore and USA contributed to more than 50% of cumulative India's FDI equity inflows during both time periods (FY 2022-23 and April 2000- March 2023).

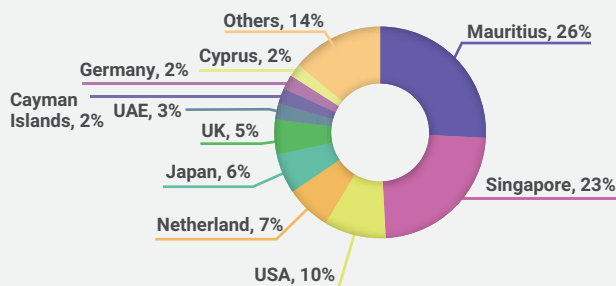
During FY 2022-23, Singapore was the top investor with USD 17.20 billion, followed by Mauritius, USA, UAE, Netherlands, Japan, UK, Cyprus, Cayman Islands, and Germany. It is pertinent to note that some of the key countries mentioned here are favorable jurisdictions to make investments into India.

## Sector-wise FDI Equity Inflows: 2022-23

From April 2000 to March 2023, the Service Sector and Computer Hardware and Software attracted the highest FDI equity inflow accounting for 16% and 15% respectively of all inflows followed by Telecommunications (6%).

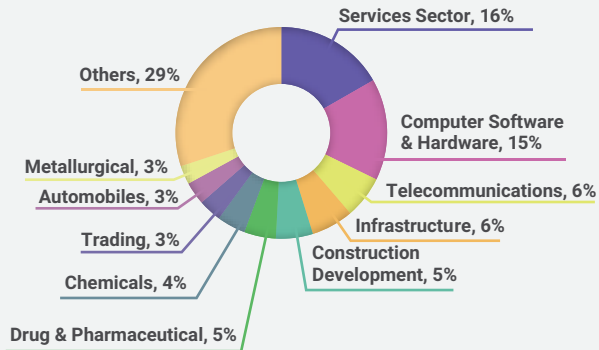
In FY 2022-23, the Computer Hardware and Software sector received the highest amount of FDI equity inflows (USD 9.39 billion) followed by the Service Sector, Trading, Drugs and Pharmaceuticals, Automobile Industry, Chemicals, Construction (Infrastructure) Activities, Telecommunications, Metallurgical Industries and Construction Development in that order.

## Country-wise FDI equity inflows (April 2000 - March 2023)



**Source:** Department of Industrial Policy & Promotion, FDI Statistics, April 2000 to March 2023.

## Sector-wise FDI equity inflows (April 2000 - March 2023)



**Source:** Department of Industrial Policy & Promotion, FDI Statistics, April 2000 to March 2023.

## Foreign Exchange Reserves

As of April 2023, India's foreign exchange reserves stood at USD 588.8 billion.<sup>18</sup>



18. RBI Forex reserve data, <https://m.rbi.org.in/scripts/WSSViewDetail.aspx?TYPE=Section&PARAM1=2>, as accessed on 15 May 2023



# 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 and Export Controls
- Bank Accounts
- Intellectual Property
- Privacy
- Cross-Border Transactions
- Competition Act 2023
- Consumer Protection
- Environmental Laws in India
- Closure of business in India

## 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; 25 Offices of Registrars of Companies<sup>1</sup>; and 24 Official Liquidators in States and Union Territories of India.<sup>2</sup> 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 and the Insolvency and Bankruptcy Code, 2016 (IBC Code). 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 Investment

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 RBI Master Direction - Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities as amended from time to time.<sup>3</sup>

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), formerly 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 regular basis elaborating on the policy and framework with respect to FDI in India. The most recent consolidated FDI Policy was published on 15 October 2020.<sup>4</sup>

1. Official Liquidators, Ministry of Corporate Affairs, <https://www.mca.gov.in/content/mca/global/en/contact-us/official-liquidators.html>, as accessed on 17 July 2023

2. Foreign Investments in India, RBI, <http://www.rbi.org.in/scripts/FAQView.aspx>, as accessed on 17 July 2023

3. Master Direction - Establishment of Branch Office (BO)/Liaison Office (LO)/Project Office (PO) or any other place of business in India by foreign entities, Reserve Bank of India, [https://rbi.org.in/Scripts/BS\\_ViewMasDirections.aspx?id=10404](https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10404), accessed 13 July 2023

4. FDI Circulars and Press Notes, Department for Promotion of Industry and Internal Trade, <https://dpiit.gov.in/policies-rules-and-acts/press-notes-fdi-circular>, accessed 13 July 2023



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 investors. 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.<sup>5</sup>

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.

5. Prohibited Sectors, FDI Policy, InvestIndia, <https://www.investindia.gov.in/foreign-direct-investment>, as accessed on 17 July 2023

## Sector-wise FDI Limits

Sector	Automatic route	Government route
Railway infrastructure	100%	-
Construction development: Such as townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, as well as city and regional level 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%	
<b>Broadcasting Carriage Services</b> (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%	
<b>Broadcasting content services</b>	100%	
1. Up-linking of 'Non-news & Current Affairs' TV Channels/Down-linking of TV Channels		
2. Terrestrial Broadcasting FM (FM radio)		Up to 49%
3. Up-linking of 'News & Current Affairs' TV Channels.		Up to 49%
<b>Civil aviation</b>		
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%	-

Sector	Automatic route	Government route
Private security agencies	Up to 49%	Up to 74%
Pharmaceuticals (greenfield)	Up to 100%	
Pharmaceuticals (brownfield)	Up to 74%	Up to 100%
Defense	Up to 74%	Up to 100%
Insurance companies	49%	
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)		26%
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%	Up to 74%
Banking (Public sector)		20%

## Recent changes in the in FDI Policy

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

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 promoting industrial development of the country by facilitating investments in new technology, formulating the Industrial Policy at a Central Government level, and promoting balanced growth of the industrial ecosystem. The role and functions of the DPIIT include:

- Industrial Management
- Productivity in industry
- Matters related to e-commerce and Startups

- Promotion of internal trade including retail trade
- Welfare of traders and their employees
- Matter relating to facilitating 'Ease of Doing Business'
- Integrated development of the logistics sector
- Monitoring of implementation of projects for their expeditious completion
- Implementation of PM Gati Shakti National Master Plan
- 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

In addition, the DPIIT is also responsible for the promotion and development of industries related to Cables, Light Engineering products (eg. Sewing machines, typewriters, weighing machines, bicycles, etc.), Light Industries (e.g. Polywood, stationery, kmatches, cigarettes, etc.), Light Electrical Engineering products, Raw Films, Hard Board, Paper and Newsprint, Tyres and Tubes, Salt, Cement, Ceramics, Tiles and Glass, Leather and Leather Goods Industry, Soaps and Detergents, Footwear Design & Development and any other Industry not covered by other Ministries/ Departments.<sup>6</sup>

Invest India 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.<sup>7</sup>

Prime Minister (PM) Gati Shakti<sup>8</sup>, a digital platform was formally launched in the year 2021 to provide multi-modal connectivity to all industrial zones in India, thus promoting holistic infrastructure for manufacturing industries. This National Master Plan integrates 21 Ministries including Railways, Aviation, Shipping, and Road Transport to promote the implementation of infrastructure connectivity projects. The platform envisages generating multiple employment opportunities, rationalizing the overall logistics costs, improving supply chains, and providing a competitive advantage to locally manufactured goods.

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).<sup>9</sup> The main objective of these committees is to improve the investment environment in the country, promote domestic manufacturing, and make India a favored destination for foreign investment.

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

6. Role and Functions of the Department for Promotion of Industry and Internal Trade, Department for Promotion of Industry and Internal Trade, <https://dpiit.gov.in/about-us/role-and-functions-dpiit>, as accessed on 17 July 2023

7. About Us, InvestIndia, <https://www.investindia.gov.in/about-us>, as accessed on 17 July 2023

8. PM Gati Shakti - <https://pmgatisakti.gov.in/pmgatisakti/login#>, as accessed on 17 July 2023

9. EGoS and PDCs, <https://pib.gov.in/PressReleasePage.aspx?PRID=1629037>, as accessed on 17 July 2023



bridge gaps and identify issues in the system to resolve investment decisions and remove lags.

Other than the Central Government agencies mentioned above, every state has its respective investor facilitation centers and industrial corporations to support companies in terms of land scouting, obtaining relevant registrations, etc. A dedicated industrial policy is also formulated by these states to promote new investments. In this regard, multiple incentives are offered by the states based on the sector, location and size of the investment, and employment generation, among others. Some of these incentives include Investment Promotion Subsidy (IPS), stamp duty exemption, electricity duty exemption, GST reimbursement, etc.

## The 'Make in India' Program

In September 2014, the government launched the Make in India campaign, focusing on initiatives to facilitate investments in India and promoting it as a global manufacturing hub.<sup>10</sup> 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 about local products. The Atmanirbhar Bharat program has five pillars, namely economy, infrastructure, system, vibrant demography, and demand.

The Atmanirbhar Bharat program aims to achieve self-reliance through a five-stage plan:<sup>11</sup>

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.

## 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 provided loans to potential businesses, protection against the pandemic, and technology upgradation via employment. The package focused on land reforms, labor reforms, MSMEs, and industry

10. About, Make in India, <https://www.makeinindia.com/about>, as accessed on 16 July 2023

11. Atmanirbhar Bharat Abhiyaan, Invest India, <https://www.investindia.gov.in/atmanirbhar-bharat-abhiyaan>, accessed 16 July 2023

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.

The government had also provided a few relaxations from the initiation of insolvency proceedings against organizations facing economic crises during the pandemic.

- The amount of minimum default was raised from INR 100,000 to INR 10 million<sup>13</sup>, thereby saving small and medium enterprises from insolvency by economic distress.
- The government also provided temporary suspension of the initiation of corporate insolvency resolution processes for a period of six months, or such further period not exceeding one year from 25 March 2020<sup>14</sup>.
- Relaxations were also provided to the liquidator to exclude the entire time period of lockdown during COVID-19 from the computation of time-lines provided under the liquidation process<sup>15</sup>.

The government also emphasized the need of speeding up these insolvency processes once the lockdown was removed.

The RBI 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 155 bps to 3.35

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.

### Production Linked Incentives (PLI):

In September 2021, under the Atmanirbhar Bharat initiative, to build a vigorous domestic manufacturing ecosystem, the government rolled out Production Linked Incentives for 14 key sectors (including telecom, pharmaceutical, automobile, etc.) with a total outlay nearly USD 2 trillion. These incentives will be over and above the various state-level incentives currently available.<sup>15</sup>

### Vaccine:

A robust vaccination program has seen over 2.2 billion doses given to Indians, with over 85% of the eligible population (12 years old and older) fully inoculated.

