

Destination India 2014

Unleashing the Prowess

*Overview of Tax and
Regulatory framework
in India*



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Contents

04	Chapter 1 Introduction
08	Chapter 2 Foreign investment in India
18	Chapter 3 Funding Options in India
21	Chapter 4 Significant Exchange Control Regulations
23	Chapter 5 Direct Taxation in India
31	Chapter 6 International assignments in India
34	Chapter 7 Indirect Taxation in India
37	Chapter 8 Mergers & Acquisition
41	Chapter 9 Transfer Pricing in India



Annexures

Annexure 1 Special Economic Zones (SEZs) in India
Annexure 2 Tax Rates under Double Taxation Avoidance Agreements
Annexure 3 Governing laws

Introduction

India is the world's third largest economy as per Gross Domestic Product in PPP terms. In terms of population, India is second in the world, with more than 1.2 billion people, out of which nearly 2/3rd of the population being in their working age. This means that India will be a source of human resources in most of the aging, developed world in the coming decades.

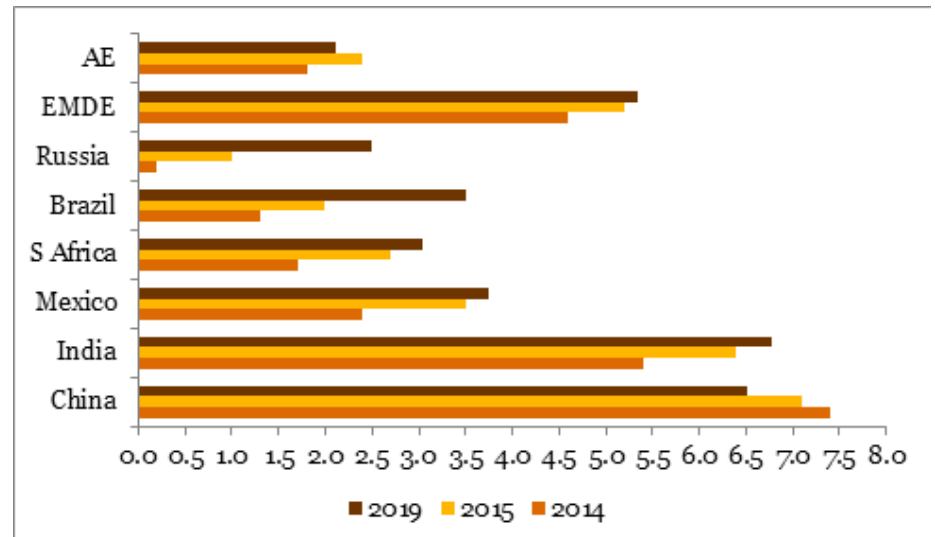
With a new Government in place, India looks poised to enter a secular growth phase, with increasing stress on inclusiveness – the greater the proportion of our population that is brought into the financial mainstream, the greater is the scope for growth combined with reduced inequalities – any development economist's dream.

The signs are all around us:

- With a view to making India an attractive global manufacturing hub, the Government has announced a "Make in India" project, which aims at easier and more effective governance to help achieve high growth rates and job creation. The aim is that the manufacturing sector's share in GDP rises 60% from the existing 15% to 25% of GDP.

- S&P's upgrade of India's sovereign credit outlook to 'stable' from 'negative' within 120 days of the new Government taking office acknowledges its expectation of a spell of continued fiscal discipline in the near future and rosier outlook for the Indian economy. It has projected project real per capita GDP growth to reach 5% by next year, and India's per capita GDP to surpass \$2,000 by 2017.
- The International Monetary Fund (IMF) in its update to World Economic Outlook in July, 2014 retained its growth projection for India to 5.4% in 2014-15 and 6.4% in 2015-16. This number confirms the projection in the range of 5.4% to 5.9% by the Government of India in its Economic Survey, 2014. IMF predicts the Advanced Economies (AE) to grow at 1.8% (2.4%) and Emerging market and developing economies (EMDE) to grow at 4.6% (5.2%) in 2014(2015). India is the fastest growing economy among the EMDEs after China. Russia, Brazil, Mexico and South Africa are all projected to grow at less than 4% rate in 2014-15 and unlikely to touch higher than 5% growth rate even by 2019. India would be the fastest growing economy among its EMDE peers by 2019.

The combination of a strong and stable democratic government, and the relatively free play of market forces today combine to make India amongst most attractive investment destination.



Macro-economic Review

The Index of Industrial Production (IIP) has been showing a positive trend for the economy. During the first quarter of 2014-15 (April-June), the manufacturing sector grew at 3.1% as against a contraction of 1.1% during the same period of last fiscal year. Capital goods production registered an increase to the extent of 14% in the first quarter of 2014-15 against a 3.7% contraction during the same period of last fiscal year. The capex cycle seems to have broken the long streak of contraction and entered into positive territory.

Basic and intermediate goods, which are essential inputs for industrial production, reflect a similar pattern. This turnaround in industrial production deserves attention since India witnessed a manufacturing growth contraction to the extent of 0.8% in 2013-14 and overall industrial contraction was 0.1%. This growth momentum is so far a supply side phenomenon.

Consumer demand is set to revive which will provide further impetus to the growth engine. The government has also taken measures to encourage investment. Box 1 below highlights some of the budget announcements in this regard.

Over a period of time, India has responded reasonably well to some of its macroeconomic vulnerabilities. The key challenges were – inflation, current account deficit and fiscal situation. The government has taken several measures to produce long-run solution to some of its structural problem.

An unstable price situation dampens investor's interest in the economy as it makes perspective planning relatively difficult. Inflation became a major macro-economic concern starting with 2010-11 when it reached close to 10%. The average WPI inflation remained at 8% in the past four years (2010-11 to 2013-14) which is significantly above the average inflation of 5.4% during the previous decade (2000 to 2010). The driver of inflation remained food inflation which was much higher than the overall inflation in the economy.

On the non-food side, it is the fuel and power which was rising at a faster rate due to rise in global commodity prices. Manufacturing inflation which has approximately 2/3rd weight in Wholesale Price Index (WPI) remained range bound over the entire period. In 2013-14, the inflationary situation improved with overall inflation coming to around 6% from its 2010-11 peaks. Manufacturing



price rise was muted at 3%. However, food inflation still persisted at 12.7% - a point of major political debate in the recent election. During the first 4 months of the current fiscal year (April to July, 2014), overall inflation came down to 5.6% with food inflation at 8.7%.

There are some early signs this year for moderating inflation. One of the reasons to cheer could be reduced volatility in global crude oil market despite geopolitical tensions. The softening of global crude oil prices will provide scope to the government to reduce its fiscal deficit which in turn positively impacts the overall inflationary scenario.

It is recognized that inflation in India is a supply side phenomenon, and the Government of India is working in right earnest to face it head-on. The Economic Survey of 2014 mentions several measures such as deregulating energy prices, improving the efficiency of public programmes and breaking the wage-price spiral, rationalization of government support to farmers, revamping the Agricultural produce marketing committee (APMC) Acts and reduction of budget deficit could be some of the measures in the government's priority list.

In the recent budget of 2014-15, the government allocated Rs. 50,000 million to a 'Warehouse Infrastructure Fund' to develop scientific warehousing infrastructure in the country. In a bid to encourage expansion of food processing capacity and reduce post-harvest loss, the finance minister also reduced the excise duty on specific food processing and packaging industry from 10% to 6%. These measures are a step forward to ease the supply side pressure.

The second macro-economic factor which posed challenge for Indian economy was current account deficit (i.e., roughly the difference between country's exports and imports in merchandise and services). From a paltry amount of INR 115 billion in 2000-01, it reached INR 4,796 billion in 2012-13. The corresponding number in percentage of GDP was from 0.5% in 2000-01 to 4.7% in 2012-13. High current account deficit creates several macro-economic imbalances – it puts pressure on domestic currency to depreciate, it makes the domestic market less competitive, unless financed by large capital inflow it may put pressure on foreign reserves.

Moreover, investors lose confidence on the currency as well as on the economy. India has witnessed some of its impact as domestic currency sharply lost its value in comparison to other global currency. Government of India and the central bank

of the country – Reserve Bank of India have taken several measures to manage the current account deficits to sustainable level. Measures were undertaken to promote exports, curb imports especially of luxury items like gold and other non-essential items.

The concerted effort by government helped in bringing down the current account deficit to 1.7% in 2013-14 – a whopping 60% reduction in a year. In the current financial year, the government is trying to restrict it at a lower level. The softening of global crude prices shall provide major relief to curtail the current account deficit significantly.

The third macro-economic factor which is critical from macro-economic management perspective is government deficit. High fiscal deficit is the cause of several macro-economic ills. It leads to high current account deficit, higher inflation, rising government debt level, higher interest rate and crowding out of private investment. In fact, foreign investors get jittery at the prospect of the economy in the presence of high budget deficit. International rating agencies assign higher weightage to budget deficit while giving sovereign ratings. India has shown long-term commitment to become fiscally responsible by enacting Fiscal Responsibility and Budget Management (FRBM) Act in 2003. India has brought it down to below 3% (the benchmark) during 2007-08. Since then the global development coupled with domestic factors led to the rise in deficit and it reached 6.5% level in 2009-10. It was gradually brought down to 4.5% in 2013-14 and government is targeting to bring it further down to 4.1% in 2014-15. By 2016-17, it aims to reach the targeted deficit level of 3%.

The Government has taken a series of measures to bring fiscal deficit under control. Gradual de-control of oil prices, targeted subsidy system, partial de-control of fertilizer subsidy and capping on LPG cylinder are some of the major steps in the right direction. If the global crude oil price does not take a surprise move, government can further bring down the deficit than targeted in the budget.

India has the potential to be the major investment destination for the global community. The macroeconomic stability and the resilience to deal with external shocks, and the extremely high optimism pervading the economy makes this one of the largest markets capable of absorbing and yielding steady attractive returns to investors in the medium term.

Policy Announcements to Encourage Investment: Budget 2014-15

- FDI in Defense manufacturing has been increased to 49% (with full Indian management and control through the FIPB route) from 26%.
- The FM proposed to increase FDI in insurance from 26% to 49% with full Indian management and control through the FIPB route
- FDI in manufacturing is already set on the automatic route-manufacturing units will also be able to sell products through retail (including e-commerce) without additional approvals.
- Conditions for FDI in real estate have been eased-requirement of minimum built up area reduced from 50,000 square meters to 20,000 square meters. Minimum capital requirements have been lowered from USD 10 million to USD 5 million with a three year lock in period. No minimum built up area and capitalization requirements will be applicable on housing projects that spend 30% of total project cost on low cost affordable housing.
- The government has asked all Central Government ministries and departments to integrate their services with the e-Biz platform by 31st Dec 2014. This will help ensure that all business and investment related clearances are available on a single 24 hour portal.
- National Industrial Corridor Authority is being set up. This will help coordinate the development of industrial corridors and connect smart cities with transportation facilities.
- Steps to revive Special Economic Zones are expected in the near future.
- To improve business competitiveness, the government is considering the addition of 13 airports and 14 sea ports to the existing list of facilities providing 24 hour customs clearing services.
- The FM proposes to implement an 'Indian Customs Single Window Project' to obtain clearance for importers and exporters. Other agencies would also be required to provide clearance at a single point.
- Infrastructure bottlenecks have been one impediment to investment. The government has made several budget announcements in this regard.
 - The budget announced the establishment of 3P India that is expected address issues in PPP arrangements-including the need for more sophisticated and flexible methods of contracting.
 - Sixteen new port projects to be awarded.
 - Development of inland waterways-a project on the River Ganga called 'Jal Vikas Marg' between Allahabad and Haldia to cover a distance of 1620 kilometers in order to improve the capacity for transportation of goods.
 - Expected scheme for development of new airports in Tier I and Tier II cities through Airport Authority of India or PPP mode.
- To remove uncertainty in taxation policies and to encourage fund managers to move to India, income arising from foreign portfolio investors from transaction in securities will be treated as capital gains. While short term capital gains are taxed at a rate of 15%, business income would have been taxed at a rate of 30%.



Foreign investment in India

In recent decades, the Indian government had embarked on liberalising the regulatory framework, particularly as regards foreign investment, through the Statement on Industrial Policy of 1991. Since then, the regulatory environment in terms of foreign investment has been consistently eased to make it increasingly investor-friendly.

Under the current framework, FDI is permitted by all categories (of investors) and in all sectors, except the following:

- Activities and sectors not open to private sector investment, e.g. atomic energy
- The lottery business, including government / private lotteries, online lotteries, etc
- Gambling and betting, including casinos
- Agriculture (excluding floriculture, horticulture, apiculture, seed development, animal husbandry, pisciculture, aquaculture and cultivation of vegetables, mushrooms, etc, under controlled conditions and services related to the agriculture and allied sectors)
- Plantations (excluding tea plantations)
- Real estate business (except construction development projects) or construction of farm-houses
- Chit funds, nidhi companies or trading in transferable development rights
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, tobacco and tobacco substitutes

Foreign investment can be made in other sectors under the following:

- The approval route, i.e. by approval from the government through the FIPB under the Ministry of Finance or the Department of Industrial Policy and Promotion (DIPP) under the Ministry of Commerce and Industry, or both
- Automatic route, i.e. no prior approval is required from regulatory authorities but post facto notification to RBI through Authorized Bankers is necessary.

Approval route

A prior approval from the FIPB or the DIPP is required in cases of foreign investment where the project does not qualify for the automatic route.

The following cases fall under this category:

- Specified sectors which require FIPB approval for FDI or for FDI beyond a prescribed sectoral cap (refer to FDI in major sectors in India)
- The issue of shares for a consideration other than cash, i.e. issue of shares against import of capital goods/ machinery/ equipment and pre-operative/ pre-incorporation expenses, share swap (subject to compliance with certain stated conditions) (except for capitalisation of an external commercial borrowing (ECB) due for repayment and interest on such an ECB, as well as technical knowhow fee or royalties due for payment)
- Investments by citizens and companies of Bangladesh or Pakistan
- Investment in an Indian company engaged only in downstream investment activities for holding purposes, or which does not have any operations or any downstream investments. Additionally, a company which fulfils the criteria prescribed under the core investment companies (CICs) guidelines issued by the RBI will have to comply with the norms prescribed therein

The decision of the FIPB or DIPP is normally conveyed within four to six weeks from the date of submission of an application. A proposal for foreign investment is decided on a case-by-case basis on the merits of the case and according to the prescribed sectoral policy. Generally, preference is given to projects in high-priority industries and the infrastructure sector, those with export potential, large-scale employment opportunities, links with the agriculture sector, social relevance, or those relating to the infusion of capital and induction of technology.

Foreign investment proposals under the FIPB route involving a total foreign equity inflow of more than 12 billion INR have to be placed before the Cabinet Committee of External Affairs (CCEA) for further consideration.

Where an entity has an earlier FIPB or CCEA approval for an activity/ sector or sectoral caps, additional foreign investment in such an entity does not require prior approval from the FIPB or the CCEA, where – subsequent to the earlier approval:

- either the activity or the sector had been placed under the automatic route, or
- sectoral caps had been removed or increased (provided that such additional investment along with the original investment is within the current sectoral cap)

Automatic route

Generally, except in the cases mentioned above, all other cases of foreign investment fall under the automatic route and do not require prior approval from the FIPB or DIPP.

Computation of FDI

The Indian government has issued guidelines to calculate total FDI in an Indian company where sectoral caps apply. In accordance with these guidelines the total FDI in an Indian company will comprise the following:

- Direct investment by a foreign investor
- Indirect Foreign Investments (IFIs) through an Indian company owned or controlled by non-residents. Here, owned means more than 50% shareholding and controlled refers to where there is a right to appoint a majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements.

Furthermore, for the computation of IFI, 'foreign investment will include all types of investments, i.e. FDI, investment by foreign institutional investors (FIIs) (holding as on 31 March), non-resident Indians (NRIs), American depository receipts (ADRs), global depository receipts (GDRs), foreign currency convertible bonds (FCCBs), convertible preference shares and convertible currency debentures, regardless of whether the said investments have been made under Schedule 1, 2, 3 or 6 of the Foreign Exchange Management Act (FEMA), 1999 (Transfer or Issue of Security by Persons Resident Outside India) Regulations.

Broadly speaking, the principle that is emerging is that where an Indian company is owned and controlled beneficially by resident Indian citizens (RICs), any downstream investment made will be considered as domestic investment and not counted towards foreign investment caps.

Furthermore, any downstream investments made by an Indian company owned or controlled by non-residents is also required to comply with sectoral caps and conditions. In this regard, RBI has issued a circular incorporating the downstream investment policy guidelines issued by DIPP in 2009. In addition, a statutory auditor must certify whether downstream investment is in compliance with the FDI Policy and FEMA provisions.

Foreign venture capital investors permitted to acquire securities under private arrangement

Foreign venture capital investors (FVCIs) can invest in eligible securities (equity, equity-linked instruments, debt, debt instruments, debentures of an Indian venture capital undertaking (IVCU) or venture capital fund (VCF), units of schemes or funds set up by a VCF) by private arrangement or by purchase from a third party, subject to compliance with certain conditions.

Foreign investment by qualified foreign investors

Qualified foreign investors (QFIs) are non-resident investors other than SEBI-registered FIIs and SEBI-registered FVCIs who meet SEBI's Know-Your-Customer (KYC) requirements.

QFIs from Financial Action Task Force (FATF) compliant jurisdictions who are resident in a country that is a signatory to the International Organization of Securities Commissions' (IOSCO) Memorandum of Understanding (MoU) or a signatory of a bilateral MoU with SEBI have been permitted to invest in equity shares of listed Indian companies or equity shares of Indian companies offered to the public in India through SEBI-registered depository participants (DPs) or SEBI-registered brokers, within an individual cap of 5% and 10%, respectively, in aggregate of the paid-up capital of listed companies, or both.

Furthermore, QFIs can also purchase rupee denominated units of equity schemes of domestic mutual funds (MFs) on a repatriation basis, and eligible corporate debt instruments, viz. listed non-convertible debentures (NCDs), listed bonds of Indian companies, listed units of MF debt schemes and to-be-listed corporate bonds, directly from the issuer or through a registered stockbroker on a recognised stock exchange in India. QFIs are also permitted to acquire non-convertible debentures or bonds issued by non-banking financial companies (NBFCs) categorised as infrastructure finance companies (IFCs).

FDI in limited liability partnerships (LLP)

FDI up to 100% is permitted with prior government approval in limited liability partnerships engaged in sectors or activities currently eligible for 100% FDI under the automatic route. Such sectors/activities should not have any sectoral or other FDI-linked conditions. Some of the conditions, subject to which FDI in LLP would be permitted, are as follows:

- Only cash contributions are permissible for FDI in LLPs
- LLPs with FDI are not allowed to make downstream investments

- LLP cannot raise ECB
- FIIs and FVCIs cannot invest in LLPs

Investment through share acquisition

Non-resident investors can acquire shares of an existing Indian company, subject to compliance with sectoral conditions. Stock acquisition is permitted after a resolution to this effect has been passed by the board of directors of the company whose shares are being acquired. The acquisition must comply with valuation guidelines prescribed by RBI or SEBI from time to time.

Prior FIPB approval is required in all cases where either the control or ownership of an Indian company that is engaged in a sector where FDI caps apply is transferred to or acquired by a non-resident entity.

Acquisition by way of share swap is also permitted with prior FIPB approval and is subject to valuation guidelines.

Prior approval from the RBI is no longer required for the following cases of share acquisitions:

- Acquisition of existing equity by residents from non-residents where the share price falls outside the prescribed valuation norms but complies with the pricing prescribed under SEBI regulations or guidelines
- Acquisition of equity by non-residents from residents under the following cases:
 - where the requisite approval of the FIPB has been obtained
 - where prescribed pricing guidelines are not met, but comply with SEBI pricing guidelines
 - where the investee company is in the financial services sector

Valuation norms

The issuing of shares to non-residents or transfers from residents to non-residents is subject to valuation guidelines, as set out below:

- The fair valuation of shares must be carried out in accordance with any internationally accepted pricing methodology for the valuation of shares on an arm's length basis, duly certified by a chartered accountant or SEBI registered Merchant Banker, where the shares of the company are not listed on any recognised stock exchange in India. However, if shares are listed, then the consideration price cannot be less than the price at which preferential allotment of shares can be made under SEBI guidelines in relation to a transfer of shares of an Indian company (listed or unlisted) from a non-resident to resident, and the price cannot exceed the above-mentioned price.

