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DOING BUSINESS IN INDIA - 2020

"A comprehensive treatise on business ecosystem prevalent in India"

FOREWORD

India is a vast, populous, and diverse nation encompassing many different identities, languages, cultures, and religions. India is the seventh largest country by area and the second most populous country in the world. In terms of its economic growth, India is one of the fastest growing economies of the world. However, these are intriguing times for the Indian economy. Rated as one of the most stable economies, India continues to shine amidst global gloom. Led by the Modi government, several economic, financial, and institutional reforms including the reforms leading to ease of doing business across states, have been implemented. India claiming the 63rd spot in World Bank's recently released Ease of Doing Business rankings is a testimony to this fact. Moreover, India has marked the biggest improvement recorded among 190 countries in the World Bank's 'Doing Business 2020-Reforming to create jobs' report. Furthermore, India jumped 22 ranks in last four years in the United Nation's E-Governance Index.

Increase in the economic growth in India is majorly attributed to the sweep of changes that have been ushered by the governments both at the central and state level with some of the biggest changes being:

- Introduction of a unified indirect tax law system,
- Introduction of insolvency and bankruptcy code to turn around stressed assets and improve the flow of money in the economy [primarily through banking and financial institutions],
- Stabilization of government's outlook towards imposing taxes on foreign investors, liberalization of the framework for foreign investment,
- Regulation of real estate market, which was largely considered fragmented and unorganised by enactment of the Real Estate Regulation Act [RERA],
- The state and central governments have also made changes to the various laws which deal more so with the compliances whereby they have streamlined the laws and brought them in line with the socio economic changes that have happened since the introduction of several of such laws and thus, have moved away from the age-old bureaucracy and red-tapism by removing physical interaction and interface vis-à-vis the government and progressing towards digital interfaces.

This document endeavours to lay down the fundamental legal regime regarding the conduct of business in India and resolves queries and issues normally raised by overseas investors. It is intended to act as a broad legal guide to aid your decision-making process when deciding to invest, establish business entity and carry on operations in India.

Today, when the world is looking at India as an ideal business destination, we hope that this comprehensive document will prove to be very handy and useful to all the aspirants from global business fraternity and our professional associates throughout the world in their analysis and evaluation of business ventures and in strengthening decision making process.

CA. Suresh Vyas
Managing Partner

May 25, 2020, New Delhi, India

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1. India: At a Glance

"A brief look at the India— It's languages, demography, economy, political and legal systems"

INDIA: AT A GLANCE

Profile

Area: 3,287,263 sq. km [1,269,346 sq. mi]
Location: North of the Equator
Latitude 8° 4' and 37° 6' north
Longitude 68° 7' and 97° 25' east
Capital: New Delhi
Indian Standard Time: GMT + 5:30
Telephone Country Code: +91

Geography and Climate[1]

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. Despite 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[2]

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 8 union territories and is the largest democracy in the world. The central/union government is further divided at the state and local levels.

The government is divided into three structural segments: the executive, the legislature, and the judiciary.

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

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

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

Legal System

India has one of the oldest legal systems in the world. The Constitution of India is the supreme law of the country. It gives due recognition to statutes, case laws and customary laws consistent with its dispensations. There is also a vast body of laws known as subordinate legislations 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

India is currently the second most populous country in the world, with an estimated 1.35 billion people in 2019. With around 63% of the population in the age range of 15–59 years and a median age of 29 years in 2019, India has a favourable demographic dividend. It will soon have the largest and youngest workforce in the world.

Language

The Constitution of India recognizes 22 different local languages, of which Hindi is used for official communication along with English at a national level. Other Indian languages recognized by the constitution are Assamese, Bengali, Gujarati, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telugu, and Urdu. However, according to the 2011 census, about 30 languages are spoken by more than a million native speakers, and 122 are spoken by more than 10,000 speakers. According to the 2011 census, literacy rates stand at 74.04% (82.14% for males and 65.46% for females).

Currency

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

Business Hours

Typically, a workday is 8 hours long extending, from 9am to 5pm 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[3]

India has three National days:

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

In addition, there are about 14 gazetted vacation days and 31 restricted holidays in the official calendar. These public vacation days are set by every state government each year under the Negotiable Instruments Act, 1881.

Economy

India is among the fastest growing economies in the world. It is the third largest economy in terms of gross domestic product (GDP) based on purchasing power parity (PPP) and the fifth largest by nominal GDP. The service sector has been driving economic growth in India, accounting for 55.30% of Gross Value Added (GVA) growth (at constant prices), followed by the industry sector with a 28.20% share, and agriculture accounting for 16.50%. However, agriculture still has the largest share in employment (over 40% of the total workforce), followed by services (approximately 30%).

Many new initiatives have been taken up by the government to facilitate investment and ease of doing business in the country. Noteworthy among them are initiatives such as Make-in-India, Invest India, Start-Up India and e-biz Mission Mode Project under the National e-Governance Plan. The current business-friendly government's policies are expected to further boost foreign investments, as it aims to:

- Revive growth by fuelling investments in infrastructure and manufacturing,
- Promote Foreign Direct Investment (FDI) selectively in sectors,
- Introduce administrative 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.

India's economy has grown at a strong pace in recent years owing to the implementation of critical structural reforms, favourable terms of trade, and lower external vulnerabilities. Beyond the challenges faced in November 2016 due to demonetization, currency exchange initiative and policy actions should focus on reducing labor and product market rigidities to ease firm entry and exit, expand the manufacturing base, and gainfully employ the abundant pool of labour.

Foreign trade: Total exports from India (Merchandise and Services) registered a growth of 2.13 per cent year-on-year during April 2019-February 2020 to US$ 491.64 billion, while total imports are estimated at US$ 559.45 billion.

The merchandise export stood at US$ 292.91 billion during April 2019-February 2020 and imports reaching US$ 436.03 billion for the same period.

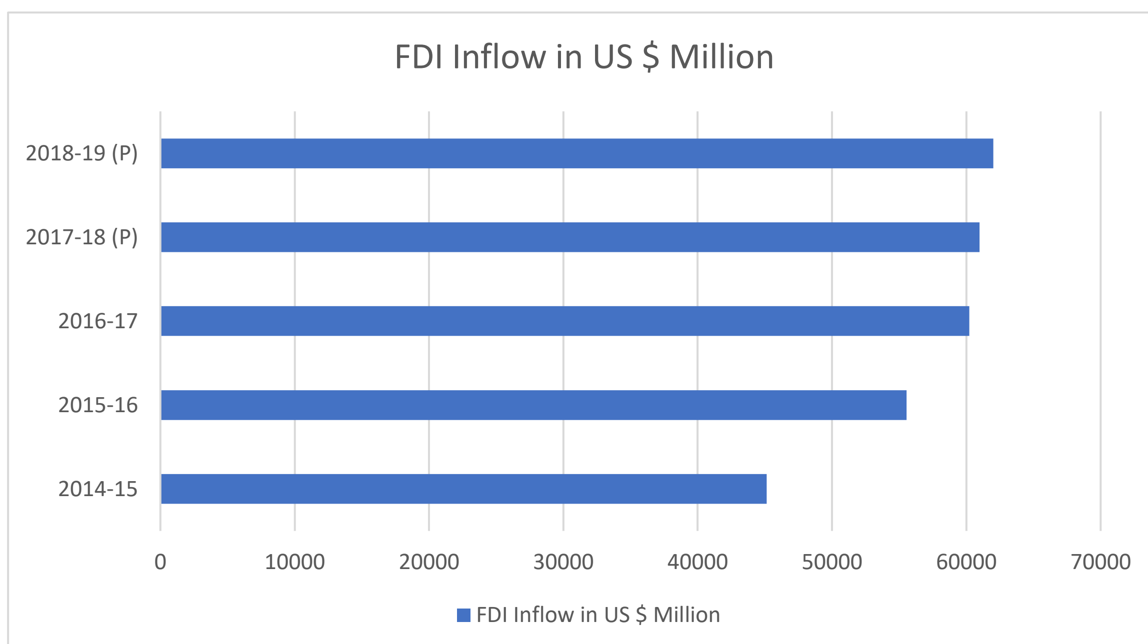
The estimated value of services export for April 2019-February 2020 stood at US$ 198.73 billion and import is US$ 123.42 billion.

India's top export commodities include gems and jewellery; mineral fuels and oils; vehicles and parts and accessories; nuclear reactors, boilers, machinery, and mechanical appliances; pharmaceuticals; chemicals; textiles and apparel; machinery; cereals; and iron and steel. These account for nearly 50% of India's exports.

Sector-Wise FDI Inflow

Detailed FDI policy on various sectors indicating therein sector-wise Foreign Direct Investment (FDI) limits is provided in 'Consolidated FDI Policy Circular of 2017', as amended from time to time, through subsequent Press Notes, which is available at the website of Department of Industrial Policy and Promotion at www.dipp.nic.in.

The sector-wise and State-wise/Union-Territory-wise details of total FDI inflow in the country is not centrally maintained. However, the financial year wise details of total FDI inflow reported in the country during the last five years is given below[4]:



Source: Reserve Bank of India [(P): Provisional]

FDI policy is an enabling policy which is uniformly applicable in the country. Government has put in place a liberal and transparent policy for FDI, wherein most of the sectors are open to FDI under the

automatic route. The Government reviews the FDI policy and makes changes from time to time, to ensure that India remains an attractive & investor friendly destination.

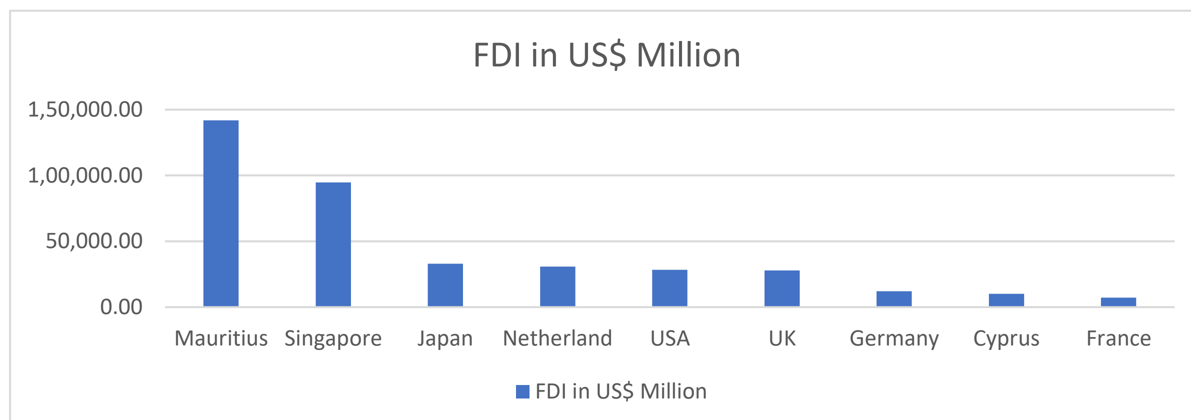
Make in India initiative was launched with the objective of facilitating investment, fostering innovation, building good quality manufacturing infrastructure, making it easy to do business and enhancing skill development. The initiative is further aimed at creating a conducive environment for investment, modern and efficient infrastructure, opening-up new sectors for foreign investment and forging a partnership between government and industry through positive mindset.

Make in India initiative has been reviewed and is now focusing on 27 sectors under Make in India 2.0. Department for Promotion of Industry and Internal Trade [DPIIT] is coordinating action plans for 15 manufacturing sectors while Department of Commerce is coordinating 12 service sectors.

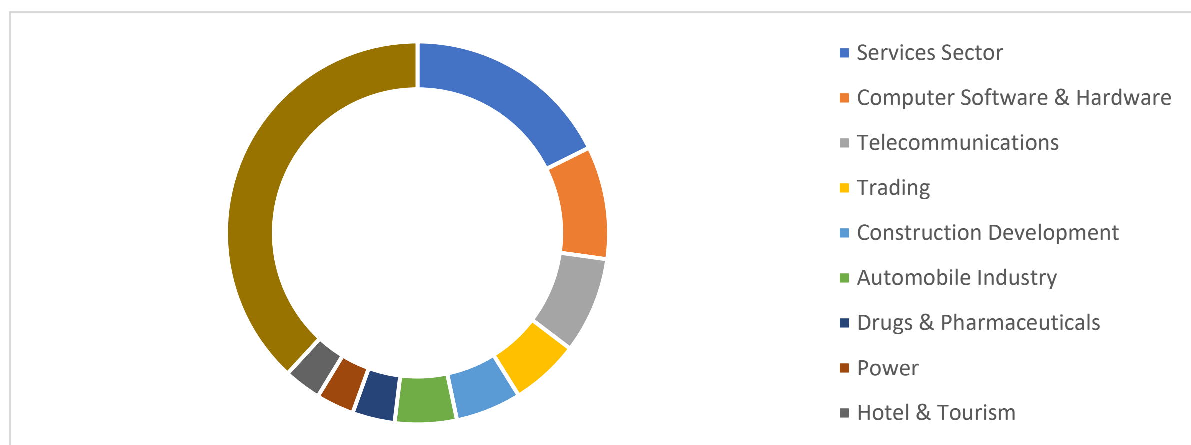
The Government of India is making continuous efforts for Investment facilitation including financial assistance to Invest India and for implementation of Make in India action plans to identify potential investors. Support is being provided to Indian Missions abroad and State Governments for organising events, summits, roadshows, and other promotional activities to attract investment in the country under the 'Make in India' banner. Investment outreach activities are being carried out for enhancing international co-operation and promoting FDI in the country.

