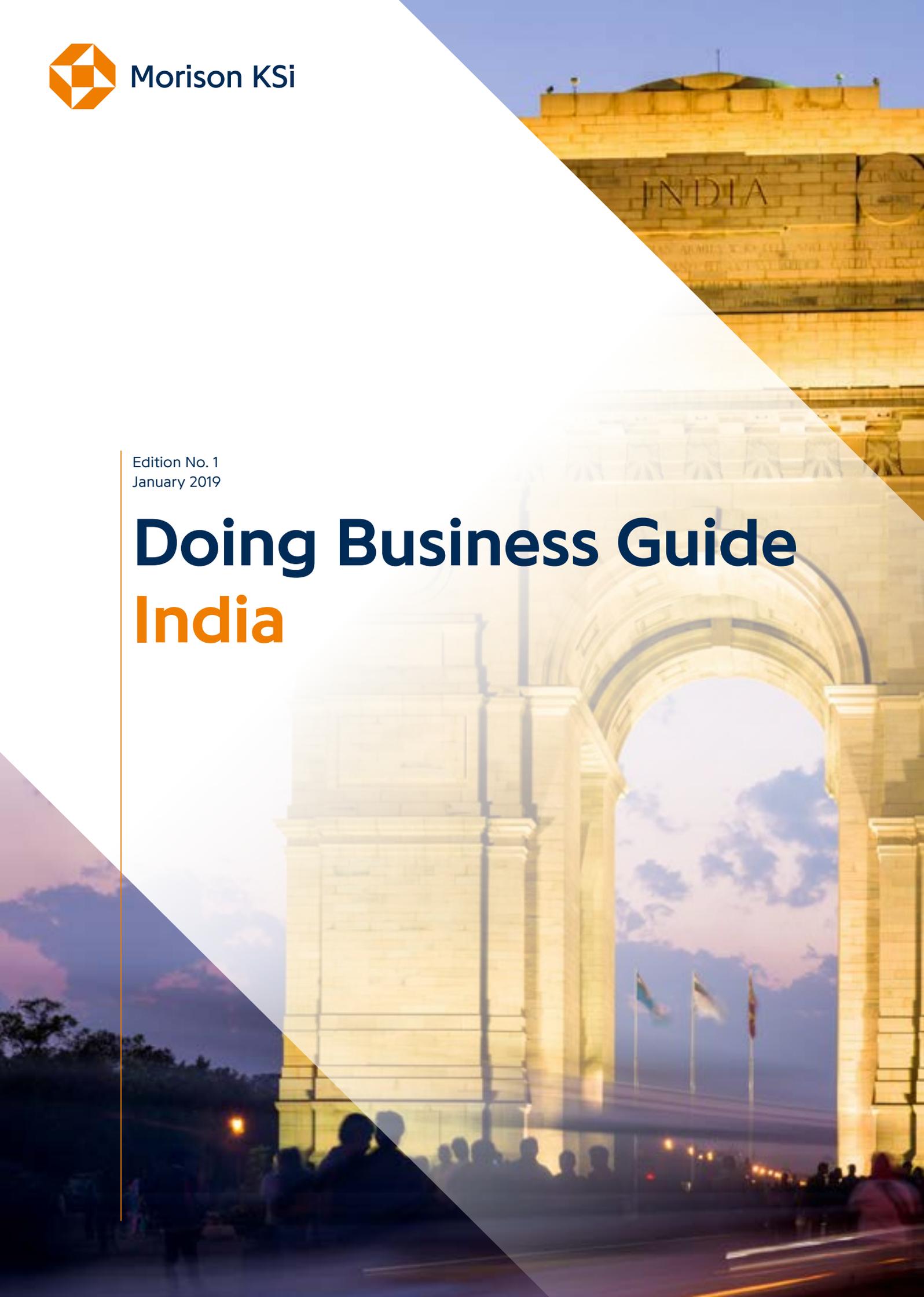




Morison KSi

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# Doing Business Guide India



## About This Guide

This guide has been produced by the Morison KSi Indian member firms for the benefit of their clients and associate offices worldwide who are interested in doing business in India.

Its main purpose is to provide a broad overview of the various issues that should be considered by organisations when considering setting up business in India.

The information provided cannot be exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend anyone considering doing business in India or looking to India as an opportunity for expansion should seek professional advice before making any business or investment decision.

While every effort has been made to ensure the accuracy of the information contained in this guide, no responsibility is accepted for its accuracy or completeness.

The information in this guide is up to date as at the edition date.

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# Introduction

## Why India?

India has emerged as the fastest-growing major economy in the world, according to the Central Statistics Office and International Monetary Fund (IMF). The IMF forecasts that the Indian economy will grow by 7.5%<sup>1</sup> in FY 2018–19, making it the fastest-growing country among major economies. India has retained its position as the third largest startup base in the world, with over 6,000<sup>2</sup> startup applications approved by the Department of Industrial Policy & Promotion (DIPP).

India's labour force is expected to touch 160–170 million by 2020, based on the rate of population growth, increased labour force participation and higher education enrolment, among other factors, according to a study by ASSOCHAM and Thought Arbitrage Research Institute. M&A deals in India have reached US\$104.5 billion in 2018, trouncing the previous annual record with almost 4 months left in the year.

India is expected to be the third largest consumer economy as its consumption may triple to US\$4 trillion by 2025, owing to shifts in consumer behaviour and expenditure pattern. According to the Boston Consulting Group report 'The New Indian: The Many Facets of a Changing Consumer'<sup>3</sup>, India's nominal year-over-year expenditure growth of 12% is more than double the anticipated global rate of 5% and will make India the third-largest consumer market by 2025. In their report 'The World in 2050',<sup>4</sup> consulting firm PwC projects that India's GDP will exceed US GDP in purchasing power parity terms by 2040 (purchasing power parity accounts for variations in price levels across countries). This would make India the largest economy in the world after China.

India's prime minister, Mr. Narendra Modi, has introduced a series of policy measures that are expected to increase the country's economic growth fivefold by 2040.

As stated by TRAI in its report of June 2018, India has a subscriber base of around 1.2 billion<sup>5</sup> people and this telecom revolution has led to huge growth for the Indian e-commerce industry.

## History

India is one of the oldest civilisations in the world, with a kaleidoscopic variety of sights and a rich cultural heritage. As the land of vast empires and historic trade routes, the Indian subcontinent has been associated with cultural and commercial wealth for much of its long history. Gradually annexed by the British East India Company from the early eighteenth century and colonised by the UK from the mid-nineteenth century, India became a Sovereign Nation in 1947 after a struggle for independence that was marked by widespread use of non-violent resistance as a means of social protest. Since then, it has achieved all-round socio-economic progress. As well as being self-sufficient in agricultural production, India is now one of the top industrialised countries in the world and one of the few nations to have ventured into outer space.

The country's official name, 'India', is derived from *Sindhu*, the Old Persian name for the river Indus. Another name in common usage, and officially recognised by the Constitution of India, is 'Bharat' – derived from the Sanskrit name of an ancient Hindu king whose story is to be found in the *Mahabharata*. A third name, 'Hindustan' (Persian for 'Land of the Hindus'), has been used since the Mughal Empire (sixteenth century).

1. <https://www.ibef.org/economy/indian-economy-overview>
2. <https://startupindia.gov.in>
3. <https://www.bcg.com/en-gb/publications/2017/marketing-sales-globalization-new-indian-changing-consumer.aspx>
4. <https://www.pwc.com/gx/en/world-2050/assets/pwc-world-in-2050-slide-pack-feb-2017.pdf>
5. <https://main.traai.gov.in/sites/default/files/PRNo91Eng20082018.pdf>

## Geography

India covers an area of over 3 million km<sup>2</sup>, extending from the snow-covered Himalayan heights to the tropical rainforests of the south. As the seventh largest country in the world, India stands apart from the rest of Asia, marked off as it is by mountains and the sea, which give the country a distinct geographical entity. Bounded by the Great Himalayas in the north, it stretches southwards to the Tropic of Cancer, where it tapers off into the Indian Ocean between the Bay of Bengal and the Arabian Sea. India is subdivided into 29 states and seven union territories.