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- Where non-residents (including NRIs) make investments in an Indian company by way of subscription to its Memorandum of Association, such investments may be made at face value, subject to non-residents being eligible to invest under the FDI scheme.

In relation to a transfer of shares of an Indian company (listed or unlisted) from a non-resident to a resident, the price may not be more than the minimum price at which the transfer of shares can be made.

Investment by FIIs

A registered FII may, through the SEBI, apply to the RBI for permission to purchase the shares and convertible debentures of an Indian company under a portfolio investment scheme.

FIIs are permitted by the RBI to purchase the shares or convertible debentures of an Indian company through registered brokers on recognised stock exchanges in India. They are also permitted to purchase the shares or convertible debentures of an Indian company through private placement or arrangement. The total holding by each FII and SEBI-approved sub-account of FII cannot exceed 10% of the total paid-up equity capital, or 10% of the paid-up value of each series of convertible debentures issued by an Indian company. Furthermore, the total holdings of all FIIs or sub-accounts of FIIs added together cannot exceed 24% of the paid-up equity capital or the paid-up value of each series of convertible debentures. The limit of 24% may be increased to the specified sectoral cap or statutory ceiling, as applicable, by the Indian company in question, by passing a Board of Directors' resolution, followed by obtaining the permission of the shareholders through a special resolution to that effect and immediate intimation of the same to the RBI.

FIIs can now invest in the primary issues of NCDs or bonds only if there is a commitment to list those NCDs or bonds within 15 days of such an investment. FIIs can also subscribe to unlisted bonds or NCDs where the issuing company is an infrastructure company.

FDI in major sectors in India

India ranks among the most attractive destinations for FDI in the world. Indian markets have the potential of, and offer positive prospects regarding, higher profitability, as well as a favourable regulatory regime to attract investors. We provide below a summary of the FDI in key sectors:

Agriculture and allied activities

FDI or NRI investment is not permitted in agriculture and allied activities, except under the following circumstances:

- FDI up to 100% under the automatic route is permitted in floriculture, horticulture, the development and production of seeds and planting material, animal husbandry, pisciculture, aquaculture, cultivation of vegetables and mushrooms under controlled conditions and services related to the agriculture sector and allied sectors. Certain conditions apply for companies dealing with the development of transgenic seeds and vegetables.
- In the tea sector (including tea plantations), FDI up to 100% is permitted under the approval route.

Asset reconstruction companies

Foreign investment by way of FDI, FII and foreign portfolio investor (FPI) is permitted up to 100% (up to 49% under the automatic route and beyond 49% with prior FIPB approval) in an asset reconstruction company (ARC) that is registered with the RBI. The total shareholding of an individual FII/FPI must not exceed 10% of the paid-up capital. Furthermore, FIIs / FPIs can invest upto 74% of each tranche in security receipts (SRs) scheme issued by RBI registered ARC. All investments in ARCs must be subject to the provisions of section 3(3) (f) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).

Banking

Public sector banks: FDI and portfolio investment is restricted to 20% with prior FIPB approval. Such investment is subject to the Banking Companies (Acquisition and Transfer of Undertakings) Acts 1970/1980.

Private sector banks: FDI up to 74% is allowed in private sector banks (up to 49% under the automatic route, and up to 74% under the FIPB approval route). The 74% limit includes investment from all sources including Portfolio Investment Scheme (PIS) by FIIs/FPIs, NRIs, initial public offering (IPOs), private placements, GDR/ADRs, acquisition of shares from existing shareholders and shares acquired prior to 16 September 2003 by erstwhile Overseas Corporate Bodies (OCBs). At all times, at least 26% of the paid up capital must be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.

However, within the permissible FDI ceiling, there are separate limits for investment under portfolio investment





schemes through stock exchanges by FIIs/ FPIs and NRIs.

A foreign bank may operate in India only through one of the following three channels:

- a branch or branches
- a wholly-owned subsidiary
- a subsidiary with an aggregate foreign investment of a maximum 74%

Broadcasting

- Teleports (setting-up of up linking hubs or teleports), direct-to-home, cable networks (Multi-System Operators (MSOs) operating at a national, state or district level and undertaking upgrading of networks towards digitalisation and addressability), mobile TV and head-in-the-sky (HITS) broadcasting services: in such cases, FDI is permitted up to 74% (up to 49% under the automatic route and beyond 49% up to 74% under the approval route).
- Cable network (other MSOs not undertaking upgrading of networks towards digitalisation and addressability and local cable operators (LCOs)): foreign investment is permitted up to 49% under the automatic route.
- Terrestrial broadcasting FM (FM radio): FDI is permitted up to 26% under the approval route.
- Up-linking TV channels: FDI up to 26% is permitted under the approval route for the up-linking of a news and current affairs TV channel. 100% FDI is permitted under the approval route for up-linking a non-news or current affairs TV channel.
- Down-linking of TV channels: 100% FDI is permitted with prior Government approval

In addition to FDI, foreign investment, as specified above, includes FII, NRI, FCCBs, ADRs, GDRs and convertible preference shares held by foreign entities.

FDI in the broadcasting sector is also subject to compliance with the mandatory requirement of appointing an Indian citizen as the key executive of the company, and other security clearance requirements and conditions prescribed by the Ministry of Information and Broadcasting. In addition, in sub-sectors where FDI is limited to 49%, the Indian company must comply with the condition that the largest Indian shareholder will hold at least 51% of the share capital of the company.

Civil aviation and airports

- FDI up to 49% is permitted for scheduled air transport services and domestic scheduled passenger airlines under the automatic route. NRI investment is permitted up to 100% under the automatic route
- For non-scheduled air transport services, non-scheduled airlines and cargo airlines, FDI is permitted up to 74% (up to 49% under the automatic route and beyond that with FIPB approval). NRI investment is permitted up to 100% under the automatic route
- Foreign airlines are permitted to invest in the capital of Indian companies operating scheduled and non-scheduled air transport services to the limit of 49% of their paid-up capital, subject to specified conditions
- 100% FDI is permitted under the automatic route for maintenance and repair organisations, flight training institutes and technical training institutions
- FDI up to 74% is permitted for ground-handling services, subject to sectoral regulations and security clearances. FDI up to 49% is permitted under the automatic route and between 49% and 74% under the approval route. However, NRI investment up to 100% is permitted under the automatic route
- FDI up to 100% is permitted under the automatic route for helicopter and seaplane services
- Foreign airlines can participate in the equity of companies operating cargo airlines, helicopter services and seaplane services
- 100% FDI is permitted under the automatic route for greenfield investments in airports. With respect to existing airports, FDI up to 100% is permitted, up to 74% under the automatic route and up to 100% with prior FIPB approval

Coal and lignite

- FDI is permitted up to 100% under the automatic route in coal and lignite mining for captive consumption by power projects, iron and steel, cement units and other eligible activities, subject to the provisions of the Coal Mines (Nationalisation Act), 1973
- Up to 100% FDI in a company setting up coal processing plants is permitted under the automatic route subject to the condition that the company will not conduct coal mining, and will supply the washed or sized coal to parties supplying raw coal or coal processing plants, instead of selling it in the open market



Commodity exchanges

Up to 49% composite foreign investment (CFI) (FDI plus FII investment) is permitted under the automatic route. Investment by registered FIIs/FPIs under a PIS is limited to 23% and investment under an FDI scheme is limited to 26%. FII/FPI purchases are restricted to the secondary market only and no non-resident investor/ entity, including persons acting in concert, can hold more than 5% of the equity in these companies.

Credit information companies

CFI in credit information companies is permitted up to 74% under the automatic route, subject to the following conditions:

- Foreign investment is permitted subject to regulatory clearance from RBI.
- Investment by registered FIIs/FPIs under a PIS is permitted up to 24% (within the overall limit of 74%) only in listed credit information companies
- FPI investment is permitted subject to the conditions that a single entity should directly or indirectly hold below 10% equity, any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement, and FIIs/FPIs investing in CICs must not seek representation on the Board of Directors based upon their shareholding.
- Foreign investment is subject to the Credit Information Companies (Regulation) Act, 2005

Courier services

FDI up to 100% is permitted under the automatic route in companies undertaking courier business operations.

Defence

FDI in this sector is permitted up to 49%, subject to prior FIPB approval and compliance with security and licensing requirements and guidelines issued by the Ministry of Defence. FDI beyond 49% will be subject to obtaining approval from Cabinet Committee on Security (CCS) on case to case basis. One of the bases for approval for such cases is whether the proposal brings in state-of-the-art technology in the country. Additionally, the Indian company must comply with the condition that the largest Indian shareholder holds at least 51% of its share capital.

The FDI Limit of 49% is a composite FDI limit which include all kinds of foreign investment. However, portfolio investment by FPIs, FIIs, NRIs, QFIs are permitted under automatic route subject to maximum limit of 24% of the total equity of the Indian company.

According to the guidelines for production of arms and ammunition, the management of the applicant-company

or partnership should be in Indian hands, and the majority of the Board, as well as the chief executive, should be resident Indians. Furthermore, there is a three-year lock-in period for transfer of equity from one foreign investor to another.

FDI in rail infrastructure

FDI upto 100 % is permitted under the automatic route in the construction, operation, and maintenance of the following railway infrastructure:

- Suburban corridor projects through Public Private Partnership ('PPP');
- High speed train projects;
- Dedicated freight lines;
- Rolling stock including train sets and locomotives/coaches manufacturing and maintenance facilities;
- Railway electrification;
- Signaling systems;
- Freight terminal;
- Passenger terminals;
- Infrastructure in industrial parks pertaining to railway line/sidings including electrified railway lines and connectivity to the main railway line; and
- Mass rapid transport systems.
- FDI beyond 49 % for development of railway infrastructure in sensitive will require approval from CCS on a case to case basis.

Insurance

Foreign investment in the insurance sector (including insurance companies, insurance brokers, third party administrators, surveyors and loss assessors) is permitted up to 49% under the automatic route, subject to obtaining a licence from the Insurance Regulatory and Development Authority (IRDA).

Micro and small enterprises

FDI in a micro and small enterprise (MSE) for the manufacture of items reserved under the small-scale sector is permitted, subject to compliance with the applicable sectoral policy.

However, any industrial undertaking which is not an MSE and is engaged in manufacturing items reserved for the MSE sector will require FIPB approval when foreign investment exceeds 24%. Such an undertaking will also require an industrial licence under the Industries (Development and Regulation) Act, 1951. This licence prescribes the export of a minimum of 50% of the new or additional annual production of the MSE-reserved items to be achieved within a maximum period of three years.

Mining

- Up to 100% FDI is allowed under the automatic route for activities such as the exploration and mining of metals and non-metal ores, including gold and silver, minerals, diamonds and precious stones.
- Up to 100% FDI is permitted with prior government approval for the mining and mineral separation of titanium-bearing minerals and ores, as well as value addition and integrated activities related to these minerals. This is subject to sectoral regulations and the conditions of the Mines and Minerals (Development and Regulation) Act, 1957.

Non-banking financial services

100% FDI is permitted in the following 18 activities under the automatic route, subject to the minimum capitalisation norms indicated below:

- Merchant banking
- Underwriting
- Portfolio management services
- Investment advisory services
- Financial consultancy
- Stock broking
- Asset management
- Venture capital
- Custodian services
- Factoring
- Credit rating agencies
- Leasing and finance (this covers only finance leases)
- Housing finance
- Forex broking
- Credit card business
- Money changing business
- Micro credit
- Rural credit

Minimum capitalisation norms (foreign equity): Fund-based activities

For NBFCs, investment is subject to the following the minimum capitalisation norms:

- US \$0.5 million for foreign capital, up to 51% to be brought in upfront
- US \$ 5 million for foreign capital, more than 51% and up to 75% to be brought in upfront
- US \$ 50 million for foreign capital, more than 75%, out of which US\$ 7.5 million to be brought in upfront and the balance to be brought in within 24 months

Minimum capitalisation norms (foreign equity): Non-fund-based activities

For NBFCs engaged in non-fund based activities, the minimum capitalisation norm has been fixed at USD 0.5 million. The prescribed minimum capital is required to be brought in upfront.

The following activities are classified as non-fund-based activities:

- Investment advisory services
- Financial consultancy
- Forex broking
- Money changing
- Credit rating

A non-fund based NBFC is prohibited from setting up a subsidiary for any other activity, and it cannot participate in the equity of an NBFC holding or operating company.

Petroleum

Other than refining

100% FDI is permitted under the automatic route in the following, subject to the existing policy and regulatory framework in the petroleum sector:

- Exploration activities in relation to oil and natural gas fields
- Infrastructure related to marketing of petroleum products and natural gas
- Petroleum products and natural gas marketing
- Petroleum product and natural gas pipelines
- Liquefied natural gas (LNG) re-gasification infrastructure
- Market studies and formulation in the petroleum sector

Refining

In the case of public sector undertakings Public Sector Undertakings (PSUs), up to a maximum of 49% FDI is permitted under the automatic route without any disinvestment or dilution of domestic equity in the existing PSU.

In the case of private Indian companies, up to 100% FDI is permitted under the automatic route.

Power exchange

Up to 49% FDI is permissible in power exchange under the automatic route (with FDI up to 26% and FII investment up to 23%). FII investment is restricted to the secondary market. No non-resident investor or entity, including persons acting in concert, can hold more than 5% of the equity.

Print media

- Publication of newspapers, periodicals and Indian editions of foreign magazines in news and current affairs: Foreign investment, including FDI, NRI, PIO and FII investment, is permitted up to 26%, with prior FIPB approval.
- Publishing and printing of scientific and technical magazines, speciality journals and periodicals: FDI is permitted up to 100%, with prior FIPB approval.

- Publication of facsimile editions of foreign newspapers: FDI up to 100% is permitted, with prior FIPB approval, provided investment is by the owner of the original newspaper whose facsimile edition it is proposed will be published in India.

These sub-sectors need to comply with terms and conditions prescribed by the Ministry of Information and Broadcasting. In addition, in the above sub-sectors where FDI is limited to 49%, the Indian company needs to comply with the single largest Indian shareholder condition.

Construction development projects

FDI up to 100% under the automatic route is permitted in the following:

- Construction development projects (including, but not restricted to, housing, commercial premises, resorts, educational institutions, recreational facilities, city and regional level infrastructure, and townships) subject to certain conditions:
 - the minimum land area to be developed under each project must be ten hectares for service housing plots and 50,000 square meters built-up area for construction development projects.
 - minimum capitalisation of 10 million USD for a wholly-owned subsidiary and 5 million USD for a joint venture (JV) with an Indian partner
 - it must be an original investment, i.e. the entire amount should be brought in as FDI with a minimum three-year lock-in from the date of receipt of each FDI instalment, or from the date of completion of minimum capitalisation, whichever is later
- development of at least 50% of each project must be completed within five years of obtaining all statutory clearances. The investor/ investee company is not permitted to sell undeveloped plots.

Investment by NRIs is not subject to the conditions applicable in the case of construction development projects.

Investment in SEZs, hotels, hospitals, industrial parks (which satisfy prescribed conditions), the education sector and old-age homes is also exempt from the above requirements.

Industrial parks

Up to 100% FDI in industrial parks is permitted under the automatic route, subject to the fulfilment of prescribed conditions.

“Industrial activity” has been defined to mean: manufacturing; electricity; gas and water supply; post and telecommunications; software publishing, consultancy and supply; data processing, database activities and distribution of

electronic content; other computer-related activities; basic and applied research and development (R&D) on bio-technology, pharmaceutical sciences and life sciences, natural sciences and engineering; business and management consultancy activities; and architectural, engineering and other technical activities.

The conditions applicable to construction development activities are not applicable in the case of FDI in industrial parks, provided the following conditions are complied with:

- The industrial park comprises at least ten units and no single unit occupies more than 50% of the allocable area
- At least 66% of the total allocable area is allocated to industrial activity

Satellites: establishment and operations

FDI up to 74% is permitted with prior FIPB approval, subject to the sectoral guidelines of the Department of Space or the Indian Space Research Organisation (ISRO).

Security agencies in the private sector

FDI up to 49% is permitted under the approval route.

Stock exchanges, depositories, clearing corporations

Foreign investment up to 49% (FDI capped at 26% and FII investment capped at 23%) is permitted under the automatic route. FIIs are allowed to invest only through purchases in the secondary market.

Pharmaceuticals

100% FDI is permitted in existing pharmaceutical companies with prior FIPB approval. With respect to greenfield investments, 100% FDI is permitted under the automatic route. Non-compete clauses are not permitted, except in special circumstances with prior government approval.

Telecommunications

Up to 100% FDI is permitted in the Telecommunication sector. FDI up to 49% is permitted under the automatic route (and beyond 49% subject to prior FIPB approval) in the telecom services, including telecom infrastructure providers in Category I, viz. (basic, cellular, united access services, unified licence (access services), unified license, national/ international long distance, commercial V-sat, public mobile radio trunked services, global mobile personal communications services, all types of internet service provider (ISP) licences, voicemail/ audiotex/ UMS, resale of IPLC, mobile number portability services), and in infrastructure providers in Category I (providing dark fibre, right of way, duct space, towers) except other service providers, subject to observance of



licensing and security conditions by the licensee as well as investors, as announced by the Department of Telecommunications from time to time.

Trading

100% FDI is permitted under the automatic route for trading companies engaged in the following activities:

Cash-and-carry wholesale trading and wholesale trading, subject to operational guidelines

- Cash-and-carry wholesale trading means the sale of goods or merchandise to retailers, industrial, commercial, institutional or other professional business users, or to other wholesalers, and related subordinated service providers.

Operational guidelines for wholesale trading

- Sales made by a wholesaler qualify as wholesale trading where the sales are made to the following eligible customers (except in the case of sales to the government):
 - Entities holding sales tax or VAT registration, or service tax or excise duty registration
 - Entities holding trade licences under applicable local shops and establishment laws
 - Entities holding permits, licences, etc. for undertaking retail trade from government authorities and local self-government bodies
 - Institutions with certificates of incorporation or registration as a



society or registration as a public trust, for their own consumption

- Wholesale trading sales to group companies or to companies belonging to the same group should not exceed 25% of the total turnover of the wholesale venture. The term group means two or more enterprises which, directly or indirectly, are in a position to:
 - exercise 26% or more voting rights in the other enterprise
 - appoint more than 50 % of the members of the Board of Directors in the other enterprise
- Full records, indicating details such as the name of the entity, its licence, registration, permit number, amount of sale, etc., should be maintained on a daily basis
- These companies can engage only in business to business (B2B) e-commerce, and not in retail trading (which implies that the existing restrictions on FDI in domestic trading are applicable to e-commerce as well)

Single brand retail trading

100% FDI is permitted with FIPB approval for single-brand product retailing, with FDI up to 49% in this sector under the automatic route, and beyond 49% with prior FIPB approval, subject to the following conditions:

- Products to be sold should be of a single brand only
- Products should be sold under the same brand internationally
- Single-brand product retailing covers only products branded during manufacturing

- A non-resident entity or entities, whether owner of the brand or otherwise, are permitted to undertake single brand product retail trading in the country for the specific brand directly, or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will rest with the Indian entity carrying out single brand product retail trading in India. The investing entity must provide evidence to this effect at the time of seeking approval, including a copy of the licensing/ franchise/ sub-licence agreement, specifically indicating compliance with the above condition. The requisite evidence should be filed with the RBI for the automatic route and Secretariat for Industrial Assistance (SIA)/ FIPB for cases involving approval.

Where FDI is proposed to be beyond 51%, mandatory sourcing of at least 30% of the value of products sold must be done from India, preferably from micro, small and medium enterprises (MSMEs), village and cottage industries, artisans and craftsmen in all sectors. The quantum of domestic sourcing must be self-certified by the company and checked by statutory auditors from the duly certified accounts which the company is required to maintain. The procurement requirement must be met in the first instance as an average of five years' total value of the goods purchased, beginning 1st April of the year during

which the first tranche of FDI is received, and thereafter on an annual basis.