Details of the countries that have made maximum investment through FDI equity inflow is as follows:

STATEMENT ON MAJOR COUNTRY-WISE FDI EQUITY INFLOWS FROM APRIL 2000 TO DECEMBER 2019



STATEMENT ON SECTOR-WISE FDI EQUITY INFLOWS FROM APRIL 2000 TO DECEMBER 2019



Source: This information was given by the Minister of Commerce & Industry in a written reply in Lok Sabha available at https://pib.gov.in/PressReleseDetailm.aspx?PRID=1605185

2. Government Policies & Business Regulations

"A brief look at various government initiatives aimed at supporting businesses & associated regulatory measures"

Government Policies & Business Regulations

Companies Act

The Ministry of Corporate Affairs [MCA] is primarily concerned with administration of the Companies Act 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008 & other allied Acts and rules & regulations framed thereunder mainly for regulating the functioning of the corporate sector in accordance with law. The MCA is also responsible for administering the Competition Act, 2002 to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers through the commission set up under the Act. Besides, it exercises supervision over the three professional bodies, namely, Institute of Chartered Accountants of India(ICAI), Institute of Company Secretaries of India(ICSI) and the Institute of Cost Accountants of India (ICAI) which are constituted under three separate Acts of the Parliament for proper and orderly growth of the professions concerned.

The MCA also has the responsibility of carrying out the functions of the Central Government relating to administration of Partnership Act, 1932, the Companies (Donations to National Funds) Act, 1951 and Societies Registration Act, 1980.

The MCA has a three-tier organizational structure with its headquarters in New Delhi; 7 offices of Regional Directors in Ahmedabad, Chennai, Guwahati, Hyderabad, Kolkata, Mumbai, and New Delhi; 25 Offices of Registrars of Companies; and 23 Official Liquidators in States and Union Territories of India[1]. Other statutory/ quasi-judicial bodies of the MCA include:

- The Serious Fraud Investigation Office [SFIO], which is a multi-disciplinary organization consisting of experts in the fields of accountancy, forensic auditing, law, information technology, investigation, company law, capital market and taxation. It is meant for detecting and prosecuting or recommending for prosecution of white-collar crimes/frauds.

- The Insolvency and Bankruptcy Board of India [IBBI], which oversees insolvency and bankruptcy legislation in India.

- The Competition Commission of India [CCI], administers various responsibilities assigned to it under the Competition Act, 2002.

- The National Company Law Tribunal [NCLT], which is a quasi-judicial body as per the Companies Act, 2013. Following the constitution of the NCLT, the Company Law Board [CLB] stands dissolved and all the powers of the CLB is vested in the NCLT.

- National Company Law Appellate Tribunal [NCLAT], which is appellate Body to NCLT has been notified under section 410 of the Companies Act, 2013 w.e.f. 1st June 2016.

Foreign Direct Investment [FDI]

Apart from being a critical driver of economic growth, FDI is a major source of non-debt financial resource for the economic development of India. To take advantage of relatively lower wages, special investment privileges such as tax exemptions, etc, foreign companies can establish their presence in India by incorporating a company under the Companies Act as a joint venture or a wholly owned subsidiary. A foreign company could also set up a liaison office/representative office, project office, or branch office of the foreign company, which can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000. A foreign company may also invest in a Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008, a relatively new but popular concept in India.

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 of Industrial Policy & Promotion [DIPP], Ministry of Commerce and Industry, Government of India issues a 'Consolidated FDI Policy Circular' on a yearly basis elaborating on the policy and process with respect to FDI in India. Most recently, reforms were made for FDI policy in India 2019.

FDI in most of the sectors is under the automatic route, i.e., allowed without any requirement of seeking regulatory approval prior to such investment. Thus, the process to get FDI in most sectors don't require prior approval from the Government of India [GOI]. Eligible investors can invest in most of the sectors of Indian Economy on an automatic basis.

FDI can be made through two routes that are:

- Automatic Route: Indian companies engaged in various industries can issue shares to foreign investors up to 100% of their paid-up capital in Indian companies.

- Government Approval Route: Certain activities that are not covered under the automatic route require prior Government approval for FDIs.

Procedure[2]:

Foreign Investment Facilitation Portal (FIFP) is the new online single point interface of the Government of India for investors to facilitate Foreign Direct Investment. This portal is designed to facilitate the single window clearance of applications which are through approval route. Upon receipt of the FDI application, the concerned Administrative Ministry/ Department shall process the application as per the Standard Operation Procedure (SOP).

Subsequent to the abolition of the Foreign Investment Promotion Board [FIPB] by the Government, the work of granting government approval for foreign investment under the extant FDI Policy and FEMA Regulations, has been entrusted to the concerned Administrative Ministries/ Departments.

The eleven notified sectors/activities requiring government approval are:

1. Mining
2. Defence
3. Broadcasting
4. Print Media
5. Civil Aviation
6. Satellites
7. Telecom
8. Private Security Agencies
9. Trading (Single, Multi Brands & Food Products
10. Financial services not regulated or regulated by more than one regulator/ Banking Public and Private (as per FDI Policy)
11. Pharmaceuticals

FDI Reporting[3]:

Within 30 days of receipt of money from the foreign investor, the Indian company will report to the Regional Office of Reserve Bank of India [RBI] under whose jurisdiction its registered office is located.

Within 30 days from the date of issue of shares a report in Form FC-GPR together with the following documents should be filed with the Regional Office of RBI:

- Certificate from the Company Secretary of the company accepting investment from persons resident outside India.

- Certificate from Statutory Auditors or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

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 business (other than construction development) or construction of farm houses; manufacturing of cigars, cheroots, cigarillos, and cigarettes, of tobacco or of tobacco substitutes; and activities/sectors not open to private sector investment, e.g. atomic energy and railway transport (other than construction, operation and maintenance of (i) suburban corridor projects through public-private partnership (ii) high speed train projects (iii) dedicated freight lines (iv) rolling stock including train sets, and locomotives/ coaches manufacturing and maintenance facilities (v) railway electrification (vi) signalling systems (vii) freight terminals (viii) passenger terminals (ix) infrastructure in industrial parks pertaining to railway line/sidings including electrified railway lines and connectivity to main railway line (x) mass rapid transport systems).

Depending on the nature of 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.

Sector-Wise FDI Limits[4]

Sector	% of Equity/ FDI Cap	Automatic Route	Government Approval
Agriculture & Animal Husbandry	100%	100%	
Air-Transport Services (Non-Scheduled Air Transport Service / Helicopters services/ seaplane services requiring DGCA approval)	100%	100%	
Asset Reconstruction Companies	100%	100%	
Auto-components, Automobiles	100%	100%	
Biotechnology (Greenfield)	100%	100%	
Broadcast Content Services (Up-linking & down-linking of TV channels), Broadcasting Carriage Services	100%	100%	
Capital Goods, Cash & Carry Wholesale Trading (including sourcing from MSEs)	100%	100%	
Chemicals, Coal & Lignite	100%	100%	
Construction Development, Construction of Hospitals	100%	100%	
Credit Information Companies,	100%	100%	
Duty Free Shops, E-commerce Activities	100%	100%	
Electronic Systems, IT & BPM	100%	100%	
Food Processing	100%	100%	
Gems & Jewellery	100%	100%	
Healthcare	100%	100%	
Industrial Parks	100%	100%	
Leather, Manufacturing	100%	100%	
Mining & Exploration of metals & non-metal ores	100%	100%	
Other Financial Services	100%	100%	

Petroleum & Natural gas	100%	100%	
Pharmaceuticals	100%	100%	
Plantation sector	100%	100%	
Ports & Shipping	100%	100%	
Railway Infrastructure	100%	100%	
Renewable Energy	100%	100%	
Roads & Highways	100%	100%	
Single Brand Retail Trading	100%	100%	
Textiles & Garments	100%	100%	
Thermal Power	100%	100%	
Tourism & Hospitality	100%	100%	
White Label ATM Operations	100%	100%	
Insurance & Insurance Intermediaries	100%	100%	
Infrastructure Company in the Securities Market	49%	49%	
Insurance	49%	49%	
Medical Devices	100%	100%	
Pension	49%	49%	
Petroleum Refining [By PSUs]	49%	49%	
Power Exchanges	49%	49%	
Banking - Public sector	20%		20%
Broadcasting Content Services	49%		49%
Core Investment Company	100%		100%
Food Products Retail Trading	100%		100%
Mining & Minerals separations of titanium bearing minerals and ores, Its value addition and integrated activities	100%		100%
Multi-Brand Retail Trading	51%		51%
Print Media (publishing of newspaper, periodicals and Indian editions of foreign magazines dealing with news & current affairs)	26%		26%
Satellite (Establishment and operations)	100%		100%
Airport transport services (Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline; Regional Air Transport Service)	100%	Up to 49% [100% for NRIs]	Above 49%
Banking - Private sector	74%	Up to 49%	Above 49% up to 74%
Biotechnology (brownfield)	100%	Up to 74%	Above 74%
Defence	100%	Up to 49%	Above 49%
Private Security Agencies	74%	Up to 49%	Above 49%
Telecom Services	100%	Up to 49%	Above 49%

Foreign Exchange Management Act[5]

The Government of India formulated Foreign Exchange Management Act [FEMA] to encourage the external payments and across the border trades in India. The main objective of FEMA was to help facilitate external trade and payments in India. It was also meant to help orderly development and maintenance of foreign exchange market in India. It defines the procedures, formalities, dealings of all foreign exchange transactions in India. These transactions are mainly classified under two categories -- Current Account Transactions and Capital Account Transactions.

Under the FEMA Act, the balance of payment is the record of dealings between the citizen of different countries in goods, services, and assets. It is mainly divided into two categories, i.e. Capital Account and Current Account. Capital Account comprises all capital transactions whereas Current Account comprises trade of merchandise. Current Account transactions are those transactions which involve inflow and outflow of money to and from the country/countries during a year, due to the trading/rendering of commodity, service, and income. The current account is an indicator of an economy's status.

As mentioned above, the balance of payment comprises current and capital accounts, the remainder of the Balance of Payment is Capital Account, which consists the movement of capital in the economy due to capital receipts and expenditure. Capital account recognises domestic investment in foreign assets and foreign investment in domestic.

FEMA is applicable to all parts of India and was primarily formulated to utilize the foreign exchange resources in efficient manner. It is also equally applicable to the offices and agencies which are located outside India, however, is managed or owned by an Indian Citizen. FEMA head office is known as Enforcement Directorate and is situated in Delhi.

FEMA is applicable to:

- Foreign exchange,
- Foreign security,
- Exportation of any commodity and/or service from India to a country outside India,
- Importation of any commodity and/or services from outside India,
- Securities as defined under Public Debt Act 1994,
- Purchase, sale, and exchange of any kind (i.e. Transfer),
- Banking, financial and insurance services
- Any overseas company owned by an NRI (Non-Resident Indian) to the extent of at least 60%,
- Any citizen of India, residing in the country or outside (NRI).

The Current Account transactions under the FEMA Act have been categorized into three parts which, namely

a) Transactions prohibited by FEMA,
b) The transaction requires Central Government's permission [Prior Approval or General Permission Route],
c) The transaction requires RBI's permission.

The 'Make in India'[6] Program

The Make in India initiative was launched by Prime Minister in September 2014 as part of a wider set of nation-building initiatives. It quickly became a rallying cry for India's innumerable stakeholders and partners. It was a powerful, galvanising call to action to India's citizens and business leaders, and an invitation to potential partners and investors around the world. Make in India represents a comprehensive and unprecedented overhaul of outdated processes and policies. Most importantly, it represents a complete change of the government's mindset – a shift from issuing authority to business partner, in keeping with Prime Minister's tenet of 'Minimum Government, Maximum Governance'.

The Make in India initiative has been built on layers of collaborative effort. DIPP initiated this process by inviting participation from Union Ministers, Secretaries to the Government of India, state governments, industry leaders, and various knowledge partners. Next, a National Workshop on sector specific industries in December 2014 brought Secretaries to the Government of India and industry leaders together to debate and formulate an action plan for the next three years, aimed at raising the contribution of the manufacturing sector to 25% of the GDP by 2020. This plan was presented to the Prime Minister, Union Ministers, industry associations and industry leaders by the Secretaries to the Union Government and the Chief Secretary, Maharashtra on behalf of state governments.

