Grant Thornton

#GTBharat
SHAPING A VIBRANT INDIA

Guide to establishing presence in India

May 2021

Contents

About the guide

This guide explains the basics of entity establishment, sources of finance, import-export, labour regulations, financial reporting, audit regime, annual compliances, taxation laws and other compliances in the dynamic Indian market. It is intended to serve as a primer and provide a broad overview to a person planning to establish business in India as well as tap into significant opportunities in various sectors. The guide is updated with regulations as on 10 May 2021.

Disclaimer

The guide is not a substitute for professional advice. We recommend that appropriate professional advice is taken for specific requirements.

Foreword

Active government intervention in the form of pathbreaking reforms has led to a considerable jump in the country's rank in ease of doing business – India currently ranks 63 among 190 economies, as opposed to 142 in 2014.

FDI interest in India has been witnessing a significant upward trend since 2015, backed by Prime Minister Narendra Modi's focus on leveraging the power of the combination of the three D's as he calls it – Democracy, Demographics and Demand.

Active government intervention in the form of pathbreaking reforms over the years has led to a considerable jump in the country's rank in ease of doing business – India currently ranks 63 among 190 economies, as opposed to 142 in 2014. While the economy continues to grapple with the second wave of the COVID-19 pandemic, data suggests a positive long-term growth.

According to the United Nation's World Economic Situation and Prospects report, released in May, India is likely to witness a growth of 7.5% in calendar year 2021. The report has also projected the country's GDP to grow by 10.1% in 2022. For instance, according to Grant Thornton's Quarterly Dealtracker, the first three months of 2021, registered 405 transactions, a 27% growth in transaction volumes compared with Q1 2020. April too set new records by reporting the highest deal volumes, at 161 deals, in any month since 2011.

India's young and educated population, growing and aspirational middle class, push on infrastructure development and focus on investor friendly policy regime, coupled with the government's vision to make India a USD 5 trillion economy by 2024, are the right ingredients to propel growth.

At Grant Thornton Bharat, we are delighted to be at the forefront of helping shape a more Vibrant Bharat by working with the government, the leaders of India Inc., and the global companies.

Vishesh C. Chandiok
Chief Executive Officer
Grant Thornton Bharat LLP

About India

Country profile

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. It has a long coastline spanning over 7,000 kilometres. The climate varies from tropical in the south to temperate in the north.

Diversity

India is rich in history, culture, religion and diversity. There are 22 major languages spoken in the country across its 28 states and eight UTs. India is a secular, multi-cultural, multi-ethnic and multi-religious society through its Constitution with people from all faiths residing here, including Hindus, Muslims, Christians, Sikhs, Buddhists, Jains, Jews and Zoroastrians, amongst others.

Education

The education system in India is considered as one of the best globally. The country offers quality education comparable to global standards in the fields of finance, literature, computer engineering and programming, science and technology, medicine, dentistry, business management and administration. The IITs and IIMs are recognised world over as the premier higher educational institutions.

The recently approved New Education Policy 2020 is expected to usher in education reforms and fast-track India's journey towards becoming a knowledge superpower.

Currency

The INR is the official currency of India. The RBI is the national and sole currency-issuing authority in the country. The exchange rate of the rupee is 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.

Structure of government

India is a sovereign secular democratic republic with the largest multi-party democracy in the world. The Parliament of the Union consists of two legislative houses:

- The Rajya Sabha (Upper House), which represents the states of the Indian Union, and
- The Lok Sabha (Lower House), which represents the people of India as a whole.

The central and state governments comprise of 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 of the Indian state and the chief minister is the head of the elected government in the state. Elections for the states are held every five years.

India is the largest democracy in the world. It is estimated that the country today has more than 200 political parties. The country's general elections are held once in five years. The election result determines which political party or alliance will form the next government and the individual who will be elected as the Prime Minister of the country.

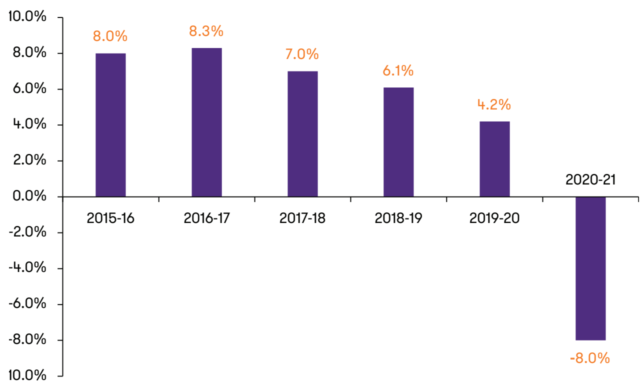
New Delhi is the national capital of India and the seat of the central government.

Judiciary and law

India has a well-established, independent judicial system, which comprises the Supreme Court of India based in New Delhi, 25 High Courts[1] spread across the major states and several district courts and subordinate courts. The Supreme Court is the apex court of the country, and its decisions are binding on all other courts of all the states and UTs.

India also has quasi-judicial authorities, consumer courts, Competition Commission, etc. The country has a framework of Tribunals and Appellate Tribunals to adjudicate on specific economic matters, e.g., ITAT, NCLT, etc.

GDP growth rate[2]



The IMF projects[3] an impressive 12.5% growth rate for India in 2021, making the country the only major economy of the world to register a double-digit growth this year amidst the coronavirus pandemic.

Money and credit

- Indian foreign exchange reserve touched USD 582.04 billion on 12 March 2021. Foreign currency assets, which form a majority of the country's foreign exchange reserves, stood at USD 541.02 billion, while gold reserves stood at USD 34.55 billion.[4]
- India has attracted total FDI inflow of USD 67.54 billion during April to December 2020. FDI equity inflow grew by 40% in the first 9 months of FY 2020-21 (USD 51.47 billion) compared to the year ago period.[5]

1. www.jagranjosh.com
2. At constant prices (Ministry of Statistics and Programme Implementation)
3. Economic Times
4. RBI
5. Press Information Bureau

Summary

Some of the key facts and statistics that make India a favourable business destination worldwide are:

- 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 with non-Asian countries
- Favourable geographical location, which makes India closer to markets, including the Middle East, South Asia, Southeast Asia and Europe

Key statistics

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

Population[6]
1.39 billion

Area[7]
3.29 million square kilometres

GDP (nominal)[8]
USD 2.87 trillion

GDP per capita (nominal)[9]
USD 2,100

Exports[10] **(April 2020 to February 2021)**
USD 439.64 billion

Imports[11] **(April 2020 to February 2021)**
USD 447.44 billion

Literacy rate (Urban)[12]
87.7%

Literacy rate (Rural)[13]
73.5%

Life expectancy[14]
69.96 years

Urban population[15]
31.16%

Median age[16]
28.4

Local currency
INR

6. www.worldometers.info
7. www.worldometers.info
8. www.investopedia.com
9. www.investopedia.com
10. Press Information Bureau
11. Press Information Bureau
12. Ministry of Statistics and Programme Implementation
13. Ministry of Statistics and Programme Implementation
14. www.macrotrends.net
15. www.censusindia.gov.in
16. www.worldometers.info

India as an attractive investment destination

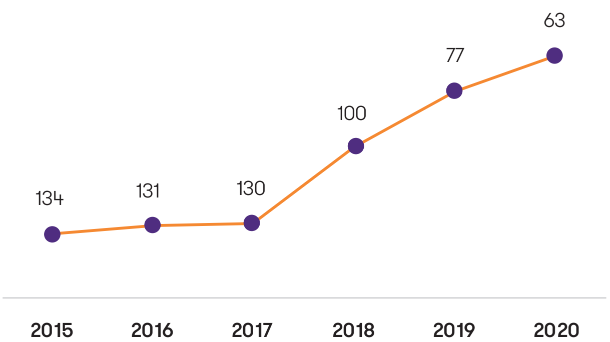
The government in Union Budget 2019-20 laid down a roadmap to transform India into a USD 5 trillion economy by 2024-25.

Ease of doing business

The World Bank, in its 2020 Doing Business Report, has placed India at the 63rd rank among 190 countries. This is a jump of 14 positions against its rank of 77 in 2019. India has improved its rank in seven out of 10 indicators and has moved closer to international best practices (Distance to Frontier score). Significant improvements have been registered across a slew of indicators, including resolving insolvency, dealing with construction permits, registering property, trading across boards and paying taxes.

Between 2014 and 2020, India has gained 79 positions. Further, for the third consecutive year, India is amongst the top 10 improvers globally.

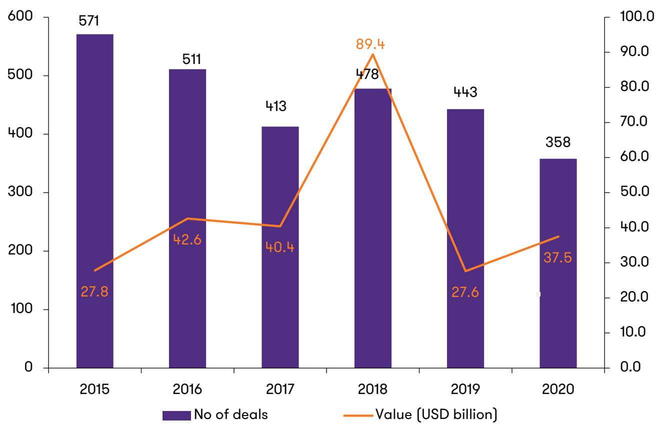
India's improving rank in the last six years



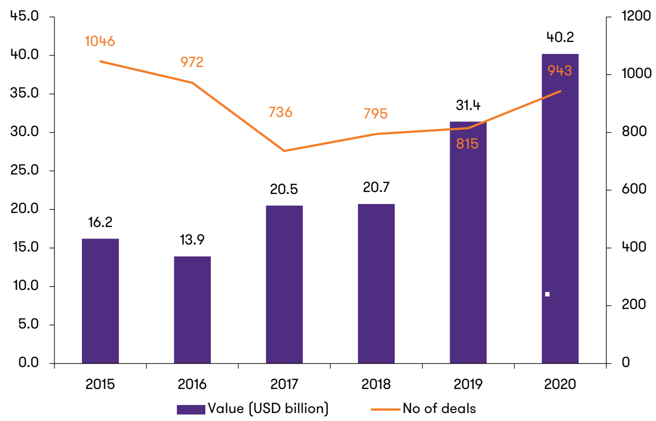
	2019	2020
▲ Resolving insolvency	108	52
▲ Dealing with construction permits	52	27
▲ Registering property	166	154
▲ Trading across borders	80	68
▲ Paying taxes	121	115
▲ Getting electricity	24	22
▬ Starting a business	137	136
▬ Enforcing contracts	163	163
▼ Getting credit	22	25
▼ Protecting minority investors	7	13

A snapshot of deal activities

M&A trend[17]



PE trend[18]



17. Grant Thornton Insights

18. Grant Thornton Insights

Setting up a manufacturing base in India

As India gears up to increase its industrial output, various drivers are fueling growth in the manufacturing sector:

Make in India

Various steps taken as part of the Make in India initiative have helped India improve its 'ease of doing business' rank, fast-tracking its journey to become a global manufacturing hub.

Key highlights of Make in India are as follows:

Invest India cell

An investor facilitation cell set up by the government that will act as the first reference point for guiding foreign investors on all aspects of regulatory and policy issues and assist them in obtaining regulatory clearances.

Interactions with users/visitors

A pro-active approach will be deployed to track visitors for their geographical location, interest and real time user behaviour.