## 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 2023 announced on 31 March 2023, provides a framework for foreign trade in goods and services as well as employment generation and increasing value addition.<sup>16</sup> 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

12. News & Important Updates, Ministry of Corporate Affairs, [https://www.mca.gov.in/Ministry/pdf/Notification\\_28032020.pdf](https://www.mca.gov.in/Ministry/pdf/Notification_28032020.pdf), as accessed on 17 July 2023

13. News & Important Updates, Ministry of Corporate Affairs, [https://www.mca.gov.in/Ministry/pdf/IBCAmendedBill\\_24092020.pdf](https://www.mca.gov.in/Ministry/pdf/IBCAmendedBill_24092020.pdf), as accessed on 17 July 2023

14. What's New, Insolvency and Bankruptcy Board of India, <https://www.ibbi.gov.in/uploads/whatsnew/4697af9d01b6c12c0816f4be28ea6835.pdf>, as accessed on 17 July 2023

15. About Production Linked Incentive (PLI) Schemes, Invest India, <https://www.investindia.gov.in/production-linked-incentives-schemes-india>, accessed 17 July 2023

16. Foreign Trade Policy 2015-2020, Directorate General of Foreign Trade, <https://www.dgft.gov.in/CP/?opt=ft-policy>, as accessed on 17 July 2023

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.

### Foreign Trade Policy (FTP) 2023<sup>17</sup>:

The Government has recently announced FTP 2023, effective from 1 April 2023, with a vision to increase India's exports to USD 2 trillion by 2030. The policy places a special emphasis on process re-engineering and automation for facilitating ease of doing business for exporters.

The policy is built upon four critical pillars:

- Incentive to remission
- Export promotion through collaboration - exporters, states, districts, Indian missions
- Ease of doing business, reduction in transaction cost, and e-initiative
- Emerging Areas – e-commerce developing districts as export hubs and streamlining SCOMET (Special Chemicals, Organisms, Materials, Equipment and Technologies) policy

As a whole, FTP 2023 aims to strengthen India's position in exports by manifesting automation in approvals, collaboration with multiple authorities, creating a welcoming environment for MSMEs and other businesses, and establishing India as a global leader in the export industry.

Free Trade Agreements (FTAs) are an important element of India's trade strategy. The Indian Trade Portal, [www.indiantradeportal.in](http://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](http://www.commerce.gov.in). Such FTAs and Preferential Trade Agreements (PTAs) provide customs duty exemption benefits to importers subject to compliance with the 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.

India has recently signed FTAs with UAE and Australia.

### 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 Governments<sup>18</sup>. 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 (if an existing SEZ unit set up prior to April 2020 is acquired), zero-rating of GST, etc.

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 units<sup>19</sup>.

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

17. Foreign Trade Policy 2015-2020, Directorate General of Foreign Trade, <http://dgftcom.nic.in/exim/2000/FTP-2017/ftp17-051217.pdf>, as accessed on 17 July 2023

18. About us, Introduction, Special Economic Zones in India <http://sezindia.nic.in/cms/introduction.php>, as accessed on 17 July 2023

19. Foreign Trade Policy 2023, Directorate General of Foreign Trade, <https://www.dgft.gov.in/CP/?opt=ft-policy>, accessed 16 July 2023

use duty-free equipment for training.

#### Duty deferment scheme:

To promote India as a global manufacturing hub and showcase its commitment towards ease of doing business, the government is allowing import of raw materials and capital goods without payment of customs duty for manufacturing and other operations in a bonded manufacturing facility.

Under this scheme, viz., MOOWR, the customs duty payable on raw materials is deferred until the finished goods are cleared to the domestic market. Import duty on capital goods is to be paid if and when the capital goods are cleared to the domestic market. If these imported inputs are utilized for exports, the deferred duty is exempted.

#### 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.

#### 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.<sup>20</sup> The customs/import tariff for various goods can be viewed on the CBIC website, [www.cbic.gov.in](http://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.

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.

## 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.<sup>21</sup>

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 Controller General of Patents, Designs and Trademarks, or Copyright Office 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.<sup>22</sup>

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. 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.<sup>23</sup>

## 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.<sup>24</sup>

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. 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 157 countries.<sup>25</sup>

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 and utility models; 6 months for industrial designs and marks), 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.<sup>26</sup>

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

21. <https://www.makeinindia.com/policy/intellectual-property-facts>, as accessed on 17 July 2023

22. National Intellectual Property Rights Policy, Department for Promotion of Industry and Internal Trade, <https://dpiit.gov.in/policies-rules-and-acts/policies/national-ipr-policy>, as accessed on 17 July 2023

23. IP Nani, Department for Promotion of Industry and Internal Trade, <https://dpiit.gov.in/ip-nani>, accessed 16 July 2023

24. Intellectual Property Facts, Make in India, [www.makeinindia.com/policy/intellectual-property-facts](https://www.makeinindia.com/policy/intellectual-property-facts), as accessed on 17 July 2023

25. World Intellectual Property Organization, <http://www.wipo.int/pct/en/>, as accessed on 17 July 2023

26. Summary of the Paris Convention for the Protection of Industrial Property (1883), WIPO, [http://www.wipo.int/treaties/en/ip/paris/summary\\_paris.html](http://www.wipo.int/treaties/en/ip/paris/summary_paris.html), as accessed on 17 July 2023



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](http://www.ipindia.nic.in).<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup>

The improvement in IP administration during the last few 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.<sup>30</sup> 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.<sup>31</sup>

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.<sup>32</sup>

27. Patent FAQs, IP India, <https://ipindia.gov.in/index.htm>, accessed 16 July 2023

28. Intellectual Property Facts, Make in India, <http://www.makeinindia.com/policy/intellectual-property-facts>, as accessed on 17 July 2023

29. Section 108: Reliefs in suit for infringement, Patents Act, 1970, [https://ipindia.gov.in/writereaddata/Portal/IPOAct/1\\_31\\_1\\_patent-act-1970-11march2015.pdf](https://ipindia.gov.in/writereaddata/Portal/IPOAct/1_31_1_patent-act-1970-11march2015.pdf), as accessed on 17 July 2023

30. A Hand-Book of Copyright Law, Ministry of Human Resource Development, <http://copyright.gov.in/documents/handbook.html>, as accessed on 17 July 2023

31. Ibid.

32. 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>, as accessed on 17 July 2023

### Trademarks<sup>33</sup>

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.

### Design<sup>34</sup>

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. 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

33. Intellectual Property Facts, Make in India, <http://www.makeinindia.com/policy/intellectual-property-facts>, as accessed on 17 July 2023

34. Design FAQs, IP India, <https://ipindia.gov.in/faq-designs.htm>, accessed 16 July 2023

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 India for 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.

On 11 December 2019, the Ministry of Electronics and Information Technology (MeitY) introduced the draft Personal Data Protection Bill, 2019 (PDP Bill) before the Parliament, which was referred to a Joint Parliamentary Committee (JPC) for further consideration. Post extensive stakeholder consultations, the JPC submitted

its report in December 2021 which includes the recommendations of the JPC along with the draft bill, now titled the Data Protection Bill, 2021 (DP Bill), which is likely to be re-introduced this year and implemented in a phased manner.

The DP Bill now includes in its ambit, all Non-Personal Data (NPD), defined as 'data other than personal data'.

The introduction of the DP 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;
- All data breaches (including breach of NPD) will have to be disclosed to the Data Protection Authority (DPA) within 72 hours;
- The DPA can authorize schemes of transferring sensitive personal data outside India after consultation with the Central Government and such contract or intra-group scheme will not be approved, if "the object of such transfer is against public policy or State policy";
- Organizations are required to implement appropriate security safeguards to protect personal information.

Under the Rules, an entity 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. Compliance requirements for significant data fiduciaries requires the appointment of a data protection officer, being a Key Managerial Personnel (or equivalent in entities that are not companies) to carry out various functions prescribed under the law.

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

Non-compliance can attract a fine of up to INR 150 million or 4% of the worldwide turnover, whichever is higher.

## 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, 2013

- The Companies Act, 1956, has been replaced by the Companies Act, 2013. The Act governs mergers and schemes of arrangement, including procedures for approval from the Tribunal 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.
- 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 (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 National Company Law Tribunal (NCLT) 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 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 Act 2023

### What is the competition act?

India's commercial competition is governed under the Competition Act, 2023 (the Act), which replaced the erstwhile Competition Act, 2002 and the Monopolies and Restrictive Trade Practices Act, 1969. The main goal of these Acts was to stop actions that have a negative influence on competition in the Indian market.

The Competition Act, 2002 legislation led to the establishment of the Competition Commission of India (the Commission or the CCI), charged with preventing activities that hinder competition within India.

The Act empowers the Commission to safeguard the interests of free and fair competition, including the competitive process, thereby protecting consumers' interests. Its main responsibilities are as follows:

1. Prohibiting agreements or practices that have, or are likely to have, a significant adverse effect on competition in the Indian market (horizontal and vertical agreements/conduct)
2. Prohibiting the abuse of dominant positions in the market
3. Prohibiting acquisitions, mergers, amalgamations, etc. between enterprises that have, or are likely to have, a considerable adverse effect on competition in the Indian market(s)

Furthermore, the Competition Act, 2002 emphasized international cooperation and enforcement by envisioning mutual support and a global enforcement network.

Over time, the Competition Act, 2002, underwent amendments through the Competition (Amendment) Act, 2007, and the Competition (Amendment) Act, 2009.



### Why the changes

The Competition Act, 2002, was enacted with the aim of curbing abuse of dominance and monopolies in the Indian market. Since its implementation, the Indian market experienced significant growth, witnessing a surge in internet-based businesses and companies leveraging technological advancements. Recognizing these developments and in alignment with India's ever-expanding economic fundamentals, the Ministry of Corporate Affairs (MCA) established the Competition Law Review Committee (CLRC) in 2018. The CLRC was tasked with assessing the Act's implementation and its coherence with the evolving market landscape. In 2019, certain gaps and drawbacks were identified in the existing framework, leading to recommendations for structured management of market competition. Considering the Standing Committee's suggestions, the MCA introduced additional amendments and presented the draft to the Parliament in February 2023. After due consideration of the report, the Lok Sabha passed the Competition (Amendment) Bill, 2023 in March 2023, and the Rajya Sabha subsequently passed it in April 2023, effecting changes to the two-decade-old Competition Act, 2002.

The proposed Competition (Amendment) Bill, 2023 aims to revamp India's current competition law in response to instances of anti-competitive conduct by major corporations, particularly in the technology industry.

#### Recent Cases that triggered the Amendments:

- a. Google was fined USD 21 million by the CCI in 2018 for abusing its dominant position in online search advertising, a decision that was upheld by the Competition Appellate Tribunal in 2020. Data being considered more vital than the turnover of the entity, tech giants such as Google enjoy the opportunity to acquire significant firms in the data processing realm lacking turnover generation. **Introducing a 'deal value threshold' under the proposed amendment would bring these instances under the purview of CCI. Furthermore, due to expansion of penalty provisions through**

the current amendment, larger penalties can be imposed over the 'global turnover' of enterprises. Such terms could allow the CCI to impose greater penalties similar to the European Union, where Google had to incur a fine of over USD 4 billion.