These exercises resulted in a road map for the single largest manufacturing initiative undertaken by a nation in recent history. They also demonstrated the transformational power of public-private partnership and have become a hallmark of the Make in India initiative. This collaborative model has also been successfully extended to include India's global partners, as evidenced by the recent in-depth interactions between India and the United States of America.

In a short space of time, the obsolete and obstructive frameworks of the past have been dismantled and replaced with a transparent and user-friendly system. This is helping drive investment, fostering innovation, developing skills, protecting Intellectual Property (IP) and building best-in-class manufacturing infrastructure. The most striking indicator of progress is the unprecedented opening of key sectors – including railways, defence, insurance, and medical devices – to substantially higher levels of Foreign Direct Investment.

The ministry has engaged with the World Bank group to identify areas of improvement in line with World Bank's 'doing business' methodology. Several workshops with Ministries and State governments have been conducted by the Department for Promotion of Industry & Internal Trade (DPIIT) and World Bank for Business Reforms Action Plan.

An Investor Facilitation Cell [IFC] dedicated for the Make in India campaign was formed in September 2014 with an objective to assist investors in seeking regulatory approvals, hand-holding services through the pre-investment phase, execution and after-care support.

The Indian embassies and consulates proactively disseminate information on the potential for investment in the identified sectors. DPIIT has set up a special management team to facilitate and fast track investment proposals from Japan. The team known as 'Japan Plus' was operationalized in October 2014. Similarly, 'Korea Plus', launched in June 2016, facilitates fast track investment proposals from South Korea and offers holistic support to Korean companies wishing to enter the Indian market.

Various sectors have been opened-up for FDI like defence manufacturing, railways, space, single brand retail, etc. The focus of Make in India programme is on 25 sectors. These include: automobiles, automobile components, aviation, biotechnology, chemicals, construction, defence manufacturing, electrical machinery, electronic systems, food processing, IT & BPM, leather, media and entertainment, mining, oil and gas, pharmaceuticals, ports and shipping, railways, renewable energy, roads and highways, space, textile and garments, thermal power, tourism and hospitality and wellness. Also, for ease of doing business, the regulatory policies have been relaxed to facilitate more investments.

Across various regions of the country, six industrial corridors are being developed. Industrial Cities will also come up along these corridors.

The dedicated website for this initiative (www.makeinindia.com) not only showcases the 25 sectors but also puts focus on

opportunities, policies and Ease of Doing Business. The Investor Desk is an integral part of this website, which aims at providing all information/data analysis to investors across sectors.

The Insolvency & Bankruptcy Code, 2016[7]

The Insolvency and Bankruptcy Code, 2016 [IBC] came into force on 28 May 2016 and consolidates 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.

IBC is one matured step towards settling the legal position with respect to financial failures and insolvency. To provide easy exit with a painless mechanism in cases of insolvency of individuals as well as companies, the code has significant value for all stakeholders including various Government Regulators. Before the enactment of this Code, there were multiple agencies dealing with the matters relating to debt, defaults, and insolvency which generally led to delays, complexities, and higher costs in the process of Insolvency resolution.

Competition Law[8]

The Government of India enacted the Competition Act, 2002 ("Competition Act") to replace the Monopolies and Restrictive Trade Practices Act, 1969. The Competition Act takes a new look at competition altogether and contains specific provisions on (i) anticompetitive agreements, (ii) abuse of dominant positions and (iii) mergers, amalgamations, and takeovers ("Combinations"). The Competition Commission of India [CCI] has been established to monitor, regulate, control, and adjudicate on anti-competitive agreements, abuse of dominant position and Combinations.

Combinations which meet certain thresholds have to be notified under the Competition Act. The Competition Act requires mandatory pre-transaction notification to the CCI of all Combinations that exceed any of the asset or turnover thresholds which apply to either the acquirer or the target or both; or to the group to which the target / merged entity would belong post acquisition or merger. For the purposes of the Competition Act, acquisitions would mean direct or indirect acquisition of any shares, voting rights or assets of any enterprise, or control over management or assets of an enterprise. A filing/ notification will be required if the merger/ acquisition satisfies the following criteria and does not fall within one of the specified exceptions.

The combination regulations prescribed by the Competition Act are as follows. These thresholds have been revised in 2016 in order to ease doing business in India[9].

Enterprise Level	**Assets**		**Turnover**
India	> ₹ 20 billion		> ₹ 60 billion
Worldwide with India Leg	> USD 1 billion with at least ₹ 20 billion in India		> USD 3 billion with at least ₹ 30 billion in India
Group Level		**or**	
India	> ₹ 80 billion		> ₹ 240 billion
Worldwide with India Leg	> USD 4 billion with at least ₹ 10 billion in India		> USD 12 billion with at least ₹ 30 billion in India

Intellectual Property[10]

With the advent of the knowledge and information technology era, intellectual capital has gained substantial importance. Consequently, Intellectual Property [IP] and the rights [Intellectual Property Rights/ IPR] attached thereto have become precious commodities and are being fiercely protected. Keeping in line with the world, India also has well established statutory, administrative, and judicial frameworks for safeguarding IP and IPRs. It becomes pertinent to mention here that India has complied with its obligations under the Agreement on Trade Related Intellectual Property Rights [TRIPS] by enacting the necessary statutes and amending its existing statues.

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

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

Patents

Patent rights protect workable ideas or creations known as inventions. A patent is a statutory right to exclude others, from making, using, selling, and importing a patented product or process without the consent of the patentee, for a limited period of time. Such rights are granted in exchange of full disclosure of an inventor's invention.

The term "invention" is defined under Section 2(1)(j) of the Patents Act, 1970 [Patents Act] as "a new product or process involving an inventive step and capable of industrial application." Thus, if the invention fulfils the requirements of novelty, non-obviousness (inventive step), and industrial application then it would be considered a patentable invention.

There are certain innovations that are specifically excluded from patentability even if they meet the criteria of an invention as defined under Section 2(1)(j) of the Patents Act. These inventions are listed in Section 3 and Section 4 of the Patents Act.

India grants patent rights on a first-to-apply basis. The application can be made by either (i) the inventor or (ii) the assignee or legal representative of the inventor.

Any person who is resident of India cannot first file for a patent application outside India unless a specific permission has been obtained from the patent office. However, a person resident in India can file a patent application outside India after 6 weeks of date of filing the patent application in India. This rule does not apply in relation to an invention for which a patent application has first been filed in a country outside India by a person resident outside India.

The inventor, in order to obtain registration of a patent, has to file an electronic application with the Patent Office in the prescribed form along with the necessary documents as required. A patent application usually contains the following documents:

1. Application Form in Form 1
2. A Provisional or Complete Specification in Form 2
3. A Declaration as to Inventorship in Form 5
4. Abstracts
5. Drawings, if any

6. Claims,
7. A Power of Attorney in Form 26 if a patent agent is appointed.

Once the patent application has been filed, it gets published in the patent office Journal. The patent application is examined by the patent office when a request for examination has been filed by the patent applicant. The patent office examines the patent application and issues an office action with procedural and substantive objections. As per the Patent (Amendment) Rules, 2016, an application for expedited examination may also be filed by

a) a Patent Co-operation Treaty [PCT] applicant nominating the International Patent Office ("IPO") as its International Searching Authority or as an International Preliminary Examining Authority in the corresponding international application; or

b) a Start-up.

A response to the office action has to be filed by the applicant and subject to the satisfaction of the responses the patent may be granted or refused by the patent office.

Patent rights are territorial in nature. Therefore, once a Patent is granted, it gives the inventor the exclusive right to exclude third parties from making, using, selling in India, and importing to Indian, a patented product or process without the consent of the patentee. In the event someone uses a patented invention without the permission or consent of the patent owner, then the same would amount to patent infringement and the owner of the patent can approach the court of law for obtaining remedies not limited to injunctions, damages etc. For infringement of a patent, only civil remedies are available.

In order to claim damages in a patent infringement suit it is important to note that the product should be marked with the word "patent" or "patented" and should specify the patent number through which the patent protection is being claimed. Failure to do so can result in the defendant in the patent infringement suit claiming that he was not aware and had no reasonable grounds for believing that the patent existed.

Section 107A in the Patents Act, incorporates Bolar provision and provision for parallel imports. Bolar provision allows manufacturers to begin the research and development process in time to ensure that affordable equivalent generic medicines can be brought to market immediately upon the expiry of the patent without any threat of patent infringement by the patentee.

Under the parallel imports exception a machine, though patented in India, can be imported (without the consent of the patentee) from the patentee's authorized agent, say, in China, who manufactures it at a lower cost with the consent of the patentee then the act of importation would not amount to patent infringement.

It is mandatory under Indian patent laws to file a statement as to the extent of commercial working in Indian Territory of a patent granted by Indian Patent Office.

The statement embodied in Form 27 of the Patents Rules, 2003 [Patent Rules] is required to be filed in respect of every calendar year within 3 months of the end of each year (i.e. before March 31st of every year). Non-compliance with this requirement may invite penalty of imprisonment which may extend to 6 months, or with fine, or with both, as provided under section 122(1) (b) of the Patents Act.

Upon an application made by any person interested, the Controller of Patents may grant a compulsory license at any time after 3 years of the grant of a patent on the grounds that the reasonable requirements of the public with respect to the patented inventions have not been satisfied, or the patented invention is not available to the public at reasonably affordable prices, or the invention is not exploited commercially to the fullest extent within the territory of India.

Copyrights

Copyright Act, 1957 [Copyright Act], supported by the Copyright Rules, 2013 [Copyright Rules], is the law governing copyright protection in India. Copyright Act provides that a copyright subsists in an original literary, dramatic, musical, or artistic work, cinematograph films, and sound recordings. A copyright grants protection to the author / owner of the work to certain works and prevents such works from being copied or reproduced without his/their consent. The rights granted under the Copyright Act to a creator include the right to stop or authorize any third party from reproducing the work, using the work for a public performance, make copies / recordings of the work, broadcast it in various forms and translate the work to other languages. The term of copyright in India is, in most cases, the lifetime of the creator plus 60 years thereafter.

Under Indian law, registration is not a prerequisite for acquiring a copyright in a work. A copyright in a work is vested when the work is created and given a material form, provided it is original. Unlike the US law, the Indian law registration does not confer any special rights or privileges with respect to the registered copyrighted work. India is also a member to the Berne and Universal Copyright Convention, which protects copyrights beyond the territorial boundaries of a nation. Further, any work first published in any country which is a member of any of the above conventions is granted the same treatment as if it was first published in India.

Under Section 57 of the Copyright Act an author is granted "special rights,". The author has the right to (a) claim authorship of the work; and (b) restrain or claim damages with respect to any distortion, mutilation, modification, or other act in relation to the said work if such distortion, mutilation, modification, or other act would be prejudicial to his honor or repute. These special rights can be exercised by the legal representatives of the author. A copyright is infringed if a person without an appropriate consent does anything that the owner of the copyright has an exclusive right to do. However, there are certain exceptions to the above rule (e.g., fair dealing). The Copyright Act provides for both civil and criminal remedies for copyright infringement. In the event of infringement, the copyright owner is entitled to remedies by way of injunction, damages, and order for seizure and destruction of infringing articles.

Trademarks

Trademarks are protected both under statutory law and common law. The Trademarks Act, 1999 [TM Act] along with the rules thereunder govern the law of trademarks in India.

Under the TM Act, the term 'mark' is defined to include 'a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or, combination of colors, or any combination thereof.' Thus, the list of instances of marks is inclusive and not exhaustive. Any mark capable of being 'graphically represented' and indicative of a trade connection with the proprietor is entitled to registration under the Act. This interpretation opens the scope of trademark protection to unconventional trademarks like sound marks. India follows the NICE Classification of goods and services, which is incorporated in the Schedule to the Trade-Marks Rules, 2017. Once the trademark is granted, it gives the proprietor of the registered trademark an exclusive right in relation to that trademark within the territorial jurisdiction of India.

In addition to trademarks, the following categories of marks can also be registered under the TM Act:

a) **Certification Marks:**
Certification marks are given for compliance with defined standards but are not confined to any membership. Such marks are granted to anyone who can certify that the products involved meet

certain established standards. The internationally accepted "ISO 9000" quality standard is an example of a widely recognized certification mark.

b) Collective Marks:

Collective marks can be owned by any association. The members of such associations will be allowed to use the collective mark to identify themselves with a level of quality and other requirements and standards set by the association. Examples of such associations would be those representing accountants, engineers, or architects.

c) Internet Domain Names:

Indian courts have been proactive in granting orders against the use of infringing domain names. Some of the cases in which injunctions against the use of conflicting domain names have been granted are: www.yahoo.com vs. www.yahooindia.com and www.rediff.com vs. www.radiff.com. In the www.yahoo.com case it has been held that "the domain name serves the same function as a trademark, and is not a mere address or like finding number on the internet, and therefore, it is entitled to equal protection as a trademark".

d) Assignment of Trademarks:

A registered or unregistered trademark can be assigned or transmitted with or without the goodwill of the business concerned, and in respect of either or all of the goods or services in respect of which the trademark is registered. However, the assignment of trademarks (registered or unregistered) without goodwill requires the fulfilment of certain statutory procedures including publishing an advertisement of the proposed assignment in newspapers.