Dedicated portal for business queries

A dedicated cell created to answer queries from business entities through a newly created web portal (http://www.makeinindia.com).

Easing policies and laws

The outdated frameworks of the past are being dismantled and replaced with transparent and investor-friendly policies to drive investment, foster innovation, develop skills, protect IP and build best-in-class manufacturing infrastructure.

Sectors covered under Make in India[19]

- Automobile
- Auto Components
- Aviation
- Biotechnology
- Chemicals
- Construction
- Defence Manufacturing
- Electrical Machinery
- Electronic Systems
- Food Processing
- IT & BPM
- Leather
- Media & Entertainment
- Mining
- Oil & Gas
- Pharmaceuticals
- Ports & Shipping
- Railways
- Renewable Energy
- Roads & Highways
- Space Technology
- Textiles & Garments
- Thermal Power
- Tourism & Hospitality
- Wellness

Favourable corporate tax[20]

In 2019, the government announced a corporate tax rate of 15% (effective tax rate 17.16%) for new manufacturing units. This rate, available to new manufacturing company incorporated on or after 1 October 2019, is amongst the lowest in the world. The company should commence production by 31 March 2023 and fulfil prescribed conditions.

19. www.makeinindia.com
20. Grant Thornton Insights

Key sectors – an overview

Consumer, retail and e-commerce

The sector comprises consumer durables (electronics and appliances), FMCG, retail and e-commerce. With rising incomes and growing levels of consumer awareness, the sector is expected to witness growth in the coming years.

Current scenario

Consumer durables

Electronics hardware production in India was ~USD 90 billion in FY 2019-20, a significant increase from USD 31.6 billion in 2015.[21] The demand for electronics hardware is estimated to grow exponentially, to reach USD 400 billion in FY 2023-24.[22]

The market is steadily growing due to increased affordability of products and shared economy. Rental business of home appliances and furnishing is witnessing an uptick due to launch of multiple startups.

E-commerce

The COVID-19 pandemic had a positive impact on the sector. The Indian e-commerce market is expected to touch USD 200 billion by 2026.[23] Shift of consumer shopping preference, from brick and mortar stores to online shopping, coupled with increased penetration of smartphones led to an overall growth of the sector. With a large customer base in India, the sector witnessed huge investment from multinationals. In 2020, e-commerce and consumer internet companies raised more than USD 8 billion in PE/VC investments across 400 deals.[24]

The impact of COVID-19 has made the sector more agile and resilient to future disruptions. Supply chains have been made more robust and there is an increasing use of technologies, such as AI, to ensure products are available at the right place and the right time. E-commerce players have also taken steps to cut down on delivery time by collaborating with local departmental stores and vendors.

FMCG

It is the fourth-largest sector of the Indian economy. F&B (19% share), healthcare (31% share), household and personal care (50% share) are the three main segments of FMCG sector.[25]

Impact of COVID-19

Consumer durables/FMCG

The consumption pattern of the Indian household has been changing consistently and the pandemic has accelerated this change. Indian consumers are more inclined towards brand assurance rather than the need to "touch and feel" products. Traditionally, this sector was never active on social media, but now all FMCG companies have defined online spends. While disruptions will be a way of life, the sector is expected to witness growth due to various favourable factors. With food, personal care items, especially hand sanitisers and disinfectants (the key products of the pandemic) pushing the industry to post positive growth amid the crisis, the FMCG industry is likely to continue its momentum and achieve sustained growth in rural and urban markets in 2021.

Way forward

The overall retail market is set to cross USD 1.75 trillion by 2026[26]. This is expected to be driven by a rising number of households carrying out online transactions, which are estimated to grow from 154 million in 2020 to 233 million in 2025. The availability of higher disposal income, along with a strong push from the rural economy, will likely have a positive impact on the sector.

21. www.statista.com
22. www.sieindia.com
23. www.ibef.org
24. www.kr-asia.com
25. www.ibef.org
26. www.investindia.gov.in

Key trends

Retail in India is poised for a transformation due to changing business dynamics on account of the pandemic. To keep pace with the changing dynamics, digitisation needs to be incorporated into traditional business models.

Growth of luxury products market

- The luxury consumer products market in India was ~USD 9.09 billion in 2020. It has been growing over the past decade and is expected to witness an annual CAGR of 5.8% during 2020–23. Luxury cosmetics and fragrances were the largest segments with a market value of USD 3 billion in 2020.[27]
- The market is being driven by a rising middle-class [28] that's expected to expand by 140 million in 2018–30.[29]

Rise in demand from Tier 2/3 cities

- Higher awareness, improved logistics, growing internet penetration and increased government policy support has led to a rise in consumerism (brand consciousness and awareness) in smaller cities in India. Several Tier 2/3 cities have favourable conditions, such as lower rentals, lower manpower cost, increasing population density and increase in disposable income, for growth. The rural FMCG market in India is expected to reach USD 220 billion by 2025[30]. In addition, increasing electrification of rural areas is also expected to aid growth in demand for electronics and appliances.

Growth in omni-channel retailing

- Retailers are exploring multiple channels to maximise sales and omni-channel retailing is widely adopted.
- Consumer is looking forward to timely delivery of products without compromising on quality. All consumer companies have to develop an AI-based robust supply chain mechanism.

Increase in use of technology to augment services

- Companies leveraging data, technology and innovation to increase customer satisfaction and experience. For example, a number of retail chains are digitising their showrooms and rolling out next-generation outlets thereby requiring lesser number of store assistants.
- Several players are experimenting with data analytics, AI and social media and using functions such as BOPIS and self-kiosk.

Additional investments/consolidation

- The sector has been on a growth trajectory. However, it requires heavy investments of real estate as well as inventory. Thus, companies with higher ability to invest are able to sustain.
- In 2020, 55 deals, valued at USD 10,753 million, took place in the consumer and retail sector. There were 95 deals in the e-commerce sector, valued at USD 4,504 million over the same period.[31]

Government initiatives

- The National e-commerce policy aims to create a framework for achieving holistic growth of the sector. It also emphasises on Make in India and digital initiatives.
- Launch of various PLI schemes across sectors:[32]
  – INR 6,238 crore for white goods such as air conditioner and LED lights. White goods (air conditioners and LEDs) have high potential for domestic value addition and the PLI scheme will lead to more domestic manufacturing, generation of jobs and increased exports.
  – INR 5,000 crore for electronic products such as mobile phones, laptops and computers, will boost the production of electronic products in India.
  – INR 10,683 crore for textile products. The PLI scheme will attract large investment in the sector to further boost domestic manufacturing, especially in the man-made fibre segment and technical textiles.

27. www.cpp-luxury.com
28. www.sentinelassam.com
29. www.consultancy.asia
30. www.ibef.org
31. Grant Thornton Insights
32. Press Information Bureau

Infrastructure

With the government prioritising investments in the sector, India is expected to become the third-largest construction market globally by 2022. The sector includes development of power, bridges, dams, railways, roads, coal mining and urban infrastructure.[33]

Current scenario

Driven by rapid urbanisation, the sector has seen growth in urban construction activities, under housing initiatives, such as Housing for All and Smart City Mission. Further, a rise in industrial activity and growing number of on-road vehicles is driving the demand for improvement in road network and allied infrastructure across the country. In April 2020, the government set an expenditure target of INR 15 lakh crore for construction of roads over the next two years.[34] Similarly, to accelerate development of rail, the government plans to invest INR 50 lakh crore in railways by 2030.[35]

The COVID-19 pandemic has disrupted construction activity in the short-term, resulting in projects being stalled. This has impacted cash flow in the sector for stakeholders, including the government and private operators. However, the government has introduced multiple reforms, including opening of railways and coal sector for private participation, that would go a long way in increasing investment and boosting the growth of sector.

Way forward

Despite short-term impact, the government expects the NIP to play a crucial role in offsetting the impact of COVID-19 on the economy. Therefore, the government plans to invest INR 111 lakh crore on 6,835 projects under NIP by 2025.[36]

Bilateral investment opportunities in Indian infrastructure projects with countries, including Japan and the United Arab Emirates, are also expected to drive future growth for the sector.

India plans to expand its energy infrastructure. This would give rise to investment opportunities worth USD 300 billion in the sector in the coming 10 years.[37]

33. www.ibef.org
34. www.ibef.org
35. www.ibef.org
36. Bloomberg Quint
37. www.ibef.org

Key trends

Facilitating PPP projects

- Infrastructure development through PPPs has helped in spurring economic growth and creating jobs.
- To ensure speedy appraisal of projects, eliminate delays and adopt international best practices, the government has set up the PPP Appraisal Committee.[38]

Rise in PE/VC investments

- In 2020, the infrastructure sector received USD 5 billion in investments; 21% of the total PE/VC investments[39]
- In November 2020, the National High Speed Rail Corporation Limited signed a contract with Larsen & Toubro to design and construct a 237 kilometre long viaduct between Vapi (Maharashtra-Gujarat border village of Zaroli) and Vadodara (Gujarat). This high-speed rail corridor implementation agreement is the biggest infrastructure contract for construction and design in the country.[40]

Government initiatives

The following initiatives have been announced in the Union Budget 2021 to support the development of the infrastructure sector:[41]

- INR 1.18 lakh crore, highest ever outlay, for Ministry of Road Transport and Highways.
- New Economic corridors and Expressways being planned.
- Advanced traffic management system in all new four and six lane highways. Around 150 private trains are to be introduced under PPP mode, which is expected to generate private investment of INR 30,000 crore[42].
- The thrust of the Union Budget 2021 is on increasing capital expenditure focused on expanding physical infrastructure in line with the already envisaged NIP. Increasing capital expenditure is desirable since it has high growth and employment multipliers.
- National Rail Plan for India (2030) to create a "future ready" railways system by 2030.
- 100% electrification of Broad-Gauge routes to be completed by December 2023.
- Western DFC and Eastern DFC to be commissioned by June 2022.
- Expansion of metro rail network and augmentation of city bus service.
- 'MetroLite' and 'MetroNeo' technologies will be used to provide metro rail systems at much lesser cost with similar experience.

38. www.indiafilings.com
39. The Hindu Business Line
40. www.ibef.org
41. www.drishtiias.com
42. Financial Express

Automotive

The Indian government has adopted a visionary approach in Union Budget 2021, with a stance towards infrastructure building. India is eyeing an electric vehicle ecosystem, where the budget of R&D would further enhance its development and localisation towards efficiency improvement and increasing competitiveness. The year 2020 gave automakers an opportunity to reposition themselves as they emerge from the crisis on a new path towards electrification and connectivity.

With the announcement of right policies and induced support, the automotive sector is poised for growth. As focus increases on the Vehicle Scrappage Policy and there's more clarity on the proposed scheme, the automotive sector would create a significant impact in boosting investor confidence and the manufacturing sector in the country in line with the Aatmanirbhar Bharat initiative.

Current scenario

Overall sales from April 2020-March 2021 showed a decline of 13.6% and exports decreased by 13.05% on y-o-y basis.[43] The industry also witnessed a 14.04% fall in production figures in the same period.[44]

On the contrary, driven by two-wheelers, EV sales (excluding e-rickshaws) witnessed a growth of 20% in India and reached 1.56 lakh units in FY 2019-20.[45]

As India enters the new era of green mobility, it is at a unique position in the global EV landscape, offering opportunities to stakeholders who are mindful of price-sensitive consumers.

Balancing act in industry post COVID-19 crisis

COVID-19 has pushed all companies across the globe into a balancing act where, on one hand, they need to manage the immediate effects of the current crisis while, on the other hand, build resilience to future disruptions.

