DOING BUSINESS IN
INDIA

M. S. Chhajed & Co.

Contents

This guide has been prepared by M.S. Chhajed & Co. with the intent to giving stakeholders an overview of the demographic profile of India, key sectors, an insight into the regulatory framework, form of business enterprises and relevant tax regimes in India in a concise manner. The information presented in this guide has been validated upto 31st March 2020.

1. AT GLANCE

Geographic Overview

India is a country in South Asia is democratic republic and federal structure consisting of 28 states and eight union territories with New Delhi being its capital. With estimated 1.35 billion people, India is the second-most populous country in the world, bounded by the Indian Ocean to the south, the Arabian Sea to the south west and the Bay of Bengal to the south east. It shares its borders with Pakistan to the west, Bhutan, China and Nepal to the north east, and Bangladesh and Myanmar to the east.

India has a coastline of 7516.60 kms and landmass of 32,87,263 sq. kms. The railways have a route length of 95981 kilometres while the road length runs to 5603292 kms. The country has 449 airports and inland water ways running tenth of of 14200 km.

Economic Overview

The Gross Domestic Product of India for the year 2019-20 is at $2.28 trillion and budgeted at $3.20 trillion for the year 2020-21. At existing economic growth of around 6.7%, India is the fastest-growing economy amongst G20 countries. The merchandise exports of India was at $314 billion for the year 19-20 while the service exports were at $212 billion for the equivalent period. The FDI in inflow in India during April 2019 to December 2019 stood at $36.79 billion.

The Reserve Bank of India is the Central Bank of India and Securities and Exchange Board of India is the capital market regulator. Bombay Stock Exchange and National Stock Exchange are the major stock exchange.

The pace of the structural reforms, a shift towards the rule-based policy framework and low commodity prices have provided India with powerful growth opportunities. Recent deregulation measures and efforts to substantiate the ease of conducting business with reform in tax laws have boosted foreign investment.

Demographic Overview

The estimated population of India is at 1.35 billion, it is the second-most populous country in the world. It has an urban population of around 35% and rural pollution of 65%. It has the literacy ate of 74.04% and boosts of highest English speaking population in the world. India has above 65% of its population below the age of 35 years. The median age is 29 years. India has a labour force of around 521.16 million.

2. KEY INDUSTRIES

I. Automobile

Automotive industry in India is one of the prime drivers of the economy and is fourth largest in the world. Indian automotive industry (including component manufacturing) is expected to reach INR 16.16-18.18 trillion by 2026. The Government of India encourages foreign investment in the automobile sector and allows 100 per cent FDI under the automatic route.

With view to encourage the manufacturing of Electric Vehicles ("EVs"), Government of India has shortlisted 11 cities in the country for introduction of EVs in their public transport systems under the FAME (Faster Adoption and Manufacturing of (Hybrid) and Electric Vehicles in India) scheme. The government will also set up incubation centre for start-ups working in electric vehicles space. Further tax incentives have been announced to encourage purchase of EVs.

II. Banking

Indian banking system consists of 12 public sector banks, 22 private sector banks, 46 foreign banks, 53 regional rural banks, 1,542 urban cooperative banks and 94,384 rural cooperative banks as of September 2019. During the year 2001 to 2019, deposits grew at a CAGR of 11.11 per cent and reached US$ 1.86 trillion by FY 2019. Deposits as of Feb 2020, stood at Rs 132.35 lakh crore (US$ 1,893.77 billion).

The total equity funding of micro-finance sector grew at the rate of 42 year-on-year to Rs 14,206 crore (US$ 2.03 billion) in 2018-19. The digital payments system in India has evolved the most among 25 countries with India's Immediate Payment Service (IMPS). As per Reserve Bank of India as of February 14, 2020, India recorded foreign exchange reserves of approximately US$ 476.09 billion.

III. Capital Market

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IV. Defense

Indian has third largest armed force in the world and has become one of the largest importer of defense goods and services in the world. Its defence budget is of Rs. 4.71 lakh crores which is around 2.85% of GDP. Government, as part of its "Make in India" program, has given a new impetus to development of defence production in the country. Several initiatives have been taken in the last three years to promote greater participation of industry. The FDI has been permitted upto 49% under automatic route, restricting licensing requirements for only critical items. The government has placed a draft Defence Production Policy 2018 on its web portal. In the draft policy, FDI up to 74% under automatic route is proposed to be allowed in niche technology areas.

V. E-Commerce

The e-commerce has transformed the way business is done in India. The Indian e-commerce market is expected to grow to US$ 200 billion by 2026 from US$ 38.5 billion as of 2017. Much growth of the industry has been triggered by increasing internet and smartphone penetration. The ongoing digital transformation in the country is expected to increase India's total internet user base to 829 million by 2021 from 636.73 million in FY19. India's internet economy is expected to double from US$ 125 billion as of April 2017 to US$ 250 billion by 2020, majorly backed by e-commerce.

India's E-commerce revenue is expected to jump from US$ 39 billion in 2017 to US$ 120 billion in 2020, growing at an annual rate of 51 per cent, the highest in the world. The business-to-business model in e-commerce marketplace allows up to 100% FDI, subject to certain operating conditions.

