Grant Thornton
An instinct for growth™

A guide to establishing presence in India

2019

Contents

About the guide

This guide explains the basics of entity establishment, sources of finance, import-export, labour regulations, financial reporting, audit regime and annual compliances, taxation laws and other compliance in the dynamic Indian market. It is intended to serve as a primer and provide a broad overview for companies planning to enter the country to tap significant opportunities in various sectors.

Disclaimer

The guide is not a substitute for professional advice. We suggest that appropriate specific professional advice should be taken for your particular requirements and needs.

Foreword

India's young and educated population, growing and aspirational middle class, regular flow of foreign investments and huge push on infrastructure development are all the right ingredients to propel growth.

India has emerged as one of the fastest growing large economies in the world and it is expected to continue on this growth trajectory in the foreseeable future. As per the Reserve Bank of India, the country's GDP will grow at 7.2% during 2019-20 despite the risk of a global slowdown, turbulence in financial markets and crude price volatility. The International Monetary Fund has projected that India is poised to become the fifth-largest economy by 2019 overtaking the United Kingdom. According to the World Bank, the growth outlook for South Asia, and India in particular, remains strong based on the increase in exports and domestic consumption with support from monetary and fiscal policies.

Structural reforms undertaken over the last few years, including the introduction of the Goods and Services Tax, constitution of the Real Estate Regulatory Authority, implementation of the Insolvency and Bankruptcy Code and other administrative reforms, have helped improve the business sentiment. All these changes have helped India move to the 77th position in the World Bank's Ease of Doing Business 2019 rankings.

The government has recently laid down a strategic vision for 2030 for the country focusing on 10 key themes. The vision comprehensively covers all aspects of the economy to take India to the next level of development along with social equity.

The areas of focus include making India a $10 trillion economy, ensuring digitisation of government processes and private transactions, committing to ensure self-sufficiency in food and improving agricultural productivity.

India's young and educated population, growing and aspirational middle class, regular flow of foreign investments and huge push on infrastructure development are all the right ingredients to further propel growth.

At Grant Thornton in India, we are delighted to be at the forefront of helping shape a more vibrant India working with the government, the leaders of India Inc., and global companies that want to maximise this amazing opportunity

Vishesh C Chandiok
Chief Executive Officer
Grant Thornton India LLP

Country profile

India has emerged as a bright spot in the world economy, on course to becoming a $10 trillion economy by 2030.

India's FDI inflow for the period April-December 2018 was $33.49 billion, driven by the government's efforts to improve ease of doing business and relax FDI norms.

Summary

Outlined below are key facts and statistics that make India a favourable business destination worldwide:

- Growing middle class
- Abundant supply of raw material
- Extensive rail and road network
- World's largest working population in the age group of 25-45 years
- Large pool of skilled English-speaking manpower
- Lower labour cost and hence reduced cost of manufacturing, especially in comparison to non-Asian countries
- Favourable geographical location, which makes India closer to markets including the Middle East, South Asia and Europe

Main ports of entry:
Chennai, Jawahar Lal Nehru (Mumbai), Kandla, Kochi, Mormugao, Kolkata, Paradip, Tuticorin, Ennore, Vishakhapatnam and New Mangalore

Major international airports:
Chennai, New Delhi, Mumbai, Hyderabad, Kolkata, Bengaluru, Goa and Thiruvananthapuram

Sources:
IBEF
Ministry of Commerce & Industry

Geographical location

India forms a natural subcontinent with the Himalayan mountain range to the north, and the Indian Ocean, the Arabian Sea and the Bay of Bengal to the south, west and east, respectively. The country is bordered by Pakistan on the northwest, China, Bhutan and Nepal on the northeast, and Bangladesh and Myanmar on the east. Near the country's southern tip, across the Palk Strait, lies Sri Lanka.

India has a land frontier of over 15,000 kilometres, stretching from the Himalayas in the north to the Palk Straits in the south, and from the Arabian Sea in the West to the Bay of Bengal in the east. It has a long coastline spanning over 7,000 kilometres. The climate varies from tropical in the south to temperate in the north.

Population and standard of living

India is the second most populated country in the world with a population of 1.339 billion (World Bank, 2017 estimates). According to the 2011 population census, there are 35 cities in India with a population of more than a million, with Mumbai, Delhi and Kolkata having a population over 10 million. Around 70% of the country's population resides in rural and semi-rural areas. One of the main reasons that India is considered as an attractive, high-growth market is its large pool of untapped and upper middle class population. Also, the standard of living in metropolitan cities of the country is comparable to the best in other developing nations.

As per estimates, 250 million people are set to join India's workforce by 2030. With a significant chunk of population shifting into the working age group, there is a corresponding increase in disposable income and consumption demand. It is estimated that India will have 247,800 new millionaires by 2025.

Diversity

India is rich in history, culture, religion and diversity. There are 22 officially recognised languages spoken in India across its 29 states and 7 union territories. India is secular through its constitution with people from all faiths residing here, including Hindus, Muslims, Sikhs, Christians, Buddhists and Jains.

Sources:
World Bank, indexmundi.com, Ministry of commerce and industry, PIB, India

Ministry of Shipping: http://shipping.gov.in/writereaddata/l892s/27963559-Perspectiveplans.pdf

Financial Benchmarks India Ltd

RBI (provisional estimates)

Education

The education system in India is considered as one of the best globally. The system comprises public and private schools, universities and other institutions for higher learning (MBA, PhD, MSc etc.). These institutions are committed to impart excellent academic and vocational training, and encourage participation in sports and other extra-curricular activities. The current literacy rate in India stands at 74.04%. The country offers quality education comparable to global standards in the fields of finance, consulting, literature, computer engineering and programming, science and technology, medicine, dentistry and business management and administration. The Indian Institutes of Technology (IITs) and Indian Institutes of Management (IIMs) are recognised world-over as premier higher educational institutions.

Currency

The Indian Rupee (INR) is the official currency of the Republic of India. The Reserve Bank of India (RBI) is the national and sole currency-issuing authority in the country. The exchange rate of the rupee is mainly market determined. The RBI takes a keen interest in the financial markets of the country and other countries globally to determine suitable monetary, regulatory and other measures. The current RBI reference rate for INR to US dollar 1 is 69.17 (29 March 2019).

Key economic statistics

India's economic policies are designed to attract significant capital inflows in the country on a sustained basis, and encourage technological collaboration with foreign firms. Policy initiatives taken over the past few years have resulted in significant inflow of foreign investment in all areas of the economy.

Statistics

Population	1.339 billion
Area	3.29 million square kilometres
GDP (current)	$2.7 trillion
GDP – per capita	$1.939.61
Exports (April 2018-March 2019)	$535.45 billion
Imports (April 2018-March 2019)	$631.29 billion
Literacy rate	74.04% (Census 2011)
Life expectancy	68.35 years
Urban population	33%
Local currency	Indian rupee (INR)

Key economic indicators of India

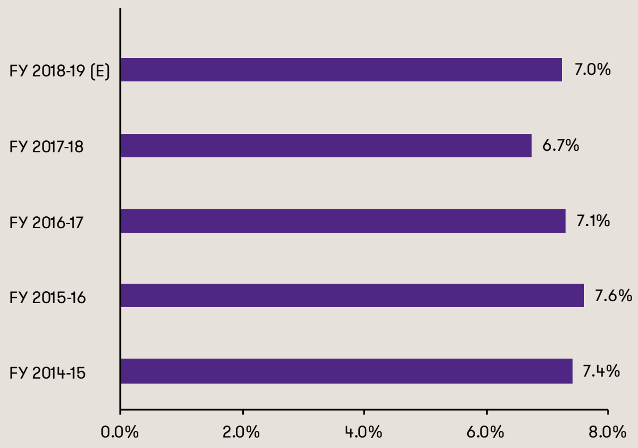
GDP and key fiscal indicators

- India's GDP growth rate stood at 6.7% in FY 2017-18. As per the Central Statistics Office (CSO), the GDP growth is estimated at 7.0% for FY 2018-19. IMF and World Bank studies estimate the country's GDP to reach 7.5% in fiscal year 2020. The fiscal deficit target of the country for FY 2018-19 is revised at 3.4% of GDP, which is marginally higher than the 3.3% budgeted previously.
- With an average growth of 7.5 % in the last four years, India has been the fastest growing large economy in the world. Also, India's contribution to world growth has risen from 7.6% during 2000-2008 to about 14.5% in 2018.

7.0%

GDP growth in 2018-19

Growth rates in GDP at factor cost



Source: CSO

External factor and per capita national income

- Exports during 2018-19 are estimated at $535.45 billion, registering a growth of 7.97% as compared to 2017-18.
- Imports during 2018-19 are estimated at $631.29 billion registering a growth of 8.48% as compared to 2017-18.
- India is the third largest economy in the world in terms of purchasing power parity (Source: IMF).
- According to First Advance Estimates provided by the CSO, in real term (at 2011-12 prices) during 2018-19, the per capita income is likely to attain a level of INR 91,291 as compared to INR 86,660 for the year 2017-18. The growth rate in per capita income is estimated at 6.1% during 2018-1, as against 5.4% in the previous year.

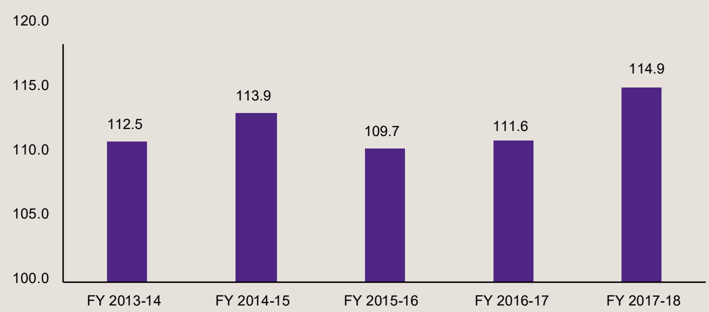
Money and credit

- India's current account deficit stood at 2.6% of the GDP in the period April-December 2018 as compared to 1.8% of the GDP in the same period a year ago. (Source: RBI)
- Indian foreign reserve touched $411.90 billion as on 29 March 2019. The Foreign Currency Assets (FCAs), which form a majority of the country's foreign exchange reserves, stood at $384.05 billion, while gold reserves stood at $23.40 billion. (Source: RBI)
- The total FDI investments in India for the period April-December 2018 stood at $33.49 billion, indicating that the government's efforts to improve ease of doing business and relaxation in FDI norms are yielding results. Data for April-December 2018 indicates that the services sector attracted the highest FDI equity inflow of $6.59 billion, followed by computer software and hardware at $5 billion, trading at $3.04 billion and telecommunications at $2.29 billion. (Source: IBEF)
- GST collections as a share of major tax revenue showed an impressive trend during 2018-19 with the average monthly collections at INR 981.14 billion as compared to INR 898 billion in the first year.
- Corporate tax contributed around 30% and GST contributed around 29%, while the balance 41% was contributed by other direct/indirect taxes. (Source: Government budget documents (revised estimates))

10th

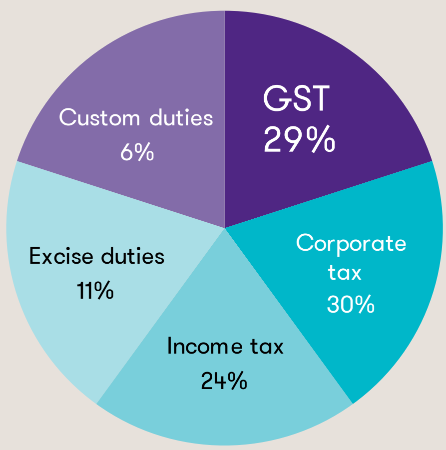
largest recipient of FDI in 2017 globally

Wholesale Price Index: Base year 2011-12



Source: Office of the Economic Advisor, Government of India; Department Of Industrial Policy & Promotion (DIPP)

Share of major tax revenues in FY 2018-19



Key sectors: An overview

Manufacturing and automotive

The government launched the ‘Make in India’ campaign in 2014 with the objective of making India a global manufacturing hub. India was ranked 30th on the Global Manufacturing Index of the World Economic Forum in 2017-18. The manufacturing sector currently accounts for about 16% of the country’s GDP, and the government aims to increase this to 25% of GDP by 2022. The sector encompasses a number of sub-sectors such as metals and mining, industrial manufacturing, chemicals, engineering, telecom and automotive, among others. To give a boost to the sector, the government has rationalised the GST rates at 18% for the majority of the equipment and introduced the e-way bill mechanism to ease the movement of goods across the country.

India is the seventh largest producer of automobiles in the world and the fourth largest market by volume. The sector, valued at around $93 billion, contributes almost 7.1% to India’s GDP. The auto components industry is valued at $51.2 billion representing about 2.3% of the GDP.

The two-wheelers segment dominates the market in terms of volume owing to a growing middle class and a young population. Moreover, the growing interest of companies in exploring the rural markets has further aided the growth of the sector.

India is expected to become the third largest passenger vehicle market by 2020 with an expected CAGR of 9.4% for 2015-2020.

Electronic vehicles are expected to take the centre stage in the coming years. The auto component industry primarily consists of original equipment manufacturer (OEM) supplies valued at $28.5 billion (representing 56%), exports valued at $13.5 billion (representing 26.2%) and aftermarket supplies of $9.2 billion (representing 17.8%). As per the Automotive Mission Plan 2016-26, the sector is expected to attract $8-10 billion in local and foreign investments by 2023. With a view to promote the sector, the government encourages foreign investment in the automobile sector and allows 100% FDI under the automatic route. Further, it aims to develop India as a global manufacturing centre and an R&D hub. Moreover, with the advent of GST, challenges and complexity around valuation in the auto sector have been reduced.

Real estate

The real estate sector in India is expected to reach a market size of $1 trillion by 2030 from $120 billion in 2017 and account for almost 10% of the country’s GDP by 2025. The growth of this sector is complemented by the growth of the corporate environment and the demand for office space as well as urban and semi-urban accommodations. The sector witnessed a gross leasing activity of 47.4 million square feet, marking a year-on-year growth of 5.3%. Also, co-working leasing witnessed a 199% increase in the first half of 2018 compared with the first half of 2017. Co-working spaces have raised an aggregate of $68 million over the past three years.

The real estate sector comprises four sub-sectors: housing, retail, hospitality and commercial. While the housing sector has seen muted demand in the recent years, the other sub-sectors are growing steadily.