Designs

Industrial designs in India are protected under the Designs Act, 2000 [Designs Act], which replaced the Designs Act, 1911. The Designs Act incorporates the minimum standards for the protection of industrial designs, in accordance with the TRIPS agreement. It also provides for the introduction of an international system of classification, as per the Locarno Classification. The Design Rules, 2001 [Design Rules], was amended on 30th December 2014, to incorporate official fees for filing a new design application and the category of applicant have been further divided into two main categories 'natural person' and 'other than natural person' and fees will depend on the type of applicant. The category of 'other than natural person' is further divided into 'small entity' and 'others except small entity'. An entity is considered to be a 'small entity' if the investment does not exceed the limit specified for medium enterprise in the Micro, Small and Medium Enterprises Development Act, 2006.

As per the Designs Act, "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any "article" whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual mechanical or chemical, separate or combined, which in the finished article appeals to and are judged solely by the eye. The Designs Act provides for civil remedies in cases of infringement of copyright in a design but does not provide for criminal actions. The civil remedies available in such cases are injunctions, damages, compensation, or delivery-up of the infringing articles.

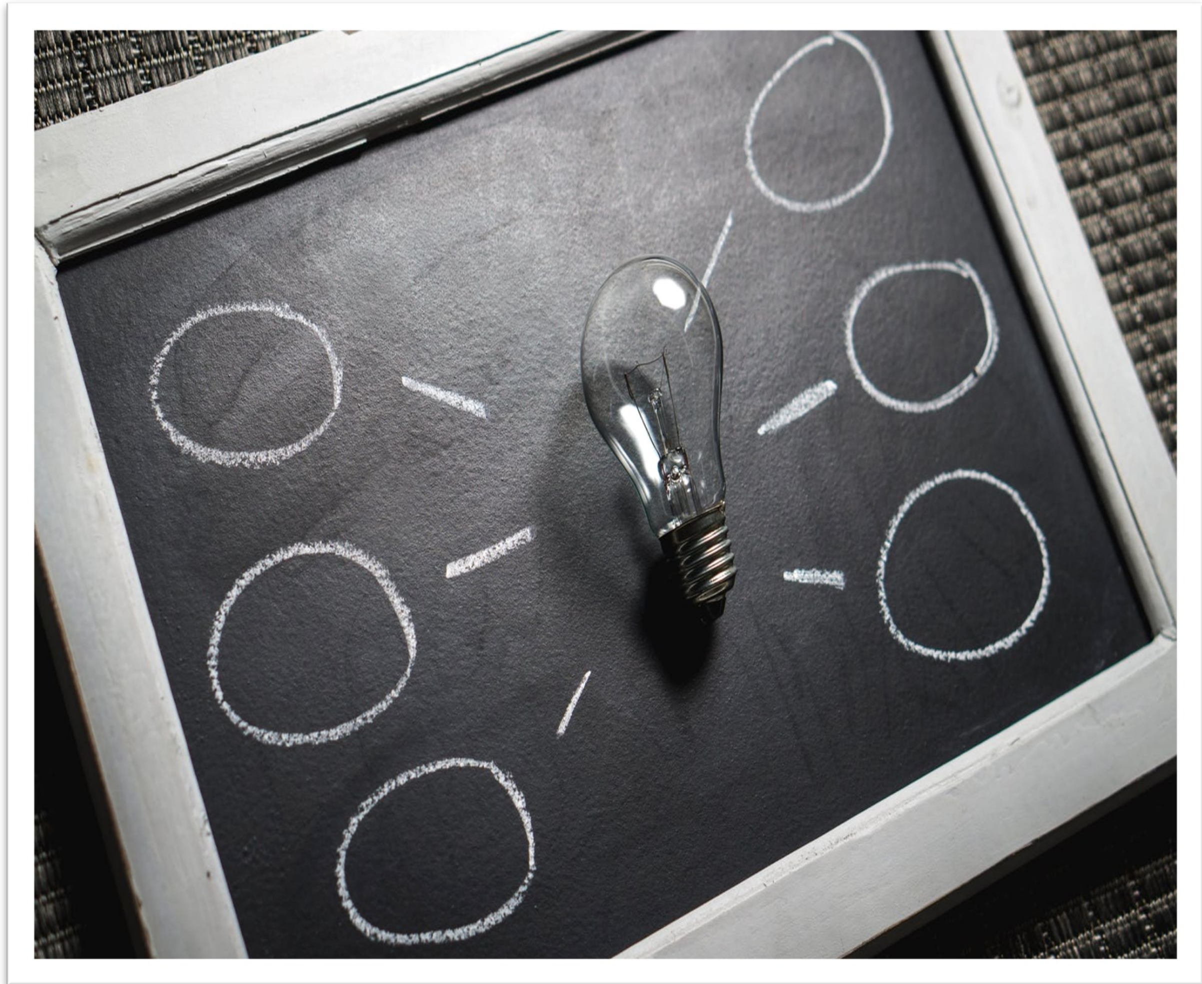
A company in India needs to ensure that it fully leverages the intellectual property developed by it as this may often be the keystone of its valuation. Further, it needs to establish systems to ensure that such intellectual property is adequately recorded, registered, protected, and enforced. It needs to conduct IPR audits to ensure that any intellectual property developed by the company is not going unnoticed or unprotected. The company also needs to ensure that its employees do not violate any

third party's intellectual property rights knowingly or unknowingly. A company must ensure that its intellectual property is not only protected in India, but also in the country where it carries on its business, where its products are exported, or where it anticipates competition.

Environmental Laws[11]

The tremendous growth of the Indian economy has resulted in a lot of pressure on its finite natural resources. In order to prevent indiscriminate exploitation of natural resources, the Government regulates the development of industrial projects / activities through environmental approvals and compliances. The approvals may be required at the Central or State levels, depending on the type of activity undertaken. Most of the compliances are mandatory in nature and consequences of noncompliance could result in criminal liability. In 2016, the Ministry of Environment, Forest and Climate Change (MoEFCC) re-categorized industries in India into red, orange, green and white categories. The MoEFCC developed a criterion of categorization of industrial sectors based on the Pollution Index which is a function of the emissions (air pollutants), effluents (water pollutants), hazardous waste generated and consumption of resources. The industries which fall under the 'White Category' (such as scientific and mathematical instrument manufacturing and solar power generation through photovoltaic cell) are non-polluting industries and such industries will not require environmental clearance and consent. In addition, with the aim of bringing uniformity and clarity to the terms and conditions for environment clearances, the MoEFCC has released standard environment clearances for 25 industrial sectors such as oil and gas transportation sector, pharmaceuticals and chemical industries, iron and steel plants sector, etc.

Various environmental legislations including State specific legislations may be applicable, depending on the type of industrial activity undertaken and the State that they are operating or proposing to operate from. Primarily, however, it is the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 are the key legislations with respect to environment.



3. Business Entities

"A look at the various modes of establishing business presence in India"

Business Entities

Sole Proprietorship

A sole proprietorship is an organization 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 alone enjoys the profits of the business and alone 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[1].

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[2].

Partnership

A partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are individually called 'partners' and collectively, 'a firm', and the name under which their business is carried on is the 'firm name'. It is governed by the Indian Partnership Act, 1932[3].

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

The Registrar of Firms is responsible for registering partnership firms. There must be a minimum of two partners, while the maximum number can be 100. The firm and the partners are the same in the eyes of 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. 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[4].

Limited Companies

The Companies Act, 2013 (to the extent applicable) broadly recognizes four types of companies:

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

Private Limited Company[5]

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,
- At least two shareholders to form a private limited company

The name of a private company carries the suffix 'Private Limited' [Pvt Ltd].

Public Limited Company

A public company is a company, which is not a private company[6]. The above-mentioned restrictions applicable to a private company are not applicable to a public company. A minimum of seven shareholders are 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, 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].

Dormant Company

A company formed and registered under this Act for a future project or to hold an asset or intellectual property and which has no significant accounting transactions, may make an application to the Registrar of Companies [ROC] for obtaining the status of a dormant company, if it satisfies the terms and conditions as mentioned in the relevant provisions of the Companies Act, 2013, and the rules made thereunder. The ROC, on consideration of the application, would allow the status of a dormant company to the applicant, and issue a certificate.

One Person company

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

Object/Activity

A company incorporated under the provisions of the Companies Act, 2013 can undertake only those business activities as specified in its 'Objects Clause' under its Memorandum and Articles 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.

Trusts[7]

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 which 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[8]:

- 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; or
- Incorporate a company under the Companies Act as a Joint Venture [JV] or a Wholly Owned Subsidiary [WOS]; or
- Invest in a Limited Liability Partnership [LLP] under the Limited Liability Partnership Act, 2008.

Liaison Office[9]

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.

Setting up a LO in a sector in which 100% FDI is allowed under the automatic route requires the prior consent of the Authorized Dealer [AD]. For the remaining sectors, RBI grants its approval after consultation with the Ministry of Finance. Permission to set up LOs is initially granted for a period of 3 years and this may be extended from time to time by the AD in whose jurisdiction the office is set up. No extension would be considered for LOs of entities that are NBFCs and those engaged in construction and development (excluding infrastructure development companies). Upon expiry of the validity period, these entities must either close down or be converted into a Joint Venture/ WOS, in conformity with the current FDI policy.

Branch Office[10]

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

- **Reserve Bank route:** Where the principal business of the foreign entity falls under sectors where 100% FDI is permissible under the automatic route.
- **Government route:** Where the principal business of the foreign entity falls under sectors where 100% FDI is not permissible under the automatic route. Applications from entities in this category are considered by the RBI in consultation with the Ministry of Finance, Government of India.

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

Tack 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[11]

The RBI has granted general permission to foreign companies to establish Project Offices [PO] in India where 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.
- It is funded by a bilateral or multilateral international financing agency.
- It has been cleared by an appropriate authority.
- 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 has to approach the RBI Central Office for approval.

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

Wholly Owned Subsidiary/ Joint Venture[12]

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 foreign company incorporated as either of these two entities under the Companies Act 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 liable on account of 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.

The 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[13].

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[14].

SNR & COMPANY
CHARTERED ACCOUNTANTS

4. Incorporation and Administration

"A look at the various steps involved in incorporating a company and its management"

Incorporation & Administration

Forming a Domestic Company

The process of incorporating a company in India can be broadly divided into the following steps[1]:

A. PAN – DSC – DIN:

- Permanent Account Number [PAN], Digital Signature Certificate [DSC] preferably with PAN encryption and Director Identification Number [DIN] is mandatory for initiating the incorporation process. All forms are required to be filed electronically.
- No person can be appointed as a Director without DIN and having duplicate DIN is an offence.
- DSC should be PAN encrypted as, all filings relating to Income Tax must be done by a director whose DSC is PAN encrypted.

B. Name Approval:

- The ROC must be provided with 2 preferred name which should not be similar to the names of any existing companies. A no-objection certificate must be obtained if the word is not an 'invented word'.
- The proposed name must not violate the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950.
- MCA has introduced Central Registration Centre having territorial jurisdiction all over India to process and dispose of the name reservation applications.

C. Filing of Charter Documents:

- The memorandum and articles of the company have to be prepared in accordance with the needs of the business and the same must be filed with the ROC. Subscribers having valid DIN or not shall file the memorandum and articles of the company in electronic form by digitally signing e-form INC 33 and e-form INC 34[2]. However, foreign subscribers shall sign the memorandum and articles in physical and file along with SPICe e-form INC 32.
- The proposed company shall apply PAN, TAN, GST, Import Export Code, Professional Tax, Industrial License, Employees' State Insurance Corporation [ESIC] registration and open a bank account at the time of incorporation.
- The ROC will need to be provided with certain information, such as the proposed first directors of the company and the proposed address of its registered office. The registered office is required to be finalized within 15 days and intimated within 30 days of incorporation, in case communication address is provided.
- Declarations to be provided by subscribers and proposed directors requires notarisations and apostillisation in the respective home countries, in case of foreign subscribers and directors.
- A private limited company must have at least 2 shareholders and 2 directors whereas a public limited company must have at least 7 shareholders and 3 directors.
- One of the directors has to be resident in India, for at least 182 days in the previous calendar years.
- Companies that meet certain thresholds must have independent directors and women director on the Board.

D. Certificate of Incorporation

The certificate of incorporation provided by the ROC at the end of the incorporation process acts as proof of incorporation of the company that contains CIN, PAN and TAN.