- b. Amazon was accused of engaging in predatory pricing and providing preferential treatment for certain sellers on its platform, which led to an investigation by the CCI and a finding that Amazon had violated Competition Act.
- c. The Facebook-WhatsApp acquisition also raised concerns about data privacy and competition in the messaging app market, and the CCI found that the acquisition had reduced competitive constraints in the market. However, due to threshold constraints, the CCI could not investigate the issue even though around 130 million users were affected. Acquisitions of such sorts are, per se, beyond the scope of the CCI as the target company is small enough to escape the Competition Act thresholds. **Considering transactional value under the proposed amendment became crucial for expanding the investigative scope of the CCI.**

### Summary of amendments and impacts

1. **Introduction of deal value thresholds** – Deals with a transaction value of more than INR 2,000 crore (USD ~250 mn) will require prior approval of the CCI. The aim of introducing a deal value threshold is to bring certain deals under the Act's purview, such as deals by large technology and digital platforms where a target may not hold significant assets or turnover in India, provided that the target has 'substantial business operations' in India. This is an additional threshold prescribed over and above the existing asset- and turnover-based tests and, noticeably, is applicable across sectors of the economy and not merely confined to digital markets as was originally recommended in the CLRC Report, 2018.

### Difference from Competition Act, 2002:

The 2002 Act included 'gross assets of more than INR 1,000 crores (**USD ~125 mn**), or gross turnover of more than INR 3,000 crores (**USD ~375 mn**)', amongst others to be the threshold limits in case of AAEC cases.

2. **Reduction of time-limit for approvals of combinations (M&As)** from two hundred and ten days (210) to one hundred and fifty (150) days and for forming a prima facie opinion by the CCI to issue a show cause notice to parties within fifteen days (15) from the previous thirty days (30) for expeditious approval of combinations. Furthermore, the CCI has to form its prima facie opinion of whether the proposed combination is likely to cause an Appreciable Adverse Effect on Competition (AAEC) in India or not within thirty (30) calendar days (whereas the Competition Act, 2002 states thirty (30) working days). If no prima facie opinion is formed within this period, the combination shall be deemed to have been approved.
3. **The new Act has modified the definition of 'control'**, and defined it as "the ability to exercise material influence over the management, affairs, or strategic commercial decisions".

The new definition of 'Group' under Section 5 of the Act states that "two or more enterprises where one enterprise is directly or indirectly, in a position to exercise twenty six percent (26%), or such other higher percentage as may be prescribed, of the voting rights in the other enterprise".

### Difference from Competition Act, 2002:

'Control' was defined as having control over the management/affairs over an enterprise or group. This classifies businesses into a range of enterprises exercising control over other enterprises.

The new Act modifies such description, while making it more precise and specific, as the ability to exercise material influence and impact over the strategic and important commercial decisions of the enterprise, inclusive of its management and crucial affairs.

4. **The Act extends the Director General-CCI's (DG) powers to investigate defilements under the Act.** This includes the DG's power to seek information and papers from legal advisors appointed by the parties.
5. **Waiver of standstill obligations for open market purchases:** The existing 'standstill obligations' in case of an open offer and acquisition of convertible shares/securities on a stock exchange is waived off provided:
  - a. A merger notification is promptly filed with the CCI; and
  - b. The acquirer does not exercise any ownership or beneficial rights/interest/receives dividends in such shares/securities till the receipt of approval from the CCI
6. **Introduction of 'Green Channel'** or deemed approval for certain categories of combination not likely to have an AAEC:
  - The CCI, through regulations, introduced the 'Green Channel' for automatic approval of combinations in August 2019 in the spirit of promoting trust-based regulation
  - It was the first of its kind system in the world wherein transactions were automatically deemed approved on the day of filing. This dispensation is presently available to those parties that do not exhibit overlap, be it horizontal, vertical, or complementary
7. **Increased penalty for making false statements or suppressing material information related to the proposed combination:** Under the existing provisions, any person being a party to a combination who either makes a false statement or omits to disclose any material information is liable to a minimum penalty of INR 50 lakhs (USD ~62,500) and a maximum penalty of INR 1 crore (USD ~125,000). The maximum penalty has now been increased to INR 5 crores (USD ~625,000).
8. **Penalties to be imposed on 'Global' Turnover:** Enterprises found guilty of violation of the

provisions of the Competition Act, 2002 (the Act) can now be penalized up to ten percent (10%) of not only their total turnover derived from revenue generated from the sale of all products and services within India but also from all over the globe.

- 9. The Competition Act, 2023 proposes to recognize the 'hubs and spokes'** (hubs are facilitators and spokes are direct competition) arrangement of the Competition Act, 2002, which means that the parties who are not actively involved in cartel formation but merely intend to participate in its furtherance can also be penalized for such formation.

A hub and spoke cartel is one where market players at the horizontal level (spokes) enter into an agreement, tacit, or explicit, to share sensitive information through a vertical common player, referred to as a 'hub'. Although not directly involved in its activities, the hub acts as a medium to facilitate the cartel mainly by acting as an information exchange mechanism.

#### **Difference from Competition Act, 2002:**

The earlier framework states 'anti-competitive agreements' involving horizontal agreements, i.e. between enterprises indulged in similar or identical business activities, and vertical agreements, i.e. between parties at diverse stages or levels of the same production chain.

The current Act adds non-competitor and non-market participant enterprises engaged in dissimilar or different business activities, not actively involved in cartel activities, while merely 'intending to participate' or 'actively coordinating in the furtherance of such deals which are rendered as causing an AAEC'.

- 10. Widening the net to include agreements other than vertical anti-competitive agreements between manufacturers and dealers:** Now, all kinds of business agreements, not even restricted to those between enterprises or persons, are vulnerable to scrutiny if they are likely to cause an AAEC. This will include clauses such as non-compete clauses/

parity clauses used by online travel agents for hotels/air ticket bookings, etc. and will include AI-driven arrangements which may cause an AAEC.

- 11. Introduction of Settlements and Commitment:** The CCI is empowered to initiate inquiry proceedings on contravention of provisions like Section 3 (anti-competitive agreements), Section 430 (abuse of dominance), Section 19 (inquiry), etc. Furthermore, the present amendment brings in the following options, after which it may close the inquiry proceedings:

- i. Settlement, referring to an agreement between the CCI and a party under investigation to terminate proceedings upon payment of a settlement amount by the party; and
- ii. Commitment, involving an undertaking given by a party under investigation to modify its conduct or take certain actions to eliminate any concerns raised by the CCI regarding its conduct

- 12. Introduction of 'leniency plus':** This will encourage members of cartels under investigation to disclose other cartels and obtain a waiver of penalties for such cartels in advance.

#### **Other Amendments to the provisions of the Act**

1. Widening the definition of 'Relevant product market' to include supply-side substitutability. The new Act widens the scope of 'Relevant product market' to include products and services interchangeable by not only the consumer but the supplier as well, and also recognizes buyer cartels. This inculcates the supplier's perspective as well and is more comprehensive than the previous descriptive constraints. The term 'party' would include a consumer and an information provider.
2. Appointment of DG by the CCI, with prior approval of the Central Government.
3. Allowing parties to call expert witnesses to depose before the CCI and provide their expert opinion during the inquiry hearings before the CCI.

4. Enhanced and well-codified powers of the DG to investigate. These are now independent powers not linked to the Companies Act, 2013 as was the case before.
5. Mandatory pre-deposit of a 25% penalty as a condition precedent to admission of appeal for hearing before the National Company Law Appellate Tribunal (NCLAT).
6. Compounding of any offense punishable under the Act, excluding the offenses punishable with imprisonment only or imprisonment with fine, by the NCLAT or any other court where any proceeding related to such offense is pending.

## 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.<sup>35</sup>

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.

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.<sup>36</sup>

The Real Estate Act (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.

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35. Notification dated 13 August 2019, Notifications for Combinations, Competition Commission of India, <http://www.cci.gov.in/sites/default/files/notification/210553.pdf>, as accessed on 17 July 2023

36. 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 17 July 2023

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.

## Environmental Laws in India

Depending on an entity's business, they must comply with various laws relating to the environment. Broadly, we have categorized the generally applicable environmental laws into laws for manufacturing and laws for non-manufacturing entities in India.

### Manufacturing Businesses

The Environment Protection Act, 1986 and Environment (Protection) Rules, 1986: An Act to provide for the protection and improvement of the environment, and for matters connected to it such as prescribing standards for permissible level of discharge or the emission of environmental pollutants.

The Hazardous Wastes (Management and Handling) Rules, 1989: These rules apply to the management of hazardous and other wastes as specified in the Schedules I-IX. A list of all hazardous waste can be accessed here. For the management of hazardous and other wastes, a business must follow the following steps, namely prevention, minimization, reuse, recycling, recovery, utilization including co-processing, and safe disposal.

The Noise Pollution (Regulation and Control) Rules, 2000: The ambient air quality standards with respect to noise for different areas/zones shall be such as specified in the Schedule to these Rules. The respective State Governments categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards and accordingly takes measures for the abatement of

noise, including the noise emanating from vehicular movements, blowing of horns, bursting of fire crackers, use of loud speakers, public address system, sound producing instruments, and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these Rules. In a commercial area, ambient air quality standard of noise is allowed up to 65 decibels during day time and 55 decibels during night time.

The Plastic Waste Management Rules, 2016:

These Rules prescribe standards for plastic waste management including standards for recycling, recovery, or disposal of plastic waste as per the rules, regulations and standards stipulated by the Central Government from time to time.

The Water (Prevention & Control of Pollution) Act, 1974 and the Water (Prevention and Control of Pollution) Rules, 1975:

This Act provides for the prevention and control of water pollution and the maintenance or restoration of wholesomeness of water for the establishment. Likewise, to regulate the matters therein, there have been Boards which have been set-up.

Therefore, if an entity has to maintain standards with regards to disposal of trade effluents, they must ensure prior permission from the relevant Central Board is obtained.

The Air (Prevention and Control of Pollution) Act, 1981 and the Air (Prevention and Control of Pollution) Rules, 1982:

This Act provides for the prevention, control, and abatement of air pollution. The Act regulates the matters mentioned above and there have been several Boards set-up for the same.

The Batteries (Management and Handling) Rules, 2001:

These rules apply to every manufacturer, importer, re-conditioner, assembler, dealer, recycler, auctioneer, consumer, and bulk consumer involved in the manufacture, processing, sale, purchase, and use of batteries or components of batteries. As per these Rules, it shall be the responsibility of a manufacturer, importer, assembler and re-conditioner to comply with the standards prescribed for management and handling of batteries.



## Non-Manufacturing

E-Waste (Management) Rules, 2022: The government has taken a number of steps to formalize the e-waste recycling sector of the country. The E-Waste (Management) Rules, 2016 provide for compulsory authorization of the dismantling and recycling units from the concerned State Pollution Control Boards (SPCBs)/Pollution Control Committees (PCCs). The Central Pollution Control Board (CPCB) has issued guidelines/standard operating procedures for processing of e-waste. The CPCB and SPCBs have been monitoring the units and necessary steps have been taken to mainstream and modernize the recycling industry with the help of the Ministry of Electronics and Information Technology (MEITY).<sup>37</sup>

The Ministry has notified the E-Waste (Management) Rules, 2022 on 2 November 2022. These Rules will replace the E-waste (Management) Rules, 2016 and will be effective from 1 April 2023. These Rules will launch a new Extended Producer Responsibility (EPR) regime for e-waste recycling. The salient feature of the new Rules are mentioned below:

- Applicable to every manufacturer, producer, refurbisher, dismantler, and recycler.
- All manufacturers, producers, refurbishers, and recyclers are required to register on the portal developed by the CPCB.
- Only manufacturers, producers, refurbishers, and recyclers require registration. No entity shall carry out any business without registration or deal with any unregistered entity.
- Producers of notified Electrical and Electronic Equipment (EEE) have been given annual E-Waste Recycling targets based on the generation from the previously sold EEE or based on sales of EEE as the case may be.
- Management of solar PV modules/panels/cells have been added in the new Rules.
- The quantity recycled will be computed on the basis of end products so as to avoid any false claims.