OEMs are prioritising efforts to adapt to new and upcoming legislation on emissions, developing and marketing climate-friendly products, and above all recouping their losses.

Post the pandemic, creation of jobs, with a strong cash flow, is the need of the economy. Fostered investments would help OEMs to focus on growth areas considering that EVs are the biggest opportunity for industry players.

Scope of expansion

India has the scope to expand its share in the global auto components trade to 4-5% by 2026, driven by exports growth and import substitution initiatives being taken by the industry as part of the Aatmanirbhar initiative.[46]

The Indian automotive industry (including component manufacturing) is expected to reach INR 16.16-18.18 trillion (USD 251.4-282.8 billion) by 2026.[47]

Way forward

The Indian auto industry is expected to see stronger growth in 2021-22, after recovering from the devastating effects of COVID-19. Looking at the road ahead, India aspires to reach its vision of 100% EVs by 2030.[48] Factors, such as increasing government support, decreasing cost of technology, growing interest of the country in EVs and distressing pollution levels, will collectively accelerate India's transition to EVs.

43. Business Today
44. Business Standard
45. Bloomberg Quint
46. Financial Express
47. www.ibef.org
48. Economic Times

Key priorities

Ramping up EV investments

- India is offering fresh incentives to EV car manufacturers as part of a broad automobile sector scheme aimed at attracting approximately USD 14 billion of investment over five years.[49]

Focus on EV startups

- Fundraising for EV startups and battery compound companies in India/vocal for local focus is likely to push investments in the EV space.

Increasing role of digitisation

- Integration of online tools with existing sale processes.
- Focus of OEMs is on accelerating their connectivity and voice-activated capabilities to improve the in-car, shopping and service experience.
- Implementation of technology and building data platforms and above all to evolve customer experience is at priority.

Enforcement of best practices towards road safety

- India expects massive reduction in road traffic fatalities and injuries related to specific behaviors due to the added features in the MV Act.

Government initiatives

E-charging station across country

- To accelerate EV purchase and consumption, e-charging stations to be set up by the government at around 69,000 petrol pumps across the country.[50]

Vehicle Scrappage Policy

- The policy aims at taking old vehicles off the roads. The policy is expected to boost sales of automobile leading to higher production capacity utilisation.
- Nearly 80% commercial vehicle operators would be affected by the policy[51]
- The policy proposes several incentives for vehicle scrappage including a 5% rebate on new vehicle purchase, upto 25% discount on road tax and a waiver of vehicle registration fee.

PLI scheme to boost manufacturing and exports

- The benefits for the sector in FY 2020-26, amounting to around INR 57,042 crore for auto and components and INR 40,951 crore for large electronics manufacturing, have already been approved by the government.[52]
- Under the scheme, cash subsidies are provided to companies as a percentage of incremental sales from the base year. The scheme would promote large manufacturing capacities at par with global standards, local manufacturing and exports and additional investment and employment generation for the next five years.

Auto components industry export to grow 5 times in next 10 years.[53]

India needs about 400,000 charging stations by 2026 to meet the charging requirement for 2 million EVs.[54]

Automotive aftermarket segment in India is expected to reach USD 32 billion by 2026.[55]

49. News18
50. The Times of India
51. www.leaflet.in
52. CNBC TV18
53. www.investindia.gov.in
54. www.inc42.com
55. www.investindia.gov.in

Renewable energy

India has the fifth-largest installed capacity of renewable energy in the world. With a renewable energy potential of 1,000+ GW, India was ranked as the fourth most-attractive renewable energy market in the world.[56] The sector is broadly classified into wind, solar, small hydro, biopower and waste-to-energy.[57] FDI is permitted up to 100% in this sector under the automatic route.

Current scenario

As of November 2020, India had a total installed renewable power capacity of 90 GW, of which, solar and wind comprised 37 GW and 38 GW, respectively. Further, biomass and small hydro power constituted 10 GW and 5 GW, respectively.[58]

In FY 2019-20, the renewable energy sector delivered more than two-thirds of India's new power capacity additions, with installations of 9.39 GW of new on-grid capacity.[59]

By May 2020, the private sector contributed to ~95% of installed renewable energy capacity, with leading renewable energy companies contributing approximately over 10,000 MW.[60, 61]

To meet the growing energy demand and address rising concerns for the environment, the government has set a target of achieving 227 GW of renewable energy capacity by 2022 and 500 GW by 2030.[62]

India's renewable energy sector attracted FDI totaling USD 9.68 billion between April 2000 and September 2020.[63] The current economic slowdown has also slowed down construction of projects in the sector, with only 12 MW of wind capacity and 176 MW of solar capacity installed in May 2020. This downward trend is likely to continue as the sector faces labour shortages, challenges in movement of goods and delays in site inspection and approvals. Moreover, wind energy installation is expected to face major delays as they have a more complex supply chain than solar projects.[64]

Way forward

As India plans to achieve 60% of its power generation from clean sources by 2030, the renewable energy sector continues to show high growth potential.[65] Moreover, government initiatives, such as the Smart Cities Mission and National Solar Mission, will continue to drive the demand for clean energy sources.

Further, the government and the industry is committed towards making policy changes and investments to cover entire renewable energy value chain encompassing component manufacturing and innovation, such as modern energy storage technologies, R&D, skilling and modernisation of the grid infrastructure. This would lead to a fast-track adoption of clean energy, making India a preferred renewable energy destination.

To meet the growing energy demand and address rising concerns for the environment, the government has set a target of achieving 175 GW of renewable energy capacity by 2022 and 500 GW by 2030.

56. www.investindia.gov.in
57. Ministry of New and Renewable Energy
58. www.ibef.org
59. Economic Times
60. Asian Development Bank
61. www.infraline.com
62. www.ibef.org
63. www.ibef.org
64. Economic Times
65. Economic Times

Key trends

Rise in PE investments

- A suitable policy environment coupled with high growth opportunities in India's renewable energy sector have made it an attractive market for investors.
- The sector has attracted USD 17.6 billion of private investments in the past three years. Further, the sector has the potential to attract USD 10 billion of annual investments.[66]

Growing M&A activity

- India has emerged as a global clean energy investment destination, resulting in a significant rise in M&A deals.
- Various foreign players are entering into strategic partnerships with Indian energy companies, to expand their pan-India presence.[67]

Expanding solar power capacity

- As of the third quarter of of 2020, solar installations accounted for 10% of total installed power capacity in India. The Indian government has set an ambitious plan to reach 227 GW by 2022, under which it aims to achieve a solar power capacity of 114 GW.[68]
- Amid the pandemic, India added 2,320 MW of solar capacity in January 2020-September 2020.[69]

Government initiatives

- The Ministry of New and Renewable Energy has decided to provide custom and excise duty benefits to the solar rooftop sector and lower installation costs.[70]
- Smart Cities Mission, development of solar parks, and installation of solar pumps are some of the initiatives undertaken by the government.
- The government is also working towards reducing operational bottlenecks, such as related to land acquisition, providing off-take assurance and financial support to discoms, rationalisation of GST rates on solar and wind equipment. The resolve of the government to make related reforms will lead to promotion of the sector in the country.
- In November 2020, the government announced PLI scheme worth INR 4,500 crore for expanding high-efficiency solar PV modules manufacturing by 10,000 MW capacity over a five-year period.[71]
- Renewable Purchase Obligation: State electricity commissions are obliged to purchase certain percentage of power from renewable energy sources. The floor prices for solar and non-solar renewable energy certificates was removed with revised prices in force until 30 June 2021.[72]
- The Solar Energy Corporation of India implemented large-scale central auctions for solar parks and has awarded contracts for 47 parks with over 25 GW of combined capacity.[73]

66. Projections of Bank of America (www.renewableenergyindiaexpo.com)
67. www.mercomindia.com
68. www.ibef.org
69. www.ibef.org
70. www.ibef.org
71. NDTV
72. www.mercomindia.com
73. www.ibef.org

Real estate

The Indian real estate sector is expected to reach USD 1 trillion by 2030. It is expected to account for 13% of the country's GDP by 2025. It can be broadly classified into four sub sectors - residential, commercial, retail and hospitality.[74]

Current scenario

During 2017-28, the Indian real estate sector is expected to register a CAGR of 19.5%. This growth can be attributed to rapid urbanisation, rise in household income and growth in demand for office space. Further, rising requirement of space from education, healthcare, e-commerce and logistics sectors is also driving the demand.[75]

Growth opportunities, coupled with government initiatives aimed at increasing transparency through RERA, relaxation of FDI norms and institutionalisation of investments in completed properties in the form of REITs,[76,77] has boosted investors' interest in the sector.

The sector attracted FDI worth USD 42.50 billion in April 2000-March 2020, amounting to 9.5% of the total FDI inflows during the period.[78] India's economic slowdown aggravated by the COVID-19 pandemic has negatively impacted the sector, bringing construction activities to a halt and significantly eroding the market of its potential buyer-base.

With property transactions dipping to near-zero during lockdown, the sector is expected to witness challenging times. The interdependence of supply chains, migration of labourers, cost overruns and liquidity constraints are posing challenges.[79]

Way forward

Despite these challenges, the sector stands to benefit in the longer run due to various initiatives taken by the government. These include Housing for All, Smart City mission, interest rates benefits, stamp duty relaxation, extensions of commencement dates of project loans for commercial projects and service tax exemption on construction of affordable housing.[80,81,82]

Some of the key drivers for the sector in mid-to-long term that are likely to increase focus on the sector are:

- Owing to the impact of COVID-19, businesses are moving towards cloud, which is leading to an uptick in the demand for data warehouse. According to estimates, the data centre market in India is likely to receive USD 5 billion in investments by 2025.[83]
- Owing to changing business environment and work flexibility across locations, demand for co-working and co-living is likely to see traction.
- As global supply chain see shift towards India, demand for commercial real estate is likely to see a boost in the long-run.
- SEBI approval for REIT platform would create opportunity worth USD 19.65 billion in the coming years.[84]

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74. www.ibef.org
75. www.ibef.org
76. The Hindu
77. www.jll.co.in
78. Grant Thornton Insights
79. Financial Express
80. www.ibef.org
81. The Hindu
82. www.99acres.com
83. Financial Express
84. www.ibef.org

Key trends

Growing investor interest for luxury properties

- According to a new study, over 2.3 lakh housing units were launched in the year 2019 in the top seven cities of the country - Bengaluru, Chennai, Hyderabad, Pune, Mumbai, NCR and Kolkata, with 10% of the total number of housing units launched belonging to the luxury and ultra-luxury segments.[85]
- This segment has witnessed strong demand from HNIs and NRIs, driven by rising purchasing power and increase in exchange rate of the USD as compared with the INR.[86]

Growth of new real estate investment options

- India currently has three listed REITs. More REITs in India are set to be listed in 2021 and beyond.[87]
- Apart from REITs, other investment options, such as fractional ownership of commercial real estate, are being taken to investors through technologies and digital marketplaces.[88]

Government initiatives

- The government has launched several schemes to support the industry. This includes the Housing for All scheme under which 60 million houses are to be built, including 40 million in rural areas and 20 million in urban areas by 2022.[89]
- The government has also set up the RERA, which works towards making the sector more transparent.[90]
- It has also allowed FDI of up to 100% for townships and settlement development projects.[91]
- It has also announced that bank credit to registered NBFCs towards the housing sector, up to prescribed limits, will be treated as priority sector loans for a year.[92]

85. The Hindu
86. Financial Express
87. www.constructionworld.in
88. Financial Express
89. www.ibef.org
90. The Hindu Business Line
91. www.ibef.org
92. Economic Times

Technology

The IT industry in India is one of the leading contributors to India's GDP, employment and economic growth. The sector can be broadly classified into three major segments - IT services software products and engineering services and hardware. India is also the second-largest telecom market in the world, with a subscriber base of 1.16 billion users.[93]

Current scenario

India is the leading sourcing destination across the world, accounting for ~55% market share of the USD 200-250 billion global services sourcing business in 2019-20. Indian IT & BPM companies have set up over 1,000 global delivery centres in about 80 countries across the world.[94]

India has become the digital capabilities hub of the world with around 75% of global digital talent present in the country.[95]

Due to the impact of COVID-19 in key export regions, such as US and Europe, the Indian IT industry is expected to witness a revenue impact in the short-term but the overall long-term growth potential remains robust, as the world moves to largely digital and technology enablement for business delivery. The pandemic has also forced Indian IT firms to restructure their working models, from a centralised delivery model to a work from home model.