- Retail trading, in any form, by means of e-commerce is not permitted for companies engaged in single-brand retail trading activities.

Multi-brand retail trading

FDI of up to 51% is permitted with prior FIPB approval for multi-brand retail trading, subject to the following conditions:

- Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded
- There must be minimum capitalisation of 100 million USD by the foreign investor
- Mandatory investment in backend infrastructure – at least 50% of the total FDI brought in in the first tranche of US\$ 100 million must be invested in backend infrastructure within three years. Subsequent investment in backend infrastructure can be made depending upon business requirement
- At least 30% of the value of procurement of manufactured or processed products purchased must be sourced from Indian MSMEs, which have a total investment in plant and machinery not exceeding 2 million USD. The small industry status shall only be seen at the time of first engagement with the retailer
- Retail sales outlets may be set up only in cities with a population of

more than 1 million (according to the 2011 census) or any other city as stated by a decision of the respective state government, and may also cover an area of ten kilometres around the municipal or urban agglomeration limits of such cities

- Retail trading in any form by means of e-commerce is not permissible for companies engaged in the activity of multi-brand retail trading that receive FDI

While the above policy has been approved by the central government, state governments or union territories are given the right to make their own decisions in regard to implementing this policy. States that have allowed multi-brand retail include Andhra Pradesh, Assam, Delhi, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Maharashtra, Manipur, Rajasthan, Uttarakhand, Daman and Diu and Dadra and Nagar Haveli (union territories).

Entry options

A foreign company looking to set up operations in India can consider the following options:

Operating as an Indian company

Wholly-owned subsidiary company

A foreign company can set up a wholly-owned subsidiary company in India to carry out its activities. Such a subsidiary is treated as an Indian resident and an Indian company for all Indian regulations (including income tax, Foreign Exchange Management Act, 1999 and the Companies Act), despite being 100% foreign-owned. At least two shareholders (for a private limited company) and seven shareholders (for a public limited company), are mandatory.

The activities of such a company need to comply with the provisions of the FDI policy.

JV with an Indian partner (equity participation)

Although a wholly-owned subsidiary has proven to be the preferred option, foreign companies have also begun operations in India by forming strategic alliances with Indian partners. The trend is to choose a partner in the same area of activity, or who brings synergy to the foreign investor's plans for India. Sometimes, JVs are also necessitated due to restrictions on foreign ownership in certain sectors.

Limited liability partnership (LLP)

An LLP is a new form of business structure in India. It combines the advantages of a company, such as being a separate legal entity having perpetual succession, with the benefits of organisational flexibility associated with a partnership. At least two partners are required to form an LLP. These partners have limited liability for the LLP.

With less stringent compliance requirements an LLP is comparatively easier to manage than a company. Furthermore, an LLP is not subject to mandatory compliance requirements applicable to a company under the Companies Act, 2013

Operating as a foreign company

Liaison offices

Setting up a liaison or representative office is a common practice for foreign companies seeking to enter the Indian market. The role of such offices is limited to collecting information about the market, and providing information about the company and its products to prospective Indian customers. Such offices act as listening and transmission posts, and transmit information between the foreign company and its Indian customers. A liaison office is not allowed to undertake anything other than liaison activities in India and cannot, therefore, earn any income in India, under the terms of approval granted by the RBI.

A liaison office can be established under the prior approval of the RBI where the principal business of the foreign entity falls under sectors where 100% FDI is permitted under the automatic route; otherwise, the additional approval of the central government is required.

Foreign companies intending to establish a liaison office in India need to have a net worth of at least USD 50,000 or equivalent, and a profit-making track record in the home country during the immediately preceding three financial years.

Additionally, the office must be registered with the Registrar of Companies and details of the liaison office must be reported to the Director General of Police under whose jurisdiction the liaison office is established.

Project offices

Foreign companies planning to execute specific projects in India can set up temporary project and site offices for this purpose.

The RBI has granted general permission to foreign companies to establish project offices in India, provided they have secured a contract from an Indian company to execute a project in India, and:

- the project is funded directly by inward remittance from abroad, or
- the project is funded by a bilateral or multilateral International Financing Agency, or
- the project has been cleared by an appropriate authority, or
- a company or entity in India awarding the contract has been granted a Term Loan by a Public Financial Institution or a bank in India for the project



However, if the above criteria are not met, the foreign entity must approach the RBI for approval. The automatic route is not available to entities that are registered in/ residents of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong and Macau, for establishment of project offices or any other place of business in India, by whatever name they are called. Any entity registered in/ residents of any of the aforesaid countries require specific prior approval from the RBI.

Branch offices

Foreign companies engaged in manufacturing and trading activities abroad can set up branch offices in India for the following purposes, with the prior approval of the RBI:

- Export and import of goods
- Professional or consultancy services
- Research work in which the parent company is engaged, to promote technical or financial collaboration

between Indian companies and the parent company

- Representing the parent company in India and acting as a buying or selling agent in India
- IT and software development services in India
- Technical support for products supplied by the parent or group companies
- Acting as a foreign airline or shipping company

A branch office can be established under the prior approval of the RBI if the principal business of the foreign entity falls under sectors where 100% FDI is permitted under the automatic route; otherwise, the additional approval of the central government is required.

Foreign companies intending to establish a branch office in India need to have a net worth of at least USD 100,000 or its equivalent, and a profit-making track record in their home country during the

immediately preceding three financial years.

In general, manufacturing activities cannot be undertaken through a branch office. However, foreign companies can establish a branch office or unit for manufacturing in an SEZ, subject to the fulfilment of certain conditions.

In addition, a branch office must be registered with the Registrar of Companies and details of the liaison office must be reported to the Director General of Police under whose jurisdiction the liaison office is established.



Funding Options in India

A foreign company which sets up a subsidiary in India can fund its Indian subsidiary through the channels summarised below:

Equity capital

Equity shares refer to the common stock of a company. Equity capital comprises securities representing the equity ownership in a company, providing voting rights, and entitling the holder to a share of the company's success through dividends and/or capital appreciation. In the event of liquidation, common stockholders have rights to a company's assets only after bondholders, other debt holders, and preferred stockholders have been satisfied.

The issue of equity shares by an Indian company to a foreign company must comply with the sectoral caps stated in the FDI policy of the Government of India.

Repatriation of capital

Investments in equity can be repatriated only on the liquidation or transfer of shares. Limited buy-back provisions are available under corporate laws. Capital reduction can be undertaken in certain circumstances with court approval. Sectors such as defence and construction and the development of real estate are subject to a minimum lock-in period before the capital can be repatriated.

ECBs

ECBs refers to commercial loans (in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. floating rate notes and fixed rate bonds)) obtained from non-resident lenders with minimum average maturity of three years.

Under the FEMA regulations there are two routes for raising funds through ECBs: the automatic route and the approval route. Under the approval route, prior permission from the RBI is required for raising ECBs. Under the automatic route, post facto intimation filings must be made periodically, as prescribed under the FEMA regulations.

ECB for investment in the real sector – the industrial sector, infrastructure sector and specified service sectors, i.e., hotels, hospitals and software – fall under the automatic route. However, in case of doubt as regards eligibility to access the automatic route, it is advisable to take

recourse to the approval route. The real sector refers to the industrial sector, including small and medium enterprises, and the infrastructure sector.

ECB can be obtained for incurring rupee or foreign currency expenditure up to the following limits (any further funds to be raised through ECB beyond these limits requires prior approval from the RBI):

- USD 750 million for borrowers in the infrastructure and industrial sectors, under the automatic route
- USD 200 million for borrowers in the service sector (hotels, hospitals and software), under the automatic route
- USD 10 million for lending to self-help groups or for micro-credit or for bona fide micro-finance activity including capacity building by non-governmental organisations NGOs engaged in micro-finance activities

ECB can be obtained from recognised lenders only. Recognised lenders include certain international financial institutions, suppliers of equipment, foreign collaborators or foreign equity holders. In the case of ECB from foreign equity holders, such shareholders should hold at least 25% of the total paid-up equity capital of the company. In the case of ECB exceeding USD 5 million from foreign equity shareholders, the proposed ECB should not exceed four times the direct foreign equity holding. ECB from indirect equity holders is permitted, provided the indirect equity holding in the Indian company by the lender is at least 51%. ECB from a group company is permitted, provided both the borrower and the foreign lender are subsidiaries of the same parent.

The minimum maturity period of the ECB is at least three years if the amount of ECB does not exceed USD 20 million or its equivalent in a financial year. For ECB in excess of USD 20 million and up to USD 500 million or its equivalent, the minimum maturity period is five years.

The FEMA Guidelines prescribe a maximum ceiling for the cost of raising funds through ECB. Cost here includes the rate of interest and other expenses in foreign currency. That cost, in aggregate, must not exceed:

Average maturity period	Aggregate cost
From three years to five years	Six month LIBOR + 350 basis points
More than five years	Six month LIBOR + 500 basis points

Commitment fees, pre-payment fees, any other fees payable in Indian Rupees, and withholding tax in Indian Rupees, are to be excluded when calculating the maximum ceiling of aggregate cost of raising funds through the ECB.

ECBs can be used for certain prescribed purposes only. ECBs can be raised, inter alia, for import of capital goods (as classified by the Director General of Foreign Trade in the Foreign Trade Policy), implementation of new projects, and modernisation/ expansion of existing production units (including acquisition of land) in the real sector. ECBs are not permitted to be used for the following purposes:

- On-lending, investment in capital markets or for acquiring a company in India
- Activities in the real estate sector and
- Repayment of existing Rupee loans.

Eligible borrowers can obtain ECB from their direct foreign equity holders with a minimum average maturity of seven years for general corporate purposes (which includes working capital), subject to the following conditions:

- Minimum paid-up equity of 25% should be held directly by the lender
- Such ECBs must not be used for any purpose specifically not permitted, as stated above
- Repayment of the principal must commence only after completion of minimum average maturity of seven years
- No prepayment will be allowed before maturity

Pledge of shares

Promoters of an Indian company can pledge their shares to secure a loan obtained under ECB. However, this can happen only if the banker is satisfied that the conditions in the loan agreement are met and the loan registration number for ECB is obtained. A non-resident shareholder in an Indian company can also pledge his or her stake in the company in favour of an Authorised Dealer (AD) in order to secure a credit facility extended to such a company. The pledge may also be made in favour of an overseas bank to secure credit facilities extended to non-resident promoters or shareholders of the resident Indian company whose shares are pledged, provided, inter alia, such loaned funds are utilised for overseas business purposes.

Fully and compulsorily convertible preference shares / debentures

Indian companies can mobilise foreign investment through the issue of fully and compulsorily convertible preference shares / debentures. The conversion formula or price must be determined upfront. The following guidelines apply:

- Only compulsorily and fully convertible preference shares and debentures without any option/ right to exit at an assured price are reckoned as eligible capital instruments.
- Optionality clauses are allowed in fully and compulsorily preference shares / debentures under an FDI scheme, subject to the following conditions:
 - There is a minimum lock-in period of one year, or a minimum lock-in period as prescribed under the FDI Regulations, whichever is higher (e.g. the defence and construction development sectors where the lock-in period of three years has been prescribed).
 - The lock-in period is effective from the date of allotment of such capital instruments, or as prescribed under the FDI Policy, e.g. for the defence and construction development sectors.
 - After the lock-in period, as applicable above, and subject to FDI Policy provisions, in this regard, if any, the non-resident investor exercising the option/ right shall be eligible to exit without any assured return, in accordance with the pricing/ valuation guidelines issued by the RBI from time to time.

Other types of preference shares/ debentures (i.e. non-convertible, optionally convertible or partially convertible) for the issue of which funds have been received on or after 1 May 2007 are considered as debt. Accordingly, all norms applicable for ECBs relating to eligible borrowers, recognised lenders, amount and maturity, end-use stipulations, etc, shall apply.

- The dividend rate on preference shares should not exceed the limit prescribed by the Ministry of Finance of the Government of India. This is currently fixed at 300 basis points above the State Bank of India's prime lending rate.

Partly paid-up shares and warrants

Partly paid equity shares and warrants can be issued by an Indian company as eligible instruments for the purpose of FDI and FPI, in accordance with the provisions of the Companies Act, 2013 and SEBI guidelines, as may be applicable

The pricing/ conversion formula of the partly paid equity shares/ warrants needs to be determined upfront, and 25% of the total consideration amount (including share premium, if any), also needs to be received upfront; the balance consideration towards fully paid equity shares / warrants must be received within 12 months / 18 months respectively.

Global depository receipts (GDRs), American depository receipts (ADRs) and foreign currency convertible bonds (FCCBs)

Foreign investment through GDRs, ADRs and FCCBs is also treated as FDI. Indian companies are permitted to raise capital in the international market through the issue of GDRs, ADRs and FCCBs, subject to restrictions.

The issue of ADRs or GDRs does not require any prior approval (either from the Ministry of Finance, FIPB or the RBI), except where the FDI after such issue will exceed the sectoral caps or policy requirements, in which case prior approval from FIPB is required. There are no end-use restrictions on ADRs or GDRs, except for a ban on the deployment of such funds in real estate or the stock market.

The issue of FCCBs up to 750 million USD also does not require prior approval. Only companies listed on the stock exchange are allowed to raise capital through GDRs, ADRs and FCCBs. The end-use of FCCB proceeds must comply with ECB norms.

Foreign currency exchangeable bonds (FCEBs)

In FY 2007–08, the Indian government announced the foreign currency exchangeable bonds scheme for the issue of FCEBs. The salient features of this scheme are as follows:

- FCEBs are bonds expressed in foreign currency, the principal and interest of which is payable in the same currency
- An FCEB is issued by a company which is part of the promoter group of a listed company whose equity is offered, and which is engaged in a sector eligible to receive FDI (offered company) and which holds shares in the offered company. The FCEB is subscribed to by a person resident outside India and is exchangeable into an equity share of the offered company on the basis of any equity-related warrants attached

to debt instruments

- Investment under the scheme must comply with the FDI policy as well as with the ECB policy requirements. The proceeds of FCEBs:
- can be invested in the promoter group companies. Promoter group companies must ensure the investment is
- used in accordance with end uses prescribed under the ECB policy
- not utilised for investments in the capital market or in real estate in India
- (or can be) invested by the issuing company overseas by way of direct investment (DI), including in a JV or a wholly-owned subsidiary, subject to existing guidelines on Indian DI in a JV or wholly-owned abroad



Significant exchange control regulations

Foreign exchange transactions are regulated under the FEMA. Under the FEMA, foreign exchange transactions are divided into two broad categories: current account transactions and capital account transactions.

Transactions that alter the assets or liabilities outside India of a person resident in India or in India of a person resident outside India, are classified as capital account transactions. All other transactions are considered to be current account transactions.

The Indian rupee is fully convertible for current account transactions, subject to a negative list of transactions which are either prohibited or which require prior approval.

An Indian company receiving foreign investment and foreign-invested Indian companies are both treated equally with other locally incorporated companies. Accordingly, the exchange control laws and regulations for residents apply to Indian companies receiving foreign investment.

Current account transactions

Foreign nationals or Indian citizens who are not permanently residing in India and have been deputed by a foreign company to its office, branch, subsidiary or JV in India through secondment are permitted to receive their salary in a foreign currency account maintained outside India, or to make recurring remittances of salary received in India for family maintenance abroad, subject to the foreign national or Indian citizen paying applicable taxes in India.

Prior approval of the RBI is required to acquire foreign currency for the following purposes:

- Holiday travel over USD 10,000 per person per annum.
- Gifts over USD 5,000 or donations over USD 5,000 per remitter or donor per annum.
- Business travel over USD 25,000 per person per visit
- Foreign studies as per the estimate of the institution or USD 100,000 per academic year, whichever is higher
- Consultancy services procured from abroad of over USD 1,000,000 per project (USD 10,000,000 in case of infrastructure projects)

- Reimbursement of pre-incorporation expenses over the higher of USD 100,000 and 5% of investment brought into India

Certain specified remittances are prohibited:

- Remittances from lottery winnings
- Remittance of income from racing, riding, etc, or any other hobby
- Remittance for the purchase of lottery tickets, banned or proscribed magazines, football pools, sweepstakes, etc
- Payment of commission on exports made towards equity investments in JVs or wholly-owned subsidiaries abroad of Indian companies
- Payment of commission on exports under the rupee state credit route, except commission up to 10% of the invoice value of exports of tea and tobacco
- Payment related to 'call back services' of telephones
- Remittances of interest income of funds held in a non-resident special rupee (account) scheme

Capital account transactions

Capital account transactions can be undertaken only to the extent permitted. The RBI has prescribed a list of permitted capital account transactions, which include the following:

- Investments overseas by residents
- Borrowing or lending in foreign exchange
- Export or import of currency
- Transfer or acquisition of immovable property in or outside India's liberalised remittance scheme for resident individuals

Under the regulations of the FEMA resident individuals are permitted to remit up to USD 125,000 per financial year for any permitted current or capital account transaction, or a combination of both, subject to specified terms and conditions under the Liberalized Remittance Scheme (LRS), in addition to specific limits provided under current account transaction rules. Acquisition of immovable property outside India (directly or indirectly) under the LRS scheme has been permitted with effect from 17 July 2014.

RBI has permitted eligible resident individuals to access the LRS window to acquire/set up an overseas JV/ wholly-owned subsidiary (which is an operating company) outside India for bona fide business activities by making remittance under the LRS within the limit of USD 125,000.

In addition, with respect to overseas investments in a joint venture, the limit of financial commitment has been restored to 400% (from 100% in 2013) of net worth of the Indian entity as on the last audited balance sheet date. However, any financial commitment exceeding USD 1 billion (or its equivalent) in a financial year requires prior approval of the RBI, even when the total financial commitment of the Indian party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet).

All other transactions otherwise not permissible under the FEMA and those in the nature of remittances for margins or margin calls to overseas exchanges or overseas counterparties are not allowed under the scheme.

Miscellaneous repatriation of capital

Foreign capital invested in India is generally repatriable, along with capital appreciation, if any, after the payment of taxes due, provided the investment was originally made on a repatriation basis.

Acquisition of immovable property in India

Generally, foreigners are not permitted to acquire immovable property in India except in cases of inheritance, acquisition on lease for a period not exceeding five years, and where the property is required for the business of the Indian branch, office or subsidiary of the foreign entity. NRIs or PIOs are permitted to acquire immovable property (except agricultural land, plantation property and farm-houses).

Royalties and technical know-how fees

Indian companies can make payments for trademark or technology royalties without any restrictions under the automatic route.

Dividends

Dividends are freely repatriable after the payment of dividend distribution tax by the Indian company declaring the dividend. RBI permission is not necessary for a dividend affecting a remittance, subject to specified compliance requirements.

Remittances by branch or project office

No prior approval is required for remitting profits earned by the Indian branches of foreign companies (other than banks) to their head offices outside India. Remittances of the winding-up proceeds of a branch office of a foreign company in India are permitted, subject to approval from the authorised dealer bank. Remittances of winding-up proceeds of a project office of a foreign company in India are permitted under the automatic route, subject to fulfilment of the compliance requirements.



Direct Taxation in India

Tax year and tax return filing deadline

The Indian tax year runs from 1 April of a year to 31 March of the subsequent year. Companies (except those which are required to submit a transfer pricing accountant's report with respect to international transactions or specified domestic transactions) are required to file their tax return by 30 September following the end of the tax year. Companies which are required to submit a transfer pricing accountant's report are required to file their tax return by 30 November following the end of the tax year.

Overview

The authority to levy, collect and administer income-tax in India has been granted to the central government by the Constitution of India. Income-tax is levied in India under the Income-tax Act, 1961 (the IT Act) enacted by the central government. The Income-tax Rules, 1962 (IT Rules), lay down the procedures to be followed in complying with the provisions of the IT Act. The IT Act is administered by the Central Board of Direct Taxes (CBDT) which operates under the aegis of the Finance Ministry of the central government. The CBDT issues various circulars/ instructions/ notifications from time to time for the purposes of administering the IT Act.