- Provisions for the generation and transaction of EPR Certificates has been introduced.
- Provisions for environment compensation, verification, and audit have been introduced.

Under the E-Waste Management Rules, provision for reduction of hazardous substances in manufacturing of EEE has been provided. It mandates that every producer of EEE and their components shall ensure that their products do not contain lead, mercury, and other hazardous substances beyond the maximum prescribed concentration.

The Prohibition of Smoking in Public Places Rules, 2008: As per these rules, the owner, proprietor, manager, supervisor or in charge of the affairs of a public place shall ensure that no person smokes in a public place (under his jurisdiction/implied). Accordingly, there have to be designated no-smoking zones.

## Others

The National Green Tribunal Act, 2010: This Act provides for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection. It also covers the conservation of forests and other natural resources including enforcement of any legal rights relating to environment including giving relief and compensation for damages to persons and property and matters connected with the same.

## Closure of Business in India

Investor have the following options to close or exit their businesses established in India. These include:

### Transfer of shares

Here, the investor can transfer their shares to another person or body corporate, resident or non-resident, by complying with various provisions under the Companies Act, 2013, FEMA and others as may be applicable.

For ease of doing business, the government has now allowed the transfer of shares under the automatic route instead of the approval route barring a few sectors. Earlier, the name of the transferee could not be entered in the Register of Members under the Companies Act until the form for transfer of shares (FC-TRS) had been approved by the RBI. Now, the name of the transferee can be recorded in the Register of Members as soon as the transfer is complete instead of waiting until form FC-TRS is approved.

### Voluntary Liquidation under IBC Code

Voluntary liquidation is a private process for solvent body corporates where a Liquidator is appointed to wind up the affairs of the company and make an application to the Tribunal for its dissolution. The basic requirement for this process is that either the company has no debts or will be able to pay off its debt from the proceeds of assets to be sold in the voluntary liquidation. These criteria have been put in place to ensure the company is not being liquidated to defraud any creditor.

The government has assigned additional responsibilities to the 'Corporate Person' who is responsible for preserving the records of the company after its dissolution. Simultaneously, the liquidator is also obligated to maintain records pertaining to the liquidation process for a duration of eight years. These measures aim to enhance the accountability of the directors as well as the liquidator by ensuring the accuracy of the processes adopted for the liquidation and facilitating access to records for statutory authorities in the future.

Investors/founders have multiple options to close or exit their business established in India. These include:

### Remittance of assets/liquidation proceeds to foreign shareholders by Companies under liquidation

Authorized Dealer (AD) banks allow remittances of surplus funds available with the Indian companies on directions issued by the liquidator in case of liquidation on submission of the following documents:

- Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for
- Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 2013 (this may be inferred as the 'Insolvency and Bankruptcy Code, 2016')
- In case of winding up other than by a Tribunal, an auditor's certificate stating that there are no legal proceedings pending in any Tribunal in India against the applicant or the company under liquidation, and there is no legal impediment in permitting the remittance.

### Removal of name from the records of the Registrar

The Companies Act, 2013 and the Limited Liability Partnership (LLP) Act, 2008 provide an option to exit the business by removing the name of the company/LLP from the Registrar of Companies subject to conditions mentioned in the respective Acts. It is an easy route for companies/LLPs that have not commenced any business operations since incorporation or are non-operational for a period of one year (in the case of LLPs) or two preceding financial years (in the case of companies).

Recently, the Ministry of Corporate Affairs (MCA) established a Centre for Processing Accelerated Corporate Exit (also called C-Pace) that would process the application for removal of name of companies from the records of the Registrar with an aim to facilitate and speed up the dissolution process considerably.

It is important to note that tax implications need to be evaluated for each of the exit options mentioned above.



03

## Banking and Finance

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- 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 functions<sup>1</sup>:

### 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/destroys 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 Structure

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 <sup>2</sup>	Number of banks
Public sector banks	12
Private sector banks	21
Foreign banks	45
Small Finance Banks	12
Payments Banks	4
Regional rural banks	43

## Legal Framework<sup>3</sup>

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.

## Foreign Banks in India<sup>4</sup>

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.

1. About Us, RBI, <https://www.rbi.org.in/Scripts/AboutusDisplay.aspx#MF>, as accessed on 16 July 2023

2. List of Scheduled Commercial Banks, [https://www.rbi.org.in/scripts/Bs\\_viewcontent.aspx?id=3657](https://www.rbi.org.in/scripts/Bs_viewcontent.aspx?id=3657), as accessed on 16 July 2023

3. About Us, RBI, <https://www.rbi.org.in/Scripts/AboutusDisplay.aspx#LF>, as accessed on 16 July 2023

4. Core Principles of Effective Banking Supervision, <https://www.rbi.org.in/upload/publications/pdfs/10115.pdf>, as accessed on 16 July 2023

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 has been 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 planned 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.

RBI issued circular no. RBI/2017-18/178 DBR.BP.BC. No.106/21.04.098/2017-18 dated 18 May 2018 on the Basel III Framework on Liquidity Standards – Net Stable Funding Ratio (NSFR) – Final Guidelines, thereby stipulating NSFR guidelines to ensure reduction in funding risk over a longer time horizon by requiring banks to fund their activities with sufficiently stable sources of funding in order to mitigate the risk of future funding stress. The implementation of NSFR guidelines was subsequently postponed. As per the related RBI circular no. RBI/2020-21/95 DOR.No.LRG. BC.40/21.04.098/2020-21 dated 5 February 2021 on the Basel III Framework on Liquidity Standards – Net Stable Funding Ratio (NSFR), the implementation of NSFR guidelines was further deferred and now stand effective from 1 October 2021. The RBI then issued circular no. RBI/2021-22/151 DOR.No.PRD.LRG.79/ 21.04.098/2021-22 dated 6 January 2022 on the Basel III Framework on Liquidity Standards – Liquidity Coverage Ratio (LCR), Liquidity Risk Monitoring Tools, and LCR Disclosure Standards and Net Stable Funding ratio – Small Business Customers, to align its guidelines with the Basel Committee on Banking Supervision (BCBS) standards and enable banks to manage liquidity risk more effectively, while increasing the threshold limit for deposits and other extensions of funds made by non-financial Small Business Customers from INR 50 million to INR 75 million for the purpose of maintenance of LCR.

This modification is also applicable to deposits and other extensions of funds received from Small Business Customers referred to in the RBI circular DBR.BP.BC. No.106/21.04.098/2017-18 dated 17 May 2018 on 'Basel III Framework on Liquidity Standards – Net Stable Funding Ratio (NSFR) – Final Guidelines.'



## Currency Exchange Control<sup>5</sup>

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. 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. The RBI has gradually allowed the rupee to be used to settle foreign trades and is steadily allowing the rupee to depreciate against the US dollar. This was a significant step towards making the rupee move more freely in line with market forces. 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 every financial year (i.e., from 1 April to 31 March every year).

5. Reserve Bank of India: Functions and Working, <https://rbidocs.rbi.org.in/rdocs/Content/PDFs/FUNCWWE080910.pdf>, accessed 16 July 2023

A man in a dark suit and light-colored shirt is seen in profile, looking out of a large window. The view outside shows a city skyline with various buildings under a bright sky. The image has a soft, slightly blurred quality, giving it a professional and contemplative feel. The man's face is partially in shadow, and the light from the window highlights the contours of his suit and the cityscape.

# 04

## Business Entities

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- 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 risk<sup>1</sup>.

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 necessary<sup>2</sup>.

## 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.<sup>3</sup>

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.<sup>4</sup>

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 necessary<sup>5</sup>.

1. Types of Businesses, StartUpIndia, <https://www.startupindia.gov.in/content/sih/en/international/go-to-market-guide/types-of-businesses.html>, as accessed on 16 July 2023  
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>, as accessed on 16 July 2023

3. Partnership Act, 1932, Ministry of Corporate Affairs, [http://mca.gov.in/Ministry/actsbills/pdf/Partnership\\_Act\\_1932.pdf](http://mca.gov.in/Ministry/actsbills/pdf/Partnership_Act_1932.pdf), as accessed on 16 July 2023

4. Ibid.

5. Paragraph 3.2.2 (iii) of Consolidated FDI Policy 2020, Department for Promotion of Industry and Internal Trade, <https://dpiit.gov.in/policies-rules-and-acts/policies/foreign-direct-investment-policy>, as accessed on 16 July 2023

## Limited Companies

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

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

### Private Limited Company<sup>6</sup>

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 company<sup>7</sup>. 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, <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>, as accessed on 16 July 2023

7. Section 2(71) of the Companies Act, 2013, <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>, as accessed on 16 July 2023

## Trusts<sup>8</sup>

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 can:

- 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 Office<sup>9</sup>

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. Foreign entities that want to set up a LO in India are required to submit their application (Form FNC) to the Foreign Investment Division of the RBI through an Authorized Dealer bank.

8. Indian Trusts Act, 1882, Income Tax Department, <https://www.incometaxindia.gov.in/pages/acts/indian-trusts-act.aspx>, as accessed on 16 July 2023

9. 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](https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10404), as accessed on 16 July 2023



## Branch Office<sup>10</sup>

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 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 Office<sup>11</sup>

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

<sup>10</sup>. Ibid.

<sup>11</sup>. 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](https://www.rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10404), as accessed on 16 July 2023

- 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.

If the applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, the North-East region, or Andaman and Nicobar Islands, the applications shall be processed in consultation with the Government of India.

## Wholly-Owned Subsidiary (WOS)/Joint Venture

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 company.<sup>12</sup>

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.<sup>13</sup>

12. FAQs on Nature of LLPs, Ministry of Corporate Affairs, <https://www.mca.gov.in/MinistryV2/natureoflimitedliabilitypartneshiplp.html>, as accessed on 16 July 2023

13. Consolidated FDI Policy 2020, Department for Promotion of Industry and Internal Trade, [https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020\\_0.pdf](https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_0.pdf), as accessed 16 July 2023

A close-up photograph of a person's hand holding a yellow pencil, poised over a document. The document features a large blue triangle and some text. The background is blurred, showing a plaid shirt. A semi-transparent purple box covers the bottom half of the image, containing the chapter number and title.

# 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 steps<sup>1</sup>:

### 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 suitable names, up to a maximum of two names, indicative of the main objectives of the company. The proposed name should not resemble the name of any other company or LLP 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 incorporation 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)<sup>2</sup>**

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)
- d. Profession Tax

1. Steps to be taken to incorporate a new company, MCA, <https://www.mca.gov.in/MinistryV2/SPiCePlusFAQs.html>, as accessed on 16 July 2023

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 Capital<sup>3</sup>

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.