Way forward

The industry is expected to reach a market size of over USD 350 billion by 2025,[96] driven by supportive government policies, such as Digital India and globally growing digital spending.

Growth of the Indian technology market over the next few years is expected to be fueled by rising internet penetration, driven by an improving network infrastructure and rising demand for internet consumption. Over 600 million users are expected to join by 2025.[97] The top IT services players from India witnessed 7.9% revenue growth in 2020 and have continued to ramp-up hiring.[98] NASSCOM reported thousands of new hires in 2020 by Indian IT players, demonstrating the robustness in hiring.

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93. www.ibef.org
94. www.ibef.org
95. www.ibef.org
96. www.ibef.org
97. Businesswire
98. Business Standard

Key trends

Increasing automation in IT-BPM industry

- As per NASSCOM, BPM spending towards RPA will steadily rise, peaking in 2025 when as much as 30-40% of the overall BPO work will be driven by RPA, allowing BPM players to leverage benefits, such as costs reduction and increased operational efficiency.[99]

Favourable environment for startups

- In FY 2019-20, number of Indian tech start-ups stood at around 12,500 with 1,600 start-ups being added in the year. This has been driven by growing support from the government and the private sector.[100]
- NASSCOM aims to accelerate the start-up ecosystem in India significantly by 2025. This entails increasing the number of unicorns to 95-105 potentially and the cumulative valuation to USD 350-390 billion.[101]

Development of 5G network

- 5G network technology is expected to offer better user experience through increased data speeds, ultra-low latency and more reliability.
- 5G is being touted as a game-changing technology for India, with a potential to create an economic impact of over USD 1 trillion by 2035.[102]
- Indian telecom players, including Airtel, Vodafone Idea and Reliance Jio, have initiated partnerships with vendors, including Ericsson and Samsung, to conduct 5G trials in India.

Increasing AI offerings

- Indian IT companies are looking to offer AI-enabled platforms to improve the delivery of digital solutions. This is being driven by the need to offset the contraction in their traditional businesses.
- Indian IT players are expected to secure a higher share of global digital services market between 2018-2021.[103]

Growth in M&A deals

- Indian IT players continue to be active in M&A across segments. The tech sector is expected to lead M&A and PE/VC deals in 2021 as well.[104]

Increasing interest in overseas listing

- There is a significant interest in overseas listings (including via the SPAC route) of unicorns and tech players that's expected to enable tech firm to access global capital markets and grow their footprint.[105]

99. Business Standard
100. Livemint
101. Business Standard
102. Business Today
103. Economic Times
104. www.businessinsider.in
105. Business Standard

Foreign investment

Foreign investors keen to set up operations in India are required to comply with the foreign exchange control laws of the country. The CA 2013, FEMA and the regulations thereunder govern the setting-up of incorporated entities (JVs or WOS) and unincorporated entities (BO, LO or PO).

FDI policy

FDI is allowed in most sectors, including the services sector, through the automatic route without requiring any prior government approval. In few sectors, FDI can be brought in after obtaining an approval from the government.

Proposals for FDI under the approval route are directly handled by the concerned ministries. An application in this regard is to be submitted online through the FIFP portal.

Applicability of the FDI policy may vary based on the category of foreign investor. For example, investments by NRIs or OCIs are subject to certain relaxations under the FDI policy and NDI Rules, 2019. Accordingly, specific guidance must be sought by foreign investors.

Indicative summary of sectoral FDI policy

FDI policy parameter	Sectors
Automatic route	FDI of up to 100% permitted under the automatic route in most services, manufacturing, infrastructure sector, B2B trading, single brand retail trading, 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 the prescribed caps requires government approval
Sectoral caps	FDI in certain sectors is subject to sectoral caps such as 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 ARCs

Sectors in which FDI is not permitted

Lottery business including government/private lottery, online lotteries, etc.	Nidhi company
Gambling and betting including casinos, etc.	Trading in transferable development rights
Chit funds	Real estate business, or construction of farmhouses (subject to certain exceptions)
Activities/sectors not open to private sector investment, e.g., atomic energy and railways (except mass rapid transport systems)	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 profits, dividends, royalty and know-how payments freely.

Exchange controls

According to the current foreign exchange control regulations, transactions are divided into current account and capital account transactions.

Capital account transaction refers to transactions which alter 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. 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 inter alia provide, 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 SEBI regulations), subject to the pricing guidelines/valuation norms and other prescribed reporting requirements.

In pursuance to NDI Rules, issued by the Ministry of Finance on 17 October 2019, the central government governs the non-debt segment while the RBI governs the debt segment.

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.

Equity instruments

Provisions relating to inbound investments are classified into two separate rules (i.e. non-debt and debt). Accordingly, all equity instruments, such as equity shares, fully compulsorily and mandatorily convertible debentures and fully compulsorily and mandatorily convertible preference shares and share warrants (issued in accordance with SEBI regulations), subject to the pricing guidelines/valuation norms and other prescribed reporting requirements are governed by NDI Rules, 2019. These rules have recently been amended to curb vulnerable acquisitions by acquirer from neighbouring countries.

Prior approval of the government is required for investments made by entities incorporated in a country, which shares land border with India or where the beneficial owner of investment into India is situated in or is a citizen of any such country. Further, in the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within aforesaid restriction/ purview, such subsequent change will also require prior government approval.

Recently, DPIIT clarified that investments made by an Indian entity, which is owned and controlled by NRIs on non-repatriation basis, shall also be considered as domestic investment and shall not be considered for the purpose of calculating indirect foreign investment.

With effect from 1 April 2020, the investments under the FPI route are permitted up to sectoral limits prescribed under the exchange control regulation.

Foreign currency loans

With effect from 16 January 2019, a new ECB regime has been introduced wherein Indian entities who are eligible to receive FDI can 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 has two options - Foreign currency denominated ECB and rupee denominated ECB.

The ECB framework was further liberalised by RBI on 30 July 2019, with the end-use restrictions relaxed. Eligible borrowers are now allowed to receive ECBs for working capital and general corporate purposes, for repayment of rupee loans availed domestically for capital expenditure as also by NBFCs for on-lending for the same purpose (depending upon their minimum average maturity period).

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Import/export controls

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, payments written off and limits permissible for the same. Further, import/export data processing and monitoring system has been introduced in order to monitor 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 and repatriated within a stipulated time period (generally nine months).

Similarly, the import regulations provide the manner and documents required to be followed 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 AD Bank/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 LLP incorporated under the LLP Act, 2008) are eligible to undertake ODIs outside India signifying a long-term interest in the foreign entity (JV or WOS).

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 ODI. 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

As a result of a concerted effort by the government and the private sector, India is undoubtedly one of the most vibrant capital markets in the world with its robust banking insurance and fund industry. Within financial services, banking is the biggest and one of the most important sectors contributing to the growth of the economy. The government has, from time to time, endeavored to address several tax and regulatory issues faced by the sector to make India a more competitive economy and help attract domestic as well as foreign capital.

Financial services sector

The Indian financial sector has the following broad categories:

Banks

Financial markets in India have acquired increased liquidity and depth over the years with banks dominating the space. RBI, the apex bank of the country, regulates the banking sector. Reforms in the banking sector have encouraged entry of new players, making it more market-driven with increased efficiency and productivity. The banking sector comprises of – Commercial banks, Small Finance banks and Payments banks.

The RBI has also introduced detailed guidelines allowing Indian and foreign banks with a presence in India, carry out operations in the IFSC.

Non-banking financial companies

These are financial institutions, regulated by the RBI, 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 lend and make investments and hence their activities are generally considered akin to those of banks.

Recently, the IFSCA has released regulations for setting-up a 'Finance Company' in an IFSC. A finance company can undertake all the activities which an NBFC can undertake, along with aircraft and ship leasing, trading in derivatives, merchant banking, investment advisory, portfolio management, trusteeship services, distribution of mutual funds, etc.

Insurance

The insurance sector comprises insurance companies (i.e. life insurance, general insurance and re-insurance companies), insurance brokers, third-party administrators, surveyors and assessors, as well as other such intermediaries.

Finance Act 2021 increased the FDI limit in the insurance sector from 49% to 74% under the automatic route subject to certain conditions. Recently, the government has also approved 100% FDI for insurance intermediaries under the automatic route.

Capital markets

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

To boost foreign investment in Indian capital markets, SEBI has issued revised FPI Regulations and corresponding operational guidelines, which provide simplified registration and KYC requirements.

In order to deepen the bond market and achieve the aspirational growth rate through flow of additional capital in the financial system, a new route viz. fully accessible route is introduced, to enable non-residents to invest in specified securities issued by the government without being subject to any investment limit.

Capital market intermediaries

Some of the financial intermediaries in Indian capital markets include stock exchanges, stockbrokers, merchant bankers, credit rating agencies, investment advisors, portfolio managers, clearing corporations, etc. These intermediaries support the functioning of capital markets in India.

Mutual funds

Mutual funds are popular in India because they simplify investment in the increasingly complicated financial markets.

Pension funds

Pension funds are created by an employer to make contributions of funds for employees' future benefit. With the passage of the PFRD Act 2013, the investment corpus in India's pension sector is expected to cross USD 1 trillion by 2025.

Foreign investment in the pension sector is permitted up to 49%.

Alternative investment funds

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 etc.
- **Category II:** Typically, private equity and debt funds
- **Category III:** Complex derivative, listed equity

SEBI has also issued operational guidelines to enable setting up of AIFs in IFSC. Unlike, domestic AIFs, AIFs in IFSC shall have no restriction on leverage and shall not be subject to diversification norms. Government of India has also granted various tax incentives to AIFs set-up in IFSC and relocation of offshore funds to AIF located in IFSC.

Asset reconstruction companies

These 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/ infrastructure investment trusts

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

SEBI has relaxed the rules for REITs and InvITs by allowing them to invest more in under-construction projects, facilitating rationalised unit holder consent on related party transactions and removal of restrictions on SPVs to invest in other SPVs holding the assets. Further, SEBI has also done away with requirement of mandatory listing of InvIT and REIT units. REITs and InvITs incorporated in FATF compliant jurisdiction are permitted to list on stock exchanges in GIFT IFSC.

Fintech

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

The fintech sector in India mainly includes:

- Next-generation payments
- Financial inclusion
- Blockchain
- Robo-advisory
- Security and biometrics

Recently, the RBI and SEBI have issued a framework for regulatory sandbox. The regulatory sandbox framework enables fintech start-ups to test their financial products, services or technology in a controlled regulatory environment before launch.