Residential status of a company

A company is resident in India if it is incorporated in India, or if its control and management is wholly situated in India.

Residential status	Base rate	Surcharge	Education cess	Effective tax rate
Resident in India	30%	10% surcharge on tax if income > INR 100 million, 5% if income between INR 10 million and INR 100 million. No surcharge in other cases	3% on the tax and surcharge (if any)	33.99% if income > INR 100 million 32.445% if income between INR 10 Million and INR 100 Million 30.9% in other cases
Resident outside India	40%	5% surcharge on tax if income > INR 100 million, 2.5% if income between INR 10 million and INR 100 million, 0% in other cases		43.26% if income > INR 100 million 42.23% if income between INR 10 million and INR 100 million 41.2% in other cases



Scope of taxable income for a company

A company resident in India is taxed on its worldwide income.

A company resident outside India (a non-resident company) is taxed in India only in respect of income that:

- accrues or arises in India; or
- is received or deemed to have been received in India
- accrues to the non-resident company from any asset in India, or source of income in India, or from a business connection in India, or from transfer of a capital asset in India.

An asset or a capital asset, being a share or interest in a company or entity registered or incorporated outside India, shall be deemed to be an asset situated in India if the share or the interest derives, directly or indirectly, its value substantially from assets located in India.

A company's taxable income is divided into the following categories or heads of income:

- Income from business
- Income from house property
- Income from capital gains
- Income from other sources

Income from business

Business income is computed by aggregating all business receipts and reducing therefrom the deductions prescribed under the IT Act.

The IT Act provides for deduction of business-related expenses from the gross business income. These expenses include rent and interest on borrowings, etc.. The following are specifically not allowed as a deduction: personal expenses, capital expenditure (other than capital expenditure specifically allowed as a deduction), expenses incurred in any violation of the law, and expenses in relation to exempt income, income tax, wealth tax etc

Some specific deductions are discussed below:

Depreciation

Depreciation is allowed separately at the following rates on the assets owned and used during a tax year:

Factory building	10%
Furniture and fittings	10%
Plant and machinery (general)	15%
Computers (including software)	60%
Motorcars, other than those used in a business of running them on hire	15%
Intangible assets (such as know-how, patents, copyright, trademarks, licences, franchises or any other business or commercial rights of a similar nature)	25%
For certain priority items, such as energy-saving devices and pollution control equipment, depreciation is allowed at higher rates. See also the note regarding undertakings engaged in the business of the generation, or generation and distribution, of power, below	

In the case of a new asset, depreciation for the whole year is allowed only if the asset is put to use for 180 days or more during the tax year. Otherwise, depreciation is allowed at only half the prescribed rates.

In addition, 20% depreciation on the actual cost of a new plant or machinery acquired and installed after 31 March 2005 is allowed to a taxpayer engaged in the manufacture or production of any article or thing, or, (with effect from FY 2012-13) in the business of generation, or of generation and distribution, of power in the year in which such a new plant or machinery is acquired and installed.

Undertakings engaged in the generation and distribution of power can claim tax depreciation at the above rates, or on a straight-line basis at rates prescribed in the Income-tax Rules, 1962. These rates vary from 1.95 to 33.40%.

Investment allowance

A taxpayer acquiring and installing a new plant and machinery aggregating to INR 1 Billion during tax years 2013-14 and 2014-15, is entitled to investment allowance at 15%.

This benefit has been extended to new plant and machinery acquired and installed during tax years 2014-15 to 2016-17 exceeding INR 250 Million.

Investment in new plant and machinery will not include investment made in assets such as plant or machinery used earlier in or outside India, any plant or

machinery installed in any office premises or in residential accommodation (or guest house), any office appliances (including computers or computer software), vehicle, or any plant or machinery, the cost of which has been allowed as a deduction under any other provision.

A taxpayer availing the investment allowance is required to hold the plant and machinery for more than five years, failing which the investment allowance claimed will be taxed in the year of transfer of the plant and machinery.

Disallowance of expenditure incurred on corporate social responsibility (CSR) activities

Expenditure incurred by a taxpayer on CSR activities under the Companies Act, 2013, is not allowed as a deduction under section 37(1) of the IT Act (which provides for general deduction in respect of any expenditure incurred for the purposes of the business). However, expenditure on CSR activities can be claimed as a specific deduction under the other provisions of the Act, if it satisfies the conditions prescribed in those provisions.

Taxation of royalty and fees for technical services in the hands of non-residents or foreign companies under the IT Act

Royalty or fees for technical services (FTS) payable by a resident to non-residents who do not have a permanent establishment (PE) in India, are taxable on a gross basis at the rate of 25% (plus applicable surcharge and cess).



Royalty or FTS paid by a resident to non-residents are taxed on a net income basis if the underlying right, property or contract is effectively connected to the PE of the non-resident in India.

If the relevant double taxation avoidance agreement (DTAA) provides for a lower rate of tax or narrower scope of Royalties/ FTS then the Royalties/ FTS will be taxable accordingly.

Taxation of royalty – some controversies

The expression 'royalty' is defined as consideration received or receivable for transfer of all or any right for certain property or information. However, there have been certain controversies with regard to the meaning, characterisation, scope and taxability of royalty, some of which are as follows:

- Whether consideration for use of computer software constitutes a royalty payment
- Whether a right, property or information has to be used directly by the payer or be located in India, and whether its control or possession has to be with the payer
- The meaning of the term, 'process', etc.

In order to address the above controversies, the definition of royalty provided under the IT Act has been amended in the year 2012 with retrospective effect from 01 June 1976 as under:

- The consideration for use, or right to use, of computer software is 'royalty'

and transfer of all or any rights in respect of any right, property or information includes transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such a right is transferred.

- Royalty includes consideration for any right, property or information, whether or not the following conditions apply:
 - The possession or control of such a right, property or information is with the payer
 - Such a right, property or information is used directly by the payer
 - The location of such a right, property or information is in India
- The term 'process' includes transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such a process is secret.

Tax on buy-back of shares

An additional tax at 20% (plus applicable surcharge and cess) is payable by a company on the difference between the consideration paid on buy-back and the issue price of shares. The buy-back consideration received is tax-exempt in the hands of the shareholder. No tax credit is allowed in the case of taxes paid, either to the company or to the shareholder.

Minimum alternate tax

Minimum alternate tax (MAT) is levied at 18.5%, (plus applicable surcharge and cess), on the adjusted book profits of companies whose tax payable under normal income-tax provisions is less than 18.5% of their adjusted book profits.

Credit for MAT is allowed against the tax liability which may arise in the subsequent 10 years under the normal provisions of the IT Act.

Alternate minimum tax (AMT) on all persons other than companies

Alternative minimum tax (AMT) is levied on persons (other than companies) at 18.5% on the adjusted total income (as per income-tax provisions) if the AMT exceeds the tax payable under normal income-tax provisions. Credit for AMT is allowed against the tax liability which may arise in the subsequent 10 years under the normal provisions of the IT Act.

In the case of an individual, a Hindu undivided family (HUF), an association of persons, a body of individuals or an artificial judicial person, AMT is not payable if the adjusted total income of such a person does not exceed INR 2 million.

Capital gains arising on transfer of	Tax rates*	
	Resident	Non-resident
a. Short-term capital assets (other than (b) below)	Normal corporate/ individual tax rates	Normal corporate/ individual tax rates
b. Short-term capital assets, being listed equity shares, units of equity oriented funds or units of a business trust, where securities transaction tax (STT) is charged on the transaction (other than units of a business trust acquired on transfer of shares of a special purpose vehicle)	15%	15%
c. Long-term capital assets, being listed equity shares in a company or units of an equity-oriented fund or units of a business trust (other than units of a business trust acquired on transfer of shares of a special purpose vehicle) where STT is charged on the transaction	Exempt	Exempt
d. Long-term capital assets, being listed securities or units or zero coupon bonds (other than (c) above)	10%	10%
e. Other long-term capital assets	20%	20%
f. Long-term capital gains arising to a non-resident (not being a company) or a foreign company from transfer of unlisted securities	NA	10% (no indexation benefit)

* Applicable surcharge and education cess will also be levied on these taxes.

A short-term capital asset is an asset held for a period of not more than 36 months (not more than 12 months in the case of listed equity shares, listed securities, units of equity-oriented mutual funds and zero coupon bonds). In addition, unlisted shares or units of mutual funds transferred between 1 April 2014 and 10 July 2014 will be considered as short term capital assets if the period of holding is less than 12 months.

Benefit of indexation of cost of acquisition and cost of improvement of a long-term capital asset of any nature (other than a bond or debenture capital indexed bonds issued by the government) is available to residents.

Characterisation of income in the case of foreign institutional investors

In order to bring certainty to the characterisation of income arising to foreign institutional investors (FIIs) from transactions in securities, the IT Act has been recently amended to provide that any investment in securities made by FIIs in accordance with the regulations made by the Securities Exchange Board of India will be treated as a capital asset. Accordingly, any income arising from transfer of these securities by FIIs will be in the nature of capital gains. The FII regime has been replaced with Foreign Portfolio Investment (FPI) regime with effect from June 1, 2014.

Income from other sources

Income which is not covered under the any of the specific heads of income is liable to tax as “income from other sources”. While computing taxable income from other sources, expenditure specially allowed or incurred wholly and exclusively for earning such income is allowed as a deduction.

Receipt of shares for nil or inadequate consideration

If a company (not being a public company) receives shares of another company (not being a public company) for nil or inadequate consideration, then the fair market value of such shares is deemed to be the taxable income of the recipient company.

The “fair market value” is computed according to the formula prescribed under the IT Rules.

Issue of shares for inadequate consideration

If a company (not being a public company) receives from a resident consideration for an issue of shares that exceeds the fair market value of such shares, such excess can be considered as income of the recipient. The fair market value of shares is the higher of the value according to the prescribed method, and the value based on the value of assets (as may be substantiated by the company to the satisfaction of the tax authorities).

However, the above provisions do not apply to:

- a venture capital undertaking receiving consideration from a venture capital company/ fund; or
- specified classes of residents

Dividends

Indian companies have to pay dividend distribution tax (DDT) at 15% (plus applicable surcharge and education cess) on declaration, distribution, or payment, of dividends, whichever is earlier. A company does not have to pay DDT on dividends paid to its shareholders to the extent it has received such dividends:

- from its Indian subsidiary company on which DDT has been paid by the subsidiary, or
- from a foreign subsidiary company on which tax has been paid at 15% (discussed below).

The dividends, subject to DDT, are not taxable in the hands of the shareholders.

Concessional rate of tax on dividends received from overseas companies

Dividends received by Indian companies from specified foreign companies are taxed at a concessional rate of 15%. However, no expenditure will be deductible while computing this income. ‘Specified foreign company’ refers to foreign company in which the Indian company holds twenty-six per cent or more in nominal value of the equity share capital.



DTAAs

As per the provisions of section 90 of the IT Act, the Government of India is authorized to enter into an agreement, i.e., DTAA, with the Government of any other country for granting tax relief or, as the case may be, for avoidance of double taxation. The taxpayer can claim the benefit under the provisions of such DTAA if it is more beneficial (subject to general anti-avoidance rules under the IT Act (discussed below in detail)).

Tax residency certificate (TRC)

In order to avail benefits of a DTAA, a non-resident is required to furnish a copy of the tax residency certificate issued by revenue authorities of the country of residence, and also furnish other prescribed documents/information.

Note: Concessional tax rates applicable under certain DTAAs that India has signed with various countries are provided in Annexure 2.

Tax information exchange agreements (TIEA)

Since 2011, India has entered into many TIEAs with countries such as the Bahamas, Bermuda, Belize, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man, Jersey, Liberia, Monaco and San Marino. The objective of entering into TIEAs is to promote international co-operation on tax matters through the exchange of information.

Transactions with persons located in notified territories

Anti-avoidance measures have been introduced in order to discourage transactions with parties located in countries that do not effectively exchange information with India. These measures enable the Indian government to designate any country or jurisdiction not exchanging information with India as a 'notified jurisdictional area'. Transactions between any taxpayer and a party located in a notified jurisdictional area will be deemed as transactions between 'associated enterprises'. Transfer pricing regulations will apply accordingly. Transactions with those located in such jurisdictions will have the following additional implications:

- No deduction will be allowed on payments made to any financial institution, unless an authorisation is issued to the income-tax authorities to seek relevant information from the financial institution
- No deduction will be allowed for any expenditure or allowance, unless the taxpayer maintains the prescribed documents, or provides the prescribed information to the tax authorities
- Receipts from a person located in the notified jurisdictions will become taxable income for the taxpayer, unless he or she is able to explain the source of this money in the hands of the payer, or in the hands of the beneficial owner.

Payments made to a person in a notified jurisdictional area will be liable to withholding of tax at a higher rate

Cyprus has been notified as a notified jurisdictional area by CBDT notification dated November 1, 2013. Just as we close this publication, news has come in that Cyprus has accepted a key condition put forward by India (viz. ratification of the Council of Europe-OECD Multilateral Convention on Administrative Assistance in Tax matters) on effective exchange of information on tax avoiders.

Advance rulings

To facilitate certainty regarding taxation, a non-resident can approach the Authority for Advance Rulings (AAR) to determine the tax implications of any proposed or current transaction.

An advance ruling can also be sought by a resident to determine the tax liability of a non-resident with whom a transaction has been undertaken, or is proposed to be undertaken.

Specified resident taxpayers can obtain an advance ruling in respect of their income tax liability arising out of a transaction undertaken or proposed to be undertaken with other residents. Class of residents eligible for obtaining an advance ruling is yet to be notified by the Central Government.

Such an advance ruling will be binding on the person seeking it in relation to the transaction, and the income-tax department cannot disregard the ruling unless there is a change in the facts or laws affecting it.

General Anti Avoidance Rule (GAAR)

The provisions relating to GAAR are slated to come into effect from April 1, 2015. However as per the recent media reports, the GAAR provisions are presently being reviewed by the Government.

The GAAR provisions empower the tax department to declare an ‘arrangement’ entered into by an assessee to be an ‘impermissible avoidance agreement’ (IAA). Consequences of this will be the denial of tax benefit either under the provisions of the IT Act, or under the tax treaty. The provisions can be invoked for any step in, or part of, any arrangement entered, and that arrangement or step may be declared as an IAA. The provisions will be attracted only if the main purpose of the arrangement or step is to obtain tax benefit.

The GAAR provisions will not apply in the following cases:

- Where tax benefit (to all parties in aggregate) from an arrangement in a relevant tax year does not exceed INR 30 million;
- Foreign Institutional Investors (FIIs) registered with Securities and Exchange Board of India (SEBI) and not availing any benefit under a Tax Treaty, and also investment in FIIs made by non-resident investors
- Income earned by any person from transfer of investment on or after 1 April 2015 in respect of the investment made by such person before 30 August 2010

Wealth tax

Wealth tax is charged on net wealth as on 31 March every year (referred to as the valuation date). It is charged both, on individuals as well as companies, at 1% of the amount by which the ‘net wealth’ exceeds 3 million INR. The term ‘net wealth’ broadly represents the excess value of certain assets over the debts. Assets include guest houses and residences, motorcars, jewellery, bullion, utensils of gold and silver, yachts, boats, aircraft, urban land and cash. A debt is an obligation to pay a certain sum of money incurred in relation to any assets that are included in net wealth.

Gift tax

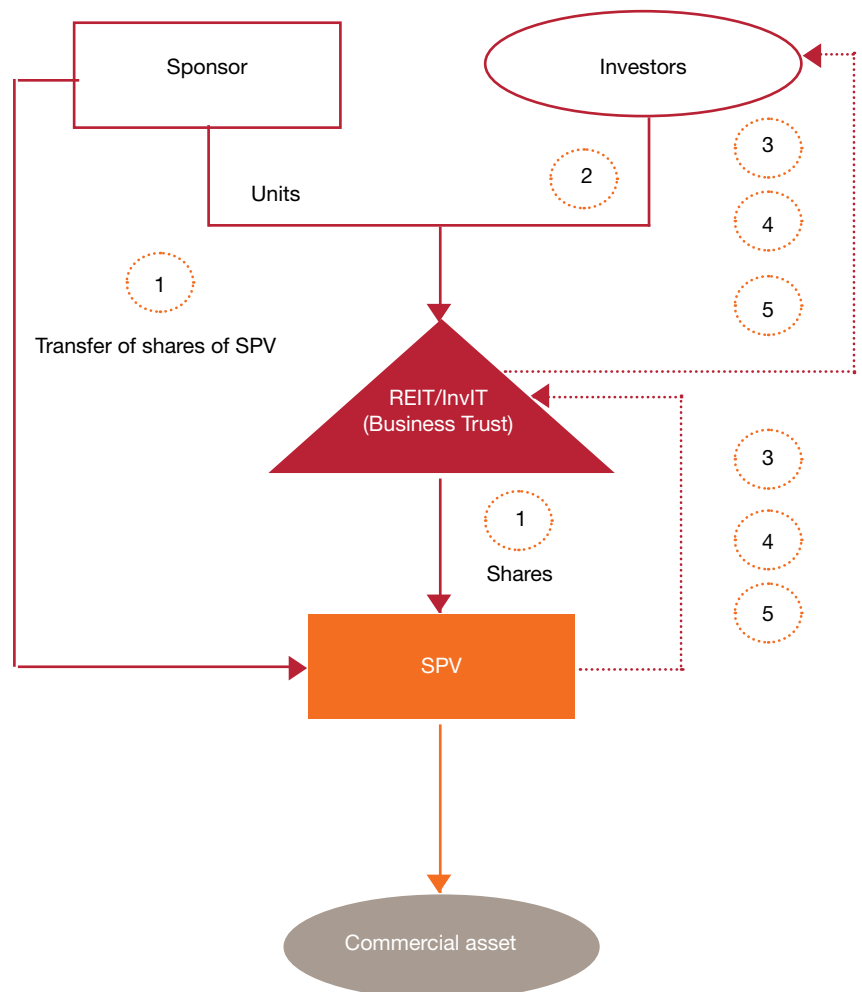
There is no gift tax liability in India. Any sum of money exceeding (or immovable property whose stamp duty value exceeds, or any immovable property whose fair market value exceeds) INR 50,000 received without consideration by an individual from any person is subject to tax as income from other sources. This does not apply to any sum of money received from the following:

- Relatives (spouse, brother, sister, brother or sister of the spouse, or any lineal ascendants or descendants)
- On the occasion of an individual’s marriage
- Under a will or by way of inheritance
- In expectation of death of the donor

Tax incentive schemes

Real Estate Investment Trusts/ Investment Trusts

SEBI has proposed draft regulations relating to two new categories of investment vehicles, namely Real Estate Investment Trusts (REITs) and Investment Trusts (InvITs).



Particulars	Taxability
Capital gains arising to Sponsor on exchange of shares in Special Purpose Vehicle (SPV) with units of business trust 1	Tax liability deferred to the time units are disposed of by Sponsor <ul style="list-style-type: none"> • Holding period of shares to be included in holding period of units • Cost of acquisition of shares of SPV to be considered as cost of acquisition of units • Preferential capital gains regime (as explained in next row below) not applicable where such units are sold by Sponsor
Capital gains on transfer of units held in trust 2	<ul style="list-style-type: none"> • Securities Transaction Tax applicable to transfer of units of business trust similar to equity shares traded on a stock exchange • Long-term capital gains to be exempt from tax • Short-term capital gains taxable at 15% (plus applicable surcharge and cess)
Dividend income of business trust 3	<ul style="list-style-type: none"> • DDT applicable at SPV level • Dividend income exempt from tax in hands of business trust • Onward distribution of amount attributable to dividends by business trust to investors will be exempt
Interest income of business trust 4	<ul style="list-style-type: none"> • Accorded pass-through treatment (no taxation at business trust level) • No withholding to be done at SPV level • Business trust to withhold tax on distribution attributable to the interest component - from domestic unit holders at 10% / non-resident unit holders at 5% • Taxes withheld for non-resident investors would also be their effective tax liability on such interest
Capital gains on disposal of shares in SPV 5	<ul style="list-style-type: none"> • Taxable at normal capital gains (assuming shares in SPV are held as capital asset by business trust) • Onward distribution of amount attributable to capital gains is exempt in hands of unit holders
Any other income of business trust	<ul style="list-style-type: none"> • Taxable at maximum marginal rate (for example: income from commercial assets held directly)
Interest on overseas debt incurred by business trust	<ul style="list-style-type: none"> • Business trust must withhold tax at the rate of 5%
Business trust	Trust registered as InvIT or REIT, the units of which are listed on a registered stock exchange in accordance with SEBI rules.
SPV	Indian company in which business trust holds controlling interest or prescribed shareholding



Special economic zone scheme

A special economic zone (SEZ) policy was introduced by the government in 2000 to provide an internationally competitive and conducive environment for exports. The SEZ Act, 2005, along with the associated rules, provides the framework for all important legal and regulatory aspects of development as well as for units operating in SEZs.