## Directors<sup>4</sup>

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>, as accessed on 16 July 2023

4. The Companies Act, 2013, Ministry of Corporate Affairs, <http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>, as accessed on 16 July 2023



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 their 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 them, 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 their 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 they were removed by the appointment of another director in their place but a special notice is required. The director so appointed shall hold office until the date up to which their predecessor would have held office if they 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 their 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 their tenure even after their 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 of Association confer such powers, subject to certain conditions listed below:

- 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.

## Duties of Directors

### Fiduciary Duties<sup>5</sup>

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 their duties with due and reasonable care, skill and diligence and shall exercise independent judgment;
- Not get involved in a situation in which they 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 themselves or to their relatives, partners, or associates, and if found guilty of making any undue gain, they shall be liable to pay an amount equal to that gain to the company;
- Not assign their 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.

5. Section 166 of the Companies Act, 2013, Ministry of Corporate Affairs, <http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>, as accessed on 16 July 2023

### Compliances by Directors under the Companies Act, 2013

- Obtain a Director Identification Number (DIN);
- Give a declaration that they are not disqualified to become a director under the Act;
- Disclose their interest in any company or body corporate, firms, or other association of individuals 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 their 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 Directors<sup>6</sup>

**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)<sup>7</sup>:** 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 Meeting<sup>8</sup>:** 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.

6. Section 166 of the Companies Act, 2013, Ministry of Corporate Affairs, <http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>, as accessed on 16 July 2023

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 wooden gavel with a brass band, resting on a white document. A silver pen lies horizontally next to the gavel. The bottom portion of the image is covered by a semi-transparent purple rectangle, which serves as a background for the text.

# 06

## Financial Reporting and Audit Requirements

- Financial Reporting Requirements
- Applicability - Companies
- Audit Information
- 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 <sup>#</sup>
Proprietorship	Yes <sup>1</sup>	Income Tax Act, 1961	Cash basis of accounting/ 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 <sup>2</sup>	1. Without audit: Income Tax Return due date: 31 July* 2. With audit: Tax Audit due date: 30 September  Income Tax Return due date: 31 October**
Partnership Firm	Yes	Income Tax Act, 1961	Cash basis of accounting/ Accounting Standards as issued by the ICAI	Applicable only if the turnover exceeds the limits specified under the relevant statute <sup>3</sup>	1. Without audit: Income Tax Return due date: 31 July 2. With audit: Tax Audit due date: 30 September  Income Tax Return due date: 31 October
Limited Liability Partnership	Yes	Limited Liability Partnership Act, 2008	Cash basis of accounting/ Accounting Standards as issued by the ICAI	Only if the turnover exceeds the limits specified under the relevant statute <sup>4</sup>	Six months from the end of the financial year

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.  
5. The requirements have been stipulated by the Securities Exchange of Board of India (SEBI)

Types of entities	Preparation of financial statements mandatory or not	Relevant statute*	Reporting standards of accounting records	Remarks	Reporting timeline#
Listed 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 <sup>5</sup> . 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
Unlisted Public Company	Yes	Companies Act, 2013	Accounting Standards or Ind AS <sup>^</sup> 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 <sup>6</sup>	Six months from the end of the financial year.
Private Company	Yes	Companies Act, 2013	Accounting Standards or Ind AS <sup>^</sup> 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	Six months from the end of the financial year.

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

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

8. 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.

Types of entities	Preparation of financial statements mandatory or not	Relevant statute*	Reporting standards of accounting records	Remarks	Reporting timeline#
Charitable Trust	Yes	Relevant Trust Act and Income Tax Act, 1961 <sup>7</sup>	Cash basis of accounting/ Accounting Standards as issued by the ICAI		1. Without audit: Income Tax Return due date: 31 July  2. With audit: Tax Audit due date: 30 September  Income Tax Return due date: 31 October
Societies	Yes	Respective Society Act and Income Tax Act, 1961	Cash basis of accounting/ Accounting Standards as issued by the ICAI		1. Without audit: Income Tax Return due date: 31 July  2. With audit: Tax Audit due date: 30 September  Income Tax Return due date: 31 October <sup>8</sup>
Liaison Office/ Branch Office/ Project Office	Yes	Companies Act 2013, Foreign Exchange Management Act, Insurance Regulatory and Development Act 1999	Accounting standards as notified under the Companies Act, 2013		Six months from the end of the financial year.
Banks	Yes	Banking Regulation Act, 1949	Ind AS <sup>^^</sup> 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.



Types of entities	Preparation of financial statements mandatory or not	Relevant statute*	Reporting standards of accounting records	Remarks	Reporting timeline#
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	60 days/within 6 months from the end of the financial year from the end of the financial year

#Timeline for submission of financial information with relevant statutory authorities.

\* 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.

\*\* The due date for filing the Tax Audit report in case of international or specified domestic transactions as per Sec. 92E is 31 October whereas the Income Tax Return due date is 30 November.

### ^ 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.

### ^^ Ind AS

The RBI has notified the deferment of implementation of Ind AS till further notice on 22 March 2019.

## Applicability – Companies

- Currently, it is mandatory for the following types of companies to follow the Indian Accounting Standards:
  - 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
  - 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

- It is mandatory for NBFCs falling within the categories mentioned below to follow the Indian Accounting Standards:
  - NBFCs 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
- 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

The date of implementation of Ind AS by insurance companies has not yet been notified.

## 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<sup>#</sup>

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

<sup>#</sup>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.
9. The company shall keep such books of account or other relevant papers available **in an electronic mode**. Such books of account and other relevant books and papers maintained in electronic mode shall be retained completely in the format in which they were originally generated, sent, or received, or in a format which shall present accurately the information generated, sent, or received, and the information contained in the electronic records shall remain complete and unaltered.

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 <sup>9</sup>	Timeline	Applicability
Audit under Section 139 of the Companies Act, 2013: Statutory audit <sup>##</sup>	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 <sup>10</sup>
Tax audit certification	30 September in case transfer pricing regulations are not applicable, else 30 November	(refer footnote 9 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. 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
  - iii. Any body corporate at any point of time during the financial year less than INR 250 million

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

10. 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

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- 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
- Planning Points for Foreign Investors

## 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 follows<sup>1</sup>:

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 31 October 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.incometaxindia.gov.in/Pages/acts/taxation-laws-amendment-act-2019.aspx>, as accessed on 17 July 2023



- 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.

- Presumptive Taxation

The law also provides a presumptive taxation regime to small and medium enterprises wherein a certain percentage of the turnover is claimed as deemed total income from tax purposes.

- a. In case of business (other than agency and commission business), 8% or more of the turnover can be claimed as total income of the assessee. The said provisions are applicable if the turnover does not exceed INR 20 million.

Furthermore, a reduced rate of 6% is applicable if the transactions (both receipts and payments) in cash does not exceeds 5% of the total transaction value. In such cases, the provisions of presumptive taxation are available for turnover up to INR 30 million

- b. In case of profession, 50% or more of the turnover can be claimed as total income of the assessee. The said provisions are applicable if the turnover does not exceed INR 5 million.

Furthermore, if the transactions (both receipts and payments) in cash does not exceed 5% of the total transaction value, the provisions of presumptive taxation are available for turnover up to INR 7.5 million.

The Finance Act 2023 has not altered the tax rates applicable for corporates, and the same remains in line with rates announced in Finance Act 2021.

The tax rate applicable for FY 2023-24 in case of domestic companies not opting for the beneficial regime and having a turnover or gross receipts in FY 2021-22 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 2023-24 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 2021-22)	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 2021-22)	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 2024

### 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. Furthermore, Finance Act 2022 has specified that dividend received from a foreign company is taxable as per rates applicable to the recipient company and not at a flat rate of 15%
- f. 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: <ul style="list-style-type: none"> <li>• Business controlled in India or profession set up in India</li> <li>• Any other source</li> </ul>	Taxable	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-resident<sup>2</sup>.

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 Act<sup>3</sup>:-
 

\*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. The threshold to determine SEP of a non-resident is given below:

1. Revenue-linked condition: threshold of INR 20 million
2. User-linked condition: threshold of 300,000 Indian users.

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.

### Goodwill not eligible for depreciation

Finance Act 2021 has stated that the goodwill of a business or a profession is not a depreciable asset and hence the same is not eligible for depreciation. However, it has been stated that the cost of such goodwill will be allowed as a deduction as and when such goodwill is sold/transferred.

### 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, the Finance Act 2022 amended the definition of 'Royalty' and made 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 (not being income which is already chargeable to tax as royalty/fees for technical services read with the relevant tax treaty) 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. An exception to the above rule is in the case of payments, due to entities registered as MSMEs. When there is a delay in payment to entities registered as MSMEs, as per the MSME law, the deduction for such expenses is allowed in the year in which the payment is actually made.

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., tax-free interest 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.

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.

### Depreciable assets

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:

<b>First Year:</b>	XXX
Cost of the asset at the time of acquisition of assets	XXX
Less: Depreciation as calculated based on the above rates	XXX
<b>Closing WDV of the block of assets</b>	XXX
<b>Subsequent year:</b>	
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
<b>WDV for the purpose of calculating depreciation</b>	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.

A new definition has been inserted by Finance Act 2021 to define the term 'liable to tax' to mean that there is an income tax liability on a person under the law of his country for the time being in force and also includes a person who has subsequently been exempted from such liability under the law of his country. This term will have a crucial impact on deciding cases where treaty benefits are to be granted.

## 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.

With effect from 1 April 2023, gains on Market Linked Debentures (MLD) and debt mutual funds are to be treated as deemed short-term capital gains and shall be taxed accordingly. Grandfathering has been provided to debt mutual funds but the same is not extended to MLDs.

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.

The Finance Act, 2020 amended 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, Section 49 (2AG) provides 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 including MLDs and debt mutual funds	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	Infinite
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 determining 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', (SDT) under the purview of transfer pricing, to mitigate tax arbitrages where transactions are carried out between two related Indian entities (and both of them enjoy tax holidays or preferential rates of taxes).

**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
- Sale of manufactured goods, whereby the terms, conditions, and prices are influenced by the other party

- Complete/absolute dependence of one entity's business on intellectual property rights owned by another party, etc.

### Transactions Covered

The regulations cover (i) all international transactions and (ii) certain specified domestic transactions (which may result in a tax arbitrage) in case the value exceeds INR 200 million.

International transactions would include routine transactions relating to the purchase and sale of goods and services, as well as transactions involving business restructuring, intangibles, goodwill, corporate guarantee, overdue debts, capital financing transactions, cost contribution arrangements, free of cost services, etc.

SDTs would include cases of inter-unit transfer of goods and services, which enjoy tax exemptions/deductions for carrying out eligible activities/businesses as well as transactions with new manufacturing companies having lower effective corporate tax rate (vide Section 115BAB). Initially, the threshold for the applicability of SDT was INR 50 million. That has been increased to INR 200 million.