In the Union Budget 2021, the Finance Minister announced that the Government would support development of a world class fintech hub at GIFT IFSC.

GIFT City

GIFT City, India's first IFSC, has been set up with an objective to enable Indian entities, compete on an equal footing with offshore financial centres and to provide facilities and regulations comparable to other leading IFSCs in the world. Currently, banks, AIFs, FPIs, mutual funds, clearing corporations, stock exchange and capital market intermediaries and insurance/reinsurance companies are allowed to operate in IFSC. Indian resident individuals are permitted to make remittances in IFSC under LRS.

The regulators overseeing the financial transactions that may be undertaken in GIFT City are RBI, SEBI and/or IRDAI, depending on the nature of the activity. The government has recently established a unified authority, IFSCA, that would regulate all the financial services in IFSC.

In December 2020, the regulators have notified IFSCA (Bullion Exchange) Regulation for setting up the International Bullion Exchange in GIFT City. Recently, the regulators have permitted trading of Rupee-Dollar (i.e. INR-USD) currency derivatives on the IFSC exchanges.

Business entities

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

Unincorporated entities	Incorporated entities
• Liaison office • Branch office • Project office • Partnership firm	• Limited liability partnership • Limited company (public/private)

These forms of business entities are discussed below:

Liaison, branch and project offices

An LO is suitable for a foreign company that 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 cannot undertake any business activity or earn any income in India. A foreign company may apply for establishing its LO in India to an AD bank if the principal business of the entity residing outside India falls under sectors where 100% FDI is permitted in terms of the FDI policy.

Foreign company may also open a BO. The BO should engage 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. A foreign company may apply for establishing its BO in India to an AD bank in most cases.

A foreign company may open a PO 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 meet the prescribed conditions. Once the project is executed as per the terms of the contracts, the PO is required to be closed down.

Partnership firms

Under the current FDI policy and the FEMA, foreign investment into Indian partnership firms (other than by NRIs) requires prior permission from the RBI.

Limited liability partnership

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

LLP is governed as per the LLP agreement between the partners. In the absence of such agreement, the framework provided in the LLP Act would govern the LLP. Importantly, the LLP Act makes it mandatory to have two individual designated partners, at least one of whom should be residing in India.

Limited company

It 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 and the FEMA. All companies in India are incorporated under the provisions of the CA Act 2013.

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:

- A private company can provide for restrictions on transfer of its shares by inserting suitable clauses in the Articles of Association, but no such restrictions can be put on transfer of shares in a public company that are freely transferable.
- A private company cannot invite public to subscribe its securities.
- The compliances applicable to a private company under the CA 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 laws

Employment agreements

India has adopted various methods of entering employment contracts, i.e. written, applied and interpreted. 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. In India, both the state and central governments, regulate labour-related laws.

Applicable labour laws on wages/salary

The Minimum Wages Act, 1948; Payment of Wages Act, 1936; Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976 are the key legislations that regulate wage and bonus payments in all employments where any industry, trade, business, or manufacturing is carried out.

New labour codes

The government has recently enacted the following four labour codes that subsumed 29 existing legislations:

- **Code on Wages, 2019**: Consolidates laws relating to wages and bonus
- **Social Security Code, 2020**: Amalgamates the nine labour laws including the Provident Fund, Gratuity, Employee State Insurance and Maternity Benefit
- **Industrial Relations Code, 2020**: Consolidates matters related to trade unions, conditions of employment in industrial establishments, investigation and settlement of industrial disputes
- **Occupational Safety, Health & Working conditions Code, 2020**: Consolidates laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and related matters

The date on which the labour codes would come into force is pending notification as on 10 May 2021. Also, state governments would be notifying the rules applicable to establishments in their jurisdictions. Once notified, the new labour codes would be applicable to all establishments across industry segments operating India.

Social security

Social security regulations in India are administered by the EPFO, a statutory body under the Ministry of Labour and Employment, Government of India. It is mandatory to apply to the fund for all establishments employing 20 or more people at any point of time. It also covers provision of pensions and other survivor benefits in the event of any employee's death. Employees are required to contribute 12% of their salary to the EPFO with a matching contribution by the employer. Foreign or international workers employed in India are also subject to the terms of this fund.

Workers are also entitled to gratuity on completion of five years of continuous service.

Social security agreements

India also has SSA, which are bilateral agreements between two governments. Such agreements serve to protect the interests of Indian citizens working outside India in any of these countries or foreign nationals coming to India from these countries. Presently, India has signed SSAs with 18 countries as under:

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

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. 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 FRRO. The FRRO registration process is digitalised and the e-FRRO portal provides a faceless, cashless and paperless service to foreign nationals.

Generally, employment visa, business visa or project visa is issued for business/employment purposes. The validity of a visa depends upon the type of visa granted and extension of visas may be granted as per the requirements on a case-to-case basis.

Overseas Citizenship of India

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

Registered OCIs shall be entitled to certain benefits like multiple entry, multi-purpose life-long visa to visit India, parity with NRIs in financial, economic and educational fields, except in the acquisition of agricultural or plantation properties, etc. Also, OCIs are not required to register themselves with the FRRO, irrespective of the period of stay in India.

Accounting, reporting and audit requirements

In India, accounting, reporting and auditing requirements of businesses are primarily governed by the regulations issued by the ICAI, the SEBI, the MCA and the CBDT.

The CA 2013 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 CA 2013.

Companies listed on a recognised stock exchange in India are also governed by the rules and regulations issued by the SEBI. Further, industry-specific guidance relating to financial reporting are also issued by relevant regulatory authorities such as RBI, NHB and IRDAI.

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. Listed companies and specified unlisted companies (rules in this respect are yet awaited) are also required to publish periodical interim financial information, as may be applicable, which are subjected to review or audit.

Accounting year

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

Contents of financial statements

The CA 2013 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. MCA has recently enhanced these disclosure requirements which are applicable for the financial years starting from 1 April 2021. Financial statements comprise balance sheet, statement of profit and loss, cash flow statement, a statement of changes in equity (if applicable) and related notes.

Records to be maintained

Every company should follow accrual basis of accounting. The CA 2013 requires that the records can also be maintained in electronic mode in the prescribed manner and should 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. A new amendment is effective from financial years starting 1 April 2022 that mandates use of accounting software with features of maintaining an effective audit trail for maintaining books of account electronically.

Accounting framework

The CA 2013 prescribes two accounting frameworks:

1 The accounting standards prescribed under Companies (Accounting Standards) Rules, 2006 as notified under the Companies Act, 1956 (Indian GAAP);
2 Ind AS prescribed under the Companies (Indian Accounting Standards) Rules, 2015, based on IFRS as issued by the International Accounting Standards Board, with certain carve-ins and carve-outs.

The applicable accounting framework for companies other than insurance and banking companies is determined based on the thresholds and other criteria prescribed under CA 2013. Companies may also voluntarily adopt Ind AS irrevocably earlier than the prescribed roadmap.

Banking and insurance companies were earlier required to implement Ind AS for preparation and presentation of their financial information from 1 April 2019 in a phased manner. However, RBI has deferred such implementation for banking companies till further notice in view of preparedness of banks and pending necessary legislative amendments to the Banking Regulation Act, 1949, while IRDAI has deferred Ind AS implementation for insurance companies until Ind AS 117 on insurance contracts is notified by the MCA.

National Financial Reporting Authority

In October 2018, the MCA constituted the NFRA by notifying Section 132 of the CA Act 2013 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.

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 CA 2013. In addition, the IT Act mandates audits of taxpayers meeting certain specified thresholds to be conducted by a chartered accountant in practice (member of the ICAI).

Mandatory firm rotation

To promote auditor independence and in the interest of improving audit quality, the CA 2013 prohibits auditor appointment for more than five consecutive years (if the auditor is an individual) or more than two periods of five consecutive years (if the auditor is an audit firm) 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 largely similar to the International Standards on Auditing issued by the IAASB of the International Federation of Accountants.

However, there are additional reporting responsibilities on auditors governed by Section 197 and Section 143 of the CA 2013 which, inter alia, includes the CARO 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. A new order, CARO 2020 replaces CARO 2016 for periods beginning on or after 1 April 2021, which has significantly enhanced the reporting requirements.

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.

Filing of financial statements/results

A company is required to hold an AGM within six months of the end of a financial year.

Financial statements are laid down before the members of the company in the AGM. Such financial statements are required to be filed with the RoC within 30 days of the AGM. Listed companies also need to file the audited (or reviewed) 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.

Reporting on internal financial controls

In case of a listed company, directors are required to implement 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 only 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

In view of the significant developments in convergence with IFRS, ICDS were notified under the IT Act 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 accrual system of accounting for the purpose of computation of income from business and income from other sources.

Direct tax

Income tax is chargeable on income computed in accordance with the provisions of the IT Act. Income can be brought within the tax net under the following heads:

- Income from salary
- Income from house property
- Profits and gains from business or profession
- Capital gains
- Income from other sources (income not specifically covered under other heads)

All taxpayers are required to follow a uniform tax year from 1 April to 31 March for tax purposes, referred to as previous year, irrespective of the financial year followed for accounting purpose.

India follows a mix of source-based and residence-based taxation. The IT Act provides for such taxation vis-à-vis the residential status of the person in relevant previous year, i.e. ROR, RNOR, NR.

Taxation of individuals

Depending upon the duration of physical presence in India, an individual and his scope of taxation can be considered as following:

Resident and ordinarily resident

ROR are taxable on their global income.

Resident but not ordinarily resident

RNOR are also taxable on their global income. However, the income that accrues or arise to him outside India shall not be included, unless the income is derived from a business controlled from India or from a profession set up in India.

Non-resident

NR are taxable either on receipt or source basis in India.

An individual taxpayer is treated as a 'resident' in India in a year, if the taxpayer is in India:

- For 182 days or more in the previous year; or
- For an aggregate period of 60 days or more and has been in India for an aggregate period of 365 days or more within four years immediately preceding that year. For a citizen of India or a person of Indian origin visiting India, the condition of 60 days is to be read as:
  - 120 days if their total income (other than income from foreign sources) exceeds INR 15 lakh during the year;
  - 182 days in other cases.

Further, an Indian citizen shall be deemed to be 'resident' (RNOR) in India if his total income (excluding income from foreign sources) exceeds INR 15 lakh and he is not liable to tax in any other country or territory. This would not apply to individuals who qualifies as ROR under the normal provisions of the IT Act.

The personal tax rates for the FY 2021-22 are as follows:

Option 1: Old tax regime

Income slabs	Rate of tax (%)*
Upto INR 250,000#	Nil
INR 250,000 to INR 500,000	5%
INR 500,000 to INR 1,000,000	20%
Above INR 1,000,000	30%

#Minimum exemption limit for:

- **Resident senior citizens** (age 60 years and above but less than 80 years): INR 300,000
- **Resident super senior citizens** (age 80 years and above): INR 500,000

Option 2: Optional concessional tax regime

(can be availed on foregoing certain deductions/exemptions)[106]

Income slabs	Rate of tax (%)*
Upto INR 250,000	Nil
INR 250,001 to INR 500,000	5%
INR 500,001 to INR 750,000	10%
INR 750,001 to 1,000,000	15%
INR 1,000,001 to 1,250,000	20%
INR 1,250,001 to 1,500,000	25%
Above INR 1,500,000	30%

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 be received in India or (b) accrues or arises or is deemed to accrue or arise 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 is situated wholly outside India.