Lying entirely in the northern hemisphere, the mainland extends between latitudes 8° 4' and 37° 6' north and longitudes 68° 7' and 97° 25' east; it measures about 3,214 km from north to south between the extreme latitudes, and about 2,933 km from east to west between the extreme longitudes. It has a land frontier of about 15,200 km. The total length of the coastline of the mainland, Lakshadweep Islands and Andaman and Nicobar Islands is 7,517 km.

## Population and language

The latest United Nations Estimates (September 2018) indicate that India's population is over 1.35 billion.<sup>6</sup> India accounts for only 2.4% of the world's total surface area, yet supports and sustains 17.74% of the world's population.

A number of languages are spoken in India; 22 are officially recognised and accepted nationally, while another 33 languages and around 2,000 regional dialects have also been identified. Hindi, written in the Devanagari script, is the official language of the Union Government of India, while English is the secondary official language.

## Constitution and law

India is a union of states and is a sovereign, socialist, secular democratic republic with a parliamentary system of government. The president of India is the official head of the state, elected indirectly by an electoral college. The prime minister is, however, the de facto head of the government and exercises most executive powers.

India is the largest democracy in the world, with a federal form of government comprising three branches:

- **Executive.** The president; vice president; and the Council of Ministers, headed by the prime minister
- **Legislature.** The bicameral parliament consists of the Upper House (Rajya Sabha, Council of States) and the Lower House (Lok Sabha, House of the People)
- **Judiciary.** The three-tiered system is led by the Supreme Court in New Delhi, with High Courts standing at the head of each state judicial system, followed by District and Sessions Courts in the judicial districts into which the states are divided. The third tier comprises local Courts of Civil and Criminal Jurisdiction.

Every state has a Legislative Assembly. Certain states also have an Upper House, called the State Legislative Council. Executive power is vested in each head of state, a governor appointed by the president. The Council of Ministers, headed by the chief minister, advises the governor in the discharge of executive functions. The Council of the Ministers of a State is collectively responsible to the Legislative Assembly of the State.

6. <http://www.worldometers.info/world-population/india-population/>

## The economy

The Indian economy is one of the fastest-growing economies, currently ranking 6th largest in terms of nominal GDP (almost US\$2.8 trillion in 2018) and third largest in terms of purchasing power parity. The country is one of the G-20 major economies, a member of BRICS<sup>7</sup>, and a developing economy that is among the top 20 global traders, according to the World Trade Organization. It is one of the most attractive destinations for business and investment opportunities due to a vast manpower base, diverse natural resources and strong macro-economic fundamentals.

The economic reforms that have been taking place since 1991 have also helped to create an investor-friendly environment through a liberalised policy framework spanning the whole economy. Between 2006 and 2010 the GDP grew at an impressive rate, averaging 8–9%, with the 2010–11 growth rate pegged at 8.2%. These growth rates slipped to below 5% level in 2012–13 and 2013–14; but since then the economy has been steadily reviving, with an accelerated growth rate of 7.6% in 2015–16 and 7.1% in 2016–17. With various business-friendly policy decisions taken by the government (e.g. introduction of GST; see below), the economy is expected to reach the 8% growth rate.

India's diverse economy encompasses agriculture, petrochemicals, gems and jewellery, engineering goods, chemicals, plastics, coal and minerals, iron and steel, vegetable oil and commodities. Real estate, infrastructure, telecoms, information technology, tourism, banking and financial services are key growth sectors. A lot of emphasis is being given to establishing India as a manufacturing hub, under

the government's 'Make in India' programme. Services are the main source of economic growth, accounting for more than half of India's output with less than one-third of its labour force. The services sector is the biggest contributor to the national GDP – making a contribution of 53.66%, compared with industry (29.02%) and agriculture (17.32%) according to statistics for 2016–17.

## Foreign direct investment

In recent years, India has emerged as an attractive FDI destination. The cumulative amount of FDI equity inflows from April 2000 to March 2018 stood at US\$377 billion; during the period April 2017 to March 2018, India received US\$45 billion FDI equity inflow according to DIPP reports.<sup>8</sup>

Mauritius is the leading investor into India, followed by Singapore, Japan, the UK, the USA and the Netherlands. The inordinately high investment from Mauritius was due to routing of international funds through the country given its significant tax advantages; double taxation was avoided due to tax treaty provisions between India and Mauritius. However, it may be noted that the treaty between India and Mauritius has now been renegotiated to give India the right to tax capital gains under the source rule.

FDI is subject to regulations prescribed by the Government of India. There are two routes of entry:

- **Automatic route:** FDI into India is currently possible without any RBI or government approval in most sectors (except certain specific industries; see below), subject to certain specific terms and conditions
- **Approval route:** Investment proposals that are not covered by the automatic approval route

7. BRICS is the acronym for an association of five major emerging national economies: Brazil, Russia, India, China and South Africa (coined by British economist Jim O'Neill).

8. <https://dipp.gov.in/publications/fdi-statistics>

must be filed with the Foreign Investment Promotion Board (FIPB), which considers each proposal on a case-by-case basis. There is no standard form – applications are typically in the form of a letter setting out an executive summary of the applicant’s details as well as outlining the proposed investment/project, with a specific request for the proposed foreign investment. Wherever an industrial licence is required, the application for approval should be filed with the Secretariat of Industrial Assistance.

The Foreign Exchange Management Act, 1999, and the various Press Notes issued by the government’s Department of Industrial Policy and Promotion (DIPP), together form the basis of legislation regulating FDI into India. The RBI and/or FIPB share the monitoring/regulating of agencies in this regard.

FDI is prohibited under the approval route as well as the automatic route, in the following sectors:

- Atomic energy
- Lottery business (including government/private lottery, online lotteries etc.)
- Gambling and betting (including casinos, etc.)
- Chit fund business
- Nidhi company
- Agricultural (excluding floriculture, horticulture, apiculture, seed development, animal husbandry, pisciculture, aquaculture and cultivation of vegetables, mushrooms, etc. under controlled conditions and services related to agro/allied sectors) and plantation activities (other than tea, coffee, rubber, cardamom and palm/olive oil plantations)
- Activities/sectors not open to private-sector investment

- Real estate business or construction of farm houses. ‘Real estate business’ shall not include development of townships, construction of residential / commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the Securities Exchange Board of India (SEBI) REITs Regulations, 2014
- Trading in transferable development rights
- Manufacture of cigars, cheroots, cigarillos and cigarettes, or tobacco or tobacco-substitute products.

Besides foreign investment in any form, foreign technology collaboration in any form – including licensing for franchise, trademark, brand name, or management contract – is also completely prohibited for lottery business and gambling and betting activities.

Foreign investment in trusts, other than investment by SEBI-registered (foreign venture capital investors) in domestic venture capital fund, is not permitted.

## Major policy reforms in the Indian economy

### Introduction of the goods and services tax

In July 2017, India moved to GST, the single biggest tax reform undertaken by the country in 70 years of independence. The national GST unifies the country’s US\$2.8 trillion economy and 1.35 billion people into a common market as GST replaces more than a dozen indirect taxes.

### Insolvency and bankruptcy code

The IBC, 2016 is the bankruptcy law of India; it seeks to consolidate the existing framework by creating a single law for insolvency and

bankruptcy. The IBC has been implemented to tackle bad loans of up to US\$150 billion and revitalise the Indian banking sector.

#### **Implementation of Indian Accounting Standards**

India has chosen a path of International Financial Reporting Standards (IFRS) convergence rather than adoption. Hence, Indian Accounting Standards (AS) are primarily based on the IFRS issued by the International Accounting Standards Board, with some local modifications.

#### **'Make in India' programme**

In September 2014, the Government of India launched an ambitious campaign, 'Make in India', aiming to revive the growth of India's manufacturing sector. The year 2015–16 witnessed 46% growth in foreign direct investment (FDI) equity inflows and the highest ever FDI inflows (US\$55.5 billion).