Furthermore, in India there is also a concept of deemed international transactions which covers transactions with third parties (whether resident or not) under the ambit of transfer pricing if:

- There exists a prior agreement in relation to such a transaction between the third party and the associated enterprise, or;
- The terms of such transactions are determined in substance between the third party and the associated enterprise.

### Reporting and Compliance

Obtaining an accountant's certificate in the prescribed format is mandatory and would have to be filed on or before the prescribed due date<sup>4</sup> 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.

4. Currently being 31 October, whereas formerly, it was 30 November.

### 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 regulations do not give preference to any specific method or methods. 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.

### Usage of multiple year data and range

To enhance the reliability of the comparability analysis, taxpayers need to examine multiple year data as opposed to single year data in order to evaluate factors that influence transfer pricing, such as long-term arrangements, business/product life cycles, etc.

The adoption of the arm's length range and allowing the usage of multiple year data and a range of comparable results (35th to 65th percentile) has aligned the transfer pricing rules to global practices, to a certain extent.

However, if the dataset contains less than six comparability data points, taxpayers need to use the arithmetical mean to ascertain the ALP, wherein a tolerance range of 1% for 'wholesale trading' and 3% for all other transactions is also allowed vis-a-vis the ALP. 'Wholesale trading' has also been defined to include:

- Where the purchase cost of finished goods is at least 80% of the total cost of such trades; and
- The average monthly closing inventory of such goods must be 10% or less of sales from such trading activities

### Extensive Transfer Pricing Documentation (Three-tiered documentation approach)

The transfer pricing documentation requirements have been substantially revised to align with Action Plan 13 of the OECD BEPS Project, in which a three-tiered documentation (viz. Country by Country Report (CbCR), Master File, and Local File requirements) was introduced.

- Local File: The requirement of maintaining prescribed documentation would be attracted only in cases wherever aggregate value of international transactions exceed INR 10 million for the year. Furthermore, there is no specific format prescribed for documentation, but an indicative list to be included has been prescribed. A taxpayer (falling within the thresholds above) is required to keep contemporaneous documentation (in the English language) for demonstrating the arm's length nature of the international transactions and SDTs (collectively referred to as a related party transaction). The record-keeping (retention of documentation) should be for a period of 8 years from the end of the relevant year of assessment. For comparability analysis, the taxpayer can use publicly available databases (Indian and overseas as relevant for the analysis) to arrive at an ALP, and appropriate adjustments need to be made if necessary. The Indian databases widely used are maintained by private companies, while the corporate filings of companies are available on the public portal, namely, the Ministry of Company Affairs (MCA).
- Additionally, 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 CbCR, in addition to the current transfer pricing documentation (local file) requirements in India.

**Master File- Rule 10DA:** The information to be captured in the 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"> <li>Whether the entity has entered in international transactions</li> <li>Threshold applicability</li> <li>Whether the entity is resident or not</li> </ul>	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 64 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.

## 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, Finance Bill (No. 2) of 2019 provided certain clarifications regarding the effective implementation of these provisions, which are given below:

- 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.

## Section 94B - Limitation of interest benefit (Deduction)

In conformance with OECD BEPS Action Plan 4, the Finance Act, 2017 introduced Section 94B "Limiting Base Erosion Involving Interest Deductions and Other Financial Payments" where an Indian company or PE of a foreign entity as a borrower pays interest exceeding INR 10 million in respect of a debt issued/ guaranteed (implicit or explicit) by a non-resident AE. The provisions intend to disallow interest expense

in 'excess' of 30% of the earnings before interest, tax, depreciation, and amortization, subject to actual interest expense. However, the same shall be available to be carried forward for a period of 8 years and will be allowed as a deduction in subsequent years. The above restriction is not applicable to banking and insurance companies.

## Penalty

In case of any lapses/adverse inferences drawn by the transfer pricing officers, penalties linked to the value of transactions are attracted. The penalties, circumstances under which they shall be attracted, and their quantum are mentioned below:

Nature of penalty	Penalty
Failure to maintain documentation;	2% of value of the international transaction entered into between related parties
Failure to furnish documentation to tax authorities, when called for; and	
Failure to disclose a transaction in the Chartered Accountant's report (Form 3CEB)	
Failure to furnish Chartered Accountant's report (Form 3CEB)	INR 100,000
For under-reporting of income	50% of the amount of tax payable on the under-reported income
For misreporting of income including failure to report any international transaction or related material facts	200% of the amount of tax payable on the misreported income
Failure to furnish the Master File; and	INR 500,000
Inaccurate information filed under the CbCR	
Failure to furnish the CbCR or further information as called for	INR 5000-50,000 per day depending upon the period of delay



### Safe Harbor provisions

In existence since 2013, Safe Harbor Provisions 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 specific tax year/financial year and currently, the latest provisions have been pronounced for FY 2020-21. It is yet to be prescribed whether the existing Safe Harbor Provisions would continue to be valid for FY 2021-22, or if there are any other prescribed rates.

### Advance Pricing Agreements (APA)

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.

In March 2015, the Central Board of Direct Taxes (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 its first Bilateral APA (BAPA) with Japan, which was to be valid for 5 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.

Provisions to convert Unilateral APAs (UAPAs) to BAPAs (subject to the satisfaction of certain conditions) are also available, and, since FY 2012-13, 42 Unilateral APAs have been converted under the same.

It should be noted that the total number of applications since inception filed till 31 March 2019 stood at 1155, which consisted of 944 UAPAs and 211 BAPAs. Basis the latest press release published on 31 March 2022, the CBDT announced that the total APA count has increased to 421 since inception. Despite severe economic and social disruption caused by the COVID 19 pandemic, the number of APAs signed has increased from 57 APAs in FY 2019-20, to 31 APAs in FY 2020-21, and now 62 APAs in FY 2021-22<sup>5</sup>.

Furthermore, attribution of profit to a Permanent Establishment (PE) has also been included under the purview of APAs entered into on or after 1 April 2020 with a similar option for roll-back.

5. Signing of 62 Advance Pricing Agreements by CBDT in FY 2021-22, Press Releases, Income Tax Department, <https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1068/>

Press-Release-Signing-of-62-Advance-Pricing-Agreements-by-CBDT-in-FY-2021-22-dated-31-03-2022.pdf, as accessed on 14 July 2023

## 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) <sup>6</sup> , Registrar of Companies (ROC) and local registrations	RBI, ROC and local registrations	RBI <sup>7</sup> , ROC and local registrations	ROC and local registrations
Rate of tax <sup>8</sup>	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) <sup>9</sup> - 15% of adjusted book profits.	Normal tax rate - 30% of net taxable income.  Companies with total turnover in FY 2020-21 less than INR 4 billion: 25%  Certain manufacturing companies foregoing specific deductions - 25%  MAT - 15% of adjusted book profits.  <b>Concessional Tax Regime<sup>10</sup>:</b> 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) <sup>11</sup> - 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, at a broad level, the corporate tax rate for an Indian company is reduced to 22%.

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

7. Only for few sectors, where FDI is permitted under the approval route

8. Excluding surcharge and Health and education cess.

9. 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

10. The Taxation Laws (Amendment) Act, 2019, Income Tax Department, <https://www.incometaxindia.gov.in/Pages/acts/taxation-laws-amendment-act-2019.aspx>, as accessed on 14 May 2023

11. 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 <sup>12</sup>	Not Applicable	Not applicable	10% on the capital gain exceeding INR 100,000 <sup>13</sup> or 20% <sup>14</sup>	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%

12.Excluding surcharge and Health and education cess.

13. 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)

14.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 fulfilment 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%. In case such monies are borrowed after 1 July 2023, the rate would be 9%. The concessional rate of 5% would apply on interest on long-term bonds 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 held for more than 36 months 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.
- Distributions made by a business trust shown as repayment of debt in excess of issue price of the unit would be taxable in the hands of the unit holder as income from other sources. Such income would be liable to withholding tax 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)**<sup>15</sup>

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 has 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

<sup>15</sup> This income would be taxable in India based on whether or not the non-resident has a residence or place of business in India or has rendered services in India.



exempt from TDS requirements. This would be provided by issuing the appropriate notification.

- 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 tax<sup>16</sup>
- 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.
- In order to incentivize the set up of fund managers of offshore funds in the IFSC, Finance Act 2020 has amended Section 9A for enabling the Central Government to relax/modify the specified conditions, where the fund manager is located in an IFSC and its operations are commenced on or before 31 March 2024.
- In order to boost the undertaking of aircraft or ship leasing activities in IFSCs, Finance Act 2020 introduced a new Section 10(4F) for providing exemption to any royalty income earned by a non-resident from lease of an aircraft to a unit in an IFSC. The exemption is subject to the fulfilment of certain specified conditions.
- Dividend received by an aircraft leasing unit in an IFSC from a company which is also engaged in aircraft leasing activity shall be exempt.
- Capital gains from the transfer of equity shares of an IFSC entity engaged in aircraft leasing and commencing operations on or before 31 March 2026 shall be exempt, subject to conditions.

<sup>16</sup> This amendment has been applicable from 1 April 2016.

- Dividends received from a unit in IFSC shall be taxable at a concessional income tax rate of 10% subject to certain conditions.
- Relocation of a specified offshore fund to an IFSC shall be tax neutral if such transfer takes place before 31 March 2025 subject to certain conditions
- Income derived by non-residents from transactions in offshore derivative instruments entered into with an offshore banking unit of an IFSC shall be exempt subject to fulfilment of conditions by such offshore banking unit
- Income of non-residents from a portfolio of securities, financial products, funds, etc. from an account maintained with an offshore banking unit of an IFSC shall be exempt
- With effect from assessment year 2023-24, an offshore banking unit of a foreign bank in Special Economic Zone (SEZ) will enjoy a tax holiday period of 10 years (100% of its income from specified sources shall be exempt). Furthermore, an IFSC unit can apply for the tonnage tax scheme under the Income Tax Act within three months from the date on which the tax holiday period ends.
- Shares issued by a private company to a Category I or II AIFs located in an IFSC will not be subjected to angel tax provisions under the Income Tax Act .
- 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. However, no exemption will be allowed to non-filers of income tax return with effect from FY 2023-24.
  - For SEZ developers: Income tax exemption on income for a block of 10 years in 15 years where the development of an SEZ has begun on or before 31 March 2017.
- 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.

### 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).

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 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 1 billion in any year in which deduction is claimed.
- The taxpayer will have the option of claiming this deduction for three consecutive years from a period of ten years starting from the year of incorporation of the start-up<sup>17</sup>. 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.
- Temporary relief has been granted until 30 September 2023 for non-residents that do not have a PAN in India and are not required to have a PAN in India. Such non-residents can continue to provide Form 10F in physical form until the aforesaid date.
- These changes entail additional compliance to be undertaken by the non-resident:
  - Obtaining PAN in India.
  - Obtaining a Digital Signature Certificate in India.
  - Filing of income tax returns (once treaty benefit is availed, filing of tax returns in India is mandatory) and undertaking transfer pricing compliances, if applicable.
- Another critical amendment under the Indian tax laws pertains to treatment of capital gains from the sale of Market Linked Debentures (MLD) or units of Specified Mutual Funds (where investment in equity shares of domestic companies is less than 35%). With effect from 1 April 2023, any capital gains from the sale of MLD or units of a Specified Mutual Funds shall be treated as short term capital gains. Units of Specified Mutual Fund acquired prior to 1 April 2023 are grandfathered.