The tax rate for FY 2021-22 is 30%.*

Taxation of companies

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

Resident

Taxed on worldwide income

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

Non-resident

Taxed on income (a) received/deemed to be received in India or (b) accrues or arises or is deemed to accrue or arise in India

* These rates would be increased by applicable surcharge and cess

106. Individual/HUF with business income: will have an option to opt out of the concessional regime without any option to re-exercise such benefit; Individual/HUF without business: Can exercise the option on a year-to-year basis

Tax rate for domestic company

The corporate tax rates for the FY 2021-22 are as follows:

	Prescribed conditions	Tax rate#
(a)	Total turnover or the gross receipts in the FY 2018-19 does not exceed INR 4,000 million	25%
(b)	Other than corporates falling under (a) above	30%

Domestic companies may opt for lower corporate tax rate subject to specified conditions as under:

	Prescribed conditions	Tax rate#
(a)	Existing domestic company which does not claim any of the specified exemption/incentives	22%
(b)	New domestic company set up on or after 1 March 2016, engaged in the business of manufacture or production of any article or thing and does not claim specified exemptions/incentives	25%
(c)	New domestic company set up on or after 1 October 2019 commences manufacturing activity by 31 March 2023 and does not claim specified exemptions/incentives	15%

Tax rate for foreign company

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

Rate of surcharge

Tax rates mentioned shall be increased by applicable rate of surcharge which is as follows:

Types of company	Net income: Up to INR 10 million	Net income: INR 10-100 million	Net income: Above INR 100 million
Domestic company not opting for lower tax rate	NIL	7%	12%
Domestic company opting for lower corporate tax rate of 22%/15%	10%	10%	10%
Foreign company	NIL	2%	5%

Taxpayer	Net income: INR 5-10 million	Net income: INR 10-20 million	Net income: INR 20-50 million	Net income: Above INR 50 million
Individual/AOP/BOI/AJP	10%	15%	25%	37%
Firm/LLP/local authority	NIL	12%		

#These rates would be increased by applicable surcharge and cess

Rate of surcharge shall be restricted to 15% in case of capital gains arising:

- On sale of equity share in a company or a unit of an equity-oriented fund or a unit of business trust liable for securities transaction tax in the hands of an individual, HUF, AOP, BOI and AJP
- On sale of any security, including derivatives in the hands of FIIs

Rate of Health and Education Cess

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

Minimum Alternate Tax/ Alternate Minimum Tax

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

MAT is not applicable in case of domestic companies opting for lower tax rates of 22%/15%.

For domestic companies liable to corporate tax at the rate of 25%/30% or foreign companies[107], MAT is leviable[108] at the rate of 15% on book profits. Excess of MAT over normal tax is treated as credit (subject to prescribed limitation), which can be set off in any 15 subsequent years against normal tax liability.

Persons (other than company) claiming certain specified deductions[109] are subject to AMT at the rate of 18.5% on adjusted total income.[110] Excess of AMT over normal tax is treated as credit (subject to prescribed limitation), which can be set off in any 15 subsequent years against normal tax liability.

107. MAT provisions apply to a foreign company only if it has a permanent establishment 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

108. Where tax payable on the total income is less than 15% of book profits

109. The provision of AMT shall apply to an individual/HUF/AOP/BOI/AJP/ LLP/firm subject to the prescribed provisions. However, where the adjusted total income does not exceed INR 2 million in the case of said person except LLP/firm, the AMT provision shall not apply. Further the provisions of AMT are not applicable to individual/HUF/ cooperative society who has opted for the concessional tax regime

110. AMT is leviable where tax payable on the total income is less than 18.5% of adjusted total income

Dividend taxation

From 1 April 2020, dividend income is taxable as per the tax rate applicable in the case of respective shareholders and investors. Cascading effect in case of intercorporate dividends has been eliminated by providing a deduction in respect of dividends received by a domestic company to the extent such dividend is distributed.

Capital gain tax

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

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 INR on the date of transfer, thus providing for adjustment of fluctuation in foreign exchange.

Short-term capital gains

Status of taxpayer	Type of asset	Rate of tax[111]
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%
Both residents and non-residents	Capital assets other than those mentioned above	• Slab rates for individual and HUFs • Applicable tax rate for those not covered above such as 40% for foreign companies

Long-term capital gains

Status of taxpayer	Type of asset	Rate of tax[112]
Both residents and non-residents	Equity shares, unit of equity-oriented funds or unit of business trust on which STT is paid[113]	10%[114]
Residents	Listed securities (other than a unit) on which STT is not paid	20% with 'indexation' or 10% without 'indexation' whichever is lower
Residents	Capital assets other than those covered above	20%
Non-residents	Listed securities (other than a unit) on which STT is not paid	10% after accounting for foreign exchange fluctuation
Non-residents	Shares and debentures other than covered above for non-residents	10% without accounting for foreign exchange fluctuation
Non-residents	Capital assets other than those covered above for non-residents	20%

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

Taxation of non-residents

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 NR is taxable in India if it has a 'business connection' in India. The term 'business connection' is conceptually similar to permanent establishment as defined in tax treaties. Profits from a business of a NR, attributable to operations carried out in India, are taxable in India. The term 'business connection' includes in its ambit (a) 'significant economic presence' and (b) any business activity carried out through a person who habitually plays the principal role leading to conclusion of contracts by a non-resident.

111. These rates would be increased by applicable surcharge and cess

112. These rates would be increased by applicable surcharge and cess

113. The benefit shall also be available if STT is not paid but transaction is undertaken on a recognised stock exchange located in an IFSC and consideration is in foreign currency

114. As per the Finance Act 2018, the existing tax exemption on long-term capital gains arising on transfer of a listed equity share or a unit of an equity-oriented fund, etc., (subject to STT) has been withdrawn. Any long-term capital gain arising from such transfers made on or after 1 April 2018 and in excess of INR 0.1 million shall be taxed at 10%. Further, long-term capital gains earned up to 31 January 2018 has been grandfathered

The concept of 'significant economic presence' has been introduced to tax non-residents who generated revenue from India without having a physical presence in India, i.e. e-commerce companies and other digitised form of businesses. The applicability of provisions of 'significant economic presence' was deferred to FY 2021-22.

A new rule has been inserted to provide thresholds for determining the significant economic presence of a non-resident in India. The significant economic presence in case of a non-resident shall be triggered if (a) aggregate amount of payment for a specified transaction with a person in India exceeds INR 20 million (during a year) or (b) non-resident undertakes systematic and continuous soliciting of business activities or engages in interaction with 300,000 or more users in India.

Taxation of other income streams of non-residents

Nature of income	Rate of tax*
Dividend	General rate - 20% (plus applicable surcharge and cess) Certain specified categories are taxed at a different rate.
Fees for technical services: Fee for managerial, technical or consultancy services	10% (plus applicable surcharge and cess) of gross receipt.
Royalty[115]	10% (plus applicable surcharge and cess) of gross receipt
Interest	• Interest payable by an Indian company to a NR for money borrowed in foreign currency – 20% (plus applicable surcharge and cess) • Interest payable on ECBs, long-term bonds and RDBs issued before 1 July 2023 – 5% (plus applicable surcharge and cess) • Interest payable to a FII or a QFI on a RDB of an Indian company or a government security issued before 1 July 2023 (subject to certain other conditions) – 5% (plus applicable surcharge and cess)
Capital gains • On account of transfer of a capital asset situated in India; or • Indirect transfer of capital asset[116]	Refer table on page 45 above for tax rates

* Benefit of reduced rates, if any under Tax Treaty can be availed

If a permanent establishment 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 IT Act, whichever is more beneficial. India has entered into comprehensive tax treaties with 96 countries so far.

In order to avail tax treaty benefits, a non-resident 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.

India is also a signatory to the MLI and has deposited the instrument of ratification on 25 June 2019. The MLI provisions would be applicable to Indian treaties depending on the date of entry into force of the MLI for the corresponding countries.

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 NR (not having a permanent establishment in India), is to be deducted by the remitter in India. The levy was introduced to tax digital services rendered by foreign service providers without having a presence in India.

The Finance Act 2020 expanded the scope of equalisation levy to cover non-resident ECO at 2% of the amount of consideration received or receivable by a non-resident ECO from e-commerce supply or services made or provided or facilitated by it to:

- Person resident in India
- NR in specified circumstances (specified circumstances shall include sale of advertisement targeting Indian customer or any person accessing such advertisement through internet protocol address located in India and sale of data collected from an Indian resident person or from a person using internet protocol address located in India)
- Person who buys such goods or services or both using Indian internet protocol address

115. It includes payments for use or right to use any industrial, commercial or scientific equipment; transfer of rights (including granting of a licence) in respect of a patent, trademark, copyright, literary, artistic or scientific work or similar property, etc.

116. 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

The Finance Act 2021 clarified following points regarding the provisions of equalisation levy:

- If consideration for e-commerce supply of goods or services are taxable as 'royalty' or 'fee for technical services', the same would be excluded from the purview of equalisation levy
- Any leg of a transaction, such as placing or acceptance of orders/offers, making online payment for supply of goods/ provision of services, shall trigger the levy
- Consideration received shall be subjected to equalisation levy on the gross amount irrespective of whether the e-commerce operator owns the goods or provides/ facilitates e-commerce services
- With effect from 1 April 2020, any income which is chargeable to equalisation levy will be exempt from income tax
- Goods and services owned and provided by a person resident in India or by a permanent establishment of a non-resident in India and transacted over an overseas e-commerce platform will not be subject to equalisation levy

General anti-avoidance rules

Indian domestic law contains GAAR provisions that target IAA entered into by person for the purpose of tax avoidance. An arrangement would be considered an IAA where its main purpose is to obtain a tax benefit and it meets one of the other four tainted element tests.

However, GAAR provisions will not apply to an IAA where the tax benefit arising in aggregate does not exceed INR 30 million.

GAAR deals with aggressive tax planning involving the use of sophisticated structures. The provisions of GAAR came into effect from 1 April 2017.

As per the GAAR provisions, reference is required to be made to the Approving Panel in certain circumstances. Recently the government has approved the composition of Approving Panel for GAAR.

Computation of business income

Business income is generally taxable on 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. This deductibility is further subject to exceptions and fulfilment of conditions, such as withholding tax, as stated in the IT Act.

Depreciation

Depreciation of capital assets is allowed on the basis of the reducing balance method using varying rates, depending on the type 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 rate if the asset is used for less than 180 days in that year. Depreciation is not available on goodwill.

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 that could not be 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. However, most of the tax incentives are being gradually phased out.

Patent box regime

To encourage indigenous R&D activities, royalty income of eligible taxpayers in respect of a patent developed and registered in India is taxable at 10% on the gross amount of royalty.

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, is eligible for the patent box regime.

Start-ups

An eligible start-up can avail of 100% deduction of the profits earned in any of the three consecutive years of the initial 10 years of operations. Provided the start-up is incorporated on or after the 1st day of April 2016 but before the 1st day of April 2022. The deduction is, however, available only to a new entity, which is not set up by way of splitting up or re-construction of an existing undertaking.

Withholding tax

The IT Act casts an obligation on each taxpayer to withhold tax on specified payments. All payments to non-residents, who are taxable in India, attract tax withholding. In certain situations, an NR making payment to another NR/resident is required to undertake tax withholding as per the Indian regulations.

Key compliances

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.

Permanent account number

Every person (as per the criteria prescribed in the IT Act) is required to obtain a tax registration number, termed as PAN. 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.