The Government of India, along with the governments of the respective states, has taken several initiatives to encourage the development in the sector. The Smart City Project and the Pradhan Mantri Awas Yojana, under which 0.68 million houses have been constructed so far in 4,331 cities, are prime opportunities for the real estate companies. Implementation of the Real Estate (Regulation and Development) Act, 2016 and changes brought in under the GST regime are expected to boost investments in the sector.

Food and agriculture

With the 10th largest arable land resources in the world, agriculture is an important sector in the Indian economy providing employment to over 58% of the population. India is the largest producer of spices, pulses, milk, tea, cashew and jute; 2nd largest producer of wheat, rice, fruits and vegetables, sugarcane, cotton and oilseeds; the 4th largest producer of agro chemicals; and one of the largest manufacturers of farm equipment.

India is targeting to double its farm income by 2022 on account of increased investments in agricultural infrastructure along with growing use of genetically modified crops.

Various initiatives have been taken by the government in the recent years to boost the agriculture sector. These include the approval of Agricultural Export Policy, which aims to increase India's agricultural exports to $60 billion by 2022, introduction of the procurement policy to ensure fair prices for farmers, creation of a special fund in National Bank for Agriculture and Rural Development (NABARD) for providing credit to entrepreneurs and classification of food and agro-based processing units and cold chain infrastructure under agricultural activities for priority sector lending.

Healthcare

Healthcare is one of the leading sectors of the Indian economy and is expected to be amongst the top three healthcare markets in the world in terms of incremental growth by 2020. Indian healthcare is primarily characterised by three major sub-sectors: hospitals, pharmaceuticals and allied services (diagnostic centres and medical devices). The hospital industry is expected to grow at a CAGR of 16% to reach INR 8.6 trillion by 2022. The period between April 2000 and June 2018 saw FDI inflows for hospitals and allied services sub-sector at INR 370 billion and INR 117 billion respectively. The government has taken a series of measures to promote the healthcare industry in India. The Pradhan Mantri Jan Arogya Yojana was launched to provide health insurance cover worth INR 500,000 to over 100 million families every year. The government also launched 'Mission Indradhanush' with the aim of improving coverage of immunisation in the rural and urban areas of the country.

The Indian pharmaceutical industry is expected to grow at a CAGR of 22.4% during 2015-20 to reach INR 3.9 trillion by 2020. India is the largest provider of generic drugs globally accounting for 20% of global exports. India's pharmaceutical exports are expected to reach INR 1.4 trillion by 2020. Pharmaceutical exports include bulk drugs, intermediates, drug formulations, biologicals, ayush and herbal products and surgicals. India enjoys an important position in the global pharmaceuticals sector. Indian companies received the second largest number of Abbreviated New Drug Applications (ANDAs) from the US Food and Drug Administration (USFDA).

The government's 'Pharma Vision 2020' to promote the sector is expected to make India a major hub for end-to-end drug manufacturing.

Technology, media and telecom (TMT)

India is the world's largest sourcing destination, accounting for approximately 55% market share of the $185-190 billion global services sourcing business in 2017-18. Indian IT and ITeS companies have assisted in setting up over 1,000 global delivery centres in about 80 countries across the world. India has grown to be the digital capabilities hub of the world with around 75% of global digital talent present in the country. The industry is expected to add $14-16 billion in revenue in FY19 from IT-BPM services. Indian IT's core competencies and strengths have attracted significant foreign investments. The computer software and hardware sector attracted cumulative FDI worth $32.23 billion between April 2000 and June 2018.

Further, the Indian start-up ecosystem has become the third largest in the world with data analytics, artificial intelligence and Internet of Things (IoT) start-ups witnessing the fastest adoption across industry verticals. Start-ups in India have witnessed 110% growth in total funding, from $2 billion in 2017 to $4.2 billion in 2018. The government has taken initiatives to promote the sector, which include launching of the Pradhan Mantri Gramin Digital Saksharta Abhiyan (PMGDISHA), which aims to make at least one person per eligible household (6 crore) digitally literate by March 2019. Digital Schemes have also launched to promote 4Es (Education, Employment, Entrepreneurship and Empowerment) across the country.

The media and entertainment industry has also emerged as one of the key growth drivers for the Indian economy. The sector grew at a CAGR of 9% during 2012-18, almost nine times that of the US and two times that of China. It is expected to touch $39.68 billion in revenue by 2023 at a CAGR of 11-13%. The industry provides employment to approximately 4 million people, including both direct and indirect employment. The Government of India has taken various initiatives to bolster the sector, which include digitising cable distribution sector; granting an industry status to the film industry to attract greater institutional funding and increasing the FDI limit from 74% to 100% in cable and direct to home (DTH) satellite platforms.

India is the world's second largest market in terms of telecommunication subscriptions and internet subscribers. The Indian government unveiled the National Digital Communications Policy in September 2018 which aims to attract $100 billion worth of investments and generate 4 million jobs in the sector by 2022. The BharatNet programme was initiated in 2017 which has successfully connected 120 thousand grampanchayats and targets to connect a total of 250 thousand grampanchayats by March 2019. FDI in the telecom sector has been increased from 74% to 100%. The sector, over the years, has seen consolidation of the major players and it is expected that the key players would invest up to INR 700 billion in optical fibre cable (OFC) and other capex spends followed by investments in 5G technology.

Consumer products

The fast-moving consumer good (FMCG) sector primarily comprises household and personal care, healthcare and food and beverages. The sector has grown from INR 2.2 trillion in 2011 to about INR 3.7 trillion in 2017-18. It is expected that the sector will expand at a CAGR of 27.86% to reach INR 7.4 trillion by 2020 largely attributable to increase in private consumption and rural income. The online FMCG market is forecasted to reach INR 3.2 trillion in 2020 from INR 1.4 trillion in 2017, backed by growth in online users from 90 million in 2017 to about 200 million by 2020.

All basic categories of products such as detergents, dishwashing bars, hair oils, shampoos, fairness creams and toothpaste have witnessed rural growth outpacing urban growth by 1.5 times at offtake levels. People in India have gracefully embraced Ayurveda products, which has resulted in home-grown brand Patanjali being ranked as one of the most trusted FMCG brand in India.

On the GST front, the rates across various product categories have been reduced which has benefited the sector as well as consumers. The government has instituted a National Anti-Profiteering Authority which ensures that the traders pass on the benefits of reduced GST rates to the consumers by way of a reduction in prices.

Retail and e-commerce

The Indian retail industry is one of the fastest growing in the world, accounting for more than 10% of the country's GDP. India is the fifth largest retail destination globally. The Indian retail market, which was valued at INR 55.5 trillion in 2018, is projected to reach INR 113.8 trillion by 2023, exhibiting a healthy CAGR of 15.4% between 2018 and 2023. Increasing economic growth, changing demographic profile, improving disposable incomes, urbanisation and changing consumer tastes and preferences are the other factors contributing to the growth of the organised retail sector in the country. The government has introduced reforms to attract FDI in the retail industry. The government has approved 51% FDI in multi-brand retail and 100% in single brand retail under the automatic route, which is expected to give a boost to ease of doing business and Make in India.

The e-commerce sector is transforming the way business is done in India. The e-commerce market in India is valued at INR 3.5 trillion and is projected to reach INR 8.3 trillion by 2023, marking a CAGR of 19% between 2018 and 2023. The growth is triggered by increasing internet and smartphone penetration with the number of online shoppers expected to reach 171 million by 2023. The smartphone user base is expected to touch 472 million by 2023, primarily driven by the government's Digital India campaign. On the GST front, e-commerce dealers are allowed a threshold turnover exemption of INR 2 million from registration.

Financial services

The financial services sector has expanded rapidly, backed by formalisation of economy, improved standard of living and spending habits, and digitisation of various financial service products. The sector comprises commercial banks, insurance companies, non-banking financial companies (NBFCs), co-operatives, pension funds, mutual funds and other smaller financial entities, with commercial banks accounting for more than 64% of the total assets held by the financial system. The banking sector has faced a lot of non-performing asset (NPA) issues in the last few years, but with the introduction of the Insolvency and Bankruptcy Code (IBC), banks are in the process of recovering bad loans from defaulting borrowers expeditiously. IBC has directly/indirectly addressed stressed assets worth about INR 3 trillion in the last two years.

The Indian government has introduced several reforms to liberalise, regulate and enhance this sector. Consolidation of weaker public sector banks with stronger public sector banks has been initiated, which would lead to higher capital with banks for kick-starting the credit cycle. Other key initiatives include digitisation of financial products (such as Pradhan Mantri Jan-Dhan Yojana (PMJDY), Aadhaar-enabled e-KYC, UPI, etc.) and increased penetration of the banking/NBFC sector in rural and remote areas of the country.

The focus of the government in the last few years has been to build a digital payment ecosystem, which has led to channelising of retail investments into financial products offered by mutual funds, insurance companies, etc. This has in turn led to more than 30% growth in investments made by retail investors through systematic investment plans (SIPs) in Indian capital markets.

Political and legal system

Introduction

India is the largest democracy in the world. It is estimated that the country today has more than 200 political parties. One feature of the political parties in India is the dominant role played by their leaders. There are both national and regional political parties and to compete on a national level, many political parties form alliances. The two main alliances in the country are the National Democratic Alliance, a coalition led by the Bharatiya Janata Party, and United Progressive Alliance, a coalition led by the Indian National Congress. The country's general elections are held once in five years. The election result will determine which political party or alliance will form the next government and the individual who will be elected as the prime minister of the country.

Structure of the government

India is a sovereign socialist secular democratic republic with the largest multi-party democracy in the world. The Constitution of India provides for a parliamentary form of government which, although has certain unitary features, is federal in structure. The council of the Parliament of the Union consists of two legislative houses – the Rajya Sabha (Upper House), which represents the states of the Indian federation, and the Lok Sabha (Lower House), which represents the people of India as a whole. At present, the country is a union of 29 states and seven Union Territories (UTs). Each state is governed by a government comprising elected representatives of the public. The UTs (except Delhi and Puducherry) are controlled and administered directly by the Central Government.

The central and state governments comprise a council of ministers headed by the prime minister and a chief minister, respectively. The head of the Indian Republic is the President of India while the head of the government is the Prime Minister. The Governor, appointed by the President of India, is the head the Indian State and the Chief Minister is the head of the elected government in the State. Elections for the states are also held after every five years.

New Delhi is the national capital of India and the seat of the central government. All the other state governments have primary responsibility for matters such as law and order, education, health and agriculture. India is a member of major international organisations including South Asian Association for Regional Cooperation (SAARC); Brazil, Russia, India, China and South Africa (BRICS); and the Commonwealth of Nations among others.

Judiciary and law

India has a well-established, independent judicial system which comprises the Supreme Court of India, which is based in New Delhi, 24 High Courts spread across the major states and several district courts and subordinate courts. The Supreme Court is the final court of appeal, and its decisions are binding on all other courts of all the states and UTs.

India derives most of its judicial framework from the British legal system based on the Common Law wherein the judicial pronouncements are carefully preserved and they act as a reference in subsequent judicial pronouncements. India also has quasi judicial authorities, consumer courts, Competition Commission, etc. India does not have any system of jury as prevailing in the US.

India also has a framework of Tribunals and Appellate Tribunals to adjudicate on specific economic matters, eg Income-tax Tribunals, National Company Law Tribunal, etc.

Source: Grant Thornton Deal Tracker

Foreign investment

Introduction

Foreign investors keen to set up operations in India are required to comply, inter alia, with the foreign exchange control laws of the country, particularly the FDI Regulation, issued by the Government of India from time to time. The Companies Act 2013, Foreign Exchange Management Act, 1999 (FEMA) and the regulations thereunder govern the setting-up of incorporated entities (joint ventures or wholly-owned subsidiaries) and offices of foreign incorporated entities (branch, liaison or project offices).

FDI policy

In recognition of the important role played by FDI in accelerating the economic growth of the country, the government initiated a slew of economic and financial reforms in 1991. India is now ushering in the second generation reforms aimed at furthering the integration of the Indian economy with the global economy.

FDI is allowed in most sectors, including the services sector, through the automatic route without requiring any prior government approval.

On the other hand, in a few sectors, the existing and notified sectoral policy does not permit FDI beyond a ceiling or it is subject to certain specified conditions. In such cases, FDI can be brought in after obtaining an approval from the government. The approving authority used to be the FIPB, which functioned under the Ministry of Finance. The government has abolished FIPB with effect from May 2017. New proposals for FDI under the approval route are now directly handled by the concerned ministries. Towards this end, the Department for Promotion of Industry and Internal Trade (DPIIT) has issued the Standard Operating Procedure (SOP) for processing FDI proposals. This SOP clearly lays down the procedure to submit the online application through the Foreign Investment Facilitation Portal (formerly known as the FIPB portal).

Applicability of the FDI policy may vary based on the category of foreign investor - for example, investments by Non-Resident Indians (NRIs)/Overseas Citizens of India (OCIs) are subject to certain relaxations under the FDI policy - and specific guidance should be sought by the foreign investors.

The table below gives an indicative summary of the sectoral FDI policy:

FDI policy parameter	Sectors
Automatic route	FDI up to 100% permitted under the automatic route in most services, manufacturing, infrastructure sector, B2B trading, single brand retail trading (SBRT), pharmaceuticals (greenfield), etc.
Approval route	FDI in these activities is permitted only with prior government approval, e.g., broadcasting content services (FM radio), print media (newspaper and periodicals), multi-brand retail trading (51%) and mining. FDI beyond these caps requires government approval.
Sectoral caps	FDI in certain sectors is subject to sectoral caps such as insurance (49%), defence subject to industrial licence (49%) and airlines (49%).
FDI-linked conditions	FDI in these sectors is subject to specified conditions – floriculture, horticulture, apiculture and cultivation of vegetables and mushrooms under controlled conditions, wholesale trading, single-brand retail trading, e-commerce, construction development – townships, housing and built-up infrastructure, print media and asset reconstruction companies (ARCs).

FDI is not permitted in the following sectors:

- Lottery business including government/private lottery, online lotteries, etc.
- Gambling and betting including casinos, etc.
- Chit funds
- Activities/sectors not open to private sector investment, e.g., atomic energy and railways (except mass rapid transport systems)
- Business of chit fund
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real estate business, or construction of farmhouses (subject to certain exceptions)
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, tobacco or tobacco substitutes.

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name and management contract is also prohibited for lottery business, gambling and betting activities.