E. Post Incorporation

Once a company is incorporated, it must undertake certain other actions in order to become fully functional:

- The company must, within 30 days from incorporation, hold its first board meeting.
- The first auditor should be appointed by the board within 30 days from the date of its incorporation who shall hold the office till the conclusion of its first annual general meeting. If in case, the board fails to appoint within 30 days, shareholders can appoint the first auditors, within 90 days of incorporation.
- The company should be capitalized, and the corresponding share certificates be issued within a period of 2 months of receiving the certificate of incorporation.
- Before commencing any business-activity and borrowing, a declaration to be filed with ROC within 180 days after receiving subscription money.
- In case of Foreign Subscriber, the reporting shall be done with Reserve Bank of India [RBI] through AD Bank after receiving subscription money.
- The company may appoint additional directors (if required).
- The company must register itself with statutory authorities such as indirect tax authorities and labour authorities.
- The company must put in place the contracts with suppliers and customers that are essential to running the business.

Pursuant to various reform measures brought in by the MCA, the procedure for incorporation of a company in India has become single-form and single window with a time frame of less than 96 hours after submission of the requisite documents Additionally, with the no-minimum capital requirement, the MCA is looking to attract start-up culture. With many advantages to doing business in India via an incorporated entity, company is definitely one of the leading options.

With the objective of improving the ease of doing business, the MCA, in January 2016, set up the Central Registration Centre [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 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 two to three 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

Indian companies may issue various types of securities. The primary types of securities used in foreign investments into India are:

i) Equity Shares

Equity shares are ordinary shares in the capital of a company and are entitled to voting rights and dividend rights.

ii) Preference Shares

Preference Shares are shares which carry a preferential right to receive dividends at a fixed rate as well as preferential rights during liquidation over the equity shares. Convertible preference shares are a popular investment option. Further, the preference shares may also be redeemable. An Indian company can issue only compulsorily convertible preference shares to a non-resident.

iii) Debentures

Debentures are debt securities issued by a company, and typically represent a loan taken by the issuer company with an agreed rate of interest. Debentures may either be secured or unsecured.

Like preference shares, debentures issued to non-residents are also required to be compulsorily convertible to equity shares.

For the purposes of FDI, fully and compulsorily convertible preference shares and debentures are treated on par with equity and need not comply with the external commercial borrowing guidelines [ECB Guidelines].

The ECB Guidelines place certain restrictions and requirements on the use of ECB. Indian companies are permitted to avail ECB, which limits are in the range of USD 100 million to USD 750 million per company per year under the automatic route depending on the sectors the companies are doing business. For example, Indian companies involved in the software development sector are allowed to avail of ECB up to USD 200 million or its equivalent in a financial year under the automatic route. In order to raise ECB, the Indian company and the foreign financier must fulfil the criteria of an eligible borrower and a recognized lender respectively, under the ECB Guidelines. Further, there remain restrictions on average maturity period and the permitted end-uses of foreign currency expenditure such as for the import of capital goods and for overseas investments.

Return on Investments

Extracting earnings out of India can be affected in numerous ways. However, it is essential to consider the tax and regulatory issues around each mode of exit:

i) Dividend

Companies in India, as in other jurisdictions, pay their shareholders dividends on their shares, usually a percentage of the nominal or face value of the share. For a foreign investor holding an equity interest, payment of dividend on equity shares is a straightforward way of extracting earnings.

ii) Buy Back

Buyback of securities provides an investor the ability to extract earnings as capital gains and consequently take advantage of tax treaty benefits. However, buybacks in India have certain restrictions and thus need to be strategically planned. For instance, a company may not, except with a special resolution, buy back more than 25% of its outstanding equity shares in a year. Further, a buyback may be affected only from certain permitted sources.

iii) Redemption

Preference shares and debentures can both be redeemed for cash. While redemption is perhaps the most convenient exit option for investors, optionally convertible securities, which are effectively redeemable, have been classified as ECB. This entails greater restrictions. Also, there is a restriction on issuing preference shares redeemable beyond a period exceeding 20 years from their issue (except in the case of infrastructure companies).

iv) IPO

An IPO is the first offer for sale of the shares of a company to the public at large via listing the company's stock on a stock exchange. While an initial public offering may usually be regarded as a long-term exit option, it is also usually included as an exit option in transaction documents as it may provide investors with large returns.

Directors

Every company must have a Board of Directors that is responsible for the conduct of its business. Every company belonging to prescribed classes 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 empowers the Board to do activities in accordance with the company's Memorandum and Articles of Association, 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. Since, directors act as agents of a company, all acts done and contracts entered into by them are binding on the company, unless such acts 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 circumstances mentioned under the Companies Act.

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. Otherwise expressly provided in the Act, every director shall be appointed by the company in the general meeting
- Every proposed director shall have a valid DIN.

Disqualification for 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 undercharged insolvent
- Has applied to be adjudicated as an insolvent and his application is pending
- Has been convicted by a court and sentenced to imprisonment for at least six months, and five years have not lapsed from the expiry of the sentence
- Has been convicted and sentenced to imprisonment for seven years or more
- Has been disqualified as a director by an order passed by a court or tribunal
- Has not paid any calls of any shares held by him, and six months have lapsed from the last day fixed for the payment
- Has been accused of related-party transactions during the preceding five years
- Has not obtained a DIN

Removal of Directors

- A company may remove a director before the expiry of the period of his office through an ordinary resolution.
- On receipt of notice of the resolution, the company shall send a copy of the notice to the concerned director, who shall be entitled to be heard on the resolution at the meeting.
- A vacancy shall be filled by the company in the meeting in which he was removed by the appointment of another director in his place, but a special notice is required. The director so appointed shall hold office until the date up to which his predecessor

would have held office if he had not been removed.
- A director who is removed from office shall not be re-appointed as a director by the Board.

Resignation of Directors

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

Types of Directors

First Directors: The number of directors and the names of the first directors shall be determined by the articles of association of the company.

Executive or Whole-Time Director & Non-Executive Director: Directors who are in whole-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 day-to-day activities of the company and do not have knowledge about the company's routine operations.

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 in the previous calendar year.

Independent Director: 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: As per provisions of the Companies Act, 2013, certain classes of companies are required 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, listed companies may appoint a small shareholders' director. Shareholders holding shares of nominal value of not more than ₹ 20,000 or such other prescribed sum may appoint one director from amongst them.

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

- A person who fails to get appointed in a general meeting cannot be appointed as an additional director.
- An additional director shall hold office until 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 for any other director in the company.
- An alternate director can only be appointed in case a director leaves India for a period of at least three months.
- An alternate director to an independent director should also satisfy the criteria for an independent director.

- The office of the alternate director shall be vacated if and when the director in whose place he has been appointed returns to India.
- Provisions of automatic re-appointment of the retiring director shall apply to the original director and not to the alternate director.

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

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

Duties of Directors

The Companies Act, 2013 enlists 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 in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community, and for the protection of the environment,
- Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment,
- Not get involved in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company,
- Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company,
- Not assign his office, and any assignment so made shall be void.

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

Compliances by Directors under the Companies Act, 2013

- Obtain a DIN,
- Give a declaration that he is not disqualified to become a director under the Act,
- Disclose his interest in any company or body corporate, firms, or other association of individuals at the first Board meeting, at the first Board meeting in every financial year, or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change
- Mention his DIN while furnishing any return, information, or any 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 company 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 company shall constitute a **Nomination and Remuneration Committee** consisting of three or more non-executive directors, of which not less than 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 security holders of the company.

Meetings

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

Director's Meetings

Board Meetings: According to the Companies Act, 2013, there must be at least one meeting of the Board of Directors every three months, the gap between which 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]: The Companies Act, 2013 states that every company must hold one AGM in each calendar year. The first AGM must be held within 9 months of the closing of accounts. In other cases, an AGM shall be held within 15 months from the date of the last AGM or 6 months from the closing of accounts, whichever is earlier. Furthermore, a One Person Company is not required to hold an AGM.

Extraordinary General Meeting: 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[3]

A company can be closed in the following ways:

- Strike off a company under Section 248(2) of the Companies Act: Any defunct company wanting to strike off its name from the Register of Companies can apply under the Fast Track Exit Mode 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[4]. 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.

Corporate Social Responsibility

According to the Companies Act, 2013, every company having a net worth of ₹ 5 billion or more, or turnover of ₹ 10 billion or more, or a net profit of ₹ 50 million or more, during the immediately preceding financial year, shall constitute a Corporate Social Responsibility [CSR] Committee of the Board. In case of a Public Company, such committee shall consist of three or more directors, of which at least one must be an independent director and in case of a Private company, any two directors. Every company, its holding or subsidiary company, or a foreign company having a branch or project office in India, which individually fulfils any one of the criteria mentioned above will be considered a 'qualifying company', and would then need to mandatorily perform all the CSR activities mentioned in Section 135 of the Companies Act 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 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 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 financial years
- Ensuring that, if the earmarked amount is not spent, the same is specified in its report
- The Board shall have the power to make any change(s) in the constitution of the Committee.

Forming a Foreign Company [LO/BO/PO]

Meaning

Foreign company means any company or body corporate incorporated outside India which—

a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

b) Conducts any business activity in India in any other manner.

Establishment of Place of Business in India

Once the entity is set up in India, then as per Companies Act 2013, they are required to get themselves registered with the Registrar of Companies [ROC].

Every foreign company shall, within thirty days of establishment of its place of business in India, in addition to the particulars specified in Section 380 of the Act, deliver to the Registrar for registration, a list of directors and Secretary of such company.

The application shall also be supported with an attested copy of approval from the Reserve Bank of India under Foreign Exchange Management Act or Regulations, and also from other regulators, if any approval is required.

A foreign company shall, within a period of thirty days of the establishment of its place of business in India, file with the Registrar Form FC-1.

Annual Statements

Every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents:

- Every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III
- Financial Statement of foreign company

The documents referred above shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company.

Further, a Statement of transfer of funds (including dividends, if any) which shall, in relation of any fund transfer between place of business of foreign company in India and any other related party of the foreign company

Audit of Accounts

Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with the requirements of section 381 and rule 4, audited by a Practicing Chartered Accountant in India or a firm or limited liability partnership of Practicing Chartered Accountants. Every foreign company shall file with the Registrar, along with the financial statement, in Form FC 3.

Annual Return

Every foreign company shall prepare and file, within a period of sixty days from the last day of its financial year, to the Registrar annual return in Form FC-4.

Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi Office where documents to be delivered and fee for registration of documents

A copy of any charter, statutes, memorandum and articles, or other instrument constituting or defining the constitution of a foreign company shall be duly certified to be a true copy.

Where any of the financial statements or the accounts is not in English language, there shall be annexed to it a certified translation in the English language. Where such translation is made within India, it shall be authenticated by an advocate, attorney or pleader entitled to appear before any High Court and an affidavit, of a competent person having, in the opinion of the Registrar.

Where any such translation is made outside India, it shall be authenticated by the signature and the seal of the official having custody of the original or a Notary of the country where the company is incorporated. All the documents required to be filed with the Registrar by the foreign companies shall be in English language.

5. Statutory Reporting & Audit Requirements

“A look at the various types of statutory reports to be filed and related audit compliances”

STATUTORY REPORTING & AUDIT 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	Applicability of Audit	Reporting Timeline
Proprietorship	Yes[1]	Income Tax Act 1961	Accounting Standards as issued by Institute of Chartered Accountants of India [ICAI]	Applicable only if the turnover exceeds the limits specified under the relevant statute[2].	30th September
Partnership Firm	Yes	Income Tax Act 1961	Accounting Standards as issued by [ICAI]	Applicable only if the turnover exceeds the limits specified under the relevant statute[3].	30th September
LLP	Yes	Limited Liability Partnership Act, 2008	Accounting Standards as issued by ICAI	Only if the turnover exceeds the limits specified under the relevant statute[4].	30th September
Listed Limited Company	Yes	Companies Act, 2013, Securities and Exchange Board of India Guidelines, and any other relevant statute depending upon the nature of business and activities of the company	Ind AS notified under the Companies Act, 2013 or such other accounting standards as may be applicable under the relevant statute	In case the company falls under a special statute, then the requirements of such special statute shall prevail.	60 days from the end of the financial year. Additionally, Listed Companies are also required to furnish quarterly financial results within 45 days from the end of the quarter except for the last quarter.