Tax audit

Every person carrying on business is required to get his books of accounts audited if the total sales or turnover or gross receipts exceeds INR 10 million.

However, the threshold shall be INR 100 million in case cash receipts and payments do not exceed 5% of the total receipts and payments respectively.

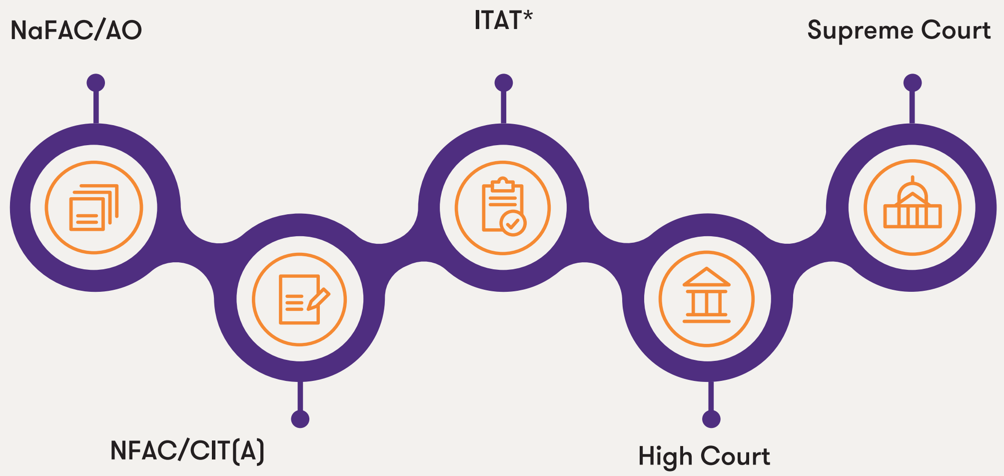
Tax deduction and collection account number

Every person responsible for withholding tax, in accordance with the provisions of the IT Act, is required to make an application for the allotment of withholding tax registration number called TAN. Corporate taxpayers can now submit a common application form for incorporation, PAN and TAN.

Tax return filing

All taxpayers (companies and firms) are required to file a return of income for the previous year within the prescribed due dates. Persons, other than companies/firms, are required to file tax returns where the total income during the year is above the basic exemption limits.

Direct tax dispute resolution process



* ITAT is the final fact finding authority.

Faceless dispute resolution

A new scheme to make tax assessments 'seamless, painless and faceless' has been introduced. Accordingly, going forward tax assessments (barring a few cases) will be conducted in a faceless manner, where the physical interface between taxpayer and tax department will be eliminated. The identity of the officers carrying on the assessment will remain unknown to the taxpayer. The taxpayer will not be required to visit the income-tax office.

Key features of this scheme are selection of cases using data analytics /AI, automated random allocation of cases, dynamic jurisdiction, central issuance of notices and team-based assessment/review.

It is expected that once successfully implemented, these changes will bring in transparency and objectivity in tax assessments, foster taxpayer's trust and confidence and boost voluntary compliance.

This concept has also been introduced for the first appellate level. Further, Finance Act 2021 has introduced this concept for ITAT also.

Alternate dispute resolution mechanism

Advance rulings can be obtained for transactions (including proposed ones) involving non-residents and certain residents. As per recent changes introduced by Finance Act 2021, Board for advance rulings (which replaces the Authority for Advance Rulings) would now be empowered to issue such rulings. These advance rulings will not be binding on the applicant or the tax authority and would be appealable before High Courts.

Transfer pricing

TP Regulations were introduced in India in 2001, in order to prevent erosion of Indian tax base.

Indian TP Regulations require the international transactions between AEs and SDTs to comply with the Arm's Length Principle. The Arm's length principle requires the pricing, terms, and conditions in transactions between AEs to be in accordance with pricing, terms and conditions in comparable uncontrolled transactions between unrelated persons.

International transaction

Under Indian TP Regulations, the definition of the term 'international transaction' is very wide and encompasses transactions in the nature of purchase, sale, or lease of tangible or intangible property, 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. Indian Regulations also cover capital financing, business restructuring and intangible related transactions within the scope of international transactions.

Deemed international transactions are also included within the scope of TP. Deemed international transaction in the context of a taxpayer means a transaction entered into by an enterprise with an unrelated enterprise, where: (i) there exists a prior agreement between the unrelated enterprise and the AE of the taxpayer, or (ii) the terms of such a transaction are, in substance, determined between such unrelated enterprise and the AE of the taxpayer.

Associated enterprises

For Indian TP Regulations to be applicable, there has to be international transaction(s) between AE(s) and at least one of the AEs has to be a non-resident.

The definition of AEs under Indian Regulations is broadly in line with the OECD TP guidelines. Under the TP Regulations, direct or indirect participation in management, control or capital is the triggering factor for determining the AE relationship. There are 13 situations prescribed under the Indian TP Regulations where participation in management, control or capital is deemed to exist. Some of the prescribed situations which trigger AE relationship include, ownership of 26% or more shares carrying voting rights, loan advanced amounting to 51% or more of book value of assets of borrowing enterprise, guaranteeing of 10% or more borrowings of other enterprise, control in appointment and/or representation in board or directors/governing board, dependency on patents, know-how, copyrights etc owned by other enterprise etc.

Specified domestic transactions

Following categories of SDTs are covered within the ambit of Indian TP Regulations:

- Transfer of goods or services between units of an entity claiming/eligible to claim tax holiday under specified sections of the IT Act
- Any business transacted between an entity claiming tax holiday under specified sections of the IT Act and a closely connected person

Arm's length price

ALP means the price charged or which would have been charged for a transaction between independent parties under similar situations. The TP Regulations prescribe the use of either the range concept (35th to 65th percentile) or arithmetic mean, depending on the method applied and number of comparable selected. Where arithmetic mean is used as a measure of ALP, a tolerance band of 3% (1% for wholesale traders) from the actual transfer price is available to the taxpayer.

Transfer pricing methods

Prescribed methods for determination of ALP under Indian TP regulations are:

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Profit split method
- Transactional net margin method
- Any other method as prescribed

There is no priority prescribed in terms of selection/application of methods.

Certification - Accountant's report in Form 3CEB

Accountant's report in Form 3CEB is mandatorily required to be electronically filed by every person who has entered into international transactions or SDTs with its AEs. Form 3CEB is a brief summary of international transaction(s) and SDT along with the method used to justify the arm's length nature of such transactions.

Three-tier Transfer Pricing documentation

In accordance with its commitment to OECD's BEPS Action Plan, Indian Government introduced the concept of three tier TP documentation in 2016.

These regulations require an Indian entity which is part of a 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):

Local file

Master file

CBCR

Local file compliance is currently considered to be the same as preparation of annual TP documentation (TP study) by the taxpayer. The TP study is a detailed documentation maintained by the taxpayer to justify the arm's length pricing of its international transactions and/or SDTs. Contents of TP documentation are in line with the OECD TP guidelines. The documentation is required to be maintained on an annual basis, if the aggregate value of the international transaction(s) entered into by the enterprise with its AEs during the respective financial year exceed INR 10 million.

TP study is required to be contemporaneous, and it is to be submitted to the Income Tax Department upon request.

Master File is required to be electronically filed where the value of international transactions of the enterprise with its AEs exceeds INR 500 million during the relevant accounting year (INR 100 million in case of intangible related transactions) and consolidated global turnover of the MNE group exceeds INR 5,000 million.

CBCR is required to be electronically filed by the UPE of an MNE group with annual consolidated group revenue in the immediately preceding accounting year of more than INR 64,000 million. Statutory due date for e-filing is 12 months from the end of reporting accounting year of the UPE. The UPE can designate another group entity as alternate reporting entity for the purposes of filing CBCR.

CBCR filing requirement is also triggered in India if: (i) the UPE is a resident of a country with whom India does not have an agreement for exchange of CBCR; (ii) the UPE is not obligated to file CBCR in its jurisdiction; and (iii) there has been a systematic failure on part of UPEs jurisdiction to share information and such failure has been intimated to Indian entity.

Secondary adjustment

The concept of secondary adjustment is applicable in India from FY 2016-17 onwards if the amount of primary TP adjustment exceeds INR 10 million. The primary TP adjustment can be made voluntarily by the taxpayer in its return of income, or it can be made by tax officer during TP audits and reaches finality. Primary TP adjustments also arise on account of APA or application of Safe Harbour rules or from a MAP resolution.

Secondary adjustment is an accounting adjustment in the books of accounts of both the taxpayer and the AE aimed at reflecting the actual allocation of profits between the taxpayer and its AE in accordance with the primary TP adjustments based on arm's length price.

The provisions also require time bound repatriation of excess money lying with the AE as a result of primary TP adjustments, into India. Failure to repatriate triggers levy of interest on the amount not repatriated. There is an option available to the taxpayer to pay 18% additional tax on secondary adjustments in case the taxpayer is not able to repatriate the excess money to India.

Limitation of interest deduction

In line with recommendations under Action 4 of OECD's BEPS Action plan, India introduced interest limitation rules in the IT Act. Accordingly, the interest expense of the borrower being an Indian Company or a permanent establishment of foreign company in India is deductible to the extent of 30% of EBITDA. Balance interest is allowed to be carried forward for a period of 8 subsequent financial years. Interest limitation rule is not applicable where the amount of interest is INR 10 million or less. Borrowers who are in the business of banking or insurance company and borrowings from a permanent establishment of a foreign bank in India are exempted from applicability of interest limitation rules.

Transfer pricing audit

In India, the AO has to refer the TP part of revenue audit to a designated TPO. The reference is based on risk criteria notified by the CBDT.

In case of a TP adjustment made by revenue authorities, the taxpayer has an option to further appeal before Appellate authorities/Dispute resolution panel. Post exhausting all appellate levels, the taxpayer can approach the High Court and the Supreme Court on matters involving question of law.

Dispute avoidance mechanisms

Safe Harbour and APA route provide dispute avoidance mechanisms under Indian TP Regulations with APA being both a dispute resolution and dispute avoidance measure.

Safe harbour rules

Safe harbour regulations provide circumstances in which the income tax authorities shall accept the transfer price declared by the taxpayer, in respect of its eligible international transactions, without conducting an in-depth scrutiny of the declared transfer price.

Safe Harbour are effective in India from the FY 2012-13 and are available for a prescribed block of assessment years. At present, safe harbour rules have been prescribed for: (i) Provision of software development and/or IT-enabled services; (ii) Providing corporate guarantee; (iii) Contract R&D services relating to software development; (iv) Manufacture and export of core auto components; (v) Manufacture and export of non-core auto components; (vi) Low value adding intra-group services.

The safe harbour rules for FY 2020-21 and subsequent FYs are yet to be notified as on 10 May 2021.

Advance pricing agreement

The APA programme was introduced in India in FY 2012 and ever since, its utility as a TP dispute prevention and dispute resolution mechanism has increased among taxpayers.

An APA is an agreement between the taxpayer and the CBDT seeking to provide TP certainty for five prospective years and has roll back option for 4 previous years. Thus, APA gives a certainty for total 9 years with roll back and five years without roll back. Taxpayer can opt for a unilateral, bilateral or a multilateral APA.

There are no restrictions in terms of quantum or nature of international transactions for which a taxpayer can opt for an APA.

Mutual Agreement Procedure

India has an extensive treaty network with other countries and access to MAP route for resolution of TP disputes is available to taxpayers under the treaty. India has published a detailed guidance on MAP in August 2020 in order to implement the recommendations of BEPS Action 14 on "Making Dispute Resolution More Effective". The guidance provides that the Indian competent authorities would endeavour to resolve disputes under MAP route within 24 months.