To make India an attractive destination for foreign investors, the FDI policy allows repatriation of all profits, dividends, royalty, and know-how payments, freely.

Exchange controls

As per the current foreign exchange control regulations, transactions are divided into current account and capital account transactions. Capital account transaction refer to such a transaction which alters the assets or liabilities, including contingent liabilities, outside India, of a person resident in India, or assets or liabilities in India of a person resident outside India. Thus, investment by a body corporate or an entity in India and investment therein by a person resident outside India are capital account transactions.

Current account transactions, on the other hand, are transactions other than capital account transactions.

Such transactions comprise, for instance, payments due in connection with foreign trade, other current business services, and short-term banking and credit facilities, in the ordinary course of business. Broadly speaking, current account transactions are permitted unless specifically barred and capital account transactions are prohibited unless specifically permitted.

Capital instruments

FEMA, read with relevant regulations governing FDI, provide, inter alia, that Indian companies can issue to foreign investors equity shares, fully and mandatorily convertible debentures, fully and mandatorily convertible preference shares and warrants (issued in accordance with the regulations issued by SEBI), subject to the pricing guidelines/valuation norms and other prescribed reporting requirements. The FDI policy allows optionality clauses in equity shares and compulsorily and mandatorily convertible preference shares/debentures issued to non-resident investors under the FDI scheme subject to certain conditions. The policy provides that shares with call/put options may be issued to non-resident investors provided the non-resident investor is not guaranteed any assured exit price at the time of making the investment.

General permission is also available for issuing shares/ preference shares against lump sum technical know-how fee, royalty due for payment, subject to entry route, sectoral cap and pricing guidelines, and compliance with applicable tax laws. Recently, the government also allowed companies to issue equity shares against any other funds payable by the investee company (subject to bonafides being satisfied regarding legitimacy of dues), remittance of which does not require prior permission of the government or RBI under FEMA or any rules/ regulations framed or directions issued thereunder.

Foreign currency loans

With effect from 16 January 2019, a new External Commercial Borrowings (ECB) regime has been introduced wherein Indian entities who are eligible to receive FDI have been allowed to receive ECB from 'Recognised Lenders' as defined in the new ECB framework. The minimum average maturity period for ECBs has been prescribed as one year, three years or five years.

The new ECB framework comprises two options: foreign currency (FCY) denominated ECB and rupee denominated ECB. The multi-tiered structure under the erstwhile ECB framework has been done away with.

At present, there are two parameters through which corporates can avail ECBs from eligible lenders. The following table depicts the key parameters under the two tracks:

Parameter	**Track I (short-medium term foreign currency ECB)**	**Track II (long-term foreign currency ECB)**
Currency of borrowing	Any freely convertible foreign currency	INR
Forms of ECB	Loan including bank loans, floating/fixed rate notes/ bond/ debentures (other than fully and compulsory convertible instruments); trade credit beyond three years, FCCBs, FCEBs and financial lease.	Loans including bank loans, floating/fixed rate notes/bonds/debentures/preference shares (other than fully and compulsorily convertible instruments), trade credits beyond three years and financial lease. Also, plain vanilla rupee denominated bonds (RDBs) issued overseas, which can be either placed privately or listed on exchanges as per host country regulations
Eligible borrowers	The list of eligible borrowers has been expanded to include all entities eligible to receive FDI. Additionally, port trusts, units in special economic zones (SEZs), SIDBI, Exim Bank and registered entities engaged in microfinance activities, viz. registered not-for-profit companies, registered societies/trusts/cooperatives and non-government organisations can also borrow under this framework.	
Recognised lender	The lender should be a resident of a Financial Action Task Force (FATF) or International Organization of Securities Commission (IOSCO) compliant country. Multilateral and regional financial institutions, individuals and foreign branches/subsidiaries of Indian banks can also be lenders.	
End use restrictions	ECB proceeds cannot be utilised for real estate activities, investment in capital market, equity investment, working capital or general corporate purposes or repayment of rupee loans except where the ECB is received from a foreign equity holder (either minimum 25% or direct or 51% of indirect holding or group companies with common overseas parent).	

Import/export controls

Over the years, Indian trade policy has undergone fundamental shifts to correct the previous anti-import bias, through the withdrawal of quantitative restrictions, reduction and rationalisation of tariffs, liberalisation in the trade and payments regime, improvement in access to export incentives, and establishment of a realistic and market-based exchange rate.

Export and import of goods and services from India are allowed under FEMA, read with the Foreign Exchange Management (Current Account) Rules as amended from time to time.

The said export and import regulations stipulate guidelines pertaining to the settlement and payment of export and import transactions, realisation of proceeds, advance receipts and payments written off and limits permissible for them. Further, Export Data Processing and Monitoring System (EDPMS) and Import Data Processing and Monitoring System (IDPMS) has been introduced in order to monitor the relevant filings.

The export regulations also set out the obligations for Indian exporters of goods such as submission of certain prescribed declarations along with supporting documents. Nevertheless the export proceeds are required to be realised within a stipulated time period (currently nine months).

Similarly, the import regulations provide the manner and documents required to be followed by persons, firms and companies for making payments towards imports into India. Further, the said regulations provide the timelines within which remittances against imports should be complete (not later than six months from date of shipment) or an approval be sought from the authorised dealer (AD)/RBI prior to the expiration of the due date (up to three years from the date of shipment).

Overseas direct investment

Indian parties (company incorporated in India or a body created under an act of Parliament or a partnership firm registered under the Indian Partnership Act 1932 or a limited liability partnership (LLP) incorporated under the LLP Act, 2008) are eligible to undertake 'overseas direct investment' outside India signifying a long-term interest in the foreign entity (joint venture or wholly owned subsidiary).

An Indian party can make overseas direct investment under the automatic route in any bonafide activity up to the prescribed limit of its net worth (currently 400% of net worth). It may be noted that real estate and banking business are prohibited sectors for overseas direct investment. Overseas investment in the financial services sector is subject to specified conditions including a satisfactory track record of the investing party, and the prior approval of the concerned financial regulator in India.

The regulations also prescribe provisions with respect to aspects such as issuance of guarantee, ongoing compliance and reporting requirements and conditions for disinvestment.

Finance

Introduction

The government's extensive focus on digitisation of various financial services has aided rapid expansion of the financial services sector.

Within financial services, banking is the biggest and one of the most important sectors contributing to the growth of the economy.

In the last few years, the focus of the government to build a digital payment ecosystem has led to the channelising of retail investments into financial products offered by mutual funds, insurance companies, etc. which have resulted into exponential growth in these sectors and have helped Indian capital markets insulate from any external shocks.

Considering the importance of the financial services sector in the Indian economy, the government has, from time to time, endeavoured to address the tax and regulatory issues faced by the industry to make India a more competitive economy and to provide easy access to the foreign capital into the Indian markets.

Indian financial services sector

The Indian financial sector has the following broad categories:

Sr. No.	Categories
1	Banks
2	White label automated teller machine
3	Non-banking financial companies
4	Housing finance companies
5	Insurance companies
6	Capital markets
6A	Capital market - Intermediaries
7	Pension funds
8	Mutual funds
9	Private equity and venture capital funds
10	Asset reconstruction companies
11	REIT/InvIT
12	Fintech
13	Gift City

Banks

Financial markets in India have acquired increased liquidity and depth over the years with banks dominating the space. Banking is a highly regulated and administered sector given that its ability to withstand stress is critical for overall financial stability. The sector is regulated by the RBI, the central bank of India.

Reforms in the banking sector have encouraged entry of new players, making it a more market-driven one, with increased efficiency and productivity.

The banking sector comprises commercial banks (i.e. PSU banks, co-operative banks, regional rural banks, private banks and foreign banks), small finance banks (SFBs) and payments banks.

Commercial banks deal in all types of commercial banking businesses including cash management system, ATMs, credit cards, term and working capital loans, housing and consumer finance, and purchase and sale of foreign currencies. There are over 100 commercial banks in India.

SFBs have been conceptualised to further financial inclusion by (i) provision of savings vehicles, and (ii) supply of credit to small business units, small and marginal farmers, micro and small industries, and other unorganised sector entities through high technology-low cost operations. Currently, RBI has given licence to 10 entities for setting up SFBs. SFBs are a modified/ updated version of micro-finance institutions (MFIs). Many MFIs have converted themselves into SFBs given the cheap access to funds by directly accepting deposits from the public instead of borrowing through banks.

Payments banks are a new model of banks conceptualised by RBI for intensifying financial inclusion by providing (i) small savings accounts and (ii) payments/remittance services to migrant labour workforce, low income households, small businesses, other unorganised sector entities and other users. Payments banks typically reach customers mainly through mobile phones rather than through conventional banks. Currently, payments banks licence has been granted to 11 entities.

In 2018, in an endeavour to safeguard banks against various risks associated with virtual currencies, RBI prohibited all banks from providing services associated with virtual currencies such as maintaining account, registering, trading, settling, clearing, giving loans against virtual currencies, etc.

White label automated teller machine (WLA)

ATMs set-up, owned and operated by non-bank entities are called WLAs. They provide banking services to the customers of banks in India based on the cards (debit/credit/prepaid) issued by banks. The Union Cabinet has approved 100% FDI under the automatic route for non-banking entities that operate WLA, subject to certain conditions as prescribed.

NBFCs

NBFCs are financial institutions whose financial assets constitute more than 50% of the total assets and income from financial assets constitute more than 50% of the gross income. NBFCs provide certain types of banking services but do not hold a full banking licence. Like banks, NBFCs are also regulated by RBI. NBFCs lend and make investments and hence their activities are akin to those of banks; however, unlike banks, NBFCs can neither accept demand deposits nor do they form part of the payment and settlement system and thus, cannot issue cheques drawn on themselves.

NBFCs are broadly characterised on the basis of the business activities conducted by them:

- Investment and credit company: A company in the business of providing finance by making loans or advances or in the business of acquisition of securities
- Infrastructure financing: A company granting infrastructure loans
- Core investment company: A company carrying on the business of acquisition of shares and securities
- NBFC factors: A company engaged in the business of factoring
- Mortgage guarantee NBFC
- Infrastructure debt: Facilitate the flow of long-term debt into infrastructure projects
- Micro financing: A company granting loans to a borrower with lower household annual income

Currently, there are approximately 10,200 NBFCs registered with RBI.

As a dedicated credit delivery channel for vast unbanked/ under- banked segments, NBFC-MFIs have been playing a significant role in taking forward the financial inclusion agenda of the government of India.

Due to the large NPAs in the banking sector and innovative products offered with the use of technology, NBFCs have been able to service urban customers as well as unbanked/ underbanked retail and MSME customers. This is evident from the exponential growth of over 18.7% in the credit growth of NBFCs during FY 2018.

Housing finance companies (HFCs)

HFCs in India are governed by the National Housing Bank Ltd which is in turn regulated by RBI. HFCs regulate the housing finance system of the country to prevent the affairs of any housing finance institution being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the housing finance institutions.

100% FDI is permitted in an HFC under the automatic route. Currently, 71 HFCs are registered under the National Housing Bank Act.

Insurance

The insurance sector comprises insurance companies, insurance brokers, third-party administrators, surveyors and assessors, and such other intermediaries. The sector is regulated by the Insurance Regulatory and Development Authority of India (IRDAI).

Currently, there are 69 insurers operating in India of which 8 are in the public sector and the remaining are in the private sector. The companies in the private sector are formed largely as a joint venture with foreign insurers. Currently, 49% FDI is permitted under the automatic route subject to certain conditions – key ones being that the company obtains approval from IRDAI for carrying out the insurance business and that its ownership and control remain at all times in the hands of resident Indian entities. With the introduction of the private equity investment guidelines in December 2017, several private equity investors have started actively looking at investment opportunities in private insurance companies. There are at present 24 life insurers, 27 general insurers and seven standalone heath insurers operating in India. Out of these, three life insurers, two general insurers and one re-insurer are listed on Indian stock exchanges.

Since the opening of the sector to reinsurance players and Lloyd's of London in 2016, nine foreign reinsurers and Lloyd's of London have set up a branch office in India with the prior approval of IRDAI. Lloyd's of London has two syndicates currently operating in India.

IRDAI has also introduced detailed guidelines allowing domestic as well as foreign insurers/reinsurers and insurance intermediaries to set up their branch office in International Financial Services Centres (IFSCs), which would entitle them to certain fiscal incentives. The aim of the government is to develop India as the hub for global insurance business.

Capital markets

Indian companies are allowed to raise capital and access financial markets through public issue of securities within the regulatory framework of SEBI, which regulates the activities of capital market participants in India. The Indian capital market comprises equity, debt, foreign exchange, derivative markets and commodity market.

In order to boost foreign investment in Indian capital markets, SEBI has recently relaxed the eligibility and know your customer (KYC) norms for foreign portfolio investment (FPIs) and allowed FPIs a period of two years for complying with the relaxed norms.

The government has also relaxed FDI norms by enhancing sectoral limits across various sectors in an effort to boost foreign investment. Sectors such as defence, retail, and airline have witnessed noteworthy reforms. There are talks of a further increase in sectoral limits in sectors such as insurance.

Initiatives by the government towards ease of doing business, enhanced sectoral caps, simpler mechanism to obtain approval for investment coupled by tax exemptions have helped maintain a robust business environment for foreign investors leading to a larger inflow of capital.

Capital market intermediaries

Some of the financial intermediaries introduced in Indian capital markets that are typically regulated by SEBI include stock exchanges, stock brokers, merchant bankers, credit rating agencies, investment advisors, portfolio managers, clearing corporations, etc. These intermediaries support the functioning of capital markets in India.

Pension funds

Pension funds are created by an employer to make contributions of funds for employees' future benefit. With the passage of the Pension Fund Regulatory and Development Authority (PFRDA) Act 2013, the investment corpus in India's pension sector is expected to cross $1 trillion by 2025. Foreign investment in the pension sector is permitted up to 49%.

Mutual funds

Mutual funds are popular in India because they offer the ability to easily invest in increasingly complicated financial markets. A large part of the success of mutual funds is attributable to the advantages they offer in terms of diversification, professional management and liquidity.

After the streamlining of regulations, and with rising incomes, India now has several fund houses with record assets under management (AUM) of over INR 23,500 billion at last count, and several lakh unit holders. There has been a growth rate of approximately 67% in the last five years.