#### **'Startup India' programme**

'Startup India' is a flagship initiative of the Government of India, intended to build a strong ecosystem for nurturing innovation and startups. This will drive sustainable economic growth and generate large-scale employment opportunities throughout the country. Through this initiative, the government aims to empower startups to grow through innovation and design. Added impetus is provided by the Finance Acts of 2016 and 2017, which offer many benefits to eligible startups incorporated on or after 1 April 2016 and before 1 April 2019. Among others, these benefits include profit-linked deduction, special provisions for carry-forward of business losses, reduced tax rate of 25% (subject to certain conditions) and exemption

from capital gains tax for investors in eligible startups.

#### **'Ease of Doing Business' programme**

'Ease of Doing Business' is one of the important initiatives run by the government and is crucial to the success of many other programmes (e.g. Make in India, Startup India, Digital India). According to the World Bank's ranking, India has jumped 30 positions to become the top 100th country in terms of its 'ease of doing business' ranking in June 2017. In the current global environment, where capital is scarce and there are countries competing to attract the same capital, it is important to make India an investor-friendly destination. The first step towards this objective is to do away with multiple procedures, rules, regulations and red tape and bring more transparency and clarity to policies.

# Business Structures

Forms of business organisation that are commonly used in India are illustrated in Figure 1.

## Company

A company is incorporated under the Companies Act, 2013 (or under any previous enactments) and has a separate legal entity. It may be incorporated as a private, public limited, or one-person company. No permission is required for foreign nationals to be appointed as directors of the proposed company. However, as per the provisions of the Companies Act, 2013, every company must appoint at least one resident director.

## Limited company

In a limited company, the liability of members or subscribers is limited by the extent of their investment in either shares or guarantees:

- **Limited by shares:** The liability of company members is limited by memorandum to the amount, if any, unpaid on the (public or private) shares they each hold.
- **Limited by guarantee:** The liability of company members is limited by the memorandum to such amount

as the members may respectively undertake to contribute to the assets of the company in the event of it being wound up.

## Unlimited company

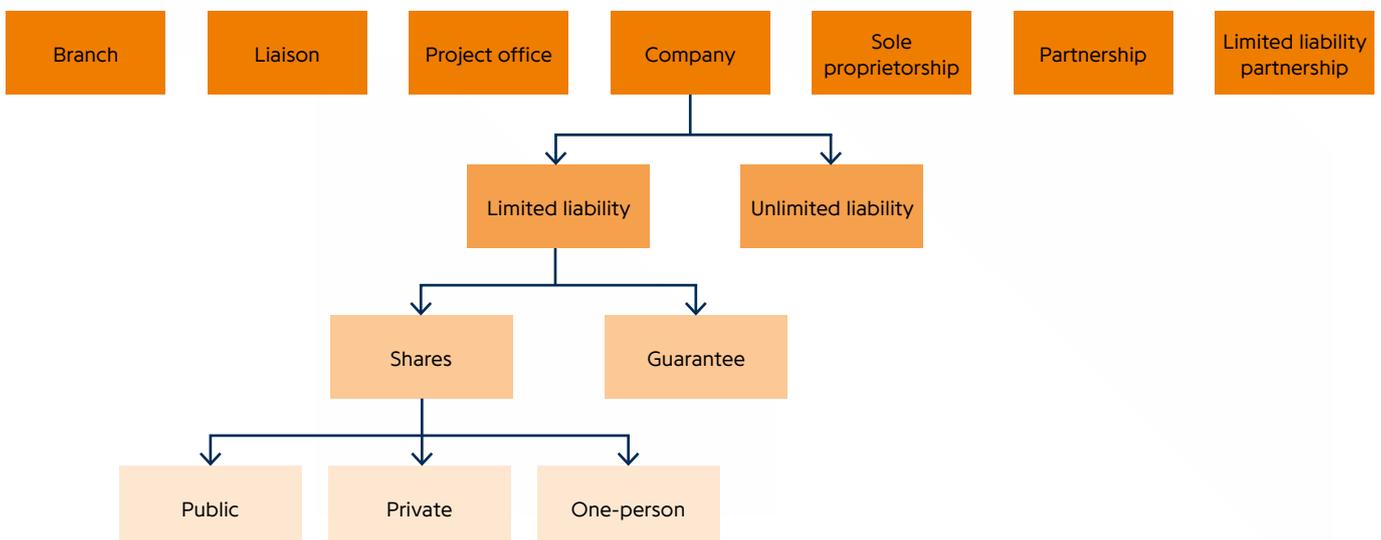
An unlimited company is incorporated either with or without share capital, but its members' liability is unlimited – that is, members or shareholders have a joint, several and unlimited obligation to meet any insufficiency in the assets of the company in the event of the company's formal liquidation.

## Private limited company

Private company means a company which by its articles:

- restrict the right to transfer its shares;
- except in case of a one-person company, limit the number of its members to 200
  - provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member;

Figure 1. Typical forms of business organisation in India



Provided further that

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

- prohibit any invitation to the public to subscribe for any securities of the company.

A private limited company is required to have a minimum of two directors and two members with no minimum paid-up share capital.

### Public limited company

Public company means a company that

- is not a private company [and]
- provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act, even where such subsidiary company continues to be a private company in its articles.

A public limited company is required to have a minimum of three directors and seven members with no minimum paid-up share capital.

### One-person company

As its name suggests, a one-person company has only one person as a member. The company may be limited by shares, limited by guarantee, or unlimited. Only a natural person who is an Indian citizen and resident in India is eligible to incorporate a one-person company.

### Partnership

A partnership is an arrangement where entities and/or individuals agree to cooperate to advance their interests. A partnership is formed between one or more businesses in which partners (owners) work together to achieve profits and share losses. The partnership is the simplest and least expensive co-owned business structure to create and maintain.

A partnership is considered to have a separate tax entity from its owners. However, the liability of partners is unlimited: if the firm's assets are insufficient to meet its business liabilities, these can be covered by the liquidation of the partners' personal property (if any).

### Limited liability partnership

Regulated by the Limited Liability Partnership Act, 2008, an LLP is an alternative corporate business form that combines the limited liability of a company with the flexibility of a partnership arrangement: although it is a separate legal entity and liable to the full extent of its assets, the liability of an LLP's partners is limited to their agreed contribution.

### Representative office/Liaison office

Foreign companies can establish offices to carry on liaison activities in India on behalf of the parent company. A person resident outside India permitted by the Reserve Bank of India (RBI) to establish a liaison office in India may undertake the following activities:

- Representing in India the parent company/group companies
- Promoting export/import from/to India
- Promoting technical/financial collaborations between parent/

group companies and companies in India

- Acting as a communication channel between the parent company and Indian companies.

All other activities are prohibited, unless otherwise specifically permitted by the RBI.

A liaison office is restricted from undertaking any trading, commercial, or industrial activities or entering into contractual agreements or transactions. It is not permitted to generate income from any activities in India. All the expenses of the liaison office must be met from funds received through inward remittances from the foreign/parent company.

### Branch office

Foreign companies can establish branch offices in India to undertake the following activities:

- Export/import of goods
- Render professional or consultancy services
- Carry out research work that involves the parent company
- Promote technical or financial collaborations between Indian companies and parent company or overseas group
- Represent the parent company in India and act as a buying/selling agent in India
- Render IT services and software development in India
- Offer technical support to the products supplied by the parent/group companies
- Airline/shipping activities.

Where the branch is proposed to be set up in special economic zones to undertake manufacturing and service activities, no RBI approval is

required. However, such branches can function only on a stand-alone basis and in sectors where 100% FDI is permitted.

Unlike a liaison office, a branch office is permitted to earn and generate income in India through its activities there, and may repatriate its entire profits to its parent company (subject to Indian income tax; see Table 1).