Types of Entities	Preparation of financial statements mandatory or not	Relevant statute*	Reporting standards of accounting records	Applicability of Audit	Reporting Timeline
Unlisted Public Company	Yes	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	In case the company falls under a special statute, then the requirements of such special statute shall prevail[5].	Six months from the end of the financial year.
Private Company	Yes	Companies Act, 2013	Accounting Standards or Ind AS^ as notified under the Companies Act, 2013, or such other accounting standards as may be applicable under the relevant statute	In case the company falls under a special statute, then the requirements of such special statute shall prevail[5].	Six months from the end of the financial year.
Trust	Yes	Relevant Trust Act and Income Tax Act, 1961[6].	Accounting Standards as issued by ICAI		30 September
Liaison Office/ Branch Office/ Project Office	Yes	FEMA, Insurance Regulatory and Development Authority of India (IRDAI) and Companies Act, 2013	Accounting standards as notified under the Companies Act		30 September[7].
Banks	Yes	Banking Regulation Act, 1949	Accounting Standards or Ind AS^^ as notified under the Companies Act, 2013, or such other accounting		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	Applicability of Audit	Reporting Timeline
			standards as may be applicable under the relevant statute		
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	

Notes:

1. *When the turnover of a proprietorship is less than a specified threshold, financial reporting is not applicable.*
2. *For Business, ₹ 10 million [₹ 50 million where amount received & amount paid in case is at most 5% of total receipts & total payments, respectively. For Profession, ₹ 5 million.*
3. *Ibid*
4. *As per the Limited Liability Partnership Act, 2008, the audit of books of account would be mandatory when the turnover exceeds ₹ 4 million and contribution exceeds ₹ 2.5 million.*
5. *Banking, financial services, insurance, and electric companies where the form and contents of the financial statements are governed by respective statutes.*
6. *Depending upon the territory of registration and the purpose of the trust.*
7. *Where form no. 49C and annual activity certificate is required to be filed/furnished, then the date of furnishing such form and certificate shall be within 60 days from and six months from the end of the financial year respectively.*

^Ind AS

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

Applicability – Companies

- On a voluntary basis, for financial statements for accounting periods beginning on or after 1 April 2015 with the comparatives for the period ending 31 March 2015 or thereafter
- ON a mandatory basis, for accounting periods beginning on or after 1 April 2016 with the comparatives for the period ending 31 March 2016 or thereafter, for companies with a net worth ₹ 5 billion or more and holding, subsidiary, joint ventures or associates of such companies.

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

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

  Once a company opts to follow the 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.

^^Ind As

Applicability—Banks and NBFCs

- 1 April 2018 onwards
  - Scheduled commercial banks excluding Regional Rural Banks (RRBs)
  - All India term-lending refinancing institutions
  - Holding/subsidiary/joint venture/associate companies of scheduled commercial banks excluding RRBs. Even if such companies were covered by the corporate roadmap, they will have to follow the new timeline.
- 1 April 2018 onwards
  - NBFCs with net worth >INR 5 billion
  - Holding/subsidiary/joint venture/associate companies of the above mentioned NBFCs. If such companies were covered by the corporate roadmap, they will have to follow the timeline specified in the corporate roadmap.
- 1 April 2019 onwards
  - NBFCs having a net worth < INR 5 billion and whose equity and/or debt securities are in the process of listing or are listed on any stock exchange in India or outside India
  - Unlisted NBFCs having a net worth > INR 2.5 billion but net worth < INR 5 billion
- Holding/subsidiary/joint venture/associate companies of the above mentioned NBFCs. If such companies were covered by the corporate roadmap, they will have to follow the timeline specified in the corporate roadmap.

Applicability—Insurance companies

- 1 April 2020
  - Insurer/insurance companies

Audit Information

The complete set of financial statements comprises of the following:

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

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

- One-Person company
- Small company
- Dormant company
- Private company which is a start-up company

Statutory Requirements

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

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

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

6. Corporate Taxation

“A look at the corporate tax rates applicable in India and the related compliances”

CORPORATE TAXATION

Company Taxation[1]

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 accruing or deemed to be accruing in India. The effective corporate tax rate (base rate + surcharge + cess) depends on the type of the company (i.e. domestic or foreign) and the quantum of its taxable income in the previous year. The year refers to the Financial Year (FY), beginning on 1 April and ending on 31 March; and previous year means 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.

The Finance Act, 2020 has prescribed the base tax rate for FY 2020-21 in case of domestic companies having turnover or gross receipts in FY 2018-19 not exceeding INR 4 billion, to 25% of the total income plus the applicable surcharge and health and education cess. For all other domestic companies, the base tax rate shall continue to be 30% plus applicable surcharges and the health and education cess.

The corporate tax structure for FY 2020-21 is as follows:

Domestic Companies

Particulars	Income Tax Rate
Total turnover or gross receipts during the previous year 2018-19 doesn't exceed ₹ 4 billion	25%
Other Domestic Companies	30%

Foreign Companies:

The tax rate of foreign company is 40%.

Surcharge:

Company	Net Income	
	Between 10 Mn. To 100 Mn.	Exceeds 100 Mn.
Domestic	7%	12%
Foreign	2%	5%

Health & Education Cess:

- 4% of Income Tax and surcharge

Note: *Domestic Manufacturing companies incorporated on or after 1st October 2019 and other domestic companies may opt for concessional tax rate scheme and pay tax @ 15% and 22%, respectively. Such option shall be available if the afore-mentioned companies, do not avail certain incentive/exemption offered under the Indian Income Tax Act.*

Minimum Alternate Tax [MAT]

The Income Tax Act, 1961 (ITA) also provides for tax on 'book profits' in case the tax on the company's book profit (post certain adjustments) is greater than the tax on income computed as per the normal provisions of the ITA. This is commonly known as MAT, which is charged at a rate of 15% on book profits plus applicable surcharge and 4% cess on the tax and surcharge. The limits for applicability of the surcharge are the same as mentioned above. Credit for MAT paid can be carried forward and claimed against normal corporate tax payments arising in the future, subject to a limitation period of 15 years.

However, 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 be applicable 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 in relation to turnkey power projects can opt for presumptive taxation where income is taxed at a certain fixed percentage of the gross receipts and the above-referred corporate tax, surcharge and cess shall not be applicable.

Note: Domestic Manufacturing companies incorporated on or after 1st October 2019 and other domestic companies that opts for concessional tax rate scheme and pay tax @ 15% and 22%, respectively, shall not be required to pay MAT. This provision has been newly introduced and shall be effective from FY 2019-20.

Resident Companies

A company incorporated in India 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). Guidelines have been issued in connection with determination of POEM.

Therefore, a foreign company can avoid taxation of its global income if they 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 important to note that POEM rules would not apply to a foreign entity, if its turnover or gross receipt is less than ₹ 500 million.

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

Foreign Companies

Income Tax

Under the Indian Income Tax Act, a foreign company is liable to income tax in India on income 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 a 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

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 situated in India.

Accordingly, any indirect transfer of such shares would also be taxable in India. In order 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 ₹ 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) to be decided as per rules prescribed
- The amount to be taxed in India should be proportional to the value of Indian assets to 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.
- An Indian company whose ownership or control 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 ₹ 500,000.

Taxability of Business Income

In case non-residents have a business connection or PE in India, income attributable to such business connection or PE would be taxable in India at the rate of 40% (plus applicable surcharge and education cess). However, while calculating the taxable income, deduction for expenses incurred for earning such income and some part of general administrative expenses are allowed as an expense.

Business connection includes any business activity carried out by a non-resident through a person acting mainly or wholly on its 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' for business connections in India. It is nothing but 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, etc. 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 required of a domestic company (maintaining books of accounts etc)

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 the 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 will not give rise to a business connection/ PE in India with respect to offshore funds subject to the fulfilment of certain conditions and compliances by both the offshore fund and the fund managers.

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 education cess).
- **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 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 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:** Taxable on a gross basis at the rate of 10%.
- **Dividend:** Dividend income received from an Indian company shall be charged to tax at the rate of 20%.
- **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 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 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 ₹100,000 in the previous year; or the payment made is not for the purpose of carrying out business or profession of the taxpayer.

Tax Returns and Assessments

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

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 and it also loses the right to revise its tax return.

Revenue Audits

Tax returns filed by companies can be subjected to a revenue audit, popularly known as 'Scrutiny Assessment' in India. The tax authorities lay down certain parameters every year and if a company fits those parameters, it would mandatorily be selected for 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.

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 purpose of 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 allowable only on the basis of actual payment irrespective of the accrual system of accounting followed by the company.

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 be applicable 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 separate 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.

The 10 ICDS that would be applicable 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.

Interest Deduction

Interest on capital borrowed for the purpose of 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. Utilization of loans is an important factor in deciding the allowability of interest on the same. Interest on borrowings utilized for granting interest-free advances to related parties or sister concerns may not be allowed if the business expediency of such advance is not proven. Furthermore, interest on borrowings utilized for the purpose of earning tax-free income (e.g. dividend income) would be disallowed due to special provisions of the ITA.

Thin Capitalization Rules

A number of 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 on the basis of the principles laid down in the paragraph above. Interest payments to overseas related parties and in some specific instances to domestic related parties would, however, be subject to transfer pricing provisions.

Furthermore, with effect from 1 April 2017, if the transaction of debt is construed by the tax authorities as solely for the purpose of tax benefit, then the arrangement could be examined and disregarded under the General Anti-Avoidance Rules (GAAR). As such, restriction has been introduced in 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 payment by a resident company to a non-resident associated enterprise.

Capital Assets

According to the ITA, capital assets have been defined to mean property of any kind including, business assets but excluding stock-in-trade and movable personal effects, such as wearing apparel, personal furniture, personal car, etc. Thus, broadly 'capital assets' can be classified as business-related assets and personal capital assets excluding the ones specified above. Business-related capital assets can be further classified as depreciable capital assets and non-depreciable capital assets.

The tax treatment of personal capital assets and non-depreciable assets has been dealt with separately in the Capital Gains Tax section. The tax treatment of depreciable capital assets is explained here. According to the ITA, depreciation for tax purposes has to be calculated on the Written Down Value [WDV] of the block of assets at the prescribed

rates (except for undertakings engaged in the generation or generation and distribution of power, as such companies 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	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: Knowhow, patents, copyrights, trademarks, licenses, franchises or any other business or commercial right of a similar nature	25%

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 asset'. 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 around 96 countries to avoid double taxation of income. Under the Indian tax laws, a taxpayer can avail the provisions of the tax treaty or domestic tax laws, whichever is beneficial to the taxpayer. Typically, bilateral relief is provided through the 'credit method' or 'exemption method'. To avail 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 regarding the mechanism for claiming tax credit in India for foreign taxes paid by an Indian resident.

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, and thus, 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.

If the rates prescribed in a tax treaty are lower than the rates prescribed by ITA, 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)
- 20%.

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 7 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 30th April.
- Apart from the deposit of taxes, a company is also 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 31st 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 company is also required to issue a TDS certificate to the persons from whose payments the tax has been deducted within the specified time.

Also, 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 capital gains tax on transfer of capital assets. The rate of capital gains tax 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 a long-term capital asset. However, securities listed on a recognized stock exchange in India, units of UTI or an equity-oriented mutual fund and zero-coupon bonds held for more than 12 months are considered long-term assets. With

effect from 1st April 2016, shares of an unlisted company and immovable property shall be treated as a long-term capital asset, if held for a period exceeding 24 months (reduced from 36 months).

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

Particulars	Applicable Tax Rate
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%*
Sale of short-term capital assets: other than the above	Based on corporate tax rate/ individual tax rate
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 asset have been charged to STT (except certain exceptional situations provided in law like IPO, bonus, etc.)	Exempt**
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%*
Sale of long-term capital assets: other than those mentioned in points 3 and 4 above	20% with adjustment for inflation*

** Applicable surcharge and cess at the rate of 4% shall also be levied*
*** Such long-term capital gains in excess of ₹ 100,000 at the rate of 10% without any indexation benefit in the case of residents and without the benefit of computation in foreign currency in the case of non-residents.*

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 then sold in foreign currency, are required to be computed in the foreign currency and 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 being land and/or buildings are also exempt up to ₹ 5 million if the gain is invested in specified bonds within six months of the transfer of the long-term capital asset. Furthermore, the Finance Act, 2018 has increased the lock-in period from three years to five years and also clarified that 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 case of an individual.

Transfer Pricing

Transfer pricing refers to inter-company pricing arrangements between related business entities and commonly applies to inter-company transfers of services and tangible/ intangible properties. In India, detailed transfer pricing provisions were introduced by the Finance Act, 2001 in order to facilitate the computation of reasonable, fair, and equitable profits and tax in India in the case of businesses carried on by multinational companies. Essentially, transfer pricing is the process of adjusting the prices of cross-border transactions between related/ associated parties. Section 92 of the ITA provides that the price of any transaction between Associated Enterprises [AE], either or both of whom are non-residents for tax purposes (international transaction), shall be computed having regard to the arm's length principle. Subsequently, the Finance Act, 2012 also brought 'Specified Domestic Transactions [SDT]', where transactions are carried out between two related Indian entities under the purview of transfer pricing.

Two enterprises are considered to be associated if there is a direct/ indirect participation in the management or control or capital of an enterprise by another enterprise or by the same persons in both the enterprises. In determining whether there is participation in management or control, various factors are taken into consideration including:

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

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

Determination of 'Arm's Length Price'

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

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

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

Also, the ITA had also introduced a range concept for determination of ALP and use of multiple-year data for comparable analysis of transactions.