Other sources of finance

Alternative investment funds (AIFs)

In India, AIFs are regulated by SEBI. AIF refers to any privately pooled investment from Indian or foreign sources. AIFs are classified under three categories based on their investment strategy:

- Category I: Ventures capital funds, infrastructure funds, SME, etc.
- Category II: None of the two; typically unlisted equity and debt funds
- Category III: Complex derivative, listed equity

Foreign investors are permitted to invest in AIFs under the FDI route. Further, a foreign portfolio investor (FPI) can also directly invest in a Category III AIF. With fresh inflow of foreign investments, there has been an accelerated growth in the AUM of AIFs, which has yielded better returns to investors as well as better investments for new and emerging businesses, social ventures and infrastructure.

By 31 March 2019, over 500 AIFs had been registered with SEBI with total AUM of over INR 748.90 billion, increasing from approximately INR 3.6 billion five years ago.

ARCs

ARCs have been created to bring about a system for recovering NPAs from the books of secured lenders and unlocking the value of NPAs. To help tackle the issue of declining asset quality of banks, 100% FDI is allowed in ARCs under the automatic route.

Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT) funds

REIT and InVIT are alternate fund-raising mechanisms offered to capital-intensive industries for companies that own income-producing real estate or infrastructure. As such, the unit holders of a REIT/InvIT earn a share of the income earned through real estate investment without actually having to go out and buy or finance property.

SEBI has relaxed the rules for REIT and InvIT by allowing them to invest more in under-construction projects, rationalised unit holder consent on related party transactions and removal of restrictions on special purpose vehicles (SPVs) to invest in other SPVs holding the assets. Despite SEBI's efforts, only two InvITs have been listed. REITs are yet to be listed in India.

Fintech

India is transitioning into a dynamic ecosystem offering fintech start-ups a platform to potentially grow into billion-dollar unicorns. From tapping new segments to exploring foreign markets, fintech start-ups in India are pursuing multiple aspirations.

From wallets to lending to insurance, the services of fintech have redefined the way in which businesses and consumers carry out their routine transactions. The increasing adoption of these trends is positioning India as an attractive market worldwide.

The fintech sector in India mainly includes:

1. Next-generation payments: Pre-paid instruments and payment wallets and payment gateways.
2. P2P lending: Regulated NBFCs providing the services of loan facilitation via online medium through an eligible lender to an eligible borrower.
3. Financial inclusion: Jan Dhan Yojna
4. Blockchain
5. Robo-advisory
6. Security and biometrics

GIFT City

Gujrat International Finance Tec-City (GIFT City), India's first IFSC, has been set up with an objective to enable Indian entities to compete on an equal footing with offshore financial centres and to provide facilities and regulations comparable to other leading IFSCs in the world. Units set up in the GIFT City are also eligible for certain tax incentives.

The regulators overseeing the financial transactions which may be undertaken in GIFT City are RBI, SEBI and/or IRDA, depending on the nature of the activity undertaken. The government has in February 2019 approved the setting up of a unified authority that would regulate all the financial services in an IFSC.

SEBI has issued IFSC guidelines to facilitate and regulate the financial service activities relating to securities market in IFSCs. Currently, AIFs, FPIs, mutual funds, clearing corporations, stock exchange and capital market intermediaries and insurance/ reinsurance companies are allowed to operate in IFSCs

Business entities

Introduction

A foreign company has the following business entity options through which it can establish its presence in India:

Offices of foreign incorporated entities entities	• Liaison office (LO) • Branch office (BO) • Project office
Unincorporated entities	• Partnership firms
Incorporated entities	• LLP • Limited company public/private

These forms of business entities are discussed in detail as follows:

LO

A foreign company (a body corporate incorporated outside India, including a firm or other association of individuals) may establish its LO in India by making an application to the authorised dealer bank (AD bank) if the principal business of the entity resident outside India falls under sectors where 100% FDI is permitted in terms of the FDI policy. In certain cases, the application is to be made to the RBI and processed in consultation with the government, for instance, when the applicant is from certain specified countries or setting up the LO in specified states in India etc.

In addition, when the applicant is a non-government organisation, non-profit organisation (NPO), body/agency/department of a foreign government either wholly or partly and covered under any of the activities of Foreign Contribution (Regulation) Act, 2010 (FCRA), it shall obtain a certificate of registration under the FCRA only and no approval would be required from the RBI.

An LO is suitable for a foreign company which wishes to set up a representative office as a first step to explore and understand the business and investment climate in the country. This office serves as a communication channel between the parent company overseas and its present/prospective customers in India. The LO can also be set up to establish business contacts or gather market intelligence to promote the products or services of the overseas parent company. The LO cannot undertake any business activity or earn any income in India.

BO

A foreign company may establish its BO in India by making an application to its AD bank in most cases. The BO should be engaged in the activity in which the parent entity is engaged or a related activity. Permissible activities for a BO include exporting/importing goods, rendering professional or consultancy services, undertaking research work, promoting technical or financial collaborations, representing the parent company in India and acting as buying/selling agent in India, rendering information technology services and rendering technical support.

There is a general permission for establishing a BO in SEZs for manufacturing and service activities subject to those sectors where 100% FDI is permitted along with other conditions.

Project office

A foreign company may open a project office in India without prior approval from the RBI, provided it has secured a contract from an Indian company to execute a project in India and met the prescribed conditions. Once the project execution is completed as per the terms of the contracts awarded, the project office would have to be closed down.

Partnership firms

Under the current FDI policy and the Foreign Exchange Management Law, foreign investment into Indian partnership firms (other than by NRIs or persons of Indian origin) requires prior permission from the RBI.

A partnership is an association of two or more persons to carry on as co-owners of a business for profit. Each partner of a partnership firm has unlimited liability.

LLPs

An LLP is a hybrid between a partnership firm and a company. It is a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP. Foreign investment into an LLP is permitted under the automatic route (without requiring prior approval) in those sectors in which 100% FDI is allowed.

As per extant regulations, LLPs are also eligible to raise ECBs after the introduction of the New ECB Framework.

An LLP is governed as per the LLP agreement between the partners, and in the absence of such agreement, the LLP would be governed by the framework provided in the Limited Liability Partnership Act, 2008. This Act describes the matters relating to the mutual rights and duties of the partners and the LLP. Importantly, the Act makes it mandatory to have two designated individual partners, at least one of whom should be residing in India.

Any existing private company or existing unlisted public company can be converted into an LLP by complying with the relevant provisions of the LLP Act, 2008. Tax neutrality conditions have been stipulated under the Income-tax Act, 1961 for such conversion.

Limited company

A limited company is an incorporated entity which is a separate legal entity distinct from its members/shareholders. As mentioned above, foreign investment in India is governed by the FDI policy of the government as well as the Foreign Exchange Management Law. As per the current policy, all companies in India have to be incorporated under the provisions of the Companies Act, 2013.

Private company: A minimum of two members and two directors are needed to establish a private company with at least one director being resident in India.

Public company: A public company can be incorporated with minimum three directors and seven members with at least one director being resident in India.

Foreign investors while deciding to set up an entity in India as a private vis-à-vis a public company need to consider several factors:

- While a private company can provide for restrictions on transfer of its shares by inserting suitable clauses in the Articles of Association, no such restrictions can be put on transfer of shares in a public company which are freely transferable.
- A private company as the name suggests cannot invite public to subscribe its securities.
- The compliances applicable to a private company under the Companies Act 2013 are fewer as compared to those applicable to a public company, such as formation of various governance committees, secretarial audits, appointment of independent directors and ceilings of managerial remuneration.

Labour

Employment contract

India has adopted various measures to regulate the conditions under which fixed-term employment contracts are written, applied and interpreted. Labour, being an item falling under the concurrent list of the Indian Constitution, is regulated by both the state and central governments. The Indian Contracts Act, 1872 defines the term 'contract' as an agreement legally enforceable by law. There must be a lawful offer and a lawful acceptance to result in an agreement.

Customary working hours and holidays

The normal working hours in a factory per day are eight. The usual working hours in India are 9 am to 5:30 pm or 9:30 am to 6 pm. In case of corporates, it is seven hours per day, six days a week. Indian subsidiaries of multinational corporations usually follow a five day, eight hour per day week. Normally, 10 days of casual leave and 20-30 days of privilege leave are allowed in a year.

Minimum wage

There are laws in India for workers in most sectors to receive a minimum wage. It is one of the most important aspects of starting a new line of work or running an organisation successfully. The law which enforces the employers to pay the set minimum wages in India is known as the Minimum Wages Act, 1948.

Work permits for foreign workers

A foreign national coming to India to work is required to get a visa, based on the purpose of visit. Generally, employment visa, business visa or project visa are applied for business/employment purposes. However, the type of visa depends upon the purpose of visit and duration of stay in India. Employment visas are usually granted for one year or the term of the employment/project contract, and the time period can be extended. Business visa is granted for five years or such shorter duration as required. Project visa would be project specific and initially valid for one year or for the duration of the project, whichever is less. Similarly, while applying for any other type of visa, the conditions attached to it should be complied with. Extension of visas may also be granted as per the requirements on a case-to-case basis.

All foreigners (including foreigners of Indian origin) visiting India on long-term visas (student, medical, research and employment visa of more than 180 days) are required to get themselves registered with the Foreigners Regional Registration Officer (FRRO). The FRRO registration process has recently been digitalised with the introduction of an e-FRRO portal with an aim to provide faceless, cashless and paperless service to foreign nationals.

Persons of Indian origin who hold foreign citizenship (other than of Pakistan and Bangladesh) and meet the specified eligibility criteria may avail the OCI status as long as their home countries allow dual citizenship in some form or the other under their local laws.

Persons registered as OCIs do not have the right to vote or the eligibility to contest for elections to public/government offices, etc. Registered OCIs shall be entitled to the following benefits:

- Multiple entry, multi-purpose life-long visa to visit India
- Exemption from reporting to police authorities for any length of stay in India
- Parity with NRIs in financial, economic and educational fields, except in the acquisition of agricultural or plantation properties

A person registered as OCI for five years is eligible to apply for Indian citizenship if he/she has been residing in India for one year out of the five years before making the request.

Social security

Social security is valid only for those individuals who are employed in the organised sector. The Employees' State Insurance Scheme provides medical care and other benefits for employees or labourers earning less than $300 a month (INR 21,000).

The Employees' Provident Fund Organisation (EPFO) is a statutory body under the Ministry of Labour and Employment, Government of India, which administers social security regulations in India. It is mandatory for all employers who employ more than 20 people to apply to the fund for the benefit of their workers. It covers all the pensions and the survivor benefits in the event of any employee's death. All employees are required to contribute 12% of their salary to EPFO with a matching contribution by the employer. (Vide Finance Act, 2018, reduced rate of 8% is applicable for women employees for the first three years of their employment). This is automatically deducted by the employer. Subject to certain conditions, the interest earned on contributions made to the fund are exempt from tax. Even foreign or international workers who are employed in India are subject to the terms of this fund.

India also has a social security agreement, which is a bilateral agreement between two governments. This agreement serves to protect the interests of Indian citizens working in the following countries or foreign nationals coming to India from these countries:

- Australia
- Austria
- Belgium
- Czech Republic
- Canada
- Denmark
- France
- Finland
- Germany
- Hungary
- Japan
- Republic of Korea
- Luxembourg
- The Netherlands
- Norway
- Portugal
- Swiss Confederation
- Sweden

Sickness and pension arrangements

It is compulsory for an employer to provide medical facilities to its workforce by contributing towards Employees' State Insurance Scheme as applicable.

The employer contributes towards a Provident Fund Scheme and a certain portion of the contribution is appropriated towards a Pension Scheme, which provides pension benefits to the employees and their family members. Workers are also entitled to gratuity on completion of five years of continuous service.

Trade unions

The trade unions in India are generally divided on political lines. Trade unions have struggled hard to achieve an adequate measure of protection against exploitation. They work to protect the interest of the workers and discuss key workplace-related issues with the management such as wages and benefits.

The six major Central Trade Unions (CTU) in India are the United Trade Union Congress (UTUC), Bhartiya Mazdoor Sangh (BMS), Hind Mazdoor Sang (HMS), All India Trade Union Congress (AITUC), Centre of Indian Trade Unions (CITU) and the Indian National Trade Union Congress (INTUC). A trade union will be recognised if it functions for more than a year after its registration. In case an organisation has more than one union, for it to be recognised, it must have at least 15% of workers as its members.

Source: Ministry of Labour and Employment, Ministry of Overseas Indian Affairs

Accounting, reporting and audit requirements

In India, accounting, reporting and auditing requirements of business entities are primarily governed by the regulations issued by the Institute of Chartered Accountants of India (ICAI), the Securities and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA) and the Central Board of Direct Taxes (CBDT).

The ICAI has issued accounting standards that are applicable to all entities engaged in commercial, industrial or business activities. With respect to companies, the legal recognition for the applicability of these standards has been given by the central government by notification of these standards under the Companies Act, 2013 (2013 Act). The 2013 Act is an act of the Parliament of India which governs the incorporation of a company, manner of conducting the affairs of a company, responsibilities of its board of directors and other provisions including winding up. It also prescribes the financial reporting and auditing requirements to be followed by all companies including foreign companies as defined in the 2013 Act.

Companies listed on a recognised stock exchange in India are also governed by rules and regulations issued by SEBI in addition to the above requirements. Further, there are industry-specific guidance relating to financial reporting issued by relevant regulatory authorities such RBI. The following sub-sections cover some of the basic requirements applicable to most companies doing business in India:

Records to be maintained

Every company should follow accrual basis of accounting. The 2013 Act requires that the records can also be maintained in electronic mode in the prescribed manner and are required to be retained for a minimum period of eight years. In certain cases, the central government has the power to direct a company to retain the statutory books for longer periods.

Inspection of records

The books of account and other records are open to inspection by any director, Registrar of Companies and other government authorities such as those involved with GST, Provident Fund, etc. Certain records are also available for inspection by the members of the company.

Accounting Year

Under the 2013 Act, companies are required to adopt a uniform financial year ending on 31 March unless specifically permitted by the authorities under certain conditions such as holding company incorporated outside India which follow a different financial year. For income-tax purposes, the accounting year must end on 31 March every year.

Preparation of financial statements

Every company is required to prepare both separate and consolidated financial statements on an annual basis in accordance with the accounting framework applicable to the company. A listed company is also required to publish quarterly or half yearly interim financial information as may be applicable and subjected to review or audit. Listed companies' financial statements are prepared in the formats prescribed by SEBI within the specified timelines, i.e., 45 days from the end of each quarter for the first three quarters and within 60 days from the end of the financial year. From 1 April 2019, it is mandatory for listed companies to publish both separate and consolidated financial information. Earlier, it was optional to publish such information.