SEZs are duty-free enclaves considered to be outside the customs territory of India for the purposes of carrying out their authorised activities.

SEZ developers are entitled to tax holiday in respect of 100% of the profits and gains derived from the business of developing the units for any 10 consecutive years out of 15, beginning from the year when the SEZ is announced by the government. Exemption to SEZ developers from DDT was discontinued with effect from 1 June 2011 and MAT exemption for developers has been discontinued from FY 2011–12. Expenditure undertaken by a developer on account of SEZ development is also exempt from duties of customs, excise and central sales tax.

A unit set up in an approved SEZ enjoys a 100% tax holiday for five years and 50% for the next 10 years (in the last five years, subject to certain additional conditions) out of profits derived from actual exports of goods and services. The tax holiday period commences from the year in which the SEZ unit begins to manufacture or produce or provide services.

Note: Annexure 1 describes the salient features and benefits of the SEZ.

Industrial parks enterprises or undertakings in specified states

Income-tax holidays and exemptions from CENVAT are available for units set up in industrial parks in the north eastern states, subject to certain conditions

Deduction on investments for specified businesses

Tax incentives provided by allowing a 100% deduction on any capital expenditure (other than on land, goodwill and financial instruments) are available to the following types of businesses:

- Setting up and operating a cold chain facility on or after 1 April 2009
- Setting up and operating a warehousing facility for storage of agricultural produce on or after April 1, 2009
- Laying and operating a cross-country natural gas, crude, or petroleum oil pipeline for distribution (including storage facilities being an integral part of such a network) commencing operations on or after April 1, 2007
- Building and operating, anywhere in India, a two-star or above hotel commencing operations on or after April 1, 2010
- Building and operating, anywhere in India, a hospital with at least 100 beds commencing operations on or after April 1, 2010
- Developing and building a housing project under a scheme for slum redevelopment or rehabilitation commencing operations on or after April 1, 2010
- Developing and building a housing project under a notified scheme of affordable housing framed by the central or a state government commencing operations on or after April 1, 2011
- Fertiliser production in a new plant or in a newly installed capacity in an existing plant commencing operations on or after April 1, 2011
- Setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act 1962, on or after April ,2012
- Bee-keeping and production of honey and beeswax on or after April 1, 2012
- Setting up and operating a warehouse facility for storage of sugar on or after April 1, 2012

In the case of certain specified businesses commencing operations on or after April 1, 2012, such as cold chain facilities, warehousing for agricultural produce,

hospitals with at least 100 beds, a notified affordable housing project and production of fertiliser, the deduction is 150% of capital expenditure incurred on or after April 1, 2012.

Tax holiday for other facilities such as food processing units

A 100% tax holiday for the first five years and a deduction of 30% (25% if the assessee is not a company) of profits for the subsequent five years are available to undertakings engaged in the business of processing, preservation and packaging of fruits and vegetables or in the integrated business of handling storage and transportation of food grains, starting operations on or after April 1, 2001.

Furthermore, this is available to additional industries such as processing, preserving and packaging of meat and meat products or poultry, marine and dairy products, that began operations on or before April 1, 2009.

Scientific research and development

If certain conditions are met, a deduction is available on twice the amount of scientific research expenditure incurred in an approved in-house research and development facility by a company engaged in the business of bio-technology or any business of manufacture or production of any article or thing except specified articles. Currently, this weighted deduction is available until FY 2016–17.

Any sum paid to a national laboratory, a university, Indian Institute of Technology (IIT) or an approved scientific research programme also qualifies for a weighted deduction of 200%.

A weighted deduction of 125% is available on any sum paid for scientific research to a domestic company, if such a company fulfils the following conditions:

- Scientific research and development is its main objective
- Approved by the prescribed authority, in the prescribed manner
- Fulfils other conditions as may be prescribed

Particulars	Taxability	Validity period	Eligible units
North- eastern states (including Sikkim)	100% income tax holiday, concessional rate of duty payable on ten years' value addition during manufacture or refund of duty in cash, subject to conditions	Ten years	Units that (a) begin manufacturing any eligible article or thing, (b) undertake substantial expansion, (c) carry on prescribed eligible business, from April 1, 2007 to March 31, 2017. New industrial units and units existing before 1 April which have undertaken substantial expansion by refund of duty paid in cash, subject to increase in investment by 25% or more, or which commence production between April 1, 2007 and March 31, 2017

International assignments in India

There is no distinct tax regime for foreign nationals working in India. Taxation of an individual residing in India depends on his/ her residential status for the relevant tax year, which in turn depends on the number of days he/ she was physically present in the country. In India, a financial year (that is, the tax year) runs from 1 April of any year to 31 March of the succeeding year.

Under the domestic tax law, a person is considered to be a tax resident of India if either of the following conditions is satisfied:

- He/ she is present in India for a period of 182 days or more in the relevant financial year (also referred to as the '182 days rule'),
- He/ she is present in India for 60 days or more during the relevant tax year, and for 365 days or more in the preceding four financial years (also referred to as the '60 days rule').

However, in a situation where a citizen of India leaves the country as a member of the crew of an Indian ship or for the purpose of employment outside India, or in a case where an Indian citizen or a person of Indian origin, living outside India, comes on a visit to the country, only the 182 days rule will be applicable.

In case an individual satisfies neither of the conditions, he/ she will then qualify as a non-resident (NR) for that given financial year.

A resident individual is treated as a resident but not ordinarily resident (RNOR) of India, if he/ she satisfies any one of the following conditions:

- He/ she is an NR in 9 out of the 10 financial years preceding the relevant financial year,
- He/she is physically present in India for 729 days or less during the seven financial years preceding the relevant financial year.

In the case an individual does not satisfy both the conditions listed above, he/ she will then qualify as a resident and ordinarily resident (ROR) for that specific financial year.

In determining the physical presence of an individual in India, it is not essential that his/ her stay in the country needs to be continuous or at the same place. Furthermore, both, the date of arrival and the date of departure are to be considered as days spent in India in order to determine the duration of stay of the

individual in the country. If an individual qualifies as a tax resident of both India as well as his/ her home country, the conditions prescribed under the tie-breaker test of the relevant Double Taxation Avoidance Agreement (DTAA) will have to be referred to in order to determine the tax residential status of the individual.

Scope of taxation

Under the domestic tax laws, the scope of taxation for each category of residential status is as follows:

- **ROR:** Worldwide income of the individual is liable to tax in India for the relevant tax year
- **RNOR:** Income received in India, income accruing or arising from a particular source in India, income derived from a business controlled from India, or income from a profession set up in India, is liable to tax in India
- **NR:** Income received in India, or income accruing or arising from a particular source in India is liable to tax in India

Taxation of employment income

Employment income for services rendered in India is taxable in India, irrespective of where the income is received.

Taxable income includes all kinds of sums, received either in cash or kind, arising from an office of employment. Apart from income sources such as salaries, fees, bonuses and commissions, some of the most common remuneration items are allowances, reimbursement of personal expenses, education payments and perquisites or benefits provided by the employer, either free of cost or at concessional rates. All such payments are to be included, whether paid directly to the employee or paid by the employer on his/ her behalf.

Housing benefits provided by an employer are generally taxed at 15% of the salary or the actual rent paid for the accommodation, whichever is less. Hotel accommodation is taxable at 24% of the salary or the actual amount paid, whichever is less. Cost of meals and laundry expenses are fully taxable. The value of any specified security, or sweat equity shares allotted or transferred directly or indirectly by the employer or the former employer, free of cost or at a concessional rate, and the amount of any contribution to an approved superannuation fund by the employer, to the extent that it exceeds an amount of INR 100,000, are taxable as perquisites in the hands of the employee. Car and driver facilities provided by the employer are also taxable as perquisites at concessional value.

There are many issues relating to the taxation of employment income, which depends on the facts and circumstances of each case, and on the views taken by the tax authorities. Therefore, it is advisable to seek professional advice on the remuneration package as a whole, in order to minimise Indian tax incidence.

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Withholding tax

With respect to employment income, the employer will be required to withhold tax on the earnings from his/ her salary at applicable rates, and hand over this to the government's treasury within seven days from the end of the month during which salary is paid (except for March wherein the timeline is extended up to 30 April). This is applicable even if the employer is not resident in India.

Double taxation agreements

In a situation where an individual is treated as a tax resident of another country, he/ she may then qualify for relief under the Indian tax law read with the double taxation agreement signed between that country and India. Most agreements currently in force lay down various tests in order to determine the actual residential status of the individual. Many agreements contain clauses which exempt a resident of a specific country from tax on employment income incurred within India, if he or she has been residing in the country for less than 183 days within the given tax year, and if other conditions regarding the salary chargeback and the payment of salary by a NR, etc. are also satisfied (short-stay exemptions). However, to avail treaty benefit, individual would be required to obtain the Tax Residency Certificate (TRC) from his/ her home country's tax authorities certifying that he/she is a tax resident of that country. In a situation where the individual comes from a

country with which India does not have a treaty in force, a short stay exemption is available under the domestic tax law, provided the individual's stay in India during that particular tax year, does not exceed 90 days and certain other conditions are met.

Tax rates

Taxes are levied at progressive rates in India. Rates applicable for the financial year 2014-15 are as follows:

Taxable income over (INR)	Not over (INR)	Tax on income in column 1 (INR)	Rate of Tax on excess (%)
0	2,50,000	-	0%
2,50,001	5,00,000		10%
5,00,001	10,00,000	25,000	20%
10,00,001	-	1,25,000	30%

Resident senior citizens aged 60 years or more earning an income up to INR 3,00,000 do not have to pay any income tax. For senior citizens aged 80 years and above, the basic exemption limit is INR 5,00,000.

A tax credit of INR 2,000 is provided to an individual earning an income between INR 2,50,000 and 5,00,000. Furthermore, a surcharge of 10% of tax will be levied where the total income of an individual exceeds INR 10 million. In addition to these conditions, an education cess at the rate of 3% of the tax and surcharge (if applicable) will be levied so as to determine the final tax liability.

Tax registration

An individual needs to apply for and obtain his/ her tax registration number, called a permanent account number (PAN). A PAN is required in order to file the tax returns, and also has to be reported in the tax withholding returns or withholding certificates issued to an individual.

Tax returns filing

At the end of each financial or tax year, a tax return has to be filed with the income tax authorities in the prescribed format. The due date for filing of return is 31 July of the relevant assessment year. However, a belated return can be filed before the expiry of two years from the end of relevant tax year. It is mandatory to file the return electronically, if the total income exceeds INR 5,00,000 or where the individual qualifies as an ROR and possesses foreign assets, or has the signing authority for any of his/ her accounts located outside India. One should also check the wealth tax return filing obligation.

Other matters

Visa

A foreign national coming to India must hold a valid passport and visa. A visa is issued by the Indian consulates or high commission situated in the respective home country, depending upon the purpose and duration of visit. A foreign national is not permitted to take up employment within India, unless he or she holds an employment visa. An employment visa is issued to highly skilled talent or professionals, provided they draw a salary exceeding the prescribed limit. Such a visa is generally issued for a period of one to two years. The visa can be subsequently extended in India itself.

Foreign nationals coming for business meetings or to set up joint ventures (JVs) require a business visa. A business visa cannot be converted into an employment visa within India.

Registration with the foreigners' regional registration officer

A foreign national visiting India who either has a valid employment visa, or intends to stay for more than 180 days, must register himself or herself within 14 days of arrival into the country with the foreigners' regional registration officer (FRRO). On submission of the prescribed documents to the FRRO, a residential permit is issued to the foreign national.

Payment of salaries outside India

The current exchange control regulations permit a foreign national who is an employee of a foreign company, and is on secondment or deputation to the office/ branch/ subsidiary/ joint venture in India, to open, hold and maintain a foreign currency account with a bank outside India, and to receive his or her entire salary from the foreign company for the

services rendered in India by credit to his/her bank account outside India, provided the tax on the foreign national's entire salary has been paid in India. Where the foreign national is coming from a group company, prior approval from the central bank is needed in order for the foreign national to receive salary outside India.

Social security in India

In October 2008, the government made social security norms mandatory for foreign nationals who qualify to be 'international workers'. A foreign national qualifies to be an international worker, if he/ she is coming to India to work for an establishment in India, to which the Indian social security regulations apply.

An international worker coming from a country with which India has a reciprocal social security agreement (SSA) in force is exempted from the Indian social security norms if he/ she meets the following criteria:

- He/ she is contributing to his/ her home country's social security, either as a citizen or resident; and
- He/ she enjoys the status of 'detached worker' for the given period in accordance with the terms specified in the relevant SSA (i.e. he has obtained Certificate of Coverage from his/ her home country social security authorities).

Similarly, an international worker from a country with which India has entered into a bilateral comprehensive economic agreement (CECA) prior to 1 October 2008 is exempted from Indian social security if he/ she meets the following criteria:

- He/ she is contributing to his/ her home country's social security, either as a citizen or resident; and
- The CECA specifically exempts the natural person of the other contracting country from contributing to the social security system in India.

Singapore is the only country with which India has signed a CECA prior to 1 October 2008. India has signed SSAs with 17 countries. However, so far, only the SSAs signed with the following countries, namely Belgium, Germany, Switzerland, Luxembourg, Netherlands, Denmark, Korea, France, Hungary, Finland, Sweden and the Czech Republic have been notified and made operational. Every international worker has to contribute 12% of his/ her salary, consisting mainly of basic wages, dearness allowance, retaining allowance (but excluding components such as bonus, house rent allowance, etc.) to the Provident Fund. The employer is required to make a matching contribution (that is, 12% of the salary) and deposit both

the employer's as well as the employee's contributions with the Indian social security authorities by the 20th day of the following month. Out of the employer's contribution of 12%, an amount equal to 8.33% of salary is allocated to the Pension Fund of the international worker and balance goes to the provident fund. However, no such allocation towards the pension fund is required, where an international worker has joined a covered establishment in India on or after September 1, 2014 and drawing a salary of more than INR 15,000 per month. In such case, the employer's entire contribution (i.e. 12% of salary) will go to the provident fund of the international worker.

An international worker can withdraw the accumulated balance of the provident fund under the following circumstances:

- Retirement from service in the establishment, or after reaching 58 years of age, whichever is later
- Retirement on account of permanent and total incapacity to work due to bodily or mental infirmity, as certified by a prescribed medical officer or a registered practitioner
- In a situation where he or she is suffering from certain categories of diseases, detailed in the terms of the scheme
- On ceasing to be an employee of a covered establishment, where the international worker is from an SSA country

In cases where the international worker is from an SSA country, withdrawal from the provident fund shall be payable in the payee's bank account directly, or through the employer. In all other cases, the amount withdrawn will be credited to international worker's Indian bank account.

The accumulated sum in pension fund is paid as pension to employees upon retirement, or in certain circumstances as specified in pension scheme. International workers are not entitled to pension benefits from the pension fund unless they have rendered eligible service for a period of ten years with the covered establishment in India. However, an option of early withdrawal of pension contributions (i.e. before completing 10 years of service) is available to international workers coming from SSA countries.

Secondment structures need to be duly supported with appropriate robust documentation, and reviewed, keeping in view the following considerations:

- Exchange control regulations
- Corporate tax implications (permanent establishment exposure)
- Withholding tax
- Transfer pricing regulations
- Service tax implications
- Companies Act
- Indian social security regulations

For more detailed analysis and further information, please refer to our publications, 'Assignments in India' and 'Indian social security for cross-border assignments'.

Indirect Taxation in India

India follows a federal structure wherein the authority to impose taxes has been distributed amongst the central government and the state governments. The central government levies taxes / duties such as customs duty, excise duty, service tax and central sales tax, and the state governments levy taxes such as value added tax, entry tax, octroi, etc.

While the present Indian indirect tax regime is beset with a multiplicity of laws, the regime is expected to soon be replaced with a more integrated system in the form of the proposed Goods and Services Tax ('GST').

The ensuing paragraphs provide an overview of the key indirect taxes presently applicable, a brief overview of the proposed GST, and the present status with respect to its implementation.

Customs duty

Customs duty is levied by the central government on goods imported into and exported from India, though the list of goods on which export duty is levied is limited. The rate of customs duty applicable to a product to be imported or exported depends on its classification under the Customs Tariff Act, 1975 (CTA).

The customs tariff of India is aligned up to a six-digit level with the internationally recognised Harmonised Commodity Description and Coding System of tariff nomenclature (HSN) provided by the World Customs Organisation.

Customs duty is levied on the transaction value of the imported or exported goods. While the general principles adopted for the valuation of goods in India are in conformity with the World Trade Organisation (WTO) agreement on customs valuation, the central government has established independent customs valuation rules applicable to the export and import of goods. While normally, the customs duty is payable on the transaction value (based on the price at which the goods are imported), imports from related parties are typically subject to scrutiny by the Special Valuation Branch of the Customs department.

India does not have one uniform element of customs duty, and the duty applicable to any product is composed of a number of components. The types of customs duties applicable are as follows:

- Basic customs duty (BCD) - the basic component of customs duty levied at the effective rate notified under the First Schedule to the CTA and applied to the landed value of the goods (i.e., the CIF value of the goods plus landing charges at 1%)
The peak rate of BCD is currently set at 10% for all goods other than agricultural, and other specified products. However, the government has the power to exempt specific goods, wholly or in part, from the levy of custom duties. In addition, preferential or concessional rates of duty are available under various bilateral and multilateral trade agreements that India has entered into with other countries
- Countervailing duty (CVD) - equivalent to, and is charged in lieu of, the excise duty applicable on like goods manufactured in India. CVD is calculated on the landed value of goods and the applicable BCD. However, the CVD on specific consumer goods intended for retail sale is calculated on the basis of the maximum retail price (MRP) printed on their packs after allowing specified abatements. The general rate of excise duty is currently 12% and consequently, so is the CVD rate
- Education cess (EC) at 2% and secondary and higher education cess (SHEC) at 1% are also levied on the aggregate customs duties
- Additional duty of customs (ADC) at 4% is charged in addition to the above duties on imports, subject to certain exceptions. ADC is calculated on the aggregate of the assessable value of imported goods, the total customs duties (i.e. BCD and CVD) and the applicable EC and SHEC

BCD, EC and SHEC levied on aggregate customs duties are a cost on any import transaction. The duty incidence arising on account of all other components may be set off or refunded, subject to prescribed conditions. Where goods are imported for the purposes of manufacture, the Indian manufacturer may take credit for the CVD and ADC paid at the time of import to set it off against the output excise duty. In the case of service providers, CVD credit is available to set off against the output service tax. The central government has exempted specific consumer goods imported for retail sale in India from the levy of ADC, subject to the fulfilment of certain conditions. Similarly, the government allows a refund for the ADC

paid on specified goods imported for the purpose of trading in India, subject to the fulfilment of the conditions prescribed under the governing notifications and circulars issued in this regard.

CENVAT (excise duty)

Central value added tax (CENVAT), commonly referred to as excise duty, is a tax levied by the central government on the manufacture or production of movable and marketable goods in India.

The rate of excise duty levied on the goods depends on the classification of the goods under the excise tariff, which is primarily based on the HSN classification adopted so as to achieve conformity with the customs tariff. The standard rate of excise duty for non-petroleum products is 12%. In addition, EC at 2% and SHEC at 1% are applicable on aggregate excise duties. Thus, the effective rate of excise duty is 12.36%.