International Transactions

Apart from routine transactions relating to the purchase and sale of goods and services, the Finance Act, 2012 enhances the definition to include transactions involving business restructuring, intangibles, goodwill, corporate guarantees, overdue debtors, etc. There is no threshold exemption limit for this compliance.

Also, it is mandatory to obtain an accountant's certificate in the prescribed format for all international transactions between AEs. This report would have to contain prescribed particulars of the transaction and would have to be filed with

the tax authorities by 30th November of the relevant assessment year, along with the tax return.

Stringent penal provisions have been prescribed for non-compliance with the prescribed requirements under the transfer pricing regime.

Advance Pricing Agreements

An Advance Pricing Agreements [APA] is an agreement between a taxpayer and the tax authorities for specifying the manner in which the ALP is to 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 five consecutive years unless there is a change in the provisions or the facts having a bearing on the international transaction. In March 2015, the CBDT introduced roll-back provisions according to which, an APA would also be applicable to international transactions undertaken in the previous four financial years subject to certain conditions.

Extensive Transfer Pricing Documentation

As a notable development, India's transfer pricing documentation requirements are being aligned with the Organization for Economic Co-operation and Development's [OECD] recommendations under the Base Erosion and Profit Shifting [BEPS] Project. In line with the international consensus on this topic, it was proposed that companies need to maintain and furnish extensive, group-level details to the Indian tax authorities by way of a Country-by-Country Report [CBCR] and master file, in addition to the current transfer pricing documentation requirements in India.

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 CBCR reporting requirements shall apply to Indian multinational groups having a consolidated revenue above a prescribed threshold.

The onus of furnishing the CBCR to the prescribed authority in India shall be as follows:

Entity	Onus
Indian subsidiary/ affiliate of the multinational group	The Indian entity needs to notify the prescribed authority about the details of the parent entity and the country of which such parent entity is a resident. The CBCR would be obtained in the normal course by an Indian authority through the automatic exchange of information from the country of the parent entity. However, the Indian subsidiary/affiliate of the multinational group would have to file a CBCR to the prescribed authority in India if: • The parent entity of the group is a resident in a country with which India does not have an arrangement for an exchange of the CBCR. • Such country is not exchanging information with India, even though there is an agreement and this fact has been intimated to the entity by the prescribed authority. • If the group has nominated (by written intimation to the prescribed authority) the Indian entity to furnish the report on behalf of the group.
Parent entity in India	If the parent entity is a resident in India, it is required to maintain and furnish the CBCR to the prescribed authority in India.

For non-furnishing or inaccurate furnishing of the CBCR, master file and related details by an entity that is obligated to furnish the said details, a stringent penalty structure ranging from ₹ 5,000 to ₹ 50,000 per day of default would apply.

7. Personal Taxation

"A look at the personal tax rates applicable in India and the related compliances"

PERSONAL TAXATION

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.

Taxes as per the Indian Income Tax Act, 1961 (ITA)[1] are levied on persons, including individuals. The rates of taxation differ in each financial year (from 1 April to 31 March).

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 in India for that year. The Indian tax law categorizes the residential status of an individual as 'resident' or 'non-resident' depending on the number of days of stay in India.

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

a) Been in India for a period of 182 days or more during that financial year; or
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

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.

Furthermore, in condition (b) above, the period of 60 days would be extended to 120 days in the case of an Indian citizen or a person of Indian origin having total income, other than the income from foreign sources, exceeding ₹ 1.5 million.

Further, a citizen of India having total income, other than the income from foreign sources, exceeding ₹ 1.5 million, shall be deemed to be a resident in India if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

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 but 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

- has been in India for a period of, or periods amounting in all to, 729 days or less during the preceding 7 years.

- is a citizen of India or person of Indian origin whose total income, other than income from foreign sources, exceeds ₹ 1.5 million, is in India during that financial year, for a period exceeding 120 days but less than 182 days and at least 365 days during the preceding four years.

- is a citizen of India having total income, other than the income from foreign sources, exceeding ₹ 1.5 million, shall be deemed to be a resident in India if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

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

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 but 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)	Non-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 looked at on a case-by-case basis.

How to Compute Tax – A Broad Structure

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

- Income from employment/salary
- Income from house property (rental income)
- Income from business and profession
- Income from capital gains
- Income from other sources (dividend, winnings from lotteries, gifts, family pensions, etc.)

After aggregating income under the various heads, the taxpayer can then reduce certain allowable deductions from taxable income. For example, an individual could claim deductions with respect to investments made in the public provident fund or payment of life insurance premium, medical health policy premium, certain mutual funds, etc. After these deductions, the resultant taxable income is required to be offered to tax at the rates prescribed in the law.

Income Tax Rates

The tax rate applicable to an individual would depend on his income bracket. Various income slabs along with different tax rates are provided every year in the Union Budget. The slab rates mentioned in the Budget are applicable for the following financial year (April– March).

The Finance Act, 2020 has introduced the following rates for individual taxpayers (other than senior citizens):

Net Income Range	Income Tax Rate
Up to ₹ 250,000	Nil
Above ₹ 250,000 up to ₹ 500,000	5%
Above ₹ 500,000 up to ₹ 1 million	20%
Above ₹ 1 million	30%

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 ₹ 300,000 and ₹ 500,000, respectively

In addition to this, surcharge shall be levied on individuals in the following manner:

- 10% of Income Tax where total income exceeds ₹ 5 million,
- 15% of Income Tax where total income exceeds ₹ 10 million,
- 25% of Income Tax where total income exceeds ₹ 20 million, and
- 37% of Income Tax where total income exceeds ₹ 50 million.

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

Optional Personal Tax Scheme

Finance Act 2020 has introduced section 115BAC providing the Individual taxpayers and HUFs, an option to pay tax at reduced rates. However, in order to exercise this option, the eligible taxpayers are required to forego certain deductions and/or exemptions that are normally available to the taxpayer such as deductions in respect of investments made in the public provident fund or payment of life insurance premium, medical health policy premium, certain mutual funds, etc. The newly introduced optional tax slabs are as follows:

Net Income Range	Income Tax Rate
0 – 2.5 Lakhs	Nil
Above 2.5 Lakhs – 5 Lakhs	5%
Above 5 Lakhs – 7.5 Lakhs	10%
Above 7.5 Lakhs – 10 Lakhs	15%
Above 10 Lakhs – 12.5 Lakhs	20%
Above 12.5 Lakhs – 15 Lakhs	25%
Above 15 Lakhs	30%

Ways to Discharge Income Tax Liability

An individual can discharge his 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 year and discharge tax liability in four instalments during the year itself i.e. 15%, 45%, 75%, and 100% of the tax liability, which is due by 15th June, 15th September, 15th December, and 15th March of that year.

However, an individual is liable to pay advance tax only when the tax liability is more than ₹ 10,000. The above liability of ₹ 10,000 is arrived at after considering TDS, if any, deducted by taxpayers who have paid income to such person.

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

Tax Deducted at Source [TDS]

TDS refers to the portion of a payment that is deducted by the taxpayer before making payment of the net amount to the payee. The TDS rate would depend on the nature of the income earned by the individual. 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 are 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.

Tax Treatment of Employee Stock Option Plans

An increasing number of multinational companies prefer granting Employee Stock Option Plans [ESOP] 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 happens in two stages. In the first stage, it is taxable in the hands of the employee as salary (perquisite given by the employer), which is represented by the difference between the Fair Market Value [FMV] of the shares and the actual price at which they are purchased by the employees. The law lays down the procedure for determining the FMV of the shares. The point of taxability is the date on which the option is exercised by the employee to subscribe to the shares. Employers are liable to deduct tax at source on this part of the income.

The second stage of taxability arises when the said shares are sold or transferred. The difference between the sale price and the FMV (calculated in the earlier phase of taxation) is taxable as capital gains.

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.

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.

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

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

8. Indirect Taxes

"A brief look at the some of the Indirect Tax laws applicable in India and their related compliances"

Indirect Taxes

Customs Duty[1]

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

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

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

With the introduction of Goods and Services Tax [GST], the Customs Law has been amended to levy Integrated Goods and Service Tax [IGST] on the import of goods in lieu of CVD and SAD. BCD will continue to be levied, however, EC and SHEC has been exempted on all import of goods.

Customs Duty comprises of the following elements post 1 July 2017[2]:

- Basic Customs Duty [BCD]
- Integrated Goods and Service Tax [IGST] (with a peak rate of 28%, in lieu of CVD and SAD)
- Compensation Cess (ranging from 1% to 290%) depending on the nature of the goods

BCD is not available as input tax credit, whereas IGST and Compensation Cess are available as input tax credit under the GST Law (subject to the fulfilment of certain conditions and documentation requirements).

Union Budget for the Fiscal Year 2018-19 brought in some key changes that are outlined below:

Introduction of new levies

Social Welfare Surcharge [SWS] has been introduced to provide and finance education, health and social security. Typically, it would be applicable at the rate of 10% of the aggregate of duties of Customs on the import of goods.

A Road and Infrastructure Cess has been introduced on imported motor spirits (commonly known as petrol and high-speed diesel) at a rate of ₹ 8 per litre. The revenue collected from this said Cess would be utilized towards Financing Infrastructure Projects.

Move towards Digitization

Electronic cash ledgers have been introduced to ease the payment of liabilities at the time of clearance of imported goods. The facility of maintaining an electronic cash ledger has been provided to the importers and exporters through which the liability of Customs Duty may be discharged as and when goods are imported instead of a transaction-wise payment which was prevalent earlier.

Furthermore, the facility to issue Notices and Orders electronically for clearances and removal of goods for importation, exportation, home consumption, etc. has been enabled.

Miscellaneous

The Central Board of Indirect Taxes & Customs [CBIC] has been empowered to take measures or prescribe procedures or documentation for a class of importers/ exporters or for categories of goods on the basis of modes of transport to maintain transparency in the export/ import

documentation, expedite clearance of goods and reduce the transaction cost of clearances.

Goods and Services Tax [GST][3]

In order to pave the way for a unified taxation system in India, GST was introduced in July 2017. A majority of indirect taxes such as VAT, CST, Service Tax, Central Excise Duty, Entry Tax, Entertainment Tax, Luxury Tax, Purchase Tax, etc. are subsumed under GST. It was introduced mainly 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.

We have outlined the key concepts under the GST legislation below:

- Supply: GST is levied on the supply of goods or services. The scope of supply has been kept wide to include sale, transfer, barter, exchange, license, rental, lease, etc. and certain activities undertaken without a consideration.
- Administration: The GST Law is administered by the Centre and 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 is 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 Place of Supply [POS] for the goods and services determines whether the transaction is an inter-state or intra-state supply.
- Place of Supply [POS]: As GST is a destination-based tax, POS provisions have been formed in a manner to determine the territory of a supply transaction where the goods/ services will be consumed and accordingly, determine its taxability.
- Time of Supply: To align the collection of taxes, Time of Supply provisions have been introduced to determine the point at which GST is required to be paid for the supply of goods and services.
- Threshold: In majority of states, the threshold limit under GST is ₹ 4 million of aggregate turnover of goods and ₹ 2 million for aggregate turnover of services, in a financial year. Few states have pegged such a threshold at ₹ 2 million for aggregate turnover of goods/ services. For special category states in North and North-East India, the threshold is 1 million apart from a few of such states that have recently raised threshold for suppliers of goods up to ₹ 2 million.
- Registration: A person exceeding the prescribed threshold limit is required to undertake registration under GST. A few specified persons are required to obtain registration under GST irrespective of the turnover as well as facility for voluntary registration has also been provided.
- Composition levy: Composition levy is an alternative method of levy of 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 ₹ 15 million.
- Reverse Charge Mechanism [RCM]: Typically, a supplier of goods/services is liable to pay GST on the supply. However, for the import of services and other notified goods/services, a mechanism has been prescribed wherein the recipient of the supply is liable to pay GST.
- Rate of tax: The GST legislation provides for the classification of goods and services

and applicable tax rates are determined on the basis of 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 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, butter milk, vegetables, etc.

In order to avoid any issues for classification of a supply involving both goods and services, a Schedule has been prescribed under the GST Legislation to determine the transactions that shall be treated as supply of goods or supply of services.

- Input Tax Credit [ITC]: The recipient of goods or services would be eligible to claim ITC subject to certain restrictions. The ITC availed is eligible to be utilized as set-off against the payment of taxes.

- Mismatch of ITC: A strong mechanism is being set for matching ITC availed by the recipient vis-a-vis GST disclosed by the supplier. Furthermore, in order to facilitate the transparent flow of ITC, mismatch reports would be generated on the basis of the differences in disclosure by the supplier and the recipient of good or services to align the flow of credit.

- 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 enabled to provide a platform for swift processing since the interface between the taxpayer and the tax authorities has reduced.

- Compliances: Compliance is made simpler through the harmonization of tax rates, procedures and aligned laws. The erstwhile tax regime consisted of Central Excise, Service Tax and VAT/CST, along with the respective compliances and returns. However, under GST, the various compliances under various laws stand merged and this has lowered the number of returns as well as the time spent on tax compliances.