Contents of financial statements

The 2013 Act lays down the form and certain content in addition to the requirements under the accounting standards for presentation of financial statements of companies except insurance, banking, electricity companies and other classes of companies for whom the form of financial statements is specified by the governing Acts. Financial statements comprise balance sheet, statement of profit and loss, cash flow statement, a statement of changes in equity (if applicable) and related notes.

Audit of financial statements

Every company in India must have its financial statements audited by a Chartered Accountant in practice (member of the ICAI). The audits are required to be conducted in accordance with the auditing standards issued by the ICAI and as per the guidance under the 2013 Act. In addition, the Income-tax Act, 1961 mandates audits of taxpayers meeting certain specified thresholds to be conducted by a Chartered Accountant in practice (member of the ICAI).

National Financial Reporting Authority

In October, 2018, the MCA constituted the National Financial Reporting Authority (NFRA) by notifying section 132 of the 2013 Act and subsequently notified the related Rules describing NFRA's role. The primary responsibility of NFRA, inter alia, is to monitor and enforce compliance with the accounting and auditing standards, and to oversee the quality of service of the professionals associated with ensuring such compliance.

Mandatory firm rotation

To promote auditor independence and in the interest of improving audit quality, the 2013 Act prohibits auditor appointment for more than five consecutive years (in the case of individual as an auditor) or more than two periods of five consecutive years (in the case of an audit firm as an auditor) by listed companies and certain other class of companies (wherein thresholds have been defined based on nature of entity, paid-up share capital and public borrowings or public deposits). An individual/audit firm that has completed the above prescribed period as an auditor is eligible for re-appointment only after a period of five years from the completion of such term.

Auditing standards

The Standards of Auditing issued by the ICAI are substantially similar to the International Standards on Auditing issued by the International Auditing and Assurance Standards Board (IAASB) of the International Federation of Accountants (IFAC).

However, there are additional reporting responsibilities on auditors governed by Section 143 of the 2013 Act which, inter alia, includes the Companies (Auditor's Report) Order, 2016 that requires the auditor to include a statement on matters as specified in such order, reporting whether the company has adequate internal financial controls in place and reporting to the central government on any fraud identified above the prescribed thresholds.

The ICAI has also issued additional guidance notes on auditing-specific areas of the financial statements and specific industries that are required to be complied with by the auditors for discharge of their duties.

Accounting framework

The 2013 Act prescribes two accounting frameworks: (i) Indian Accounting Standards (Ind AS) prescribed under the Companies (Indian Accounting Standards) Rules, 2014, which are based on International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board with certain carve-outs and carve-ins, mandatory for certain class of companies, and (ii) the accounting standards prescribed under Companies (Accounting Standards) Rules, 2006 (Indian GAAP), which are substantially different from Ind AS. Companies are required to determine the relevant accounting framework as per the roadmap discussed below. Further, a company may irrevocably opt to prepare Ind AS compliant financial statements for the accounting periods beginning on or after 01 April 2015. The MCA has notified 40 Ind AS till date, including a new standard Ind AS 116 on 'Leases', which is effective from 1 April 2019. The following is the roadmap for mandatory adoption of Ind AS to be followed by all companies other than insurance companies, banking companies and NBFCs:

- Under Phase I, Ind AS were mandatory to be adopted for accounting periods beginning on or after 01 April 2016, with comparative financial information required to be given for FY 2015-16 for companies, whether listed or unlisted, whose net worth was INR 5 billion or more.
- Under Phase II, Ind AS were made mandatory to be adopted for accounting periods beginning on or after 01 April 2017, with comparative financial information required to be given for FY 2016-17 for all companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India which were not covered above, and for unlisted companies having net worth more than INR 2.5 billion but less than INR 5 billion.
- Under both Phase I and Phase II, Ind AS would be mandatorily applicable to the holding, subsidiary, joint venture or associate companies of the reporting companies covered above. Further, the determination date for net worth thresholds as mentioned above was 31 March 2014 or any day thereafter.

There are separate roadmaps for banks, insurance companies and NBFCs to transition to Ind AS with the earliest accounting period beginning on or after 01 April 2018. Commercial banks were required to implement Ind AS for preparation and presentation of their financial information from 01 April 2019. RBI has deferred the implementation pending necessary legislative amendments to the Banking Regulation Act, 1949.

Filing of financial statements/results

A company is required to hold an annual general meeting within six months of the end of a financial year. Financial statements are laid down before the members of the company in the annual general meeting (AGM). Such financial statements are required to be filed with the Registrar of Companies within 30 days of the AGM. Listed companies also need to file the audited (or reviewed, as applicable) financial results with the stock exchange within 60 days in case of annual periods and 45 days in case of quarterly periods except for the last quarter.

The MCA requires filing of financial statements with the Registrar of Companies, using the eXtensible Business Reporting Language (XBRL) taxonomy, for the following companies:

- All companies listed in India and their Indian subsidiaries
- All companies having a paid up capital of INR 50 million and above
- All companies having a turnover of INR 1 billion and above

All the remaining companies are required to fill the prescribed forms.

The XBRL documents of financial statements are required to be certified by a Chartered Accountant or Company Secretary or Cost and Management Accountant in whole-time practice.

Reporting on internal financial controls

In case of a listed company, directors are required to lay down internal financial controls to be followed by the company and report annually whether such internal financial controls were adequate and operating effectively. In case of other companies, directors are required to report whether such internal financial controls were adequate.

In case of all companies, except for certain private companies meeting prescribed thresholds for which exemption is given, the auditors are required to report whether internal financial controls over financial reporting in relation to separate and consolidated financial statements were adequate and operating effectively during the financial year.

Income Computation and Disclosure Standards (ICDS)

In view of the significant developments in convergence with IFRS, ICDS were notified under the Income-tax Act, 1961 which are, in principle, closer to the existing Indian GAAP than the IFRS-based Ind AS. These standards are effective from FY 2016-17 and are required to be followed by all taxpayers following the acccrual system of accounting for the purpose of computation of income from business and 'other income' chargeable to tax.

Direct tax

Income tax is chargeable on taxable income computed in accordance with the provisions of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act). Income can be brought within the tax net under the following heads of income:

1. Income from salary
2. Income from house property
3. Profits and gains from business and profession (PGBP - business income)
4. Capital gains
5. Income from other sources (Income not specifically covered under above heads of income like interest and dividend)

All taxpayers are required to follow a uniform tax year from 01 April to 31 March for tax purposes is referred to as 'previous year', irrespective of the financial year followed for accounting purposes.

India follows a mix of source-based and residence-based taxation. Global income of a resident is taxable in India. However, non-residents are taxable on certain India-sourced income.

Taxation of individuals

Depending upon the duration of physical presence in India, an individual can be:

- Resident and ordinarily resident (ROR)
- Resident and non-ordinarily resident (RNOR)
- Non-resident (NR)

Scope of taxation of an individual is as follows:

- RORs are taxable on their worldwide income
- RNORs and NRs are taxable for their India-sourced income

The personal tax rates for the financial year 2019-20 are as follows:

Income slabs ($)	Income slabs (INR)	Rate of tax (%)
Up to $3,600*	Up to INR 250,000#	Nil
$3,600 to $7,200	250,000 to 500,000	5% of the amount of total income exceeding INR 2,50,000
$7,200 to $14,400	500,000 to 1,000,000	INR 12,500 + 20% of the amount of total income exceeding INR 500,000
Above $ 14,400	Above 1,000,000	INR 112,500 + 30% of the amount of total income exceeding INR 1,000,000

* $ rate taken at 69.44

\# Minimum exemption limit for:

Senior citizens (age 60 years and above but less than 80 years): INR 300,000 ($4,320)

Very senior citizens (age 80 years and above): INR 500,000 ($7,200)

Tax rebate for individual taxpayers

The Finance Act, 2019 has enhanced the tax rebate to up to INR 12,500 for an individual with taxable income up to INR 500,000. Thus, if a taxpayer has a taxable income of up to INR 500,000, he/she will get full tax rebate and will not be required to pay any income tax. Taxable income is arrived at after adjustment of deductions.

All rates mentioned in this chapter are exclusive of applicable surcharge and Health and Education Cess. Please refer to the section on 'Rate of surcharge and cess' for further details.

Standard deduction for salaried individual taxpayers

The Finance Act, 2019 has enhanced the standard deduction limit from INR 40,000 to INR 50,000 for salaried individual taxpayers. The deduction is allowed irrespective of the actual expenditure incurred by the employee.

Domestic companies set up on or after 01 March 2016 and engaged solely in the manufacture or production have an option to be taxed at 25% subject to the fulfilment of certain specified conditions (Please refer to the section on 'Tax incentives for manufacturing companies' for further details).

Taxation of partnership firm (including LLP)

The scope of taxable income of a firm is as follows:

- Resident: Taxed on worldwide income
- Non-resident: Taxed on income (a) received/deemed to have been received in India or (b) accrued/deemed to have been accrued in India

A firm is said to be resident in India in every case except where during that year the control and management of its affairs are situated wholly outside India.

The tax rate for the financial year 2019-20 is 30%.

Taxation of companies

Scope of taxable income of a company is as follows:

- Resident*: Taxed on worldwide income
- Non-resident: Taxed on income (a) received/deemed to have been received in India or (b) accrued/deemed to have been accrued in India

*From FY 2016-17 onwards, a company shall be a resident in India if it is an Indian company or its place of effective management (PoEM) is in India. PoEM has been defined to mean a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance, made. The Indian revenue authorities have also released guidelines for the determination of PoEM of a foreign company in India.

Tax rate for domestic company

The corporate tax rates for the financial year 2019-20 are as follows:

Sr. No	Prescribed conditions	Tax rate
(a)	Total turnover or the gross receipts in the FY 2016-17 does not exceed INR 2,500 million ($36 million)	25%
(b)	Other than corporates falling under (a) above	30%

Tax rate for foreign company

The corporate tax rate for a foreign company is 40%.

Rate of surcharge and cess

Rate of surcharge

Taxpayer	Net income		
	Up to INR 10 million ($0.144 million)	INR 10-100 million ($0.144 million - 1.44 million)	Above INR 100 million ($1.44 million)
Domestic company	Nil	7%	12%
Foreign	Nil	2%	5%

Taxpayer	Net income	
	INR 5-10 million ($0.072-0.144 million)	Above INR 10 million ($0.144 million)
Individuals/ association of persons (AoP)	10%	15%
Firm/LLP/ local authority	Nil	12%

Rate of Health and Education Cess

A Health and Education Cess of 4% is applicable on all taxpayers and all levels of income, and is computed on the amount of tax computed, inclusive of surcharge (wherever applicable).

Minimum Alternate Tax (MAT)/Alternate Minimum Tax (AMT)

India has a minimum tax regime, whereby MAT/AMT is payable by corporates/other persons on profits as per books (subject to specified adjustments)/adjusted total income, where tax payable on total income under the normal provisions of the Income-tax Act is less than MAT/AMT.

Type of taxpayer	Rate of tax (%)	Applicability	Credit availability
Company	18.5% of book profits	MAT is leviable where tax payable on the total income is less than 18.5 per cent of book profits.	The excess of MAT over normal tax is treated as credit, which can be set off in any 15 subsequent years against normal tax liability subject to prescribed limitation
Persons (other than company) claiming certain specified deductions*	18.5% on adjusted total income	AMT is leviable where tax payable on the total income is less than 18.5 % of adjusted total income.	The excess of AMT over normal tax is treated as credit, which can be set off in any 15 subsequent years against normal tax liability subject to prescribed limitation

* It is applicable when the adjusted total income exceeds $0.028 million (INR 2 million).

MAT provisions apply to a foreign company only if it has a permanent establishment (PE) in India (in accordance with the provisions of relevant tax treaty) or in case where there is no tax treaty available, if it is required to seek registration under any law for the time being in force relating to companies.

Taxation of dividends

Income distributed in the form of dividends by domestic companies is chargeable to a Dividend Distribution Tax (DDT) in the hands of the company. Such dividend income is generally exempt from tax in the hands of the shareholder. DDT is required to be calculated on the grossed-up amount.

Particular	Rate of tax (%)	Basis for levy
Domestic company paying dividend	15% as DDT	Dividends declared, distributed or paid after specified adjustments*

*Deduction of dividends received from a subsidiary is allowed, subject to certain conditions, for computing DDT. However, no credit of DDT paid on the dividend received is allowed under the Indian laws. Further, DDT is not a tax deductible expense.

Where a resident taxpayer (except domestic companies and specified charitable institutions) receives aggregate dividend in excess of INR 1 million ($14,400) from domestic companies, tax at the rate of 10% on the amount of dividend received in excess of INR 1 million is payable by the shareholder.

Dividend received from a foreign company is taxable in the hands of Indian shareholders at the rate of tax applicable to them. However, in the case of dividends received by an Indian company from a foreign company in which the Indian company holds 26% or more equity, tax at a concessional rate of 15% is levied. However, in computing dividend income from such foreign company, no deduction of any expenditure is allowed.

Taxation on income distributed by way of buy-back of unlisted shares

Tax is levied at the rate of 20% on the 'distributed income' paid by unlisted companies to their shareholders on buy-back of their own shares.

'Distributed income' is computed as the difference between the amount paid as consideration for buying back the shares and the consideration received by the company at the time of issuing such shares computed in accordance with the prescribed rules. Such tax would be paid by the company while buying back its own shares.

Income from buy-back of shares is exempt in the hands of the shareholders.

Capital gains tax

Capital gains tax is levied on the transfer of a capital asset. Capital gains are computed by deducting the cost of acquisition from the sale consideration. Capital gains are categorised into short-term capital gain (STCG) and long-term capital gain (LTCG) depending on the period of holding of the asset transferred.

In case of non-resident investors, gain from transfer of shares/ debentures of an Indian company is computed in foreign exchange used for the investment and then converted in Indian rupees on the date of transfer, thus providing for adjustment of fluctuation in foreign exchange.