### Other Recent Developments

- With effect from 1 April 2023, the tax rate on income in the nature of royalty and FTS earned by non-residents has been increased from 10% to 20% as per the ITA.
- As a result of this amendment, the gap between rates of tax on income under the ITA and under most tax treaties has widened. As a result, many non-residents would prefer to avail the tax rates as per tax treaties wherever the same are beneficial.
- To avail tax treaty benefits, a non-resident is required to have a Tax Residency Certificate (TRC) and a self-declaration in Form 10F for information which is not available in the TRC. However, the Indian tax authorities have now mandated e-filing of Form 10F along with Tax Residency Certificate (TRC) on the income tax website except in certain cases where all the prescribed information is mentioned in the TRC.

A photograph of a man from behind, wearing a light blue and white striped long-sleeved shirt. He has his hands clasped behind his head, and a black watch is visible on his left wrist. He is looking out a large window, with a bright, slightly blurred view of the outdoors. The image has a purple gradient overlay at the bottom.

# 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:<sup>1</sup>

- 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 India<sup>2</sup>.

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 comes on visit to India and who has been in India for a period exceeding 120 days or more but less than 182 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.incometaxindia.gov.in/pages/acts/income-tax-act.aspx>, as accessed on 14 July 2023

2. FAQs on Provisions useful for non-residents, Income Tax Department, <https://www.incometaxindia.gov.in/Pages/faqs.aspx>, as accessed on 14 July 2023

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.

- 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, investment in 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.

## 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 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.

Finance Act 2021 inserted a new Section 194P which provided conditions for exempting senior citizens aged 75 years and above from filing Income Tax returns. This Section became applicable on 1 April 2021

For instance, the Finance Act, 2022 has 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 2023 has introduced a new tax regime that individuals, Hindu Undivided Families (HUFs) AOP, BOI, can opt for, instead of the existing structure. The salient features of the new regime are as follows:

The new tax rates will be applicable if the individual,

Income	Tax Rate
Up to INR 3,00,000	Exempt
INR 300,001 to 600,000	5%
INR 600,001 to 900,000	10%
INR 900,001 to 1.2 million	15%
INR 1.2 million to 1.50 million	20%
Above INR 1.5 million	30%
Above INR 1.5 million	30%

HUF, Associations Of Persons (AOPs), or Bodies Of Individuals (BOI) complies with all the points mentioned below:

- Forego all deductions (excluding standard deduction of INR 50,000) and exemptions such as House Rent Allowance, interest on housing loan, PPF and other Section 80C investments, mediclaim, etc. However, they are entitled to a deduction in respect to employees' contribution to a pension scheme. No loss shall be allowed to be set off carried from earlier years if such loss pertains to any specific deductions 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).

The surcharge rate under the new regime has been pegged to 25% in cases where total taxable income exceeds INR 25 million.

Furthermore, it has been clarified that the new regime will operate as the default regime and taxpayers will have a choice to specifically opt for the old regime, if required.

The concept of marginal relief is also available in case of persons opting for the new regime and a rebate under Section 87A is allowed up to 100% of the total tax liability or INR 25,000, whichever is less.

### 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](http://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 amount to the payee. The TDS rate would depend on the nature of the income earned by the individual. For example, TDS on 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.

### Aadhaar-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. PAN holders who link PAN-Aadhaar between 1st July 2022 to 30th June 2023 must pay a penalty of Rs.1,000. PAN card will become inoperative from 01st July 2023 if PAN holders do not link it with their Aadhaar card.<sup>3</sup>

### 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.

3. <https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1131/PressRelease-Last-date-for-linking-of-PAN-Aadhaar-extended-28-3-23.pdf>

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.

Furthermore, in the case of eligible start-ups, the tax on ESOP is to be paid within 14 days from the below mentioned events, whichever triggers at the earliest:

- a. After the expiry of a period of 48 months from the end of relevant assessment year in which they are issued
- b. From the date of sale
- c. From the date the assessee ceases to be an employee of the employer who allotted such shares or security

## 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/Aadhaar.

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 themselves 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 <https://incometaxindia.gov.in/Pages/tax-services/file-income-tax-return.aspx>

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.



A man wearing a grey flat cap and a blue V-neck sweater over a checkered shirt is standing in a grocery store. He is holding a clear plastic bag of snacks and looking at it. The background shows shelves stocked with various packaged goods.

09

# Indirect Taxation

- **Customs Duty**
- **Goods and Services Tax (GST)**

## 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/customs bonded warehouse.

Customs Duty comprised of the following elements:

- Basic Customs Duty (BCD) (typically ranging between 10% to 40%)
- Social Welfare Surcharge (SWS) (10% on BCD)
- Integrated GST (IGST) (same as GST rate applicable on local supply, in lieu of Countervailing Duty and Special Additional Duty)
- Compensation cess (Applicable on a few goods ranging from 1% to 290%) depending on the nature of the goods

Furthermore, 'Health Cess' at the rate of 5% of the assessable value is leviable on the import of medical equipment falling under Chapter Headings 9018, 9019, 9020, 9021 and 9022 (such as ECG, ultra-sound scanner, etc.), whereas 'Agriculture Infrastructure and Development Cess' at varying rates is applicable on the import of gold, silver, alcohol beverages, apples, coal, etc.

With a view to protecting the domestic industry from unfair injury, Anti-Dumping Duty (ADD)/Safeguard Duty (SD) is imposed on the import of notified goods (such as steel products, jute products, tiles, etc.) from specified countries (such as China PR, Vietnam, Korea PR, Nepal, etc.)

BCD, SWS, Health cess, and ADD/SG are not available as input tax credit. However, credit can be availed in respect of IGST and Compensation Cess under the GST Law (subject to the fulfilment of certain conditions and documentation requirements).

In addition to the above, export duties are levied on a limited number of products such as leathers, iron ores and concentrates, raw sugar, coffee, tea, etc.

The Customs Law provides for the valuation of imports, prescribing the declared transaction value as the assessable value for the purpose of calculating the applicable Customs Duty, where price is the sole consideration, and the buyer and seller of goods are not related. Certain inclusions are prescribed such as the amount paid or payable for costs and services such as commissions and brokerages, engineering, design work, royalties and license fees, insurance, etc.

Imports from a related seller may be subjected to an investigation by a special valuation branch to determine whether or not the circumstances surrounding the sale and price thereof have been influenced by their relationship. However, certain exceptions have been prescribed in this regard.

## 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 2017. 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/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 liability to pay GST falls upon the recipient of supply.
- **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)

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.<sup>1</sup>

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

1. 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>, as accessed on 1 April 2023

certain restrictions. The ITC availed is eligible to be utilized as a set-off against the payment of taxes, subject to prescribed restrictions<sup>2</sup>.

- **Mismatch of ITC:** A stringent mechanism<sup>3</sup> has been put in place to ensure that ITC availed by the recipient matches with the corresponding GST disclosed and paid by the supplier(s). This is intended to encourage companies to source their inputs only from GST-compliant businesses, which in turn would help detect and minimize tax frauds.
- Furthermore, ITC of supplies by newly registered vendors may be restricted for a specific time period.
- **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:** Businesses having turnover above INR 50 million<sup>4</sup> in a financial year are required to comply with e-invoicing provisions. Accordingly, they are required to incorporate a unique Invoice Reference Number (IRN) and QR Code generated online on their B2B and export invoices. While e-invoicing is not applicable to B2C supplies, taxpayers having turnover more than INR 5 billion are required to generate a dynamic QR Code for enabling digital payments. E-invoicing is currently prevalent in Brazil, China, South Korea, etc.
  - **Compliances:** Compliance have been simplified through the harmonization of tax rates, procedures, and allied laws. A taxpayer is required to file monthly/quarterly GST returns disclosing their outward supplies, availment of ITC, and discharge of applicable tax liability. Furthermore, companies having an aggregate turnover of more than INR 20 million are required to comply with annual filings, while those with turnover more than INR 50

million should additionally reconcile their books of accounts with GST returns.

- **Valuation:** Valuation plays a paramount role in GST. The GST Law accepts the transaction value where price is the sole consideration, and the supplier and recipient are unrelated. However, in case of related party transactions, or where price is not the sole consideration, certain methods have been prescribed to derive the value of supplies. Certain additions (such as delayed payment interest) and deductions (such as discounts) have been prescribed under the GST Law.
- **Refunds:** Companies engaged in zero-rated supplies (exports out of India and supplies to SEZs) are eligible to claim a refund of GST paid thereon, or unutilized accumulated ITC, subject to certain conditions and restrictions.
- **Anti-profiteering:** An anti-profiteering measure has been 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 empowered the Competition Commission of India to decide the anti-profiteering cases<sup>5</sup> as the term of the National Anti-profiteering Committee ended 30 November 2022.

The GST regime has largely stabilized since its implementation approximately six years back. The GST regime has completed 6 years since it was introduced. Businesses did face certain issues while transitioning to GST, which was expected given the change of this magnitude. The GST Council has been receptive to representations made by the industry and has constantly announced amendments and trade facilitation measures to mitigate any adverse impact to businesses. However, the administration is now focusing on plugging the revenue leakages through special drives to weed out fake/suspicious GSTINs from the GST eco-system.

2. Applicable w.e.f. 1 January 2021

3. Vide Finance Act, 2022 w.e.f. 1 October 2022

4. Applicable w.e.f. 1 August 2023

5. Applicable w.e.f. 1 December 2022



# 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.<sup>1</sup> 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.<sup>2</sup>

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 Sabha<sup>3</sup>.

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 abrogated<sup>4</sup>.

## Industrial Relations<sup>5</sup>

The Industrial Disputes Act, 1947 (ID Act), 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 ID 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; and
- Penalties for various offenses under the ID Act

As per the Act, an 'industrial dispute' means any dispute or difference between employers and employers, 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.

The ID 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.

However, the ID Act 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, <https://labour.gov.in/constitutional-provision>, as accessed on 17 July 2023

2. About the Ministry, Ministry of Labor & Employment, <https://labour.gov.in/about-ministry>, as accessed on 17 July 2023

3. The Code on Wages, Ministry of Labor & Employment, [https://labour.gov.in/sites/default/files/the\\_code\\_on\\_wages\\_2019\\_no\\_29\\_of\\_2019.pdf](https://labour.gov.in/sites/default/files/the_code_on_wages_2019_no_29_of_2019.pdf), as accessed on 17 July 2023

4. Ratifications for India, International Labor Organization, <https://labour.gov.in/lcandilasdivision/india-ilo>, accessed on 17 July 2023

5. Acts and Rules, Industrial Relations, Ministry of Labor & Employment, <http://labour.gov.in/industrial-relations>, as accessed on 17 July 2023

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 applicability of this regulation can vary from state to state depending on the number of employees. 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 (Plantation Act), 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.<sup>6</sup>

## Industrial Safety and Health<sup>7</sup>

The Factories Act, 1948 (Factories Act), provides for the health, safety, welfare, service conditions, and other aspects of workers in factories. It applies to all factories wherein a manufacturing process is carried on by 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 legislations, such as the Shops 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 are applicable.