### Project office

A foreign company can open a temporary project office for the execution of a specific project or contract where a person resident

outside India has secured from an Indian company a contract to execute a project in India, and the project:

- is funded directly by inward remittance from abroad; or
- is funded by a bilateral or multilateral international financing agency; or
- has been cleared by an appropriate authority; or
- has been granted a term loan by a public financial institution or a bank in India to the company or entity in India awarding the contract.

A branch office/project office is deemed to be a permanent establishment within the meaning of the double taxation avoidance agreement (DTAA), and is therefore subject to Indian income tax.

*Table 1. Comparison of business structures in India*

S No.	Particulars	Liaison office	Project office / Branch office	Subsidiary company	Limited liability partnership
1.	Legal status	Represent the parent company	Extended arm of the parent  PO is generally set up for specific projects, whereas a BO is set up for carrying activities in the course of business	Independent status	Independent status
2.	Approval for commencement	Requires specific approval from RBI	Requires specific approval from RBI	Company can be set up subject to FDI guidelines	LLP can be set up subject to FDI guidelines
3.	Permitted activities	Liaison activities  No commercial or business activities are permitted	Restricted scope  Only activities listed by RBI are allowed to be undertaken	Activities specified in company's MoA, subject to FDI guidelines	LLP must be engaged in sectors for which 100% FDI is allowed through automatic route and no FDI-linked conditions are applicable
4.	Key compliance requirements under FEMA	Required to file annual activity certificate (by auditors in India) with RBI	Required to file annual activity certificate (by auditors in India) with RBI	Required to file periodic and annual filings relating to foreign liabilities and assets, receipt of capital and issuance/transfer of shares to foreign investors	Required to report the details of receipt of amount of consideration for capital contribution  Disinvestment or transfer of capital contributions are required to be reported to RBI
5.	Income tax rate	LO is not subject to tax in India, since not permitted to undertake any business activity	Liable to be taxed on income earned at 43.68% (rate applicable to foreign corporations)	Liable to be taxed on global income at 34.944% on net basis  Company is liable to MAT tax at 21.549% on its book profits	Liable to be taxed on global income at 34.944% on net basis  LLP is liable to MAT at 21.549% of its adjusted total income
6.	Ease of exit	Prior approval of RBI, ROC and income tax authorities	Prior approval of RBI, ROC and income tax authorities	Complex, depending upon strategy adopted  Exit can be through sale of shares or liquidation	Complex, depending upon strategy adopted  Exit can be through sale of interest or dissolution

BO, branch office; FDI, foreign direct investment; FEMA, Foreign Exchange Management Act, 1999; LLP, limited liability partnership; LO, liaison office; MAT, minimum alternate tax; MoA, memorandum of association; PO, project office; RBI, Reserve Bank of India; ROC, Registrars of Companies.

# Labour and Personnel

## Statutory requirements for immigration

The entry of foreigners into India is regulated by the Acts passed by the Indian Parliament and related rules that are framed periodically by the central government.

Foreign nationals wishing to take up employment in India should apply for an employment visa or a work permit, issued by Indian embassies and missions in their country. Initially granted for a period of 1 year, the visa or permit can be extended in India to cover the period of the contract.

Usually, the employer offering an employment opportunity initiates the visa application process in India. Alternatively, the applicant may apply to the Indian Embassy/ High Commission in their country of residence. Both approaches require recent photographs of the applicant, together with proof of employment (the appointment/ contract letter, terms and conditions of employment, etc.).

Any foreign national (including those of Indian origin) coming to India with a visa that covers a period longer than 180 days is required to register with the local or regional Foreigners Registration Officer (FRO) within 14 days of their first arrival in India. This only needs to be done once for the duration of the visa, regardless of how many times the visitor leaves and re-enters India; only if they return on a new visa are they required to register again.

Some categories are exempt from this requirement:

- Those visiting India on tourist visas for up to 180 days, who can move freely about the country (apart from restricted/protected areas and prohibited places)

- US nationals holding 10-year tourist/business visas, provided their continuous stay during each visit does not exceed 180 days
- Foreign nationals of Indian origin holding a 5-year multiple-entry visa with an endorsement that their stay should not exceed 180 days during each visit. Should they wish to stay in India continuously for more than 180 days, then registration is required within 14 days of arrival
- 'Person of Indian origin' card holders, provided their continuous stay does not exceed 180 days. If it does, they should approach the local or regional FRO to register; this must be done within 30 days of the 180-day limit.

## Major labour laws in India

There are many labour laws enacted by both central and state governments. Some of the most relevant are outlined below.

### The Industrial Disputes Act, 1947

This legislation provides the framework for regulating the rights of employers and employees, and facilitates the investigation and harmonious settlement of industrial disputes.

### The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

A social security legislation enacted to provide for provident fund, family pension and insurance to the employee (in factories and other establishments), who is required to pay a contribution that is matched equally by the employer. The employee gets a lump sum amount on retirement. The Act covers three schemes: Provident Fund, Family Pension Fund, and Employees Deposit Linked Insurance.

### **The Payment of Wages Act, 1936**

This legislation regulates payment of wages to a certain class of employed persons – mainly to ensure regular and timely payment of wages, as well as preventing unauthorised deductions and arbitrary fines.

### **The Payment of Gratuity Act, 1972**

A gratuity is a lump sum payment to an employee when they retire or finish service. However, under this Act, a gratuity is payable to an employee who leaves after completing at least 5 years of service with the employer.

### **The Employees' State Insurance Act, 1948**

An 'insurance' scheme that makes appropriate provision, including benefits, to the employee in case of sickness, maternity, disability or employment injury.

### **The Factories Act, 1948**

Regulates all industrial establishments employing 10 or more persons and carrying manufacturing activities with the aid of power (defined as a 'factory'). The Act makes provision for the health, safety, welfare, working hours and leave of workers in factories; it is enforced by the state government through their factory inspectorates. The Act strengthens the provisions relating to safety and health at work; in larger factories, it provides for statutory health surveys, appointment of safety officers, and establishment of canteen, crèches, welfare committees, etc. It includes specific safety guidelines for the use and handling of hazardous substances, and for dealing with emergencies.

*"The Factories Act makes provision for the health, safety, welfare, working hours and leave of workers in factories; it is enforced by the state government through their factory inspectorates"*

### **The Payment of Bonus Act, 1965**

Within specified categories of work, this legislation provides for payment of a fixed-sum bonus after a certain time period. Employees can share the prosperity of the establishment as reflected by the profits earned from the contributions made by capital, management and labour.

# International mobility

India's excellent global reputation helps to explain the steady growth of its expatriate community. According to an HSBC survey<sup>9</sup>, India is a better country for expats than the USA and China because of its political stability, stable economy, and entrepreneurial environment. Needless to say, many foreign companies choose to establish their office space in India rather than elsewhere in the world.

## Cost of living

Most Indian cities offer a very healthy – and often luxurious – lifestyle for working professionals. Even in highly developed cosmopolitan cities like Mumbai and New Delhi, living costs (e.g. education, entertainment, housing, food) are much lower than in Western countries. Indeed, in global rankings of the most expensive cities to live, Mumbai and New Delhi have dropped by 19% and 28%, respectively.

Expatriates' first in-country encounter with Indian bureaucracy often occurs at the Foreign Regional Registration Office (FRRO).

The following documents are typically required for FRRO registration for foreigners visiting India on a long-term visa (more than 180 days):

- Application form in quadruplicate (Form A)
- Passport and visa in original
- Four passport-size photos of the applicant
- Proof of residence in India
- Copy of employment contract and undertakings by the employer.

The visa holder must ordinarily provide:

*"India is a better country for expats than the USA and China because of its political stability, stable economy, and entrepreneurial environment"*

- A completed visa registration application form
- Six passport-size photos of the applicant
- A copy of the photo page from the passport
- A copy of the visa page from the passport
- Proof of address, such as a driver's license or utility bill, from the visa holder's home country
- A notarised copy of a lease deed/ agreement or a C-Form from a hotel of residence
- Visa registration fees.