STCG

Status of taxpayer	Type of asset	Rate of tax
Applicable to both residents and non-residents	Equity shares or units of an equity-oriented fund or unit of a business trust on which STT is paid*	15%
Applicable to both residents and non-residents	Capital assets other than those mentioned above	a. Slab rates for individual and HUFs b. Applicable tax rate for those not covered above such as 40% for foreign companies

LTCG

Status of taxpayer	Type of asset	Rate of tax
Both residents and non-residents	Equity shares, unit of equity-oriented funds or unit of business trust on which STT is paid*	10%**
Residents	Listed securities (other than a unit) on which STT is not paid* or zero coupon bond (ZCB)	Lower of: 20% with 'indexation' (indexation is not available on ZCBs) or 10% without 'indexation'
Residents	Capital assets other than those covered above	20%
Non-residents	Listed securities (other than a unit) on which STT is not paid or ZCB	10% after taking into account foreign exchange fluctuation; however, forex fluctuation is not available on ZCBs
Non-residents	Shares and debentures other than covered above for non-residents	10% without taking into account foreign exchange fluctuation
Non-residents	Capital assets other than those covered above for non-residents	20%

* The benefit shall also be available if STT is not paid but transaction is undertaken on a recognised stock exchange located in an international financial service centre and consideration is in foreign currency.

** As per the Finance Act, 2018, the existing tax exemption on LTCG arising on transfer of a listed equity share or a unit of an equity oriented fund, etc. (subject to STT) has been withdrawn. Any LTCG arising from such transfers made on or after 01 April 2018 and in excess of INR 0.1 million shall be taxed at 10%. Further, LTCG earned upto 31 January 2018 has been grandfathered.

There is a separate computation mechanism for capital gains for depreciable business assets, which form part of block of assets held by a taxpayer.

Taxation of NRs

NRs are taxable on the income received or accruing in India and income deemed to have been received or accrued in India. Deemed accrual provides for taxation on the following terms:

Business income: The business income of a non-resident is taxable in India if it has a 'business connection' in India. The term 'business connection' is conceptually similar to PE as defined in tax treaties. Profits from a business income of a non-resident, attributable to operations carried out in India, are taxable in India.

The Finance Act, 2018 (w.e.f. FY 2018-19) has widened the term 'business connection' to include in its ambit (a) 'significant economic presence' and (b) any business activity carried through a person who habitually plays the principal role leading to conclusion of contracts by a non-resident.

The terminology of 'significant economic presence' was introduced to tax non-residents who operated without having a physical presence in India like e-commerce companies and other digitised form of businesses.

Fees for technical services (FTS): Fees for managerial, technical or consultancy services rendered by an NR are taxable in India (where an NR does not have a PE in India) at the rate of 10% of gross receipt.

Royalty income: Royalty payable to a non-resident is taxable at the rate of 10% of gross receipts. Specific provisions of the Income-tax Act seek to tax payments for use of computer software and telecommunication charges as royalty.

Interest income: Tax at the rate of 20% is applicable on interest payable by an Indian company to an NR for money borrowed in foreign currency. A lower withholding rate of 5% is applicable on interest payable on external commercial borrowings, long-term bonds and rupee denominated bonds issued before 01 July 2020. Similarly, lower rate of withholding of 5% is available for interest payable to a FII or a qualified foreign investor (QFI) on a rupee denominated bond of an Indian company or a government security issued before 01 July 2020, subject to certain other conditions.

Capital gains: Gains accrued to an NR on account of transfer of a capital asset situated in India are taxable in India.

As per the indirect transfer provisions in the Income-tax Act, shares or an interest in a foreign company shall be deemed to be situated in India if such shares or interest derives, directly or indirectly, its value substantially from assets located in India.

If a PE of a non-resident is formed in India, the aforesaid incomes would be taxable on a net basis at the rate applicable to foreign companies.

Tax treaty benefit: A non-resident covered by a tax treaty can be taxed under the tax treaty or the Income-tax Act, whichever is more beneficial. India has a vast network of favourable tax treaties. Till date, India has entered into comprehensive tax treaties with 96 countries. Recently, India has entered into a tax treaty with Hong Kong.

Tax treaties with various countries provide benefits in the form of capital gains exemption on transfer of shares of Indian companies. However, in the recent past, tax treaties with Mauritius, Singapore and Cyprus have been revised to withdraw capital gains exemption on transfer of shares acquired on or after 01 April 2017, while simultaneously grandfathering tax benefit to the shares acquired before 01 April 2017. Further, tax treaties with Australia, US, UK, Singapore, etc. provide restrictive tax treatment for income from FTS.

An NR is required to furnish a Tax Residency Certificate, which is issued by the revenue authorities of his/her state of residence. In addition, the non-resident is required to furnish certain additional information, as prescribed.

Equalisation levy

An equalisation levy of 6% of the amount of consideration for specified services, i.e., online advertisement, provision for digital advertising space, etc., payable to a non-resident (not having a PE in India), is to be deducted by the remitter with effect from 01 June 2016. The levy has been introduced to tax digital services rendered by foreign service providers without having a presence in India.

Security Transaction Tax (STT)

STT is levied on various security transactions carried out through a recognised stock exchange in India. A reduced rate of capital gains is prescribed for the transactions which have been subjected to STT.

Commodities Transaction Tax (CTT)

CTT is levied along the lines of STT. CTT is levied on taxable commodities traded at recognised associations.

Wealth tax

Wealth tax has been abolished vide the Finance Act, 2015.

Gift tax

India does not levy gift tax under a separate statute. However, certain receipts of sum of money or property (including immovable or movable property, shares and securities etc.) by any person without adequate consideration are taxed as other income in the hands of the recipient. Further, the Income-tax Act seeks to tax share premium received in excess of fair market value in the hands of the issuer of shares.

Estate duty

No estate or death duty is charged.

Computation of business income

Business income is generally taxable on a net basis, i.e., gross income less allowable tax deductions. Expenses laid out and expended for business purposes (other than capital expenses) are deductible from the income of the taxpayer for income-tax purposes. The deductibility is further subject to exceptions and fulfilment of conditions as stated in the Income-tax Act, such as witholding tax.

The following principles are generally applied for examining the admissibility of an expense:

- Expense should be incurred for the business
- Expense should be incurred in the previous year
- Expense should not be of a personal nature
- Expense should be of a revenue nature – expenses of a capital nature are not allowed
- Expense should not be for a purpose prohibited by law

Certain expenses are specifically disallowed or the quantum of deduction is restricted. These include:

- Income-tax
- Expenditure incurred on corporate social responsibility (CSR) activities
- Expenditure for the purpose of earning exempt income
- Expenses incurred in cash beyond specified limit.
- Provision for taxes, duties, interest on loans from public financial institutions or on term loans from a scheduled bank and certain contributions to statutory funds on behalf of employees, not actually paid. However, such expenditure is deductible in the year in which it is actually paid.

Depreciation of capital assets is allowed on the basis of the reducing balance method using varying rates, depending on the nature of assets. All similar types of assets eligible for the same rate of depreciation are clubbed together in a 'block' and depreciation is charged on the value of that block. Depreciation is available for a full year, irrespective of the actual period of use of the asset. However, in the year of acquisition of the asset, depreciation is allowed at half the normal rates if the asset is used for less than 180 days in that year.

Further, additional depreciation at the rate of 20% in the case of any new plant and machinery (other than ships and aircraft) shall be allowed provided such plant and machinery has been acquired and installed by the assessee engaged in the business of manufacture, production of any article or a thing, or generation or generation and distribution of power.

Depreciation on intangible assets such as know-how, patents, copyrights, trademarks, licences, franchises or other similar business or commercial rights is also available.

The rates of depreciation for different blocks of assets are as follows:

Blocks of assets	Rate
Residential buildings except hotels and boarding houses	5%
Buildings meant for non-residential purposes such as hotels and boarding houses	10%
Furniture and fittings	10%
General plant and machinery	15%
Intangible assets	25%
Computers	40%

ICDS

The central government has notified ICDS, which prescribe the detailed provisions to be applied while computing tax under the heads profits and gains from business and profession and other income. These standards are applicable from FY 2016-17 onwards.

Set-off of business loss and unabsorbed depreciation

Business losses, other than from speculation business, are permitted to be set off against income from any other source (except income from employment, i.e., salary income) in the same year. Business losses which could not be so set off are permitted to be carried forward for setting off against business profits arising in the eight subsequent years. Unabsorbed depreciation is permitted to be carried forward for an unlimited period.

Key direct tax incentives/tax holidays

India provides various tax incentives in the form of higher deduction/tax exemptions. The benefits of most of the tax incentives have been gradually phased out.

Research and development activities

The Income-tax Act provides for deduction for expenditure incurred on scientific research ranging from 100% to 150% of the amount of expenditure. Most of the weighted deductions will be phased out w.e.f. FY 2020-21.

Patent box regime

- In order to encourage indigenous research and development activities, royalty income of the eligible assessees in respect of a patent developed and registered in India shall be taxable at 10% on the gross amount of royalty.
- An 'eligible assessee' means an Indian resident who is the true and first inventor of the invention and whose name appears on the patent register as the patentee in accordance with the Patents Act, 1970.

Tax incentives for manufacturing companies

- Domestic companies set up on or after 01 March 2016, engaged in the business of manufacture or production of any article/thing, have an option to pay taxes on a lower corporate income tax rate of 25%. The total income of such companies should be computed in the prescribed manner and the company shall not be eligible for any other tax incentives.
- 100% deduction of profits and gains available for 10 consecutive years to any undertaking involved in the manufacture and production of any article/thing located in North-Eastern states (provided the undertaking commences manufacturing by 31 March 2017) and carrying on any eligible business.

A deduction of 15% of the cost of certain prescribed assets is provided to assessees engaged in the manufacture or production of any article/thing in any notified backward areas in the state of Andhra Pradesh, Telangana, Bihar and West Bengal.

Special economic zones

An SEZ is a specifically delineated duty-free enclave deemed to be a foreign territory for purposes of trade operations, duties and tariffs.

The deductions are:

- **To SEZ developers:** 100% of profits and gains derived from developing and maintaining an SEZ for 10 consecutive assessment years out of 15 years commencing from the year in which an SEZ has been notified by the central government. The deduction shall not be available where the development of SEZ begins on or after 01 April 2017.
- **To SEZ units:** For profits and gains derived by a unit set-up in any SEZ that commences the manufacture or production of any article/thing or starts providing services on or before 31 March 2020 as follows:
  - 100% export profits for the first five years
  - 50% of export profits for the next five years
  - Up to 50% of export profits for the next five years (subject to the transfer of profits to a special reserve)

Start-ups

- An eligible start-up can avail 100% deduction of the profits earned in any of the three consecutive years out of the initial seven years of its operations.
- The deduction is, however, available only to a new entity which is not set up by way of splitting up or restructuring of an existing undertaking.
- The start-up should be engaged in a business which involves innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation.
- The start-up should hold a certificate of eligible business from the Inter-Ministerial Board of Certification as prescribed by the DPIIT.
- Further, the start-up should not have a turnover exceeding $3.60 million (INR 250 million) in the year(s) in which deduction is claimed.

Taxation of issue of share by start-ups at a premium

- The Income-tax Act contains provisions for taxation of unlisted companies in respect of issue of shares in excess of the fair market value. The government has notified that these anti-abuse provisions shall not apply for investments made by resident investors in 'eligible start-ups' fulfilling conditions prescribed by the DPIIT. Accordingly, start-ups with aggregate share capital (including premium) of up to INR 250 million and fulfilling the prescribed conditions have been exempted from these provisions. Further, for claiming the exemption, the start-up is required to file a self-declaration in Form 2 stating that it has fulfilled the prescribed condition and undertakes that it shall not invest funds in the restricted assets for a period of seven years.

Business-specific incentives for capital expenditure

- 100% deduction on capital expenditure is available for the following categories of specified businesses which commence operations on or after specified dates:
  - Laying down or operating cross-country natural gas or crude pipeline
  - Laying down and operating slurry pipeline for transportation of iron ore
  - Setting up and operating semi-conductor and wafer fabrication manufacturing facility
  - Building and operating a hotel of two stars or above
  - Bee-keeping and production of honey and beeswax
  - Setting up and operating an inland container depot or a
  - container freight station
  - Developing or operating and maintaining a new infrastructure facility on or after 1 April 2017
- 150% deduction (restricted to 100% with effect from 01 April 2017) on capital expenditure shall be available for the following categories of specified businesses which commence operations on or after specified dates:
  - Setting up and operating a cold chain facility
  - Setting up and operating a warehousing facility for storage of agricultural produce
  - Building and operating a hospital with at least 100 beds for patients
  - Developing and building a housing project under specific schemes
  - Production of fertiliser

Corporate tax compliance

Withholding tax

The Income-tax Act casts an obligation on each taxpayer to withhold tax on specified payments, including, among others, the following:

- Salaries
- Interest
- Rent
- Commission or brokerage
- Payments to contractors
- Professional/technical fees/royalty
- Consideration payable on transfer of immovable property

All payments to non-residents which are taxable in India attract tax withholding.

Indian tax withholding provisions also extend to payments made by NRs. Thus, in certain situations, an NR making payment to another non-resident/resident is required to undertake tax withholding as per the Indian regulations.

Further, the deductee, i.e., the person whose receipts are subject to tax withholding, needs to disclose his/her Permanent Account Number (PAN). In case the person fails to do so, withholding tax rate would be the higher of the following rates:

- The rate prescribed in the Income-tax Act
- At the rate in force, i.e., the rate mentioned in the Finance Act, 2019
- 20%

However, the increased rate of withholding tax would not trigger for certain payments to NRs not having PAN if the NR furnishes the prescribed information.

The person deducting tax is required to file quarterly returns (in the prescribed form depending on the nature of payment) with respect to taxes withheld during the relevant quarter.

Extensive provisions are built in for enforcing compliance with tax withholding obligations. Interest and penalties may be levied in case of non-compliance with withholding tax obligations.

Advance tax

Every taxpayer is required to pay his/her tax liability for the year during the previous year itself in installments prescribed. The tax liability is to be worked out on the basis of an estimate of current year income, and the income tax thereon shall be calculated at the rates in force during the relevant previous year. Interest is levied for non-compliance with advance tax provisions.

Self-assessment tax

Every taxpayer is liable to compute the required tax payable (if any) on the basis of actual income after considering the credit for the advance tax paid and taxes deducted at source. Self-assessment tax is payable before filing the return of income.

Permanent Account Number

Every person (as per the criteria prescribed in the Income-tax Act) is required to make an application for the allotment of tax registration number, termed as PAN. The application is to be made in Form 49A/Form 49AA (depending upon the residential and/or registration status of an assessee).