The excise duty on most consumer goods intended for retail sale is chargeable on the basis of the MRP printed on the goods packaging. However, abatements are admissible at rates ranging from 15% to 55% of the MRP for charging excise duty. Goods other than those covered by an MRP-based assessment are generally chargeable to duty on the transaction value at which they are sold to an independent buyer. In addition, the central government has the power to fix tariff values for charging *ad valorem* duties on goods.

The excise duty operates as a pure value added tax (VAT), with the full set-off of input tax credits in computing and discharging the tax liabilities on the output side. The input tax credit comprises excise duty on indigenously sourced inputs and capital goods, the CVD and ADC portion of customs duty on imported material, and service tax on input services, with the exception of certain exclusions that have been provided under CENVAT credit rules.

There are different product-, industry- and geographical area-specific exemptions available under CENVAT, which present excellent business opportunities to manufacturers in India.

Service tax

Service tax was first introduced in India in 1994 with a relatively limited number of services under its ambit. Since then, the list of services has expanded year on year. In 2012, keeping in with the large number of different service categories

and the resulting classification issues, a new concept of service taxation based on a negative list of services was introduced. In this new system of taxation, all services are taxable but for the services mentioned in the negative list.

Generally, it is the service provider who is liable to pay the service tax. However, for some specified services, such as transport of goods by road, sponsorship, legal services, import of services, etc., the obligation to pay service tax rests with the service receiver instead. In certain cases, this obligation has been divided between the receiver and the provider in a specified proportion.

The existing rate of service tax is 12%. In addition, EC of 2% and SHEC of 1% of the service tax are levied on taxable services. Thus, the effective rate of service tax is 12.36%.

There is a simple online procedure prescribed for the service provider and receiver to register under service tax. Service providers or receivers rendering services from multiple locations within India have been given an option to take either a centralised registration for all locations, or to opt for separate registration for different locations. Similar to excise duty, service tax is also a pure value added tax. Since service tax and excise duty are federal levies, cross-input tax credit has also been allowed. The scheme of input tax credit under service tax has been integrated under CENVAT credit rules and the benefits available to manufacturers have also been extended to the service provider.

The valuation methodology adopted under service tax is based on the gross value charged by the service provider. In certain circumstances, the value is derived as per specified valuation rules.

Service tax is a consumption-based tax. The peculiar nature of services makes it difficult sometimes to determine the origin and place of consumption of services, or the time of completion and rendition of services. This aspect of service taxation in India has progressed tremendously in recent times. The introduction of Point of Taxation Rules, 2011, Place of Provision of Services Rules, 2012 and taxable or non-taxable territory under the negative list based service taxation regime has simplified the process of determination of time and place of rendition and completion of service.

In addition to the negative list of services, there are certain services such as education, and infrastructure projects like the development of roads and bridges,

healthcare, sponsorship of sports events, etc., which are specifically exempted from the levy of service tax. There is an abatement scheme for the valuation of certain specific services such as transportation, financial leasing, renting, etc., and the rate of exemption varies from 10 to 70% of the taxable value. The export of services is completely tax-neutral and benefits such as the refund of input tax credits and rebate of duty payments are also available.

Sales tax

The sale of movable goods in India is chargeable to tax at the federal or state level. The Indian regulatory framework has granted power to state legislatures to levy tax on goods sold within that state. On the other hand, all goods sold in the course of inter-state trade are subject to the federal sales tax, i.e. central sales tax (CST).

CST is levied at the rate applicable on such goods under the VAT law of the originating state. Where goods are bought and sold by registered dealers for trading or for use as inputs in the manufacture of other goods or specified activities (such as mining or telecommunication networks), the rate of CST would be 2%, provided an appropriate declaration form (Form C in this case) is issued by the purchasing dealer to the selling dealer.

Inter-state procurement on which CST is charged in the originating state is not eligible for input tax credits in the destination state.

Value Added Tax

State-level sales tax was replaced by VAT with effect from 1 April, 2005 in most Indian states. At present, all Indian states have transitioned to the VAT regime.

Under this regime, the VAT paid on goods purchased within the state is eligible for VAT credit. The input VAT credit can be utilised against the VAT or CST payable on the sale of goods. This ensures that the cascading effect of taxes is avoided and that only the value addition is taxed.

Currently, there is no VAT on goods imported into India. Exports are zero rated. This means that while exports are not charged to VAT, the purchaser of inputs used in the manufacture of export goods or goods purchased for exports can claim a refund of the VAT charged on the goods.

In deference to the importance of each commodity with respect to the trade of goods in the state, varying tariff rates are assigned to different commodities. General tariff rates prevalent in the state VAT laws could vary from 1% to 20%.

Apart from this, all those goods which are not covered under any of the tariff rates would be chargeable to the residual rate, which may vary from 12.5 to 15.5%.

Turnover thresholds have been prescribed so as to keep small traders out of the ambit of VAT. Small traders can also opt to pay tax under composition schemes at a lower rate levied in lieu of VAT.

Octroi duty or entry tax

Entry tax is on entry of specified goods into the state from outside the state for use, consumption or sale therein. Entry tax continues to exist under the VAT regime, though in certain states it has been made VAT-able and can be set off against the output VAT liability in the state.

Entry tax is levied on purchase value, which is defined as the amount of the valuable consideration paid or payable by a person for the purchase of any goods. The value of the specified goods can be ascertained from the original invoice for their purchase.

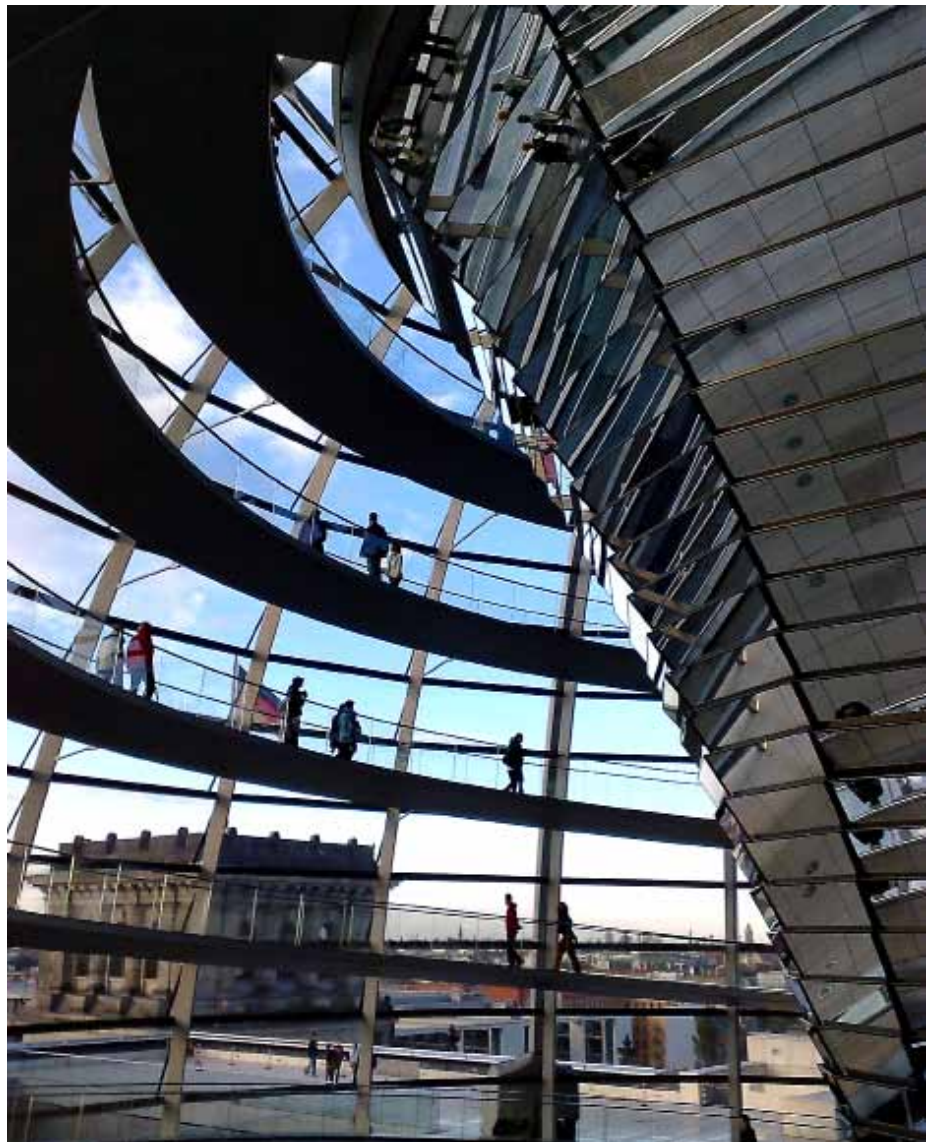
Octroi is a municipal tax levied at the time of the entry of specified goods into the limits of the municipal corporation. Thus, octroi can be levied if there is movement of goods from one city to another in the same state, in the event that the cities fall under the jurisdiction of two different municipal corporations.

Goods and services tax (GST)

In 2006, the central government took a major step towards the transition to a national integrated GST. Implementation of the GST will be a historic reform in India as it will subsume CVD, excise duties, service tax, CST, state VAT and some other state levies.

At present, a dual-rate GST model is envisaged, whereby the tax rate will be converged to one standardised rate of 16% on goods and services within three years of implementation.

Under the proposed dual-rate GST model, a central GST and a state GST will be levied on the taxable value of a transaction of supply of goods and services. Both the centre and the state will legislate, levy and administer the central GST and the state GST, respectively.



Once fully implemented, GST will create a single, unified Indian market and will diminish the multiple layers of indirect taxation that prevail in India at present. GST is also seen as a reform in administration of indirect taxation and will definitely be favourable for trade.

Status of introduction of GST in India

While, in the years gone by, several promises were made on the road to GST, there was no significant progress on the issues related to CST compensation for states, addressing the States concerns on their loss of autonomy, or even the passing of the constitution amendment bill, which are some of the critical steps towards the introduction of GST.

However, in his budget speech for FY 2014-2015, the Hon. Finance Minister of the newly formed government (with a clear majority) brought to light his discussions with various state governments and assured that the issues between the state and central government would be resolved.

Furthermore, the focus on the implementation of GST has gone up significantly, which is evidenced by a tangible outcome from a recent meeting of the empowered committee of State Finance Ministers, where the threshold for the levy of tax was decided. This removes one key stumbling block in the finalisation of the GST structure.

Thus, the introduction of GST in India appears imminent, and one will need to closely watch this space for developments over the next few months.

Stamp duty

Stamp duty is levied at various rates on documents such as bills of exchange, promissory notes, insurance policies, contracts effecting transfer of shares, debentures and conveyances for transfer of immovable property.

Research and development cess

A research and development cess of 5% is levied on all payments made for the import of technology under foreign collaboration. The term 'technology' includes the import of designs, drawings, publications and services of technical personnel.

Mergers & Acquisitions (M&A)

India is experiencing a reasonably good volume of deals and greenfield investments across sectors. While the increase in the number of deals may not have been so encouraging during FY13 and the first half of FY14, the quality and size of deals is experiencing a significant improvement. With the new government beginning its term of five years with economic growth as one of the top items on its agenda, the quality and quantity of deals may see an increasing growth rate. We have briefly explained the Indian tax and regulatory framework impact on deals and major aspects of corporate restructurings.

Part I: Indian M&A framework

The Indian regulatory framework broadly facilitates acquisitions or hive-offs through multiple legal modes. Each mode is different from the other on tax outgo parameters as well as the regulatory ease of implementing the deal. The following are the common modes of executing transactions:

- Share purchase
- Business purchase through the asset purchase (itemised sale) or business undertaking as a going concern (slump sale)
- Amalgamations and de-mergers
- Transaction through share transfer
- Implications for the seller

The transfer of shares in Indian companies is taxable as capital gains in India, subject to benefits under the applicable DTAA, if any. Furthermore, taxability is dependent on whether the subject shares are listed or unlisted, as explained below:

Listed shares

- Long-term capital gains (LTCG), i.e. gains resulting from shares held for more than 12 months (in case of listed securities), are exempt from tax if sale is on a recognised stock exchange in India. In case the transaction is carried out off the stock exchange, gains are taxed at 10%* (without indexation benefits) or 20%* (with indexation benefits), whichever is beneficial
- Short-term capital gains (STCG) are taxed at 15%*, if sale is on a recognised stock exchange in India. In case the transaction is carried out off the stock exchange, it is taxable in a similar manner as unlisted shares

*Plus surcharges

Unlisted shares

- LTCG is taxed at 10%* (without indexation benefits) for non-residents and 20%* for residents. The Union Budget 2014 has amended the period of holding of unlisted shares to 36 months from the existing 12 months, for a share to qualify as a long term capital asset. This provision is effective from 1 April 2014.
- STCG is taxed at 40%* for non-resident companies and 30%* for resident companies.

Indirect Transfer of shares

The transfer of underlying assets in India (including shares of an Indian company) by virtue of a transfer of shares from a company outside India is taxable, if the shares of the foreign company derives its value substantially from assets in India or the shares of an Indian company. This provision may impose an Indian tax liability on global deals with underlying 'substantial' Indian assets. However, the term, 'substantial' is not defined in the law and is open to subjective assessment by tax authorities.

Implications for the buyer

- The acquisition of shares of a listed company requires compliance with the Takeover Code. An open offer is required to be made for the acquisition of 25% or more of voting power in a listed company or for acquisition of control in an Indian listed company
- The document evidencing a transfer of shares is subject to stamp duty at 0.25% of the value of shares transferred. However, no stamp duty may be payable if such shares are held in electronic form
- Funding costs in the form of interest burdens on a loan applied for the acquisition of shares may not be tax-deductible, as the corresponding dividend income will be exempt from tax in the hands of shareholders
- In case a corporate buyer receives shares of a closely-held company at less than the tax fair market value (FMV) determined according to the prescribed methodology, the difference between the FMV and the sale consideration of such shares is taxable in the hands of the buyer at the applicable corporate tax rate

Withholding tax

- The buyer (including non-residents) is required to withhold the applicable taxes resulting from the capital gains in the hands of the non-resident seller. Practically, this requires the buyer to obtain Indian tax registration numbers

- Parties can seek to bring clarity on the withholding aspects by obtaining a prior clearance from the Indian tax authorities

Preservation and carry-forward of tax losses

- There is no impact on carrying forward tax losses on a transfer of shares of a listed company
- The transfer of shares of non-listed companies beyond 49% shall disentitle the company from carrying forward previous years' business losses
- There is no impact of transfer of shares on carrying forward unabsorbed depreciation allowance, irrespective of the Indian company's listing status

Share Valuation

The RBI regulates the pricing of each share transaction between resident and non-resident shareholders of an Indian company. The RBI has recently standardised the valuation methodology, allowing the parties to value the shares in accordance with internationally accepted methodologies.

Business purchase or asset purchase

In India, businesses can be acquired through asset purchase or business purchase. In the asset purchase model, the buyer may cherry-pick the assets it wants, and leave the liabilities and some assets in the seller entity itself. In the business purchase model, the buyer acquires an entire 'business undertaking', inclusive of all assets and liabilities, for a lump sum consideration on a going concern basis.

Asset purchase model

Implications for the seller

- Computation of gains is done with respect to each asset and this is taxable as short- or long-term capital gains, depending on the period of holding the assets. The sale of depreciable assets always results in STCGs under the applicable provisions
- Capital gains are determined by reducing the acquisition cost of assets from the sale consideration. In the case of LTCGs, the acquisition cost is indexed based on the cost inflation index, which is specifically notified by the tax authorities for each financial year
- The seller is liable to charge VAT or sales tax on the transfer of movable property at specified rates
- The cost of acquisition of self-generated intangible assets such as goodwill will be considered as nil for the purpose of calculating capital gains





- In case the asset purchase model involves the transfer of immovable property, the sale consideration is benchmarked at the minimum value determined by stamp taxes authorities, for the limited purpose of calculating capital gains tax

Implications for the buyer

- The buyer is liable to pay stamp duty on the transfer of immovable property at the rate applicable in the state in which the property is situated
- The buyer is also liable for stamp duty on movable property at the applicable rate. However, this is generally minimised through novation, or physical delivery, or both
- The buyer is eligible to claim depreciation on the purchase consideration of each asset

Business purchase model

Implications for the seller

- Capital gains are determined by reducing the net worth of the business undertaking from the sales consideration, which shall be determined in a prescribed manner
- Capital gains are taxable as LTCGs in case the business undertaking is held for more than three years. No indexation benefit is available in the case of a slump sale of undertaking.
- Taxable at 20%* if long term, or taxable at 30%* if short term
- Business transfers (also known as slump sales in India) are typically not subject to VAT or sales tax

*Plus surcharges

Implications for the buyer

In case of a slump sale, a lump sum purchase consideration is allocated by the buyer to various assets based on a valuation report, and hence the purchase of assets such as buildings, plants and specified intangible assets for use in business is entitled to an increased depreciation allowance.

The buyer is liable to pay stamp duty on the transfer of business undertakings at the rate applicable in the concerned state

Funding costs

Interest on loans taken for the acquisition of assets or business undertakings through slump sales is generally tax-deductible, subject to certain prescribed rules.

Amalgamations and de-mergers

In some situations, the acquired entity can be integrated into the buyer group through an amalgamation or a de-merger. While some variants to the process of amalgamation or de-merger exist, it involves a court process. An amalgamation or de-merger can be tax neutral for the parties involved, subject to achieving certain prescribed conditions.

Amalgamation (or merger)

An amalgamation refers to the merger of one or more companies into another through a court/ company law tribunal process. Conditions to be satisfied to claim tax exemption are as follows:

- All the assets and liabilities of the transferor entity should be transferred to the transferee entity
- Shareholders holding at least 75% of shares (in value) in the transferor company are to become shareholders in the transferee company

De-mergers

A de-merger refers to the transfer or division of an undertaking or a part thereof, from one company into another through a court/ company law tribunal process. Conditions to be satisfied to claim tax exemption are as follows:

- All the assets and liabilities of the relevant undertaking of the transferor company should be transferred to the resulting company
- The transfer of such a business undertaking should be on a going concern basis
- Consideration for a de-merger settled through the issue of shares to the shareholders of the de-merged company should be done on a proportionate basis
- Shareholders holding at least 75% of shares (in value) in a de-merged company are to become shareholders in the resulting company

Carrying forward of accumulated loss and unabsorbed depreciation

Amalgamation

- Accumulated loss or unabsorbed depreciation of an amalgamating company running an industrial

undertaking (defined under the law) are to be carried forward by the amalgamated company

- Specified conditions are laid down like continuance of business, holding of assets, etc.

De-merger

- Accumulated loss or unabsorbed depreciation directly related to the undertaking being de-merged is transferable
- Proportionate common losses are also transferable

Other matters

- Amalgamations and de-mergers normally attract stamp duty at varying rates. Such rates are derived from the laws of the state involved
- Stock exchange, high court and other regulatory clearances are required for amalgamations or de-mergers. A more robust process has been recently notified for obtaining approval from the stock exchanges and the SEBI, which can be time-consuming, and that can pose problems, especially if timelines agreed between the parties are tight

Part II: Inbound investments

- At the first stage, any investment in India is governed by the Indian Exchange Control Regulations, which are administered by the RBI. The RBI has issued a Foreign Direct Investment Policy which requires the prior approval from the Ministry of Finance in some cases, and also permits the investments in India without any approval, subject to certain sectoral and general conditions. Most investments in India (except the restricted sectors) are permitted without any prior approval from RBI subject to satisfying certain conditions
- On a broad basis, Indian policymakers have been encouraging greenfield as well as brownfield investments in India. A few sectors like telecom, single or multi-brand retail, defence, aerospace, insurance and banking may require approval from the respective ministries
- On the tax front, there are certain benefits given to new investment(s) in India. For instance, the purchase of additional plant and machinery has been given an increased depreciation allowance. Also, establishing units in special economic zones entails tax holidays for 15 financial years beginning with the year in which the operations commence
- From a cost-feasible structure perspective, investors may need to evaluate the options for choosing the

right legal entity (like a company or a limited liability partnership). Investors may also look at a cost effective capital structure of the Indian entity, keeping in mind a long term perspective of the investment

Part III: Profit and capital repatriation

Apart from payment towards various services provided by the parent company, funds can also be repatriated through the distribution of dividends, the repurchase (buy-back) of shares, or capital reduction by the Indian company.