6. The Trade Unions Act, 1926, Ministry of Labor & Employment, <https://labour.gov.in/sites/default/files/The-Trade-Unions-Act-1926.pdf>, as accessed on 17 July 2023

7. Industrial Safety & Health, Acts and Rules, Ministry of Labor & Employment, <https://labour.gov.in/industrial-safety-health>, as accessed on 17 July 2023



## Labor Welfare<sup>8</sup>

The Contract Labor (Regulation & Abolition) Act, 1970 (Contract Labour Act), 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 Contract Labour 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; and
- Maintenance of records (register of contractors)

The<sup>9</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") was enacted to provide protection against sexual harassment of women at the workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. All establishments are covered under the POSH Act. For establishments employing less than 10 employees, a Local Committee has to be constituted to look into sexual harassment complaints under the POSH Act and thereby investigate into the matter and recommend measures to resolve it. Likewise, establishments having 10 (ten) or more employees must constitute an Internal Committee which shall look into the matter of sexual harassment under the POSH Act. Constitution of such committees shall be as per the prescription under the POSH Act. All establishments are required to comply with the mandates under the POSH Act to avoid attracting any penalties for non-compliances.

## Wages<sup>10</sup>

The Payment of Wages Act, 1936 (Payment of Wages Act), regulates the payment of wages<sup>11</sup> 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 Payment of Wages Act were not withheld by the employer and were disbursed within the prescribed time limit without any unauthorized deductions.<sup>12</sup> 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 (Minimum Wages Act), 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 (Bonus Act), provides 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 21,000<sup>13</sup> 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/she has worked for more than 30 working days in that year.

The Bonus 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.

8. Acts and Rules, Chief Labor Commissioner, <https://clc.gov.in/clc/acts-rules/acts-and-rules-0>, as accessed on 17 July 2023

9. Ministry of Women and Child Development The sexual harassment of women at workplace Prevention, Prohibition, and Redressal Act 2013 | Ministry of Women & Child Development ([wcd.nic.in](http://wcd.nic.in)) as accessed on 17 July 2023

10. Acts and Rules, Chief Labor Commissioner, <https://clc.gov.in/clc/acts-rules/acts-and-rules-0>, as accessed on 17 July 2023

11. Excludes bonus, the value of house accommodation, the contribution made by employer to pension fund/provident fund, travel allowance, special expenses, and gratuity

12. Payment of Wages Act, 1936, Chief Labor Commissioner, <https://clc.gov.in/clc/acts-rules/payment-wages>, as accessed on 17 July 2023

13. As per the Payment of Bonus (Amendment) Act, 2015, with effect from 1 April 2014, <https://labour.gov.in/sites/default/files/theemployenact1959.pdf>, as accessed on 17 July 2023



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.

The Equal Remuneration Act, 1976 (Equal Remuneration Act) provides for the payment of equal remuneration to men and women workers, and for the prevention of discrimination on the grounds of sex, against women in relation to matters of employment, and for matters connected therewith or incidental thereto. The Equal Remuneration Act is applicable to all employers covered under the Bonus Act.

The Code on Wage, 2019 (Wage Code) 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. The Wage Code 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 Wage Code 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.<sup>14</sup>

The Apprentices Act, 1961 (Apprentices Act)<sup>15</sup> 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 Apprentices Act requires employers to hire apprentices in certain designated trades as notified by the government. The Apprentices 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. The Apprentices Act makes it obligatory for employers to engage apprentices in 'designated trades' and 'optional trades' for all employers who have a workforce of 30 employees or above (sum of total regular and contract employees), across the manufacturing, services, trading sectors, etc.

## Maternity Benefits and Paternity Leave

The Maternity Benefit Act, 1961 (Maternity Benefit Act), 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.<sup>16</sup>

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

14. Employment & Training, Acts and Rules, Ministry of Labor & Employment, <https://labour.gov.in/sites/default/files/theemployementact1959.pdf>, as accessed on 17 July 2023

15. Ministry of Skill Development And Entrepreneurship (Para 1 ([apprenticeship.gov.in](https://apprenticeship.gov.in)))

16. 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), as accessed on 17 July 2023

private companies tend to have their own policies specifying the paternity benefits extended to their male employees.

## Social Security<sup>17</sup>

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) 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.

The minimum contribution as a percentage of the wage is shown below<sup>18</sup>:

Scheme	Employer's contribution (ER)	
	Contribution accounts	Administration accounts
Provident fund	Difference of EE share and Pension Contribution	0.50% [w.e.f. 1 June 2018]
Pension fund	8.33%	NA
Deposit-linked insurance fund	0.50%	0 [w.e.f. 1 April 2017]

Scheme	Employee's contribution (EE)	
	Contribution accounts	Administration accounts
Provident fund	12%/10%	0
Pension fund	Nil	NA
Deposit-linked insurance fund	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,

- The establishment or factory should already be covered and registered under the EPF Act.
- 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 15,000<sup>19</sup>

### 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.

17. Social Security, Acts, and Rules, Ministry of Labor & Employment, <http://labour.gov.in/social-security>, as accessed on 17 July 2023

18. Present Rates of Contribution, Employees' Provident Fund Organization, India, [https://www.epfindia.gov.in/site\\_docs/PDFs/MiscPDFs/ContributionRate.pdf](https://www.epfindia.gov.in/site_docs/PDFs/MiscPDFs/ContributionRate.pdf), as accessed on 17 July 2023

19. 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/FAQonSchemeFor3months.pdf](https://www.epfindia.gov.in/site_docs/PDFs/Circulars/Y2020-2021/FAQonSchemeFor3months.pdf), as accessed on 17 July 2023

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% of their basic salary + Dearness Allowance (DA), and the employer needs to contribute a similar amount. There is no upper cap on the contribution payable for an international worker.

Currently, India had signed social security agreements with 20 countries: Belgium, Germany, Switzerland, Denmark, Luxembourg, France, South Korea, Netherlands, Hungary, Finland, Sweden, Czech Republic, Norway, Canada, Japan, Austria, Portugal, Australia, Brazil, and Quebec. Six proposals are currently in the pipeline.<sup>20</sup> 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. In the case of winding up of a company which the EPF 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 (Gratuity Act), 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. The maximum amount of tax-free gratuity is currently INR 2 million. Any amount more than this prescribed limit is taxable at the hands of the recipient<sup>21</sup>. 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 (Employee Compensation Act), 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/her employment.

The Employee Compensation 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 ESI Act.

The Employees' State Insurance Act, 1948 (ESI Act), 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

20. 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](https://www.mea.gov.in/press-releases.htm?dtl/28182/Social_Security_Agreement_between_India_and_Brazil), as accessed on 17 July 2023

21. Payment of Gratuity (Amendment) Act, 2018 w.e.f 29.03.2018

families. It covers all employees including casual, temporary, and contract employees. The ESI Act applies to factories using power and employing 10 (ten) or more people, and 20 (twenty) or more people where the work is being carried on without the aid of power.

Presently, shops, hotels, restaurants, cinemas (including preview theaters), road-motor transport undertakings, newspaper establishments, and private medical and educational institutions are covered under the ESI Act. Furthermore, as per the Bombay High Court Judgment in the case of The Assistant Director, ESIC v. M/s Western Outdoor Interactive Pvt. Ltd & Others [FA No. 143 of 2012, pronounced on 11 July 2012], the ESI Act has also been made applicable to software companies considering the development of software as a 'manufacturing process' within the meaning of the provisions of the ESI Act. The existing wage limit for coverage under the Act is INR 21,000 per month (with effect from 1 January 2017).<sup>22</sup>

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 3.25% of the employee's wages, and the employee's contribution is 0.75% of his/her wages<sup>23</sup>. 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.

## 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 Shops and Establishment Act ("Shop Act") with regard to shops and commercial establishments. For example, the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 is applicable to shops and commercial establishments in Maharashtra employing 10 (ten) or more employees.

These Shop Act 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 as per the applicability which may differ from one state to another.

The Shops 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.

22. Employees' State Insurance Corporation, <http://www.esic.nic.in/coverage>, as accessed on 17 July 2023

23. Employees' State Insurance Corporation Contribution | Employee's State Insurance Corporation, Ministry of Labour & Employment, Government of India ([esic.nic.in](http://www.esic.nic.in))

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 Ministry of Commerce and Industry issued the Special Economic Zones (Fifth Amendment) Rules, 2022 vide notification dated 8 December 2022 ("SEZ Amendment Rules"), under which certain permitted category of employees of establishments within SEZs (Units). These apply to employees of Units providing Information Technology (IT) and IT-enabled services, working from home or any place outside the SEZ, until 31 December 2023. Additionally, they also apply (subject to conditions) to employees of Units who are temporarily incapacitated, travelling, and working off site that are also permitted to work from home.
- The Ministry of Labor and Employment, vide press release dated 3 April 2023, announced that they have launched the 'e-Shram portal', a national database for unorganized workers between the age group of 16 (Sixteen) – 59 (Fifty Nine) interlinked with Aadhaar. The Ministry of Labor and

Employment has taken several steps to increase registration on the e-Shram portal such as providing a multi-channel registration facility to unorganized workers across the country. The Common Services Center, which is a special purpose vehicle along with its more than 4,00,000 (four hundred thousand) village level entrepreneurs have been on boarded to provide registration facilities at the village level. In addition, the e-Shram portal has been integrated with the Unified Mobile Application for New-age Governance (UMANG) mobile application to provide on-the-go registration and updation facilities to unorganized workers.

### 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*
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%
a) TDS on long term infrastructure bonds issued between 1st July 2012 to 1st October 2014	4%
b) TDS on interest other than (a) and (b)	20%
c) TDS on long-term capital gains on specified assets	10%
d) TDS on long-term capital gains other than (d)	20%
e) TDS on short-term capital gains on listed shares and units of equity-oriented mutual funds	15%
f) TDS on dividend income	20%
g) TDS on short-term capital gains other than (f) and (g)	40%
h) Royalty and fees for technical services	20%
i) * 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 (only in the case of resident individuals)
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 (including listed securities)	10%	10%	INR 10,000
TDS on deemed dividends	30%	30%	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 (other than online gaming)	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% <sup>#</sup>	5% <sup>#</sup>	INR 5,000,000
TDS on payment of insurance commission	5% <sup>#</sup>	5% <sup>#</sup>	INR 15,000
TDS on commission or brokerage	5% <sup>#</sup>	5% <sup>#</sup>	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
TDS on purchase of goods	0.1%	0.1%	INR 50,00,000
TDS on benefit/perquisite (including benefits in kind)	10%	10%	INR 20,000
Payment on transfer of virtual digital asset	1%	1%	INR 50,000 when payment is made by a specified person and INR 10,000 when payment is made by a person other than a specified person
Net winnings from online gaming	Rates in force	Rates in force	N/A

These amendments are applicable with effect from 1 April 2023

# These amendments are introduced by The Finance Act, 2023 applicable with effect from 1 April 2023

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