This number is to be quoted on all tax returns, correspondence with the tax authorities and documents relating to the prescribed categories of transactions. Failure to quote PAN by the income recipient may result in a higher rate of tax withholding.

Non-individual resident persons which enter into a financial transaction amounting to INR 0.25 million or more are also required to obtain PAN. Further, any managing director, director, partner, trustee, principal officer or similar person competent to act on behalf of such non-resident entity is also required to obtain PAN.

Tax Deduction and Collection Account Number (TAN)

Every person responsible for withholding tax in accordance with the provisions of the Income-tax Act is required to make an application for the allotment of withholding tax registration number which is called the TAN. The application is to be made in Form 49B within one month from the end of the month in which the tax is deducted.

Recently, the requirement for obtaining PAN and TAN has been eased for corporate assessees. A common application may be submitted by the company for incorporation, PAN and TAN through the MCA portal.

Tax return filing

All taxpayers are required to file a return of income for the previous year within the prescribed due dates.

However, NRs earning only interest and dividend income are not required to file a return of income in India if tax has been withheld on such income.

Different due dates have been prescribed for this purpose under the Income-tax Act, which are as below:

In case of:

• a company • a person (other than a company) whose accounts are required to be audited under the Income-tax Act or under any other law in force during the period • a working partner of a firm whose accounts are required to be audited under the Income-tax Act or under any other law in force during the period	30th day of September of the assessment year
• a taxpayer who is required to file an accountant's report under the transfer pricing regulations	30th day of November of the assessment year
• any other assesse	31st day of July of the assessment year

A maximum fees of INR 10,000 ($144) is prescribed where return of income is filed after prescribed due dates. Further, interest at the rate of 1% on the amount of tax on total income is prescribed for every month of default in furnishing the return of income.

General Anti-Avoidance Rules (GAAR)

To control Impermissible Avoidance Arrangement (IAA) entered into by a person to avoid taxes, the provisions of GAAR have been introduced in India. It is noted that an arrangement would be considered an IAA where its main purpose is to obtain a tax benefit. An agreement will also be treated as an IAA if it lacks 'commercial substance' and does not meet the criteria of being a bonafide business transaction in the ordinary course.

Notwithstanding the above, GAAR provisions will not apply to an arrangement where the tax benefit arising in aggregate does not exceed INR 30 million ($0.43 million).

GAAR deals with aggressive tax planning involving the use of sophisticated structures. The provisions of GAAR are effective 01 April 2017.

Direct tax enforcement in India

*AO can make a reference to the Transfer Pricing Officer (TPO) for transfer pricing (TP) audit. The TPO completes TP audit on receipt of reference from AO and forwards the TPO order to the AO for merging it with the assessment order on completion of the audit of return of income.

It takes about 21 to 33 months from the end of the assessment year to complete an audit (depending upon whether a reference is made to TPO). This period is proposed to be gradually reduced to 12 months over the next three years.

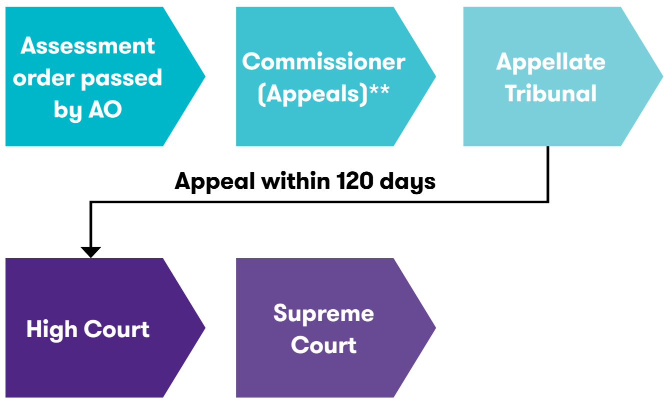
E-assessment

Initially, the central government had introduced e-assessment procedures in 2016 on a pilot basis, which was further extended in 2017. As a part of this pilot, the revenue authorities have been issuing e-notices for scrutiny assessments to the assessees.

Subsequently, the Finance Act, 2018 has amended the Income-tax Act to enable the central government to notify a new e-assessment scheme for scrutiny assessments to be carried out without any personal interface between the taxpayer and the revenue authorities.

Direct tax dispute resolution process

Dispute resolution is a multi-layered process in India.



**Alternatively, application may be filed with the dispute resolution panel objecting to variations proposed by the AO to the income of the taxpayer.

The entire litigation, till the Supreme Court level, generally gets settled over a period of 10 years.

Other alternatives to resolve tax litigation

- Settlement commission
- Advance ruling for transactions (including proposed ones) involving non-residents and certain residents.
- MAP: An alternate mechanism under tax treaties for resolving international tax disputes by the competent authorities of each state.

Indirect tax

India embarked on the Goods and Services Tax (GST) journey on 1 July 2017 and this period of more than a year has been both challenging and exciting. GST has addressed issues relating to classification, input tax credit restrictions, manual compliances, check-post barriers, etc. Although challenges exist on certain aspects, this endeavour by the Government of India will further improve ease of doing business. Key indirect taxes applicable in the country are:

- **GST** – Tax on supplies of goods and services
- **Customs Duty** – Duty imposed on import or export of goods
- **Professional Tax** – Tax on professions, trades, callings and employments

GST

The Government of India made possible the introduction of the nation's biggest tax reform – GST. It aims to mitigate the cascading or double taxation by way of a single point taxation system with free flow of input credits.

Scope of GST

GST is to be levied on supply of all goods and services except the supply of alcohol for human consumption. Levy of GST on petroleum crude, high-speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel has been postponed and to be notified by the government at a later date.

Dual structure levy

GST is a dual structure wherein both centre and states/UTs have the power to levy the tax on supplies on goods and services. The dual levy structure will be as under:

- Central Goods and Services Tax (CGST) to be levied by the centre and State Goods and Services Tax (SGST)/Union Territory Goods and Services Tax (UTGST) to be levied by respective states/union territories on all supplies within a state/union territory.
- Integrated Goods and Services Tax (IGST) to be levied by the centre on all supplies between the two different states/ union territories. Further, IGST is also to be levied on export/ import of goods or services from/to India.
- Compensation Cess (Cess) to be levied on specified supplies to compensate the states for the loss of revenue on account of implementation of GST.

Nature of supply

Levy of CGST and SGST/UTGST or IGST will depend upon the nature of supply. Separate provisions for goods and services have been incorporated under GST law to identify the nature of supply. Location of supplier and the place of supply of goods or services are the two factors to determine the nature of supply.

- Intra-state supply: Location of supplier and place of supply of goods or services are within the same state/union territory

- Inter-state supply: Location of supplier and place of supply of goods or services are with different states/union territory

Point of levy under GST

The earlier indirect taxes prevailing in India entailed multiple points of levy. For instance, excise duty was levied on the manufacture of goods, service tax was levied on the provision of taxable services and VAT was levied on the sale of goods.

The triggering point for levy of GST is the supply. Provisions for determining the time of supply have been provided, both in respect of goods and services. Hence, the tax incidence would be at the 'time of supply' as against the multiple points of levy under the earlier regime.

Tax rates under GST

All goods and services are fitted into a four-tier rate structure of 5%, 12%, 18% and 28%. While essential items like food grains attract a zero rate, demerit and luxury goods attract the highest rate and may attract cess also.

Anti-profiteering

To safeguard the consumers, anti-profiteering provisions have been incorporated under GST, casting responsibilities on the suppliers to reduce their prices of goods and services on account of benefit of reduced tax rate or availability of input tax credits. Suppliers not complying with the anti-profiteering provisions are liable for penal consequences and also cancellation of registration under GST. The National Anti-Profiteering Authority (NAA) has issued final orders in 30 cases in 2018 and 15 cases till February 2019.

GST Council meetings

The GST Council has been formed for providing recommendations to the government on various GST-related aspects inter alia including:

- Rationalisation of tax rates
- Simplification of compliances and extension of due dates from time to time
- Introduction of nationwide e-way bill mechanism
- Addressing sector-specific issues and formation of Group of Ministers (GoM) to analyse/provide recommendation in relation thereto.

Formation of GoM

On the recommendation of the GST Council, a GoM has been formed to analyse/study tax rates, issues and challenges and provide suitable recommendations on:

- GST revenue trends
- MSME sector
- Real estate sector
- Lotteries

Advance rulings under GST regime

As per the provisions of GST law, an advance ruling can be obtained by an applicant on various issues/aspects inter alia including registration, classification, tax rate, input tax credit, taxability etc. An application for advance ruling needs to be filed with the State Authority for Advance Ruling (AAR). The AAR comprises one member from Central GST and one member from State GST appointed by the central and state government respectively. Any person aggrieved by the order of AAR has the right to appeal to the Appellate Authority for Advance Ruling (AAAR).

Even though advance rulings are binding only on the applicant and on the jurisdictional tax authorities, they act as a yardstick/guiding tool for other taxpayers with similar issues.

Approval for formation of GSTAT

The government has in January 2019 approved the creation of National Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) as the forum of second appeal in GST law and the first common forum for dispute resolution between the centre and states. The appeal against the orders in first appeals issued by the Appellate Authorities under the Central and State GST Acts shall lie before the GSTAT. Being a common forum, GSTAT will ensure that there is uniformity in the redressal of disputes arising under GST.

Customs duty

Customs duty, a federal government levy is, leviable on import/export of goods to/from India. The taxable event for levy is import/export and import/export duty is payable at the time of import/export of goods to/from India.

India follows the Harmonised System of Nomenclature (HSN) classification rules, and the goods are classified under different chapter/tariff headings, primarily according to their description, components and use. The duties or taxes applicable on import shall comprise:

- Basic customs duty – BCD (standard rate of 10%)
- Customs cess (leviable on component of BCD at 3%)
- IGST at 18% (leviable on total value of BCD plus customs cess)

Currently, the effective standard rate of customs duty that is applicable on the import of goods is approximately around 30.15% with input tax credit of IGST, subject to exemption/concession as may be available/notified from time to time and Free Trade Agreements entered into by India with other countries. However, currently, there is no export duty leviable on goods exported from India, except for a few goods such as minerals (which are scarcely available).

Professional tax

Professional tax is levied by the state on professions, trades, or employment in a state. Thus, every person who is engaged in any of the activities mentioned above is liable to pay professional tax. Not all the state governments currently levy professional tax. In states where such a levy exists, every enterprise and employee earning a salary is required to register and pay professional tax.

Transfer pricing in India

Background

Globalisation and increased integration between economies worldwide have paved the way for global business operations and subsequently complex inter-company transactions. These transactions could lead to base erosion and shifting of profits to opaque tax jurisdictions. Therefore, transfer pricing is under constant scrutiny of tax authorities globally.

Indian Transfer Pricing Regulations (TP Regulations) were introduced in India in 2001 to avoid shifting of profits from India to another jurisdiction due to international transactions with related parties, i.e., Associated Enterprise(s) (AEs). Further, the scope of TP Regulations was extended to include Specified Domestic Transactions (SDTs) with effect from 2012.

Legislation

As per TP Regulations, international transactions and SDTs between AEs should comply with the arm's length principal, i.e., a price which is applied or proposed to be applied in a transaction between persons other than AEs in uncontrolled conditions.

International transaction

The Act defines the term 'international transaction' as a transaction between two or more AEs, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, financing or any other transaction having a bearing on the profits, income, losses or assets of such enterprises or any cost contribution agreement.

Further the definition of 'international transaction' also includes 'deemed international transaction', which means that a transaction entered into by an enterprise with a person other than an AE (whether resident or non-resident) shall be deemed as an international transaction, if:

- there exists a prior agreement between such other person and the associated enterprise, or
- the terms of such a transaction are, in substance, determined between such other person and the associated enterprise.

SDTs

Transfer pricing provisions were also introduced for SDT so as to curb the shift of profits between resident entities. The nature of transaction includes transaction entered into with entities/ within business units claiming tax exemptions. SDT provisions are applicable where the aggregate of such transactions exceeds a sum of INR 200 million ($3 million) in a year*.

AEs

In the Indian TP Regulations, the definition of AEs is broadly similar to the definition in the Organisation for Economic Co-operation and Development (OECD) TP Guidelines. AEs in relation to another enterprise mean enterprise:

- which participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise, and
- in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Further, the Act prescribes 13 situations where two or more enterprises are considered as AEs.

AEs for the purpose of SDT are any entities closely connected to entities claiming certain specified tax holidays/exemptions benefit.

Methodologies

The Arm's Length Price (ALP) in relation to an international transaction and SDT is required to be determined by any of the following methods:

- Comparable Uncontrolled Price (CUP) Method
- Resale Price Method (RPM)
- Cost Plus Method (CPM)
- Profit Split Method (PSM)
- Transactional Net Margin Method (TNMM)
- Any other method as prescribed

The TP Regulations do not prescribe any priority criteria in terms of selection/application of methods.

* The limit is applicable from FY 2015-16. Earlier, the limit was INR 50 million ($0.75 million).

ALP

ALP means the price charged or which would have been charged for a transaction between independent parties under similar situations. The TP Regulation prescribes the use of either the range concept (35th to 65th percentile) or arithmetic mean depending on the method applied and number of comparables selected.

Compliance requirement

Compliance requirement	Due date of submission
Obtain accountant's report in Form 3CEB Accountant's report is a brief summary of international transaction(s) and SDT along with the method used to justify the arm's length nature. This document is to be certified by a Chartered Accountant or a firm of Chartered Accountants	30 November of each assessment year for international transactions or SDT undertaken during the relevant financial year (April – March)
TP documentation (TP study) TP study is a detailed documentation (requirements are in line with the OECD guidelines) relating to international transaction(s) or SDT which is used to justify their arm's length nature. This documentation is to be maintained, and updated on an annual basis, if the aggregate value of the international transaction(s) entered into the enterprise exceeds INR 10 million ($0.1 million)	Enterprise is required to maintain contemporaneous documentation and needs to submit documentation on request by the Income Tax Department

Country-by-Country (CbC) reporting

In order to meet the commitment to Base Erosion and Profit Shifting (BEPS) initiative of G-20 and the OECD, a new section has been inserted in the Act which mandates the requirement of CbC reporting in line with Action 13 of the BEPS action plans.

These regulations require an Indian entity which is part of a multinational enterprise (MNE) group to maintain the following group information by way of three files (in addition to the information already required in relation to international transactions):

- Master file (MF)
- Local file
- CbC Reporting (CbCR) is required to be filed by the parent entity of an MNE group with annual consolidated group revenue in the immediately preceding accounting year of more than € 750 million (INR 55 billion, $830.50 million approximately)

The MF and CbCR (as applicable) are required to be filed by 31 March each year.