Dividend

- Dividend income received from an Indian company is exempt in the hands of the shareholders (resident or non-resident). However, the dividend is taxed at source in the hands of Indian company declaring it at the rate of 15%*
- However, any foreign sourced dividend is taxable in the hands of the Indian shareholder at an effective rate of 15%* on a gross basis, subject to a minimum participation of 26% in the equity share capital of the foreign company
- To simplify the taxability of dividend income in case of multi-tier structures, suitable provisions have been made to remove the cascading effect and the dividend is effectively taxed at one source only. However, the cascading effect is only removed subject to compliance with prescribed conditions

Share buy-back

- A specific tax regime is in place for taxing share buy-backs by Indian companies effective from 1 June 2013. Under the new regime, the share buy-back transaction is exempt in the hands of the shareholder and, instead, is taxable in the hands of the Indian company buying back its own shares
- In the hands of the Indian company buying back its own shares, the difference between the share buyback price and the amount received by the company for the corresponding shares, is taxable at the rate of 20%*
- Share buy-back is further governed by the provisions of the Companies Act, 2013 (recently introduced, replacing in phases the old Companies Act, 1956). An Indian company can undertake a share buy-back of up to 25% of its capital, and that too, only once a year

Reduction of share capital

- Requires an approval of the jurisdictional High Court under the provisions of the Companies Act, 1956/ 2013.
- The amount of distribution on capital reduction is deemed to be a dividend to the extent of the accumulated profits of the company. The balance distribution, over and above the accumulated profits, is taxable as capital gains in the hands of the shareholders.
- Residuary provisions like withholding taxes, and categorisation of capital gains into long term and short term, apply here equally

Part IV: Outbound investments

Regulation of overseas direct investment

- Outbound investment from India to invest in a joint venture or a wholly owned subsidiary abroad is allowed under the automatic route (except for prohibited or controlled sectors like agriculture or financial services) for *bona fide* business purposes, subject to a maximum investment of up to 400% of the net worth of the Indian investor
- The existing regulations do not provide for outbound investments in partnership firms or in any other form of entity other than a company, without the prior approval of the RBI

Tax on overseas investments

- Considering the tax regime of target countries coupled with nascent foreign tax credit regulations, it becomes imperative that investments are structured to optimise overseas tax efficiencies
- Essential tax considerations for the Indian outbound investor are offshore capital gains optimisation, foreign tax reduction and optimisation of Indian tax credits on the repatriation of funds to India
- Dividends received from overseas companies (in which an Indian company holds 26% or more of the equity share capital) are taxable at 15%* in hands of the Indian company on a gross basis
- Currently, India has no controlled foreign corporation (CFC) rules and there is no Indian tax on foreign profits that remain with offshore subsidiaries

Outbound structuring

It is important to have a robust outbound structure which is flexible, optimises global tax costs, and has the ability to bring in new investors and repatriate or deploy funds in a tax efficient and regulation-compliant manner.

*Plus surcharges

Transfer Pricing in India

A separate code on transfer pricing (TP) under sections 92 to 92F of the Indian Income Tax Act, 1961 (the Act) covers intra-group transactions, and is applicable since 1 April 2001. The basic intent of these TP provisions is to avoid the shifting of profits from India to offshore jurisdictions. Since the introduction of the code, TP has become an important international tax issue affecting multinational enterprises operating in India. Broadly based on the Organisation for Economic Cooperation and Development (OECD) Guidelines, these regulations describe the various TP methods and impose extensive annual TP documentation requirements.

Transfer pricing legislation

The Indian TP code provides that the price of any international transaction between associated enterprises (AEs) is to be computed with regard to the arm's length principle. Effective from FY 2012-13, the TP provisions have been extended to specified domestic transactions as well.

However, the TP legislation is not applicable when the computation of the arm's length price (ALP) has the effect of reducing the income chargeable to tax or increasing the losses in India. This is aligned with the legislative intent to protect the Indian tax base.

Transactions covered

The term 'international transaction' has been defined to indicate a transaction between two or more AEs involving the sale, purchase or lease of tangible or intangible property, provision of services, cost-sharing arrangements, various modes of capital (debt) financing, guarantees, business re-structuring or re-organisation transactions, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises. The AEs can be either two non-residents or a resident and a non-resident. A permanent establishment (PE) of a foreign enterprise also qualifies as an AE. Accordingly, transactions between a foreign enterprise and its Indian PE are within the ambit of the code.

Associated enterprises

The relationship of AEs covers direct and indirect participation in the management, control or capital of an enterprise by another. It also covers situations in which the same person (directly or indirectly) participates in the management, control or capital of both the enterprises.

Based on the following parameters, two enterprises would be deemed as AEs:

- A direct or indirect holding of 26% or more voting power in an enterprise by the other enterprise, or in both the enterprises by the same person
- Advancing of a loan by an enterprise that constitutes 51% or more of the total book value of the assets of the borrowing enterprise
- Guarantee by an enterprise for 10% or more of total borrowings of the other enterprise
- Appointment by an enterprise of more than 50% of the board of directors, or one or more executive directors of the other enterprise, or the appointment of specified directorships of both enterprises by the same person
- Dependence of an enterprise (in carrying on its business) on the intellectual property licensed to it by the other enterprise
- Purchase of 90% or more of raw material required by an enterprise from the other enterprise, or from any person specified by such other enterprise, at prices and conditions influenced by the latter
- Sale of goods or articles manufactured by an enterprise to another enterprise, or to a person specified by such other enterprise at prices and conditions influenced by the latter
- Existence of any prescribed relationship of mutual interest (none prescribed to date)

Furthermore, a transaction between an enterprise and a third party may be deemed to be between AEs if there exists a prior agreement in relation to such transaction between the third party and the AE, or if the terms of such transactions are determined in substance between the third party and the AE. From FY 2014-15, the third party does not necessarily need to be a non-resident.

Specified domestic transactions

From FY 2012-13, the TP provisions have extended their scope to 'specified domestic transactions' (SDT). The following domestic transactions have been specified for this purpose:

- Payment to related parties
- Transactions of tax holiday undertakings with other undertakings of the taxpayer

This provision is applicable only if the aggregate value of such transaction exceeds INR 50 million in the relevant tax year.

Arm's length principle and pricing methodologies

Most Appropriate Method

The following methods have been prescribed for the determination of the ALP:

- Comparable uncontrolled price (CUP) method
- Resale price method (RPM)
- Cost plus method (CPM)
- Profit split method (PSM)
- Transactional net margin method (TNMM)
- Such other methods as may be prescribed

No particular method has been accorded a preference over the other. The most appropriate method for a particular transaction will need to be determined according to the nature and class of that transaction or associated persons, and dependent on functions performed by such persons, as well as other relevant factors.

The legislation requires a taxpayer to determine an ALP for international transactions.

Multiple Year Data

From FY 2014-15, an announcement has been made that the rules will be amended to allow more liberal use of multiple year data; presently, the rules allow data for the relevant financial year and permit use of three years' data only where the tax-payer is able to establish that such data reveals facts which could have an influence on the determination of transfer prices. Detailed rules on the circumstances in which multiple year data will be allowed, and the number of years for which the data will be allowed, are expected shortly.

Range Concept

From FY 2014-15, the legislation has been amended to permit the use of ranges instead of the arithmetic mean concept, though detailed rules on the definition of the range, minimum threshold, the number of comparables required to consider the range, and the manner of computing the adjustment where the tested party falls outside the specified range, are still to be notified. Given that the legislation has evolved over the years, the position across the various years is summarised below:

Time frame	Flexibility allowed
FY 2001-02 to FY 2008-09	5% of the Arithmetic Mean The law as it stood then resulted in a tax controversy on availability of the benefit of 5% as a standard deduction in computing the ALP. Therefore, the Finance Act, 2012 has clarified that the law had never intended to allow any standard deduction for computing the ALP.
FY 2009-10 to FY 2011-12	5% of the transfer price.
FY 2012-13	5% tolerance band was removed and the variance percentage was capped at 1% of the transfer price for wholesale traders, and 3% of the transfer price in all other cases.
FY 2013-14	Yet to be notified – FY 2012-13 limits may be retained.
FY 2014-15 and for subsequent years unless notified otherwise	Legislation has introduced the concept of a 'range'. It seems that the current arithmetic mean concept and tolerance band may continue where the number of comparables is inadequate to apply a 'range'.

Safe harbour provisions

The Central Board of Direct Taxes (CBDT) notified the Safe Harbour (SH) Rules on September 18, 2013. These rules specify the circumstances in which the tax authorities will accept the ALP as declared by a taxpayer for up to a period of five years without detailed analysis, though nominal compliance is still required. The basic intention behind the introduction of these rules is to reduce the scope for tax litigation in determining the transfer prices of international transactions.

The table below provides a snapshot of the SH Rules:

Eligible International Transaction	Proposed SH
Software development services Information technology enabled services	If annual transaction value is: <ul style="list-style-type: none"> • up to INR 5 billion, operating margin of 20% or more, • more than INR 5 billion, operating margin of 22% or more
Knowledge process outsourcing services	Operating margin of 25% or more
Advancing of intra-group loans by Indian companies to their wholly owned subsidiaries	The interest rate is equal to or greater than the base rate of the State Bank of India as on 30th June of the relevant previous year <i>plus</i> : <ul style="list-style-type: none"> • 150 basis points (where the loan does not exceed INR 500 million) • 300 basis points (where the loan exceeds INR 500 million)
Provision of corporate guarantees by Indian companies to their wholly owned subsidiaries	The commission or fee is: <ul style="list-style-type: none"> • 2% p.a. or more of the guaranteed amount, in the case the amount guaranteed is up to INR 1 billion, and • 1.75% or more p.a. of the guaranteed amount, if the amount guaranteed exceeds INR 1 billion, provided the credit rating of the AE is of adequate to highest safety
Contract research and development services with insignificant risks	Software development - operating margin of 30% or more Generic pharmaceutical drugs - operating margin of 29% or more
Manufacture and export of auto-components	Core auto-components - operating margin of 12% or more Non-core auto-components - operating margin of 8.5% or more

However, it is pertinent to note that no comparability adjustments are permitted and the benefit of a tolerance band (+/- 3 %) is also not available to taxpayers opting for SH provisions. Also, a taxpayer opting for SH rules would not be entitled to invoke Mutual Agreement Procedure (MAP) proceedings. Furthermore, SH rules are not available for transactions with low tax jurisdictions.

Advance pricing agreements

Recently, provisions relating to advance pricing agreements (APA) have been introduced, effective from 1 July 2012.

An APA is an agreement between the taxpayer and the tax authorities for the upfront determination of the ALP and pricing methodology (which is acceptable to the revenue) of a related party transaction. Essentially, the taxpayers seek an APA to determine the ALP of a transaction upfront, thereby ascertaining their tax liability (from the transaction) and consequently mitigating tax litigation at a later stage.

The CBDT, with the approval of the central government, has been empowered to enter into an APA with any taxpayer undertaking international transactions, to determine the ALP or specify the manner in which ALP shall be determined. The APA so entered into shall be binding on the taxpayer and the tax authorities with respect to the transaction covered under the agreement. Such an agreement shall be valid for a period not exceeding five years. The CBDT notified the 'Advance

Pricing Agreement Scheme' (Rules 10F to 10T of Income Tax Rules, 1962) on 30 August 2012, covering the detailed rules and procedures (including necessary forms) for application and administration of the APAs. Around 400 APA applications have been filed in the first two cycles of filing, with five agreements reached between taxpayers and the CBDT in the first cycle.

With effect from October 1, 2014, the legislation has introduced the provisions of roll-back of APAs for four years prior to the APA period (e.g. APAs applicable from FY 2013-2014 onwards – being the year of introduction of APAs – may now be extended back to FY 2009-2010). The detailed rules regarding roll-back are yet to be announced.

Documentation and report requirements

Taxpayers are annually required to maintain a set of extensive information and documents related to international transactions undertaken with AEs. As mentioned above, the TP provisions are applicable to specified domestic transactions as well. Therefore, the taxpayer is also required to maintain the prescribed documentation in respect of such transaction (effective from FY 2012-13).

The code prescribes detailed information and documentation that the taxpayer has to maintain for demonstrating

that the price complies with the arm's length principle. All such information or documents should be contemporaneous and in place by the due date for filing the return of income (i.e. 30 November following the close of the relevant tax year). The prescribed documents must be maintained for a period of eight years from the end of the relevant tax year, and should be updated annually on an ongoing basis.

Taxpayers having aggregate value of international transactions below 10 million INR are exempted from maintaining the prescribed documentation. However, even in these cases, it is imperative that documentation is adequate to substantiate the ALP of international transactions.

The documentation requirements are also applicable to foreign companies having income taxable in India.



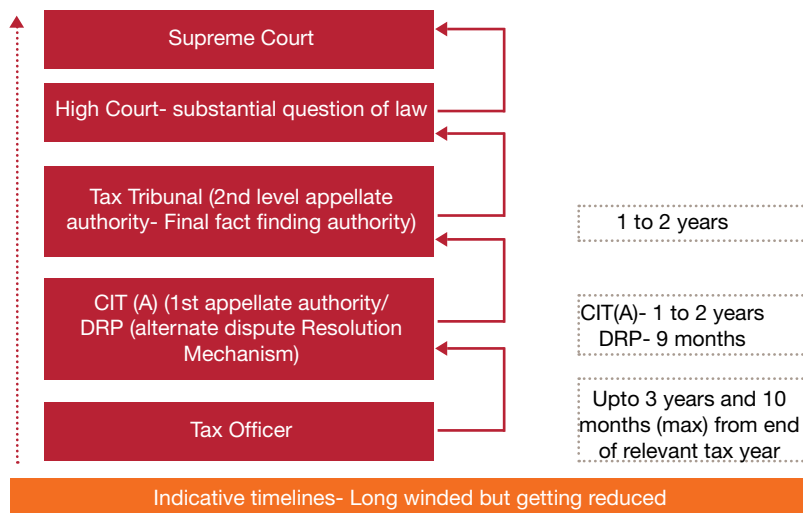
Accountant's report

It is mandatory for all taxpayers to obtain an independent accountant's report with respect to all international transactions between AEs. The report has to be submitted by the due date of the tax return filing (i.e. on or before 30 November for corporate entities having international transactions). Effective from FY 2012-13, SDT are also required to be reported in the accountant's report (under Part C of the recently modified Form 3CEB format) along with the international transactions entered into with the AEs. The accountant's report from FY 2012-13 and onwards is required to be filed electronically. This requires the accountant to give an opinion on whether the taxpayer has properly maintained the prescribed documents and information. Additionally, the accountant is required to certify the 'true and correct' nature of an extensive list of prescribed particulars in Form 3 CEB.

Burden of proof

The burden of proving the arm's length nature of a transaction primarily lies with the taxpayer. During audit proceedings, if the tax authorities, on the basis of material, information or documents in their possession, are of the opinion that the ALP was not applied to the transaction, or that the taxpayer did not maintain or produce adequate and correct documents, information or data, the tax officer may re-adjust or re-compute the price used in the transaction after giving the taxpayer an opportunity of being heard.

Assessment and litigation process



Penalties

The following penalties have been prescribed for default in compliance with the provisions of the TP code:

Default	Nature of Penalty
Failure to maintain documents; or Failure to report a transaction in the accountant's report; or Maintaining or submitting incorrect information or documents	2% of the value of transaction
Failure to submit documents	2% of the value of transaction
Failure to submit Form 3CEB by the due date	INR 100,000
In the case of a TP adjustment, in the absence of good faith and due diligence by the taxpayer in applying the provisions and maintaining adequate documentation	100-300% of tax on the adjusted amount

Annexure 1

Special Economic Zones (SEZs) in India

“The objectives of SEZs include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, quick approval mechanisms, and a package of incentives to attract foreign and domestic investments for promoting exports.”

Ministry of Commerce and Industry, Government of India

An SEZ is a specifically delineated, duty-free area notified by the Ministry of Commerce and Industry under the Special Economic Zones Act, 2005 (the SEZ Act). SEZs are considered to be outside the customs territory of India for the purposes of carrying out authorised activities. An SEZ is deemed to be a port, inland container depot (ICD), land station or land customs station under the provisions of the Customs Act, 1962.

The SEZ Act and the SEZ Rules, 2006 (the SEZ Rules), which came into force with effect from 10 February 2006, govern the development of SEZs. The SEZ Act provides the umbrella legal framework for all important legal and regulatory aspects of SEZ development, as well as for units operating in these SEZs. An important feature of the SEZ Act is that it overrides certain other laws.

The scope of the SEZ Act includes the following:

- Establishment of SEZs and units
- The fiscal regime for developers and units
- Requirements, obligations and entitlements
- A single-window clearance mechanism
- Granting of licences to industrial undertakings for establishment in an SEZ
- Establishment of administrative authority for SEZs set up by the Government of India
- Special courts and a single enforcement agency to ensure speedy trials

According to the Ministry of Commerce and Industry, SEZs can be set up by private developers, central or state Governments, or jointly by any two or more of these, on contiguous, vacant land.

Amendments to SEZ Rules, 2006

The Department of Commerce amended the SEZ Rules on 18 April 2013, and announced a series of measures in the annual supplement (2013–14) to the Foreign Trade Policy 2009–14. Key changes proposed include the following:

- a reduction in the minimum land area requirements for multi-product and sector-specific SEZs
- doing away with minimum area requirements for IT/IT enabled services (ITeS) SEZs
- a graded scale for minimum land area criteria
- sector broad-banding
- issues relating to vacancy of land and the exit policy for SEZ units

Under the amended SEZ Rules, multi-product SEZs can be set up with a minimum land area requirement of 500 hectares (as compared to the previous 1,000 hectares) and a sector-specific SEZ can be set up with a minimum land area requirement of 50 hectares (instead of the previous 100 hectares).

For IT /ITeS SEZs, the minimum area requirement of 10 hectares has been done away with. However, IT/ ITeS SEZs must comply with a minimum built-up area requirement of 0.1 million square metres in Mumbai, Delhi and the National Capital Region (NCR), Chennai, Hyderabad, Bangalore, Pune and Kolkata, categorised as Category A. Other cities are categorised as either Category A or Category B. The norms applicable for these categories of city are 50,000 square metres and 25,000 square metres, respectively.

Fiscal benefits to the developer or co-developer

Income tax incentives

- 100% tax deduction for 10 years out of 15 years, beginning with the year in which the SEZ is notified by the Government

However, exemption from Dividend Distribution Tax (DDT) has been discontinued with effect from 1 June 2011 and exemption from Minimum Alternate Tax (MAT) has been discontinued from FY 2011–12.

Indirect tax incentives

- Exemption from customs duty on import of capital goods and raw materials into the SEZ for authorised operations
- Exemption from excise duty on local procurement of capital goods and raw materials
- Exemption from central sales tax (CST) on inter-state purchases, subject to submission of statutory declaration in Form I
- Exemption from payment of service tax on input services wholly consumed in the SEZ unit for authorised operations

In addition, goods sold from a domestic tariff area (DTA) units to an SEZ unit will attain the status of physical exports. In the light of this, the sale of goods to an SEZ unit is regarded as an export and the DTA unit is eligible for export benefits, as follows:

- Exemption from additional duty of customs (ADC) in lieu of sales tax or value added tax (VAT) on goods supplied to an SEZ unit
- Exemption from VAT under VAT legislation
- Exemption from payment of stamp duty under state government policy

Who should set up an SEZ unit?

Export-oriented entrepreneurs, manufacturers and service providers (including IT and ITeS providers, business process outsourcers (BPOs), contract manufacturers, etc.) have huge growth potential in Indian SEZs. Electronic hardware and software manufacturers and telecom equipment manufacturers/ suppliers can also set up units in SEZs for supply to the domestic market.