The employer must ordinarily provide:

- Two copies of a letter requesting approval of the applicant's visa registration
- Two copies of a sponsorship letter pledging responsibility for the applicant's activity in India and promising to repatriate the applicant at company cost if any adverse conduct comes to notice
- Two copies of a letter confirming the visa holder's residential address in India
- Two copies of an employment contract that specifies their monthly salary, designation, tenure of employment, etc.
- The company's incorporation certificate.

9. <https://www.expatorer.hsbc.com/survey/>

All documents, with an exception for the incorporation certificate, must be original copies, drafted on company letterhead, signed by a senior manager, and marked with the company's official stamp.

Once the FRRO is satisfied with these documents, a residency permit is issued to the foreign national.

### Work permits in India

Non-nationals planning to work or conduct business in India must apply for an appropriate visa before entering the country. There are two relevant visas for those planning to work in India; these function similarly to a work permit:

- **Business visa** – allows visits to India of up to 6 months to conduct business for a non-Indian company.
- **Employment visa** – required for foreigners coming to India for employment. The maximum length for this visa is 5 years, although it is not always guaranteed that the visa will be issued to cover the entire duration of an employment contract. However, it is possible to get this visa extended. This visa offers the possibility to live and work in India on a more permanent basis.

# Taxation System

The Indian tax system can broadly be classified into two categories: direct and indirect taxes.

## Income tax

Under Section 4 of the Income Tax Act, 1961 ('the Act'), income tax is charged for every assessment year at the rate(s) prescribed in the Finance Act on each person's total income from the previous year. Everyone required to pay tax is known as an 'assessee'.

'Previous year' means the financial year immediately preceding the assessment year; 'assessment year' means the period of 12 months running from 1 April to 31 March (the Indian fiscal year).

### Meaning of 'foreign company'

A foreign company is any company that is not a domestic company. A domestic company is defined as 'an Indian company, or any other company, which, in respect of its income is liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends payable out of such income'. In other words, any company incorporated in India will be a domestic company.

### Concept of 'residence'

A company is said to be resident in India in any previous year either if it is an Indian company or if its 'place of effective management' (POEM) that year is in India. A company's POEM is wherever it makes key management and commercial decisions.

### Scope of total income

In case of a foreign company, only income that is received or deemed to be received in India, or accrues or arises or is deemed to accrue or arise in India, is taxable in India.

In the case of an Indian company, the income earned anywhere in the world is taxable in India.

## Sources of income

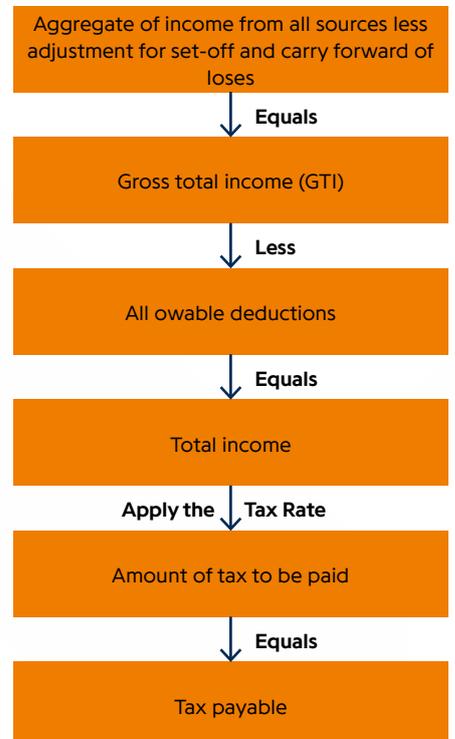
When calculating total income for tax purposes, all income earned by a company is classified under the following headings:

- Income from house property
- Profits and gains from business or profession
- Capital gains
- Income from other sources.

## Ascertainment of taxable income and tax payable

Figure 2 illustrates how taxable income is determined.

Figure 2. Process for calculating taxable income



## Advance tax

The tax for the current assessment year must be estimated by the company and paid in advance in four instalments:

- By 15 June: 15% of the total tax payable for that assessment year
- By 15 September: 45% of the total tax payable for that assessment year
- By 15 December: 75% of the total tax payable for that assessment year
- By 15 March: 100% of the total tax payable for that assessment year.

### Minimum alternate tax

The provisions for paying MAT apply to a foreign company, just as they do to an Indian company. Even if there is no tax payable for any assessment year according to the computations of the Act (normal provisions), the company would be liable to pay tax at 18.5% of its book profits, plus applicable surcharges and health and education cess, as follows:

- In case of a foreign company, 2% surcharge (if book profit is INR 10–100 million) or 5% surcharge (if book profit exceeds INR 100 million) plus health and education cess at 4%
- In case of a domestic company, 7% surcharge (if income is INR 10–100 million) or 12% surcharge (if income exceeds INR 100 million) plus health and education cess at 4%.

In other words, this is the minimum amount of tax that the company would have to pay if its accounts show profits.

### Audit of accounts

In addition to the requirements of audit as per the provisions of the Companies Act, 2013, a company is subject to a further audit (commonly referred to as the tax audit). A tax audit is applicable when the gross turnover or receipts for a financial year exceeds INR 10 million.

### Income tax returns

Every company is required to file its income tax return by the due date specified in the Act (currently 30 September of the assessment year). For companies that need to submit a transfer pricing report along with their income tax return, the deadline is 30 November in that assessment year.

### Interest

In case of default on the payment of advance tax, a company is liable to pay interest under Sections 234B and 234C of the Act. Interest under Section 234B is levied if the advance tax paid is less than 90% of the assessed tax (total tax less tax deducted at source). Interest under Section 234C is levied if there is a default in the payment of instalments of advance tax. If there is any delay in filing its income return, the company is subject to interest under Section 234A. The rate of interest under all these sections is 1% per month or part of the month. With effect from assessment year 2004–05, where a refund is granted to an assessee based on the income tax return and the assessment proceedings conclude that no refund was due or that the refund was excessive, then under Section 234D the assessee is liable to pay simple interest at 0.5% per month or part of the month on the whole or excess refund amount.

### Double taxation avoidance agreements

Taxation of the same income of a person in more than one country can arise when countries follow different rules for income taxation. There are two main rules for income taxation:

- **Source of income** – the income may be subject to tax in the country where the source of such

income exists (i.e. where the business establishment is situated or where the asset/property is located), whether the income earner is a resident in that country or not.

- **Residential status** – if a person is resident of a country, they may also have to pay tax on any income earned outside that country.

Some countries may follow a mixture of these two rules, which can result in the problem of double taxation if a person is taxed on the basis of the source of income rule in one country and residential status in another country, or a mixture of the two rules.

In India, income tax liability is based on the assessee's residential status during the previous year. If resident in India, they must also pay tax on any income accrued, arising or received outside India. The position in many other countries being broadly similar, it frequently happens that a person may be found to be a resident in more than one country or that the same item of their income may be treated as accruing, arising or received in more than one country – with the result that the same item becomes liable to tax in more than one country.

Relief against such hardship can be provided via bilateral or unilateral relief:

#### *Bilateral relief*

The governments of two countries can enter into a DTAA to provide relief against such double taxation, worked out on the basis of mutual agreement between the two concerned sovereign states. This may be called a scheme of 'bilateral relief', as both concerned powers agree on the basis of the relief to be granted by either of them.

### Unilateral relief

Bilateral relief is not always possible, since no country can reach such an agreement with all the countries of the world for all time. Given the crippling hardship of the taxpayer in all such cases, some relief can be provided by the home country, regardless of whether the other country has any agreement with India or has otherwise provided for any relief in respect of such double taxation. This is known as unilateral relief.

### Multilateral instruments

On 7 June 2017, 68 jurisdictions signed the MLI during a signing ceremony hosted by the OECD in Paris. Four more jurisdictions (Cameroon, Curacao, Mauritius and Nigeria) signed the MLI after the first ceremony. On 24 January 2018, six additional jurisdictions signed the MLI during a second signing ceremony that took place at the OECD Headquarters in Paris in conjunction with a plenary session of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS). Four other jurisdictions (Algeria, Kazakhstan, Oman and Swaziland) expressed their intent to sign the MLI in the near future.