Secondary adjustment

The concept of secondary adjustment was introduced in India in 2017 and is applicable in respect of income of FY 2016-17 and onwards if the amount of primary adjustment exceeds INR 10 million (€123,000, $140,000).

A secondary TP adjustment is required where a primary adjustment to the transfer price occurs in one of the following circumstances:

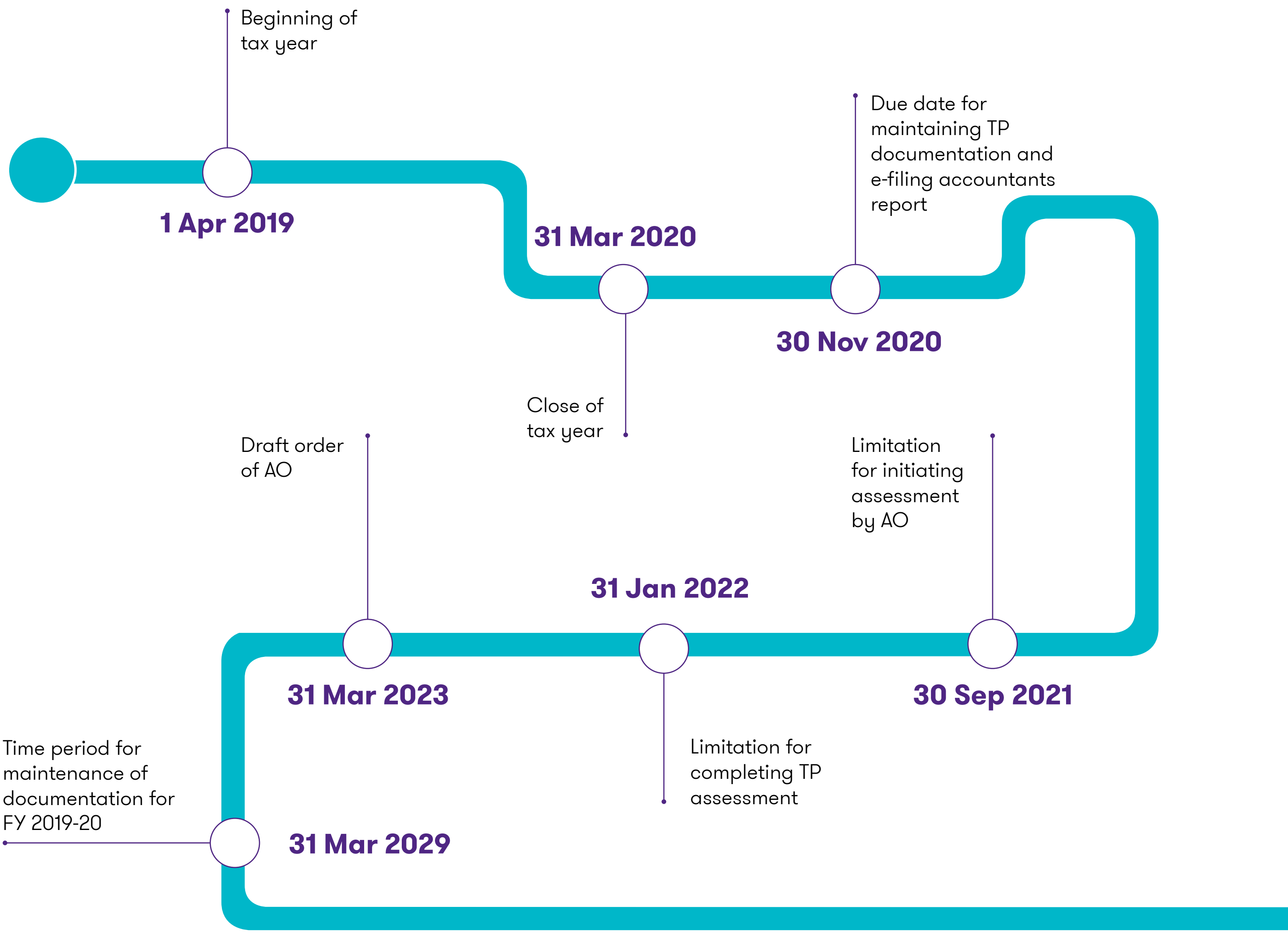
- Voluntarily made by the taxpayer in the tax return
- Made by the tax officer and accepted by the taxpayer
- Determined by an Advance Pricing Agreement (APA) entered into by the taxpayer
- Made as per the safe harbour rules
- Resulted from a an MAP resolution

Therefore, secondary adjustment is an adjustment in the books of accounts of both the taxpayer and the AE to reflect that the actual allocation of profits between the taxpayer and its associated enterprise is consistent with the ALP.

Note: The Indian Income-tax Act defines 'primary adjustment' to a transfer price as the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee.

Source: OECD Transfer Pricing guidelines for Multinational Enterprises & Tax Administrations, July 2010

Compliance timeline



Safe harbour rules

'Safe harbour' is defined as the circumstances in which the income-tax authorities shall accept the transfer price that is declared by the assessee. Safe harbour rules are effective in India from the financial year 2012-13 and are available for a period of three years. At present, safe harbour rules have been prescribed for the following transactions:

- Provision of software development services
- Provision of IT-enabled services
- Providing corporate guarantee
- Contract R&D services relating to software development
- Manufacture and export of core auto components
- Manufacture and export of non-core auto components
- Low value adding intra-group services

Penalty provisions

Penalty provisions for the following non-compliances have been prescribed by the Act:

- Underreporting and misreporting of income
- Failure to maintain statutory TP documents
- Failure to report a transaction in the accountant's report
- Failure to furnish MF
- Failure to furnish the accountant's report

TP audit

TP audit is conducted by the TPO, a specialised officer from the Revenue Department. If the regular AO of a taxpayer considers it necessary or expedient so to do, he/she may, with the previous approval of the Commissioner, refer to the computation of the ALP in relation to the international transactions or SDT of the taxpayer to the TPO.

The taxpayer has the option of approaching the dispute resolution panel or filing appeal before the Commissioner of Income-tax (Appeals).

APA

The APA programme was introduced in the Indian TP Regulations in 2012. Under the APA scheme available from FY 2013-14, any person can enter into an agreement with the CBDT after the approval of the central government, for determining the ALP or for specifying the manner in which the ALP is to be determined in relation to an international transaction to be entered into by that person.

An APA can be entered in relation to an international transaction only. The APA can be unilateral, bilateral or multilateral.

In 2014, roll-back provisions were introduced in the Indian APA scheme, which enable persons entering into an APA to roll back the results of the APA to a period not exceeding four preceding years from the year from which the APA is proposed to be applicable.

MAP

In order to avoid double taxation, MAP has proved to be an effective method where the revenue authorities of two different nations try to resolve a dispute together.

Under MAP, an agreement which seeks to avoid economic double taxation or conflicting taxation would be reached between the tax authorities. Also, under MAP, disputes are resolved through competent authorities of the contracting states.

Safe harbour rules and APA are dispute-avoidance mechanisms and MAP is a dispute-resolution mechanism.

Glossary of abbreviations

AMT: Alternate Minimum Tax
AAAR Appellate Authority for Advance Ruling
AD: Authorised dealer
AIF: Alternate investment funds
ALP: Arm's length price
AO: Assessing officer
AoP: Association of persons
APA: Advance Pricing Agreement
ARC: Asset reconstruction company
BCD: Basic customs duty
BEPS: Base Erosion and Profit Shifting
BO: Branch office
CAGR: Compound annual growth rate
CbC: Country-by-Country
CbCR CbC Reporting
CBDT: Central Board of Direct Taxes
CD: Countervailing duty
CGST: Central Goods and Services Tax
CPM: Cost Plus Method
CSO: Central Statistics Office
CSR: Corporate social responsibility
CTT: Commodities transaction tax
CUP: Comparable Uncontrolled Price
DDT: Dividend distribution tax
DIPP: Department of Industrial Policy & Promotion
DPIIT: Department for Promotion of Industry and Internal Trade
DTH: Direct-to-home
ECB: External commercial borrowing
EDPMS: Export Data Processing and Monitoring System
FCRA: Foreign Contribution (Regulation) Act 2010
FDI: Foreign direct investment
FEMA: Foreign Exchange Management Act 1999
Fintech: Financial technology
FIPB: Foreign Investment Promotion Board
FMCG: Fast-moving consumer goods
FPI: Foreign portfolio investor
FTS: Fees for technical services
GAAR: General Anti-Avoidance Rules
GDP: Gross domestic product
GoM: Group of Ministers
GST: Goods and Services Tax
GSTAT: Goods and Services Tax Appellate Tribunal
GVA: Gross value added
HFC: Housing finance company
HSN Harmonised System of Nomenclature
IBC: Insolvency and Bankruptcy Code
ICDS: Income Computation and Disclosure Standards
IDPMS: Import Data Processing and Monitoring System
IFSC: International Financial Services Centre
IGST: Integrated Goods and Services Tax
IMF: International Monetary Fund
InVIT: Infrastructure Investment Trust
IT & ITeS: Information technology & information technology enabled services
IT-BPM: Information technology-Business performance management
KYC: Know your customer
LO: Liaison office
LTCG: Long-term capital gain
MAT: Minimum Alternate Tax
MF: Master file
MFI: Micro-finance institutions
MNE Multinational enterprise
NAA: National Anti-Profiteering Authority
NABARD: National Bank for Agriculture and Rural Development
NBFC: Non-banking financial company
NPO: Non-profit organisation
NR: Non-resident
OECD: Organisation for Economic Co-operation and Development
OEM: Original equipment manufacturer
PAN: Permanent Account Number
PE: Permanent establishment
PMJDY: Pradhan Mantri Jan-Dhan Yojana
PoEM: Place of effective management
PSM: Profit Split Method
QFI: Qualified foreign investor
RBI: Reserve Bank of India
REIT: Real Estate Investment Trust
RERA: Real Estate Regulation Authority
RNOR: Resident and non-ordinarily resident
ROR: Resident and ordinarily resident
RPM: Resale Price Method
SDT: Specified domestic transaction
SEBI: Securities and Exchange Board of India
SEZ: Special economic zone
SGST: State Goods and Services Tax
SPV: Special purpose vehicle
STCG: Short-term capital gain
STT: Security transaction tax
TAN: Tax Deduction and Collection Account Number
TNMM: Transactional Net Margin Method
TP: Transfer pricing
TPO: Transfer pricing officer
USFDA: United States Food and Drug Administration
UTGST: Union Territory Goods and Services Tax
WLA: White label automated teller machine
ZCB: Zero coupon bond

Acknowledgements

Editorial review	Design
Tanmay Mathur	Gurpreet Singh

For media queries, please contact:

Spriha Jayati
E Spriha.Jayati@in.gt.com
M +91 93237 44249

Grant Thornton in India

Grant Thornton in India is a member of Grant Thornton International Ltd. It has over 4,000 people across 15 offices around the country, including major metros. Grant Thornton in India is at the forefront of helping reshape the values in our profession and in the process help shape a more vibrant Indian economy. Grant Thornton in India aims to be the most promoted firm in providing robust compliance services to dynamic Indian global companies, and to help them navigate the challenges of growth as they globalise. Firm's proactive teams, led by accessible and approachable partners, use insights, experience and instinct to understand complex issues for privately owned, publicly listed and public sector clients, and help them find growth solutions.

Over 4,000 people

15 offices in 13 locations

One of the largest fully integrated Assurance, Tax & Advisory firms in India

About Grant Thornton International Ltd.

Grant Thornton is one of the world's leading organisations of independent assurance, tax and advisory firms. These firms help dynamic organisations unlock their potential for growth by providing meaningful, forward-looking advice. Proactive teams, led by approachable partners, use insights, experience and instinct to understand complex issues for privately owned, publicly listed and public sector clients and help them to find solutions. More than 53,000 Grant Thornton people in over 135 countries are focused on making a difference to the clients, colleagues and the communities in which we live and work.

Notes

Notes

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI
National Office
Outer Circle
L 41 Connaught Circus
New Delhi 110001
T +91 11 4278 7070

NEW DELHI
6th floor
Worldmark 2
Aerocity
New Delhi 110037
T +91 11 4952 7400

AHMEDABAD
7th Floor,
Heritage Chambers,
Nr. Azad Society,
Nehru Nagar,
Ahmedabad - 380015

BENGALURU
5th Floor, 65/2, Block A,
Bagmane Tridib, Bagmane
Tech Park, C V Raman Nagar,
Bengaluru - 560093
T +91 80 4243 0700

CHANDIGARH
B-406A, 4th Floor
L&T Elante Office Building
Industrial Area Phase I
Chandigarh 160002
T +91 172 4338 000

CHENNAI
7th Floor,
Prestige Polygon
471, Anna Salai, Teynampet
Chennai - 600 018
T +91 44 4294 0000

DEHRADUN
Suite no. 2211, 2nd floor Building
2000, Michigan Avenue,
Doon Express Business Park
Subhash Nagar, Dehradun - 248002
T +91 135 2646 500

GURGAON
21st Floor, DLF Square
Jacaranda Marg
DLF Phase II
Gurgaon 122002
T +91 124 462 8000

HYDERABAD
7th Floor, Block III
White House
Kundan Bagh, Begumpet
Hyderabad 500016
T +91 40 6630 8200

KOCHI
6th Floor, Modayil Centre point
Warriam road junction
M. G. Road
Kochi 682016
T +91 484 406 4541

KOLKATA
10C Hungerford Street
5th Floor
Kolkata 700017
T +91 33 4050 8000

MUMBAI
16th Floor, Tower II
Indiabulls Finance Centre
SB Marg, Elphinstone (W)
Mumbai 400013
T +91 22 6626 2600

MUMBAI
9th Floor, Classic Pentagon
Nr Bisleri factory, Western
Express Highway, Andheri (E)
Mumbai 400099
T +91 22 6176 7800

NOIDA
Plot No. 19A,
7th Floor
Sector – 16A
Noida 201301
T +91 120 485 5900

PUNE
3rd Floor, Unit No 309 to 312
West Wing, Nyati Unitree
Nagar Road, Yerwada
Pune- 411006
T +91 20 6744 8800

For more information or for any queries, write to us at contact@in.gt.com

Follow us @GrantThorntonIN