- Anti-profiteering: An anti-profiteering measure is incorporated under the GST Law to ensure that any benefits on account of the fungibility of ITC between goods and services or the reduction in the rate of tax on the supply of goods or services would result in a commensurate reduction in the prices of such goods/services. The government has also constituted 'The National Anti- Profiteering Authority' to examine whether this clause has been given due effect by the taxpayers.

Industry is set to avail of the maximum benefits of GST as it will not only contribute significantly to its rapid growth but will also contribute to an increase in the GDP of the country. GST has helped decrease transaction costs, which makes it easier to improve business, which eventually increases competition within the industry. An increase in competition will enable newer businesses to establish across industries and generate more jobs. Exporters and manufacturers will be able to reap the benefits of GST as most of the State and Central Taxes are no longer applicable to products and services. Lowered costs in the Indian industry will provide a major boost to exports, therefore making Indian goods and services more competitive in the international markets.

9. Labor Laws & Social Security Schemes

"A brief look at the some of the Labor Welfare laws & associated social security schemes applicable in India"

LABOR LAWS & SOCIAL SECURITY SCHEMES

In this chapter, we have provided an overview of labour and employment-related laws that are applicable across India. In addition to the laws prescribed by the central government, the states also stipulate certain Compliances, Acts, Rules and Regulations or extend the scope of certain central government Acts, which have not been included here.

Under the Constitution of India, labor is a subject on the Concurrent List where both the central and state governments are competent to enact legislations[1]. As a result, India has a plethora of laws – 44 labor-related statutes by the central government alone – addressing various aspects, such as industrial relations, formation of trade unions, occupational safety and health, labor welfare, minimum wages, conditions of employment, disciplinary action, employment and training, accidental and social security benefits, etc[2]. India is a founding member of the International Labor Organization [ILO] and has ratified 45 conventions and one protocol, of which 42 are in force and four conventions have been denounced[3].

Industrial Relations[4]

Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 [ID Act] has been enacted for the investigation and settlement of industrial disputes in any industrial establishment.

The ID Act defines "Industrial dispute" as a dispute or difference between workmen and employers or between workmen and workmen, which is connected with employment or non-employment or the terms of employment or with the conditions of labor. Dismissal of an individual workman is deemed to be an industrial dispute.

The ID Act provides for the constitution of the Works Committee, consisting of employers and workmen, to promote measures for securing and preserving amity and good relations between the employer and the workmen and, to that end, endeavours to resolve any material difference of opinion in respect of such matters.

Further, the ID Act provides that an employer who intends to close down an industrial establishment shall obtain prior permission at least ninety days before the date on which he intends to close down the industrial establishment, giving the reasons thereof.

Trade Unions Act, 1926

The Trade Unions Act, 1926 seeks to provide for the registration of Trade Unions in India and for the protection of the same. Further, the Trade Unions Act also in certain respects defines the law relating to registered Trade Unions like mode of registration, application for registration, provisions to be contained in the rules of a Trade Union, minimum requirement for membership of a Trade Union, rights and liabilities of registered Trade Unions, etc.

Wages

Minimum Wages Act, 1948

The Minimum Wages Act, 1948 provides for fixing of minimum rates of wages in certain employments. The minimum wages are prescribed by States through notifications in the State's Gazette under the Minimum Wages Rules of the specific State.

As per Minimum Wages Act, an employee means (i) any person who is employed for hire or reward to do any work, skilled or unskilled manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; (ii) an outworker, to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person; and

(iii) an employee declared to be an employee by the appropriate Government.

The term "wages" has been defined to mean all remuneration capable of being expressed in terms of money which would, if the terms of the contract of employment express or implied were fulfilled, be payable to a person employed in respect of his employment or work done in such an employment and includes house rent allowance but does not include:

i) The value of:
   a) Any house accommodation or supply of light, water, and medical attendance; or
   b) Any other amenity or any service excluded by general or special order of the appropriate Government.
ii) Any contribution paid by the employer to any personal fund or provident fund or under any scheme of social insurance; or
iii) Any travelling allowance or the value of any travelling concession; or
iv) Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
v) Any gratuity payable on discharge.

Further, the Minimum Wages Act requires the employer to pay to every employee engaged in schedule employment wages at a rate not less than minimum rates of wages as fixed by a notification without any deduction (other than prescribed deductions, if any).

Payment of Wages Act, 1936

The Payment of Wages Act, 1936 is an Act to regulate the payment of wages to certain classes of employed persons [earning up to ₹ 21,000 per month]. The Payment of Wages Act seeks to ensure that the employers make a timely payment of wages to the employees working in the establishments and to prevent unauthorized deductions from the wages.

According to the Payment of Wages Act, all wages shall be in current coin or currency notes or in both. It is, however, provided that the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

Payment of Bonus Act, 1965

The Payment of Bonus Act, 1965, provides for the payment of bonus (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 ₹ 21,000 per month and engaged in any kind of work – whether skilled, unskilled, managerial, supervisory, etc. – is entitled to a bonus for every accounting year if he has worked for more than 30 working days in that year.

This Act covers factors such as the bonus payable, 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 ₹ 100, whichever is higher. The maximum bonus payable under this Act is 20% of the annual salary which has to be determined on the basis of the profits of the establishment.

For calculation of the bonus, the salary of the employee is to be considered as ₹ 7,000 per month even if his/her salary is more than ₹ 7,000.

Social Security

Employees Provident Funds and Miscellaneous Provisions Act, 1952

The Employees Provident Funds and Miscellaneous Provisions Act, 1952 [EPF Act] provides for the institution of provident funds, pension funds, and deposit-linked insurance funds for employees and applies to all establishments employing 20 or more persons or class of persons. An establishment to which the EPF Act applies shall continue to be governed by this Act, notwithstanding that

the number of persons employed therein at any time falls below 20.

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 labour and part-time labour drawing salaries up to ₹ 15,000 per month.

However, an employee who draws salary beyond ₹ 15,000 can also become a member of the fund voluntarily upon fulfilment of certain formalities by the employer.

The minimum contribution as a percentage of the wage is shown below:

Scheme	Employer's Contribution	Employee's Contribution
Provident Fund	3.67%	12%
Pension Fund	8.33%	Nil
Deposit-linked Insurance Fund	0.50%	Nil

Applicability for Expatriates and International Social Security Agreements

The Indian government, vide Notifications GSR 705(E) and GSR 706(E) dated 1 October 2008, extended the Employees' Provident Fund (EPF) and Pension Scheme to all 'international workers'. Besides Indian employees working overseas, an 'international worker' also includes an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the EPF Act applies. The EPF contribution is to be calculated on the total salary earned by the employee, whether received in or outside India. The expatriate will be required to contribute 12% and the employer needs to contribute a similar amount.

As on 9 March 2016, India had signed social security agreements with 18 countries: Belgium, Germany, Switzerland, Denmark, Luxembourg, France, South Korea, Netherlands, Hungary, Finland, Sweden, Czech Republic, Norway, Canada, Japan, Austria, Portugal, and Australia. Six proposals are in the pipeline (with Spain, Thailand, Sri Lanka, Russia, Cyprus, and the USA). 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.

Employees' State Insurance Act, 1948

The Employees' State Insurance Act, 1948 (ESI Act) is a social welfare legislation enacted with the objective of providing certain benefits to employees in case of sickness, maternity and employment injury. In terms of the provisions of the ESI Act, the eligible employees will receive medical relief, cash benefits, maternity benefits, pension to dependants of deceased workers and compensation for fatal or other injuries and diseases. It is applicable to establishments where 10 or more persons are employed. All employees, including casual, temporary or contract employees drawing wages less than ₹ 21,000 per month shall be covered.

The employer should get his factory or establishment registered with the Employees' State Insurance Corporation [ESIC] within 15 days after the Act becomes applicable to it and obtain the employer's code number.

The employer is required to contribute at the rate of 4.75% of the wages paid/ payable in respect of every wage period. The employees are also required to contribute at the rate of 1.75% of their wages.

Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 applies to (i) every factory, mine, oilfield, plantation, port and railway company; (ii) every shop or establishment within the meaning of any law, for the time being in force, in relation to shops and establishments in a State, in which 10 or more persons are employed or were employed on any day of the preceding twelve months; and (iii) such other establishments or classes of establishments, in which 10 or more persons are employed or were employed on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

The Gratuity Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops, or other establishments. The Gratuity Act enforces the payment of "gratuity", a reward for long service, as a statutory retiral benefit.

Every employee, who has completed continuous service of five years or more, irrespective of his wages, is entitled to receive gratuity upon termination of his employment, on account of (i) superannuation; or (ii) retirement; or (iii) death or disablement due to accident or disease. However, the completion of continuous service of five years shall not be necessary where the termination of employment of any employee is due to death or disablement.

The gratuity is payable even to an employee who resigns after completing at least five years of service.

The gratuity is payable at the rate of fifteen days wages for every year of completed service, subject to an aggregate amount of ₹ 2 million only. However, if an employee has the right to receive higher gratuity under a contract or under an award, then the employee is entitled to get higher gratuity.

Working Hours, Conditions of Service and Employment

Factories Act, 1948

The Factories Act, 1948 lays down provisions for the health, safety, welfare, and service conditions of workmen working in factories. It contains provisions for working hours of adults, employment of young persons, leaves, overtime, etc. It applies to all factories employing more than 10 people and working with the aid of power or employing 20 people and working without the aid of power. It covers all workers employed in the factory premises or precincts directly or through an agency including a contractor, involved in any manufacturing. Some provisions of the Act may vary according to the nature of work of the establishment.

Some Major provisions of the Factories Act are explained below:

a. Section 11 of the Act provides that every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance. Section 13 of the Act focuses on ventilation and temperature maintenance at workplace. Every factory should work on proper arrangements for adequate ventilation and circulation of fresh air.
b. Section 18 of the Act specifies regarding arrangements for sufficient and pure drinking water for the workers.
c. Section 19 further mentions that in every factory there should be sufficient accommodation for urinals which should be provided at conveniently situated place. It should be kept clean and maintained.
d. Section 21 of the Act provides from proper fencing of machinery. And that any moving part of the machinery or machinery that is dangerous in kind should be properly fenced.
e. Further, sec 45 of the said Act specifies that every factory should have a properly maintained and well equipped first aid box or cupboard with the prescribed contents.

For every 150 workers employed at one time, there shall not be less than 1 first aid box in the factory. Also, in case where there are more than 500 workers there should be well maintained ambulance room of prescribed size and containing proper facility.

Equality and Empowerment of Women

Equal Remuneration Act, 1976

The Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers for the same work and prevents discrimination, on the ground of sex, against women in the matter of employment, recruitment and for matters connected therewith or incidental thereto. This Act applies to virtually every kind of establishment.

Maternity Benefit Act, 1961

This Act regulates the employment of women in certain establishments for a certain period before and after childbirth and provides for maternity benefits and certain other benefits including maternity leave, wages, bonus, nursing breaks, etc, to women employees.

The Maternity Benefit Act, 1961 applies to (a) a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; (b) every shops or establishments within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed on any day of the preceding 12 months.

Under the Maternity Benefit Act, an employer has to give paid leave to a woman worker for six weeks immediately following the day of her delivery or miscarriage and two weeks following a tubectomy operation. The maximum period for which a woman shall be entitled to maternity benefit shall be 26 weeks for up to 2 children. A crèche facility has been made mandatory for every establishment employing 50 or more employees.

While 15 days of paternity leave is authorized for male employees working within the government/ public sector, it is not obligatory for the private sector. Large private companies tend to have their own policies specifying the paternity benefits extended to their male employees.

Employment & Training

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

This act 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

The Apprentices Act, 1961

This act aims to provide practical training to technically qualified persons in various trades. The objective is the promotion of new and skilled manpower. The scheme is also extended to engineers and diploma-holders. The Act requires employers to hire apprentices in certain designated trades as notified by the government. The Act specifies the obligations of employers and apprentices, the standard of education/physical fitness, duration of training, terms and conditions of the contract, payment, health, safety, welfare, working hours, etc.

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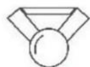
SNR has experienced a considerable growth since its inception in 1996 and is empanelled with reputed nationalized & private banks and with the office of the Comptroller and Auditor General of India. The firm through its team of experts consisting of Chartered Accountants, Company Secretaries and Management professionals provides professional services to a large number of clients viz. Companies, Banks and NGOs etc.

Member of KRESTON International, a **Global Network** of independent accounting firms. Kreston offers reliable and convenient access to quality services through member firms located around the globe.

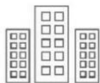
1971
Founded

25,000+
People

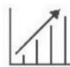
125+
Countries



12th
Largest Global Accountancy Network



200+
Firms



$2.3bn+
In Revenues

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- Ahmedabad
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Disclaimer:

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