Indian TP Regulations are largely aligned to the OECD TP guidelines. Indian Authorities have kept their commitment to the BEPS Inclusive Framework and adopted several measures from BEPS Action Points including the Three tier TP reporting structure, interest limitation rules, ratification of multilateral instrument etc.

Indirect tax

The 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

Legacy taxes
i.e., State Excise, VAT/CST and Central Excise

Professional tax
Tax on professions, trades and employments

Goods and services tax

With effect from the 1 July 2017, GST is levied on supply of all goods and services except the supply of alcoholic liquor for human consumption, which is still liable to state excise duties and the VAT.

Currently, GST is not being levied on petroleum crude, high-speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, however, Central excise duty and VAT would be levied on these products.

Dual structure levy

GST has a dual structure wherein both centre and states/union territories have the power to simultaneously levy tax on supplies of goods and services. The dual levy structure is as under:

- CGST to be levied by the Centre and SGST/UTGST to be levied by respective states/union territories on all taxable supplies within a state/union territory
- IGST to be levied by the Centre on all taxable 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 to be levied on specified supplies to compensate the states for the loss of revenue on account of implementation of GST

Zero rated supply

- GST is not applicable on 'zero rated supply' i.e. on export of goods or services and supply of goods or services to a SEZ developer or a SEZ unit.
- The registered person making such supply shall be eligible to claim refund of unutilised input tax credit without payment of integrated taxes under letter of undertaking or on payment of integrated tax subject to prescribed conditions and safeguards.

Supply against deemed exports

There are certain notified categories of supplies of goods, which have been regarded as 'deemed export' even if such goods are not taken outside India. Such supplies, inter alia, would include supply of goods by a registered person to export oriented unit, against advance authorisation or supply of capital goods by registered person against export promotion capital goods authorisation etc.

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 trigger point for levy of GST is 'supply' of goods or services or both. Provisions for determining the time of supply have been laid down for both goods and services.

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, such as food grains attract a zero rate, demerit and luxury goods attract the highest rate and may also attract cess

Anti-profiteering

To safeguard consumers, anti-profiteering provisions have been incorporated under GST, casting responsibility on the suppliers to reduce the prices of goods and services on account of benefit of reduced tax rate or availability of additional input tax credits. The tenure of the NAA has been currently extended upto 30 November 2021.

Advance rulings under GST regime

According to the provisions of the 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 and taxability.

In addition, the government has announced the constitution of the National Appellate Authority for Advance Ruling. It will take up appeals against conflicting advance rulings on similar issues pronounced by two or more existing appellate authorities.

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. Further, as a general principle, exports of goods and services are free from the duties. Duties paid on exported goods/inputs are refunded in some or the other manner.

India follows the 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 are basic custom duty, social welfare surcharge and IGST at applicable rates.

VAT/CST/state and central excise

The taxes from erstwhile regime such as VAT/CST and state/ central excise continue to be levied on alcoholic beverages and certain petroleum products. The government intends to bring the petroleum products under radar of GST in near future.

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.

Glossary

AD Bank	Authorised Dealer Bank
AE	Associated Enterprise
AGM	Annual General Meeting
AI	Artificial Intelligence
AIFs	Alternative Investment Funds
AJP	Artificial Juridical Person
ALP	Arm's Length Price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Persons
APA	Advance Pricing Agreement
ARC	Asset Reconstruction Company
B2B	Business-to-business
BEPS	Base Erosion and Profit Shifting
BO	Branch Office
BOI	Body of Individuals
BOPIS	Buy online, Pick-up in store
BPM	Business Process Management
BPO	Business Process Outsourcing
CA 2013	Companies Act 2013
CAGR	Compound Annual Growth Rate
CARO	Companies (Auditor's Report) Order
CBCR	Country-by-country report
CBDT	Central Board of Direct Taxes
CGST	Central Goods and Services Tax
CIT(A)	Commissioner of Income Tax (Appeals)
COVID-19	Coronavirus disease-19
CST	Central Sales Tax
DFC	Dedicated Freight Corridor
DPIIT	Department for Promotion of Industry and Internal Trade
EBITDA	Earnings Before Interest, Taxes, Depreciation, and Amortisation
ECB	External Commercial Borrowings
ECO	E-commerce Operator
EPFO	Employees' Provident Fund Organisation
EVs	Electric Vehicles
F&B	Food and Beverage

FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FIFP	Foreign Investment Facilitation Portal
FII	Foreign Institutional Investor
FM Radio	Frequency Modulation Radio
FMCG	Fast-moving consumer goods
FPI Regulations	SEBI (FPI) Regulations, 2019
FPIs	Foreign Portfolio Investors
FRRO	Foreigners Regional Registration Office
FY	Financial Year
GAAP	Generally Accepted Accounting Principles
GAAR	General anti-avoidance rules
GDP	Gross Domestic Product
GIFT City	Gujarat International Finance Tec-City
GST	Goods and Services Tax
GW	Gigawatt
HNI	High net-worth individual
HSN	Harmonised system of nomenclature
HUF	Hindu Undivided Family
IAA	Impermissible Avoidance Arrangement
IAASB	International Auditing and Assurance Standards Board
ICAI	Institute of Chartered Accountants of India
ICDS	Income Computation and Disclosure Standards
IFRS	International Financial Reporting Standards
IFSC	International Financial Services Centre
IFSCA	International Financial Service Centre Authority
IGST	Integrated Goods and Services Tax
IIM	Indian Institute of Management
IIT	Indian Institute of Technology
IMF	International Monetary Fund
INR	Indian Rupee
Ind AS	Indian Accounting Standards
InvIT	Infrastructure Investment Trust

IP	Intellectual Property
IRDAI	Insurance Regulatory and Development Authority of India
IT	Information Technology
IT Act	Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal
JVs	Joint Ventures
KYC	Know Your Client/Customer
LED	Light Emitting Diode
LLP	Limited Liability Partnership
LO	Liaison Office
LRS	Liberalised Remittance Scheme
M&A	Mergers and Acquisitions
MAP	Mutual Agreement Procedure
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MLI	Multilateral Instrument
MNE	Multinational Enterprise
MV Act	Motor Vehicle Act, 1988
MW	Megawatt
NAA	National Anti-profiteering Authority
NASSCOM	National Association of Software and Service Companies
NaFAC	National Faceless Assessment Centre
NBFCs	Non-banking Financial Companies
NCLT	National Company Law Tribunal
NCR	National Capital Region
NDI Rules, 2019	Non-debt Instrument Rules, 2019
NFAC	National Faceless Appeal Centre
NFRA	National Financial Reporting Authority
NHB	National Housing Bank
NIP	National Infrastructure Pipeline
NPAs	Non-Performing Assets
NR	Non-resident
NRIs	Non-resident Indians
OCIs	Overseas Citizens of India
ODIs	Overseas Direct Investments
OECD	Organisation For Economic Co-operation and Development
OEMs	Original Equipment Manufacturers
PAN	Permanent Account Number

PE	Private Equity
PFRD Act 2013	Pension Fund Regulatory and Development Authority Act 2013
PLI Scheme	Production Linked Incentive Scheme
PO	Project Office
PoEM	Place of Effective Management
PPP	Public Private Partnership
PV	Photovoltaic
QFI	Qualified Foreign Investor
R&D	Research and Development
RBI	Reserve Bank of India
RDB	Rupee Denominated Bond
REIT	Real Estate Investment Trusts
RERA	Real Estate Regulatory Authority
RNOR	Resident but Not Ordinarily Resident
RoC	Registrar of Companies
ROR	Resident and Ordinarily Resident
RPA	Robotic process automation
SDTs	Specified Domestic Transactions
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
SGST	State Goods and Services Tax
SPAC	Special purpose acquisition company
SPV	Special Purpose Vehicle
SSAs	Social Security Agreements
STT	Securities Transaction Tax
TAN	Tax Deduction and Collection Account Number
TP	Transfer Pricing
TPO	Transfer Pricing Officer
UPE	Ultimate Parent Entity
USD	US Dollar
UT	Union Territory
UTGST	Union Territory Goods and Services Tax
VAT	Value Added Tax
VC	Venture Capital
WOS	Wholly Owned Subsidiary
y-o-y	year on year

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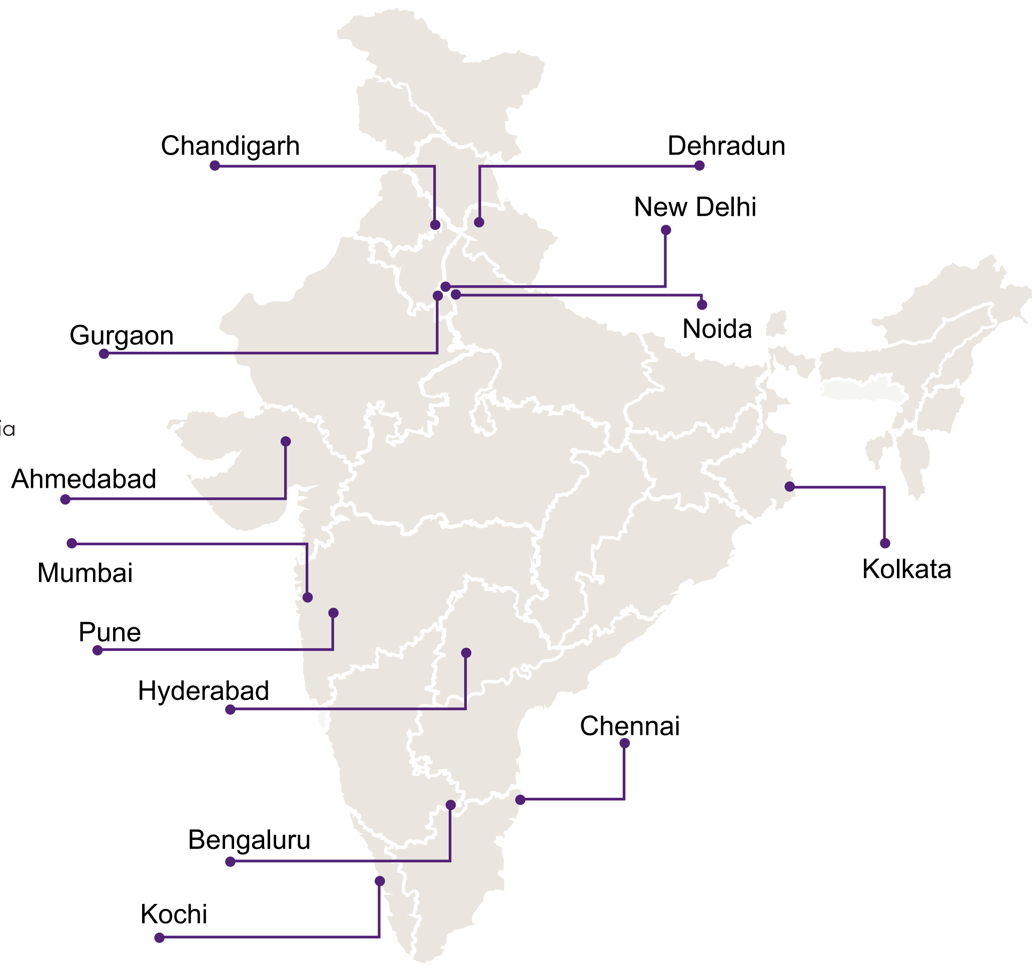

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