Signatories of the MLI may choose which existing tax treaties they would like to modify using the MLI. Once a tax treaty has been listed by the two parties, it becomes an agreement to be covered by the MLI. The current signatories have listed over 2,350 treaties, already leading up to over 1,100 matched agreements.

Abuse of tax treaties is an important source of BEPS. The MLI helps the fight against BEPS by implementing the tax treaty-related measures developed through the BEPS Project in existing bilateral tax treaties in a synchronised and efficient manner.

These measures will prevent treaty abuse, improve dispute resolution, prevent the artificial avoidance of permanent establishment status, and neutralise the effects of hybrid mismatch arrangements.

The MLI modifies tax treaties that are 'covered tax agreements'. A covered tax agreement is a DTAA that is in force between parties to the MLI and for which both parties have made a notification that they wish to modify the agreement using the MLI.

The MLI allows jurisdictions to swiftly implement measures to strengthen existing tax treaties to protect governments against tax avoidance strategies that inappropriately use tax treaties to artificially shift profits to a low- or no-tax location.

### Withholding tax / Tax deduction at source

Payments made to foreign companies are subject to withholding tax as per the rates applicable for the relevant assessment year. Section 206AA provides that if the permanent account number (PAN) number of the deductee is not available, tax is deducted at the rates prescribed in the Act, or the rates in force, or 20% (whichever is highest). Thus, if a foreign company/non-resident has no PAN, any payment to them is subject to the higher rate of tax. However, where the payment is in the nature of royalties, fees for technical services, interest or transfer of any capital asset, then (subject to furnishing of certain specified details) no PAN of the non-resident would be required. In certain cases, a foreign company is also required to deduct withholding tax on payments made by it to a person resident in or outside India.

If any person, principal officer or company does not deduct whole

or any part of the tax, or after deducting fails to pay such tax as required by the provisions of the Income Tax Act, 1961, then Section 201(1A) specifies that they are liable to pay simple interest:

- At 1% for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted
- At 1.5% for every month or part of the month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid.

### Advance ruling

A foreign company can seek an advance ruling from the Authority for Advance Rulings on any question of law in relation to a transaction that is proposed to be undertaken by the company. Such a ruling is binding upon the applicant and the income tax authorities.

### Transfer pricing

All international transactions between associate concerns that take place after 1 April 2001 would have to comply with the transfer pricing guidelines. As a result, any income arising from an international transaction in the hands of an entity in India shall be computed having regard to the arm's-length price. Non-disclosure or non-computation of such arm's-length price is subject to penalty provisions. A company must obtain a transfer pricing report from a chartered accountant using Form 3CEB, which has to be submitted to the tax authorities within the prescribed time. In addition, in accordance with the Finance Act, 2012, the provisions of transfer pricing have been made applicable to specified domestic transactions. However, according to the Finance Act, 2017, the transactions between specified

persons under Section 40A(2)(b) have been omitted. The threshold limit for specified domestic transactions to be subjected to transfer pricing provisions is INR 200 million.

## Place of effective management

On 24 January 2017, India's Central Board of Direct Taxes issued final guidelines on testing a place of effective management (POEM) when determining Indian residency status of a non-Indian company ('the Guidelines'). The Guidelines emphasise that the POEM test is one of 'substance over form'. It provides that a POEM determination is based on whether a company has 'active business outside India' (ABOI).

### General principles for determining POEM – 'substance over form' approach

The Guidelines provide the following general principles of relevance for determining POEM:

- The entity may have more than one place of management, but can have only one POEM
- Principles in the Guidelines have equal weights
- Review and study of all facts related to the management and control of the company are necessary, as the POEM

determination cannot be based on isolated facts

- If, during the tax year, the POEM exists both inside and outside India, the POEM is presumed to be in India if it is predominantly in India.

### Test for determining the POEM of a foreign company

The POEM of a foreign company is based on whether it has active business inside or outside India. If it is established that it has ABOI, then its POEM is considered to be outside India. Several direct and deeming parameters have been chalked out to establish ABOI, which must be determined separately each year.

### 'No POEM' scenarios

The POEM cannot be established as being in India merely because one or more of the following conditions exist:

- Foreign company is wholly owned by an Indian company
- Foreign company has a permanent establishment in India
- One or some of the directors of a foreign company reside in India
- Local management in India relates to activities carried out by a foreign company in India
- Support functions that are preparatory and auxiliary in character are based in India.

### Rate of tax

Foreign companies are currently charged tax at 40% plus 2% surcharge (if income is INR 10–100 million) or 5% surcharge (if income exceeds INR 100 million) and health and education cess at 4% on their business profits and income arising from short-term capital gains. Long-term capital gains are taxed at 20% under Section 112 of the Act. Short-term capital gains other than those already outlined are taxed at 15% under Section 111A (i.e., inclusive of securities transaction tax). These rates are subject to certain exceptions, where the income is taxed on a gross basis but at a lower rate of tax.

Indian companies (other than eligible startups) are charged to tax at 30% plus a surcharge of 7% (if income is INR 10–100 million) or surcharge of 12% (if income exceeds INR 100 million) and health and education cess at 4%. Table 2 provides a comparison with foreign companies.

The effective dividend distribution tax rate is 20.56%, and the effective tax rate on buy-back of unlisted shares by domestic companies is 23.30%.

### General anti-avoidance rules (GAAR)

GAAR, as introduced by the Finance Act, 2017, aims to counter

Table 2. Comparison of tax liability based on the company's POEM and income

Income (INR)	Domestic company				Foreign company	
	Rate of CIT (%)					
	Turnover more than INR 2,500 million in FY 2018–19		Turnover less than INR 2, 500 million in FY 2018–19		Effective normal tax %	Effective MAT %
Effective normal tax %	Effective MAT %	Effective normal Tax %	Effective MAT %			
<10 million	31.2	19.24	26.00	19.24	41.6	19.24
10–100 million	33.384	20.587	27.82	20.587	42.432	19.625
>100 million	34.944	21.549	29.12	21.549	43.68	20.202

CIT, corporate income tax; FY, financial year; INR, Indian rupees; MAT, minimum alternate tax.

aggressive tax avoidance schemes. It empowers officials to deny the tax benefits on impermissible avoidance arrangements, the main purpose of which is to obtain a tax benefit. The initial onus here would be on the tax authorities to prove that the main purpose is to obtain a tax benefit.

### Legislative changes in accordance with BEPS Action Plan

India has been an active member of the Organisation for Economic Co-operation and Development (OECD)'s Base Erosion and Profit Shifting (BEPS) initiatives and played its part in reaching international consensus. The following legislative changes have been made towards implementation of BEPS recommendations.

#### Equalisation levy

Introduced by the Finance Act, 2016 with effect from 1 June 2016, India's equalisation levy is how the government plans to align with the OECD's BEPS Action Plan 1 – addressing tax challenges faced in a digital economy.

The equalisation levy means that which tax will be levied on consideration received/receivable by a non-resident for rendering any specified service.

The levy will be charged at the rate of 6% of the amount of consideration (INR 0.1 million or more) for specified services (online advertisement, provision of digital advertising space, or any other facility or service for the purpose of online advertisement)<sup>10</sup> received/receivable by:

- A person resident in India and carrying on business or profession; or
- A non-resident having a permanent establishment in India.

#### Country-by-country reporting

In its BEPS report, to standardise transfer pricing documentation across the countries, the OECD recommended a three-tiered structure consisting of:

- A master file containing standardised information relevant to all multinational enterprises (MNE) group members
- A local file containing all material transactions of the local taxpayer
- A CbC report containing information relating to global allocation of the MNE's income, taxes, etc.

The Finance Act, 2016 introduced this concept to provide a specific structure for CbC reporting and the master file. These provisions are applicable from assessment year 2017–18. CbC reporting will apply only to large taxpayers – i.e., those having an annual consolidated group turnover of €750 million in the immediately preceding financial year.