Foreign direct investment policy

100% foreign direct investment (FDI) is permitted under the automatic route for SEZ development. SEZ units can be established post obtaining approval from the jurisdictional Development Commissioner/ Unit Approval Committee. No separate approval from the Foreign Investment Promotion Board (FIPB) is required.

No minimum export obligation

- There is no obligation on units to export goods or services from an SEZ unit. However, SEZ units have to be positive net foreign exchange earners at the end of five years (calculated cumulatively).
- There is no limit on DTA sales provided that full import duty is paid. The supply of specified IT hardware, software and telecom equipment to domestic markets, as well as the supply of goods and services to other SEZs, Export-Oriented Units (EOUs) and Software Technology Parks of India (STPI) units, are counted towards export earnings and the Net Foreign Exchange (NFE) calculation

Fiscal benefits provided to SEZ units

- 15-year graded income-tax deduction on export profits beginning with the year in which the unit begins to manufacture, produce or provide services: 100% for the initial five years, 50% for the next five years, and up to 50% for the remaining five years, equivalent to profits ploughed back for re-investment
- Tax deduction u/s 10AA of the Income-tax Act, 1961 is available only for physical exports
- Exemption from MAT has been discontinued with effect from FY 2011–12. Accordingly, SEZ units will henceforth be required to pay MAT
- Indirect tax benefits are similar to those applicable to a SEZ developer /co-developer
- SEZ units are exempt from payment of electricity duty
- SEZ units are exempt from payment of stamp duty (under state government policy)

Liberal exchange controls norms

- 100% export earnings can be held in foreign exchange in a special foreign currency account with minimal restrictions on business payments outside India
- Period for export realisation is 12 months from the date of export
- Branches of a foreign company are eligible for carrying out manufacturing activities in SEZ

Offshore banking units

An offshore banking unit is a branch of a bank in India that is located in an SEZ with the permission of the Reserve Bank of India (RBI). Offshore banking units provide cheaper finance at international rates to units in SEZs. Banks setting up offshore banking units in SEZs are entitled to tax deduction (beginning with the year in which they obtain the requisite approvals) of 100% for the first five years and 50% for the next five years. A similar deduction is available to units of an international financial services centre.

Free trade and warehousing zones (FTWZs)

- An FTWZ is a special category of SEZ governed by the SEZ Act and SEZ Rules, mainly related to trading, warehousing and other related activities
- FTWZs are intended to be used as international trading hubs
- The premises of an FTWZ are deemed to be foreign territory
- FTWZs are a key link in logistics and global supply chains, servicing both India and the globe
- FTWZs provide fiscal benefits, such as customs duty deferment: imported goods can be stored for five years without payment of customs duty, interest or penalty
- Administrative benefits are also available, such as a reduction in customs clearance time, transportation facility, etc
- Support facilities, such as banking and information systems for cargo tracking, are available in FTWZs
- FTWZs have high quality infrastructure

How to set up an FTWZ

Trading unit

A company can become a trading unit in an FTWZ for the purposes of trading and warehousing and other authorised operations after obtaining the requisite approval from the jurisdictional Development Commissioner/ Unit Approval Committee for setting up a unit in an FTWZ.

Service unit

A company can obtain the services of a third party which is a unit in an FTWZ for trading and warehousing and other authorised operations. Trading entities, importers and exporters, third party logistic companies, custom house agents, freight forwarders, shipping lines, manufacturers etc, can become units in an FTWZ. Units are required to execute a bond-cum-legal undertaking for import and warehousing of goods inside the FTWZ.

Activities permitted in an FTWZ

The following activities are permitted in an FTWZ:

- An FTWZ unit can carry out FTWZ-to-DTA and DTA-to-FTWZ transactions
- An FTWZ unit can hold goods on account of a foreign or a DTA supplier and buyer
- Warehousing can be undertaken on behalf of foreign or domestic clients
- An FTWZ unit can carry out trading, with or without labelling
- An FTWZ unit can carry out packaging and repacking without any processing
- Re-sale, re-invoice or re-export of goods is permitted for FTWZ units
- Other value optimisation services can be offered by FTWZ units

Obligations of an FTWZ unit

- All transactions must be conducted in convertible foreign currency
- A unit has to be a positive net foreign exchange (NFE) earner over five years. A unit has to comply with the NFE requirement as stipulated in the SEZ Rules. There is no NFE obligation for clients of service units in an FTWZ
- The value of free of charge imports are to be taken as foreign outflow
- The following are counted towards the inflow of foreign exchange earnings:
 - Supplies needed to be made to bonded warehouses where payment is received in foreign exchange
 - Goods needed to be supplied against free foreign exchange tax incentives
- Customs duty is exempt when goods are imported into the FTWZ for authorised operations. Customs duty becomes payable at the time of clearance of goods into the DTA (Customs duty is payable on the quantity of goods cleared into the DTA and not on the full quantity received into the FTWZ). Therefore, the customs duty can be deferred by importing the goods into an FTWZ
- Inbound taxable services as well as those performed inside the FTWZ for use in authorised operations are exempt from service tax. Similarly, taxable services in relation to the transportation of goods from a port to an FTWZ or from one FTWZ to another is also exempt
- No central excise duty is leviable inside an FTWZ
- Goods procured from the DTA for authorised operations are exempt from CST
- Stamp duty is exempt on any instrument executed in connection with the carrying out of the purposes of the FTWZ
- Trading profit earned on the re-export of imported goods from the FTWZ is exempt from income tax (similar to the situation for SEZ units)

National Policy on Electronics, 2012

The Government of India has rolled out the National Policy on Electronics 2012. Under this policy, the Government has formulated an incentives scheme called the Modified Special Incentive Package Scheme (M-SIPS or the Scheme) for attracting investments in the Electronics Systems Design and Manufacturing (ESDM) sector.

Applicability

- The scheme is applicable to new and existing ESDM units that wish to make investments and/ or carry out substantial expansion/ modernisation or diversification for design and manufacturing of electronic products. Such units should be located in announced electronic manufacturing clusters (whether greenfield or brownfield clusters).
- The Government of India has announced 29 verticals under M-SIPS that are eligible for incentives. These cover electronic products, nano-electronic products, telecom products, intermediates and electronic manufacturing services (covering all stages of the value chain).
- Available incentives
- M-SIPS offers two kinds of incentives to ESDM units: capital subsidy and fiscal incentives. The capital incentives vary depending on the quantum of investment made, classification of products, location of the project, etc. The fiscal incentives include exemption from customs duty, reimbursement of excise/ countervailing duty, service tax, etc. State-level incentives are granted over and above these.

Disbursement of incentives

- These incentives are available for investments made in a project within a period of ten years. Incentives against capital expenditure (capex) is released after the end of the financial year in which the total investments exceed the threshold value, and on an annual basis thereafter.
- Reimbursement of central taxes/ duties actually paid is available after the end of the financial year in which the unit commences production, and on an annual basis thereafter.

Approval procedure

- To receive the benefits under the Scheme, an ESDM unit is required to obtain the prior approval of the Department of Electronics and Information Technology (DeiTY). The project can be carried out in multiple phases, but the procedure for approval is similar for all.

Validity of the scheme

- Applications can be made for a period of three years from the date of the announcement of the Scheme (i.e. up to 26 July 2015).

Annexure 2

Tax rates under DTAs

Name of the country	Interest	Dividend	Royalty	Fees for technical services
Austria	10%	10%	10%	10%
Armenia	10%	10%	10%	10%
Australia	15%	15%	10% (b); 15% in other cases	10% (b); 15% in other cases
Albania	10%	10%	10%	10%
Bangladesh	10%	10% (c); 15% in other cases	10%	No specific provision (e)
Belarus	10%	10% (i); 15% in other cases	15%	15%
Belgium	10%(k); 15% in other cases	15%	10%(f)	10%(f)
Botswana	10%	7.5% (i); in other cases 10%	10%	10%
Brazil	15%	15%	25% if royalty arises from trademarks; 15% in other cases	No specific provision (e) _
Bulgaria	15%	15%	15% if royalty relates to copyrights of literary, artistic or scientific work; 20% in other cases	20%
Canada	15%	15% (c); in other cases 25%	10% (b); in other cases 15%	10% (b); in other cases 15%
Cyprus	10%	10% (c); in other cases 15%	15% (including fee for included services) (q)	15% (for technical fees) (q)
China	10%	10%	10%	10%
Colombia	10%	5%	10%	10%
Croatia	Treaty yet to be notified.			
Czech Republic	10%	10%	10%	10%
Denmark	10% (k); 15% in other cases	15% (i); 25% in other cases	20%	20%
Ethiopia (refer note r)	10%	7.5%	10%	10%
Estonia	10%	10%	10%	10%
Fiji	Treaty yet to be notified.			
Finland	10%	10%	10%	10%
France	10%	10%	10%	10%
Germany	10%	10%	10%	10%
Georgia	10%	10%	10%	10%
Greece	Taxable in the country of source as per domestic tax rates.	Taxable in the country of source as per domestic tax rates.	Taxable in the country of source as per domestic tax rates.	No specific provision (e)
Hungary	10% (f)	10% (f)	10% (f)	10% (f)
Iceland	10%	10%	10%	10%
Indonesia	10%	10% (i); 15% in other cases	15%	No specific provision (e)
Ireland	10%	10%	10%	10%
Israel	10%	10%	10%	10%
Italy (refer to note o)	15%	15% (c); in other cases 25%	20%	20%
Japan	10%	10%	10%	10%
Kazakhstan	10%	10%	10%	10%
Kenya	15%	15%	20%	17.5% (for managerial, technical, professional or consultancy fees)

Name of the country	Interest	Dividend	Royalty	Fees for technical services
Kuwait	10%	10%	10%	10%
Republic of Korea	10% (n); 15% in other cases	15% (d); 20% in other cases	15%	15%
Kyrgyz Republic	10%	10%	15%	15%
Latvia	10%	10%	10%	10%
Libya Arab Jamahriya	14%	14%	14%	No specific provision (e)
Luxembourg	10%	10%	10%	10%
Grand Duchy of Luxembourg	10%	10%	10%	10%
Malaysia	10%	5%	10%	10%
Malta	10%	10% (i); in other cases 15%	15% including fee for included services (q)	10% on fee for technical, managerial and consultancy services (q)
Mauritius	14%	5% (c); in other cases 15%	15%	No specific provision (e)
Mexico	10%	10%	10%	10%
Mongolia	15%	15%	15%	15%
Montenegro	10%	5% (j); in other cases 15%	10%	10%
Morocco	10%	10%	10%	10%
Mozambique	10%	7.5%	10%	No specific provision (e)
Myanmar	10%	5%	10%	No specific provision (e)
Namibia	10%	10%	10%	10%
Nepal	10% (n); in other cases 15%	5% (c); in other cases 10%	15%	No specific provision (e)
Netherlands	10% (f)	10% (f)	10% (f)	10% (f)
New Zealand	10%	15%	10%	10%
Norway	15%	15% (i); in other cases 10%	10% (f)	10% (f)
Oman	10%	10% (c); in other cases 12.5%	15%	15%
Philippines	10% (n); in other cases 15%	15% (c); in other cases 20%	15%	No specific provision (e)
Poland	15%	15%	22.50%	22.50%
Qatar	10%	5% (c); in other cases 10%	10%	10%
Portugal	10%	10% (i); 15% in other cases	10%	10%
Romania	10%	10%	10%	10%
Russian Federation	10%	10%	10%	10%
Saudi Arabia	10%	5%	10%	No specific provision (e)
Serbia	10%	5% (i), in other cases 15%	10%	10%
Singapore	10%(k); in other cases 15%	10%(k); in other cases 15%	10%	10%
South Africa	10%	10%	10%	10%
Spain	15%	15%	10%(f); 20%	20%(f)
Sudan	10%	10%	10%	10%
Slovenia	10%	5%(c); in other cases 15%	10%	10%
Switzerland	10%	10%	10%	10%
Syrian Arab Republic	10%	5% (c), in other cases 10%	10%	No specific provision, (e)

Name of the country	Interest	Dividend	Royalty	Fees for technical services
Taipei	Treaty yet to be notified.	10%	10%	10%
Tajikistan	10%	5% (c), in other cases 10%	10%	No specific provision, (e)
Tanzania (p)	10%	5%(j); in other cases 10%	10%	20% on management and professional fees
Thailand	10%(n), in other cases 25%	15%(c)(h); 20%(h) or (h)	15%	No specific provision (e)
Trinidad and Tobago	10%	10%	10%	10%
Turkey	10%(k); in other cases 15%	15%	15%	15%
Turkmenistan	10%	10%	10%	10%
Uganda	10%	10%	10%	10%
Ukraine	10%	10%(i); in other cases 15%	10%	10%
United Arab Emirates	5%(k); in other cases 12.5%	10%	10%	No specific provision (e)
United Arab Republic (Egypt)	No specific provision (e)	No specific provision (e)	No specific provision (e)	No specific provision (e)
United Kingdom	10%(n); in other cases 15%	15%	10%(b); in other cases 15%	10%(b); in other cases 15%
United States of America	10%	10%	10%	10%
Uruguay	Treaty yet to be notified.	10%	10%	10%
Uzbekistan	10%	10%	10%	10%
Vietnam	10%	10%	10%	10%
Zambia	10%	5% (j); in other cases 15%	10%	10% on managerial and Consultancy fees

Notes:

- a. The Double Taxation Avoidance Agreements (treaty tax) rates on dividends are not relevant in case of dividend paid by an Indian company, because under the current Indian tax legislation, dividend distribution by such companies is exempt from income tax in the hands of the recipient.
- b. This is applicable for use of industrial, scientific or commercial equipment.
- c. This is applicable if the beneficial owner is a company which holds at least 10% of the capital of the company paying the dividend.
- d. This is applicable if the beneficial owner is a company which owns 20% of the capital of the company paying the dividend.
- e. In the absence of a specific provision, it may be treated as business profits under respective treaties.
- f. The 'Most Favoured Nation' clause is applicable. The protocol to the tax treaty limits the scope and rate of taxation to that specified in similar articles in the treaties signed subsequently by India with other OECD nations.
- g. In most of the tax treaties, the interest attributable to financing of exports, imports and loans granted by specified institutions is subject to nil or lower withholding tax rates.
- h. This is applicable if the company paying the dividend is engaged in an industrial undertaking.
- i. This is applicable if the beneficial owner is a company which holds at least 25% of the shares of the company paying the dividend.
- j. This is applicable if the recipient is a company owning at least 25% of the capital during a period of six months before date of payment.
- k. This is applicable if paid on a loan granted by a bank or financial institution.
- l. The tax rate under domestic tax laws is 20% plus surcharge at 2%; since education cess of 3% is levied, the effective tax rate is 21.012% (applicable for payments under the agreements entered prior to June 1, 2005 but after May 31, 1997).
- m. The prescribed tax rate for royalties and FTS under domestic tax laws is 10% (plus surcharge at 2% and education cess of 3%, so the effective tax rate is 10.506%). The rate would apply for payments under the agreement entered on or after June 1, 2005.
- n. This is applicable if interest is received by a bank or financial institution.
- o. The protocol amending the tax treaty with Italy (January 2006) stipulates the rate of 10% for Dividend, Interest, Royalty and Fee for Technical Services
- p. As per a Government Press Release, under an agreement signed on May 27, 2011 the maximum rate of tax to be charged in the country of source will not exceed a two-tier 5% or 10% in the case of dividends and 10% in the case of interest and royalties. This is yet to be notified.
- q. There is a separate clause for technical fees and fee for included services under the treaty.
- r. As per a Government press release, an agreement was signed on May 25, 2011, but it is yet to be notified.

Annexure 3

Governing laws

Name of the law	Overview
Arbitration & Reconciliation Act, 1996	Relates to alternate redressal of disputes
Central Excise Act, 1944	Governs duty levied on the manufacture or production of goods in India
Central Sales Tax, 1956	Governs the levy of tax on all inter-state sales in India
Companies Act, 1956	Governs all corporate bodies in India
Competition Act, 2002	Ensures free and fair competition in the Indian market
Consumer Protection Act, 1986	Protects consumers from unscrupulous traders and manufacturers
Customs Act, 1962	Deals with import and export regulations
Customs Tariff Act, 1975	Creates a uniform commodity classification code based on the globally adopted harmonised system of nomenclature for use in all international trade- related transactions
Direct Taxes Code Bill, 2010	Aims to moderate tax rates and simplify tax laws. All direct taxes including wealth tax and income tax will be brought under one bill.
Environment Protection Act, 1986	Provides a framework for obtaining environmental clearances Act, 1986
Factories Act, 1948	Regulates labour in factories
Foreign Exchange Management Act, 1999	Regulates foreign exchange transactions including India inbound investments as well as outbound investments
Indian Contract Act, 1872	Codifies the way contracts are entered into, executed and implemented. It also codifies the effects of breach of contract
Income Tax Act, 1961	Governs direct taxes on the income of all persons, both corporate and non-corporate, as well as residents and nonresidents
Industrial Disputes Act & Workmen Compensation Act, 1951	Covers labour laws relating to disputes
Industrial (Development Regulation) Act, 1951	Provides for the development and regulation of certain industries
Information Technology Act, 1999	Governs e-commerce transactions
Limited Liability Partnership Act, 2008	Establishes a new form of entity which combines the organisational flexibility of partnership with the advantages of limited liability. It provides operational flexibility for such enterprises by sparing them detailed legal and procedural requirements intended for large companies
Prevention of Money Laundering Act, 2002	Prevents money laundering and provides for the confiscation of property derived from, or involved in, money laundering
Patents Act, Copyright Act, Trade Marks Act, Design Act	Protects intellectual property rights
Right to Information Act, 2005	Sets out the right of every citizen to access information under the control of the authorities and promotes transparency and accountability in public authorities
Securities and Exchange Board of India Act, 1992	Relates to the protection of investor interest in securities and regulation of the securities market. It puts in place securitisation and asset foreclosure laws, creating a legal framework for establishment of asset reconstruction companies.
Special Economic Zones Act, 2005	Governs the establishment, development and management of the special economic zones (SEZs) to promote exports. It provides for fiscal and economic incentives for developers of SEZ units

Notes



Our offices

Ahmedabad

PricewaterhouseCoopers Pvt Ltd
President Plaza, 1st Floor
Opposite Muktidham Derasar
Thaltej Cross Road, S.G. Highway
Ahmedabad - 380054, Gujarat
Telephone: [91] (79) 3091 7000

Bangalore

PricewaterhouseCoopers Pvt Ltd
6th Floor, The Millenia, Tower D
1 & 2 Murphy Road, Ulsoor
Bangalore - 560008, Karnataka
Telephone: [91] (80) 4079 7000

Chennai

PricewaterhouseCoopers Pvt Ltd
Prestige Pallaium Bayan, 8th floor
140, Greams Road
Chennai - 600006, Tamil Nadu
Telephone: [91] (44) 4228 5000

Delhi NCR

PricewaterhouseCoopers Pvt Ltd
17th & 18th Floor, Building 10
Tower C, DLF Cyber City
Gurgaon - 122002, Haryana
Telephone: [91] (124) 330 6000

Hyderabad

PricewaterhouseCoopers Pvt Ltd
Plot no. 77/A, 8-2-624/A/1
4th Floor, Road No. 10, Banjara Hills
Hyderabad - 500034, Telangana
Telephone: [91] (40) 4424 6000

Kolkata

PricewaterhouseCoopers Pvt Ltd
Plot Nos 56 & 57
Block DN-57, Sector-V
Salt Lake Electronics Complex
Kolkata - 700091, West Bengal
Telephone: [91] (33) 2357 9101/ 4400 1111

Mumbai

PricewaterhouseCoopers Pvt Ltd
PwC House, Plot No. 18 A
Guru Nanak Road (Station Road), Bandra
Mumbai - 400050, Maharashtra
Telephone: [91] (22) 6689 1000

Pune

PricewaterhouseCoopers Pvt Ltd
Business Bay, 7th Floor,
Tower A, Wing 1,
Airport Road, Yerwada
Pune - 411006, Maharashtra
Telephone: [91] (20) 4100 4444

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