This provision results from the OECD report on Action 13 of the BEPS Action Plan to revise standards for transfer pricing documentation and provide a template for CbC reporting. This three-tier documentation will require taxpayers to articulate consistent transfer pricing positions and will provide tax administrations with useful information to assess transfer pricing risks. It will help tax administrations to determine where their resources can most effectively be deployed, and, where audits are required, provide information to initiate and focus audit enquiries. This reporting system will not only provide more transparent information on MNEs for the tax authorities, but also ensure closer compliance with documentation requirements.

10. This list of relevant services can be modified at any point by the central government.

## Limitation of interest

Section 94B of the Finance Act, 2017 has introduced provisions with regard to limitation of interest: with effect from assessment year 2018–19, interest expenses claimed by an entity in respect of payment to its non-resident associated enterprise (AE) or to a third party (if the AE provides an implicit/explicit guarantee to the lender) has been restricted to 30% of earnings of the company before interest, tax, depreciation and amortisation or interest paid (whichever is less). In order to target only large interest payments, the threshold of interest expenditure is INR 10 million. These provisions are in line with the recommendations of the OECD Action Plan 4 (which mentions 10–30%) to address BEPS via excess interest deductions.

## Secondary adjustment

With effect from assessment year 2018–19, the Finance Act, 2017 has introduced the concept of secondary adjustment. This means an adjustment in the books of account of the assessee and its AE to reflect that the actual allocation of profits between the assessee and its AE are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between the assessee's cash account and actual profit. The concept of re-characterizing the main transfer pricing adjustment and again subjecting it to tax consequences is generally regarded as 'secondary adjustment'. Secondary adjustment shall not be carried out if the primary adjustment does not exceed INR 10 million and the primary adjustment is made in respect of assessment year 2016–17 or earlier.

These provisions are internationally recognised in a number of other jurisdictions (including the USA and

a number of EU member states), and already form part of the transfer pricing rules of many leading world economies. Although approaches to secondary adjustment vary from one country to another, it represents an internationally recognised method to align the economic benefit of the transaction with the arm's-length position.

## Goods and services tax

Goods and Services Tax (GST) is an indirect tax (or consumption tax) levied in India on the supply of goods and services. GST is levied at every step in the production process, but is meant to be refunded to all parties in the various stages of production other than the final consumer.

The tax came into effect from 1 July 2017 through the Indian government's implementation of the 101st Amendment of the Constitution of India. The tax replaced existing multiple cascading taxes levied by the central and state governments.

The tax rates, rules and regulations are governed by the GST Council, which consists of all the central and state finance ministers. GST is meant to replace a slew of indirect taxes with a unified tax and is therefore expected to reshape the country's US\$2.4 trillion economy.

The total GST revenue collected between August 2017 and March 2018 was INR 719,080; during that 8-month period, the average monthly collection has been INR 89,885.

In the GST regime, businesses with a turnover exceeding INR 2 million (INR 1 million for northeastern and hill states) are required to register as a normal taxable entity ('GST registration').

## Custom duty

All imports, unless specified exempt, are subject to custom duty. The general rates are 5%, 10% or 15%. There are special rates for special products.

## Trade policy

Under the Indian government's foreign trade policy, special incentives are given to export-oriented units set up in electronic hardware technology parks, software technology parks and biotechnology parks. These incentives include:

- Import of products on payment of duty at a concessional rate
- Duty-free import of second-hand capital goods
- 100% of export earnings can be retained in foreign currency in a special account, the Exchange Earners Foreign Currency Account.

Furthermore, to augment exports and generate employment, the government has introduced the concept of the special economic zones (SEZ). A SEZ is a clearly delineated duty-free enclave – deemed to be foreign territory for the purposes of trade operations, duties and tariffs. Like export-oriented units (EOUs), units set up in a SEZ are entitled to various benefits and incentives.

# Banking and Finance

## Banking

India has an extensive banking system that is conducive to international business. The Reserve Bank of India (RBI) is the supreme monetary authority controlling the banking system, following the legal framework provided by the Banking Regulation Act, 1949.

Indian banks can be broadly classified into public-sector banks (the government holds a majority stake in all such banks), private-sector banks (the government has no stake in these; they may be publicly listed and traded on stock exchanges) and foreign banks. Public-sector banks are the pillars of the banking sector in India, accounting for more than 70% of the total banking industry assets.

This wide network of banks and financial institutions offers a variety of financial products and services such as retail banking, debt syndication, financial advisory services, portfolio management and asset management.

## Non-banking finance companies

NBFCs play a key role in the growth of the economy. An NBFC is a company incorporated under the Indian Companies Act 2013 and is a specialised financial institution that supplies credit for the purchase of consumer goods and services or by granting small loans directly to consumers. There are various finance companies in India supporting the financial needs of business organisations.

NBFCs perform functions similar to those of banks; however, NBFCs cannot accept demand deposits, and an NBFC is not a part of the payment and settlement system as it is not authorised to issue cheques.

## Microcredit institutions

Microcredit institutions extend very small loans (microloans) to those individuals who lack collateral, steady employment and a verifiable credit history and therefore fail to meet the minimal criteria for accessing traditional credit. Microcredit institutions are becoming an important vehicle in the government's drive for financial inclusion.

## Obtaining credit facilities from banks

A business organisation seeking to secure finance in India must convince the bank/financial institution of the loan's security and the borrower's ability to meet repayment commitments, including any interest. The size of the loan and security offered will determine how much information the financiers require; however, the information and documents listed below are generally expected to be provided by the borrower:

- Borrower's financial background
- Memorandum of association, articles of association and certificate of incorporation
- Proof of identity of authorised signatory/director
- List of directors, shareholding pattern, and any related documents of authentication
- Statements for all bank accounts
- Description of purpose of loan
- Draw-down requirements, repayment provisions, etc.
- Details of any available security
- Demonstrated ability to service both the interest and debt repayment
- Copies of financial accounts for past few years

- Certified extract of directors' resolution for acceptance of bank facilities.

### Opening a bank account

A company opening a bank account in India usually needs to produce the following documents:

- A duly certified board resolution for opening a bank account
- Certified true copy of the memorandum of association and articles of association
- List of present directors, indicating their percentage holding and their residential address
- Copy of PAN card
- Proof of company's address, evidenced by
  - Certificate of Incorporation issued by Registrar of Companies
  - Acknowledged copy of income tax return
  - Bank statement
  - Leave and license agreement/ agreement of sale.

### Insurance

In India, insurance is mainly of two types: life insurance and general insurance. Until 1999, the insurance sector was regulated and was under the direct control of the government. Life insurance business was handled by the Life Insurance Corporation of India, while non-life insurance business was conducted by four nationalised insurance companies – the United India Insurance Co. Ltd, the New India Assurance Co. Ltd, the Oriental Insurance Co. Ltd and the National Insurance Co. Ltd.

To protect the interests of the holders of insurance policies, and to regulate, promote and ensure

orderly growth of the insurance industry, the India government has set up the Insurance Regulatory and Development Authority (IRDA). The IRDA Act of 1999 deregulated the insurance sector in India, allowing private companies to enter; FDI is allowed (under the RBI's automatic route, up to 49% of the total capital held by the Indian insurance companies). To date, the IRDA has allowed the registration of 24 private life insurance companies and 30 general insurance (non-life) companies.

### Capital market

The Indian capital market is among the most vibrant in the world, with seven stock exchanges as of 31 August 2018<sup>11</sup> – all of them tightly regulated and technologically advanced. Foremost among these are the National Stock Exchange and the Bombay Stock Exchange (BSE), one of the oldest in Asia. Since it began formal trading in 1875, the BSE has facilitated the growth of the Indian corporate sector by providing it with an efficient capital raising platform. Today the BSE is the world's premier exchange in terms of the number of listed companies (over 5,000); the fifth most active, in terms of number of transactions handled through its electronic trading system; and among the top 10 global exchanges in terms of market capitalisation of its listed companies.

### Debt market

The Indian debt market is one of the largest in Asia. As elsewhere, the debt market in India is considered a useful alternative to banking channels for obtaining finance. Importantly, the debt instruments used in India mean that the return is fixed, so the risks are considerably reduced. The Indian debt market can be classified into two categories:

*"The Indian capital market is among the most vibrant in the world, with seven stock exchanges – all of them tightly regulated and technologically advanced"*

- **Government securities (G-Sec) market** – the most dominant category in the Indian debt market, consisting of central and state government securities
- **Bond market** – bonds and debentures issued by financial institutions, corporates and public sector undertakings. These bonds are issued to meet financial requirements at a fixed cost.

Financial regulators, the Securities Exchange Board of India, the RBI, the Ministry of Corporate Affairs and various stock exchanges all oversee the capital markets in their designated jurisdictions, to ensure that investors are well-informed and protected against fraudulent practice.

11. <https://www.sebi.gov.in/stock-exchanges.html>

## Reporting Requirements

This section outlines India's plans for aligning with IFRS.

- There are two sets of Accounting Standards:
  - Indian AS, which comply with IFRS with minimal local modifications
  - Existing notified AS.
- In Phase I, companies with a net worth of more than INR 5 billion, whether listed or unlisted, must adopt Indian AS from the financial year 2016–17.
- In Phase II, all remaining listed companies, and unlisted companies with a net worth of more than INR 2.5 billion, must adopt Indian AS from the financial year 2017–18.
- Indian AS will be applicable to both standalone and consolidated financial statements.
- Plans for banks, NBFCs and insurance companies have been specified separately, with effect from 1 April 2018 for Phase I and 1 April 2019 for Phase II.

Companies that are not required to adopt Indian AS will continue to apply notified AS, i.e. Companies (Accounting Standards) Rules, 2006, read with Companies (Accounting Standards) Amendment Rules, 2016.

# Grants and incentives

The Indian government has undertaken several initiatives and instituted policy measures to foster a culture of innovation and entrepreneurship in the country. While job creation is the foremost challenge facing India, its unique demographic advantage offers immense potential to innovate, foster entrepreneurship and create jobs for the benefit of the nation and the world. This section describes just a few of the efforts being made in this direction.

## Startup India

Through the Startup India initiative, the government promotes entrepreneurship by mentoring, nurturing and facilitating startups

throughout their life cycle. Since its launch in January 2016, the initiative has successfully given a head start to numerous aspiring entrepreneurs. With a 360° approach to enable startups, the initiative provides a comprehensive 4-week free online learning programme, and has set up research parks, incubators and startup centres across the country by creating a strong network of academia and industry bodies. More importantly, a 'Fund of Funds' has been created to help startups gain access to funding. At the core of the initiative is the effort to build an ecosystem in which startups can innovate and excel without any barriers, through such mechanisms as online recognition of startups, Startup India learning programme, facilitated patent filing, easy compliance norms, relaxed procurement norms, incubator support, innovation-focused programmes for students, funding support, tax benefits and addressing of regulatory issues.

### Atal Innovation Mission

AIM is the government's endeavour to promote a culture of innovation and entrepreneurship, and it serves as a platform for promotion of world-class innovation hubs, grand challenges, startup businesses and other self-employment activities, particularly in technology-driven areas. Encouraging curiosity,

creativity and imagination right from school age, AIM recently launched Atal Tinkering Labs (ATL) across India. ATLs are workspaces where students can work with tools and equipment to gain hands-on training in the concepts of STEM (Science, Technology, Engineering and Mathematics). Atal Incubation Centres (AICs) are another aspect of AIM, created to build innovative startup businesses as scalable and sustainable enterprises. AICs provide world-class incubation facilities with appropriate physical infrastructure in terms of capital equipment and operating facilities. These incubation centres, with a presence across India, provide access to sectoral experts, business planning support, seed capital, industry partners and training to encourage innovative startups.

### Tax incentives scheme

To strengthen the startup ecosystem in the country and provide support, the Indian government offers several tax benefits to startups recognised under the National Startup Policy (Table 3).

Benefits include a 7-year tax holiday, beginning from the year the startup is incorporated; exemption from tax on long-term capital gains; and approval to offset carry-forward losses and capital gains in case of a change in shareholding pattern.

Table 3. Overview of tax deductions and incentives for business in India

Industry-specific	Tax incentives
Profits and gains derived by an eligible startup from specified business on or after 1 April 2017 (subject to certain conditions)	100% of profit of 3 consecutive assessment years out of 7 years beginning from the year in which the eligible startup is incorporated
Business of processing, prevention and packaging of fruits and vegetables; handling, storage, and transportation of food grains; processing and packaging of meat and meat products or poultry, marine and dairy products	100% tax holiday for the first 53 years and a deduction of 30% (25% if the assessee is not a company) of profits for the subsequent 5 years
Export-linked	Tax incentives
Employment of new workers. All taxpayers whose total sales, turnover or gross receipts exceed INR 10 million	Additional deduction of 30% of the cost incurred on a new employee
Startup businesses engaged in innovation, development, deployment or commercialisation of new technology- or intellectual property-driven products, processes or services	100% deduction for profits and gains for three consecutive years out of 7 years, starting from the year startup was incorporated

# Agencies Providing Assistance

## Department of Commerce

The Department of Commerce has been set up under the Ministry of Commerce and Industry to regulate, develop and promote India's international trade and commerce. Its basic role is to facilitate an environment and infrastructure that will encourage accelerated growth of international trade. The department formulates, implements and monitors the appropriate international and commercial policies – including the foreign trade policy, which provides a basic framework for strategies to be followed in promoting exports and trade.

## Ministry of Finance

The Ministry of Finance is concerned with taxation, financial legislation, financial institutions, capital markets, central and state finances, and the union budget.

The Union Finance Ministry of India comprises five departments:

- Department of Economic Affairs
- Department of Expenditure
- Department of Revenue
- Department of Investment and Public Asset Management
- Department of Financial Services.

## Department of Industrial Policy and Promotion

From 24 May 2017, the Government of India has abolished the Foreign Investment Promotion Board (FIPB); on 5 June 2017, they also issued an office memorandum that established the DIPP as the nodal agency for coordinating FDI proposals requiring government approval and entrusted it with the task of preparing and issuing a standard operating procedure (SOP) for processing FDI applications.

## Directorate General of Foreign Trade

Known before 1991 as the Chief Controller of Imports and Exports, the DGFT is a government organisation responsible for the formulation of national export and import (EXIM) guidelines and principles. The DGFT is responsible for implementing the foreign trade (EXIM) policy, with the main objective of promoting Indian exports.

## Securities and Exchange Board of India

SEBI was established on 12 April 1992; its basic function is to regulate the securities market, promoting its development while protecting the interests of investors.

## Ministry of Corporate Affairs

The Ministry is primarily concerned with administration of the

Companies Act and associated Acts, rules and regulations that regulate the functioning of the corporate sector – including the Competition Act, 2002; the Partnership Act, 1932; the Limited Liability Partnership Act, 2008; the Companies (Donations to National Funds) Act, 1951; the Insolvency and Bankruptcy Code, 2016; and the Societies Registration Act, 1980. The Ministry also exercises supervision over three professional bodies that are constituted under three separate Acts of the Parliament for proper and orderly growth of their respective professions: the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, and the Institute of Cost and Works Accountants of India.

The following offices are affiliated to the Ministry of Corporate Affairs:

- Serious Fraud Investigation Office
- Competition Commission of India
- Indian Institute of Corporate Affairs.

## Registrars of Companies

Registrars of Companies – appointed under Section 396 of the Companies Act, 2013 – are vested with the primary duty of registering companies floated in the respective states and union territories, ensuring that they comply with statutory requirements. These offices keep a registry of company records that are available for inspection by members of the public on payment of the prescribed fee. The central government exercises administrative control over these offices through the respective regional directors.



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## The Next Step

To discuss your needs, please contact:

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