VI. FMCG and Retail

Fast-moving consumer goods (FMCG) sector is the 4th largest sector in the Indian economy with household and personal care accounting for 50 per cent of FMCG sales in India. The retail industry has emerged as one of the most dynamic and fast-paced industries due to the entry of several new players. Total consumption expenditure is expected to reach nearly US$ 3,600 billion by 2020 from US$ 1,824 billion in 2017. It accounts for over 10 per cent of the country's Gross Domestic Product (GDP) and around. India is the world's fifth-largest global destination in the retail space.

VII. Health

The Indian life sciences industry is one of the largest and rapidly growing markets in the Asia-Pacific region. Healthcare comprises pharmaceutical, biotech, hospitals and medical equipment. Currently, FDI is permitted up to 100% under the automatic route in the hospital sector and manufacture of medical devices. For the pharmaceutical sector, foreign investment is permitted up to100% in greenfield projects and up to 74% in brownfield projects under automatic route and beyond 74% in such projects requires government approval. The healthcare market is expected to grow three-fold to Rs 8.6 trillion (US$ 133.44 billion) by 2022. Indian medical tourism market is growing at the rate of 18 per cent year on year and is expected to reach US$ 9 billion by 2020. There is a significant scope for enhancing healthcare services considering that healthcare spending as a percentage of Gross Domestic Product (GDP) is rising. The government's expenditure on the health sector has grown to 1.29 per cent in FY 2019 from 1.2 per cent in FY14.

VIII. Information Technology

Information technology in India is an industry consisting of two major components IT services and business process outsourcing (BPO). The global sourcing market in India continues to grow at a higher pace compared to the IT-BPM industry. India is the leading sourcing destination across the world, accounting for approximately 50 per cent market share of the US$ 181 billion global services sourcing business in 2018-19. Indian IT & ITeS companies have set up over 1,000 global delivery centres in about 80 countries across the world.

India has become the digital capabilities hub of the world with around 75 per cent of global digital talent present in the country. The IT-BPM sector in India stood at US$177 billion in 2019 and is estimated that the size of the industry will grow to US$ 350 billion by 2025. IT industry employees 4.1 million people as of FY-19.

IX. Infrastructure

Infrastructure sector is a key driver for the Indian economy. The sector is highly responsible for propelling India's overall development and enjoys intense focus from Government for initiating policies that would ensure time-bound creation of world class infrastructure in the country. Infrastructure sector includes power, bridges, dams, roads and urban infrastructure development. India has the one of largest road network across the world, spanning over a total of 5.89 million km. In the union budget 2020-21, the Government of India has given a massive push to the infrastructure sector by allocating Rs 1,69,637 crore (US$ 24.27 billion) for the transport infrastructure, Rs 72,216 crore (US$ 10.33 billion) for metro railways, Rs 38,637.46 crore (US$ 5.36 billion) for the development of post and telecommunications departments, Rs 72,216 crore (US$ 10.33 billion) for. Development of Railways, Rs 3,899.9 crore (US$ 540.53 billion) to increase capacity of Green Energy Corridor Project along with wind and solar power projects, Rs 8,350.00 crore (US$ 1.16 billion) to boost telecom infrastructure. The investment in this sector is expected to be Rs 50 trillion (US$ 777.73 billion) by 2022.

X. Insurance

Insurance is the important sector for any economy. The insurance industry of India consists of 57 insurance companies of which 24 are in life insurance business and 33 are non-life insurers. The measure of insurance penetration and density reflects the level of development of the insurance sector. Gross direct premiums of non-life insurers in India reached US$ 20.33 billion in FY20 (up to December 2019), gross direct premiums reached Rs 410.71 billion (US$ 5.87 billion), showing a year-on-year growth rate of 14.47 per cent. Overall insurance penetration (premiums as per cent of GDP) in India reached 3.69 per cent in 2017 from 2.71 per cent in 2001.

XI. Media and Entertainment

This includes the media and entertainment industry and is one of the fastest growing and best performing sectors in India. By 2021, Indian media and entertainment industry to reach Rs 2.35 trillion at a CAGR of 13.5%. Further, digital subscription made a strong impact in 2017, with a growth of 50%. The digital advertising industry in India is estimated to cross the Rs 50,000 crore (US$ 7.15 billion) mark by 2025, growing at a compound annual growth rate (CAGR) of 27.42 per cent from 2020. India ranked at 15th in the world in music industry and is expected to enter into the top 10 music markets by 2022.

XII. Oil and Gas

The oil and gas industry is among India's eight core industries. India is also the third largest consumer of crude oil and petroleum products in the world. With refining capacity at 249.4 million tonnes, India is the second largest refiner in Asia. India is expected to be one of the largest contributors to non-OECD petroleum consumption growth globally. Oil imports rose sharply to US$ 111.96 billion in 2018-19.

The government has allowed 100 per cent Foreign Direct Investment (FDI) in many segments of the sector, including natural gas, petroleum products, and refineries, among others.

XIII. Pharmaceuticals

India is the largest provider of generic drugs globally. Indian pharmaceutical sector industry supplies over 50 per cent of global demand for various vaccines, 40 per cent of generic demand in the US and 25 per cent of all medicine in UK.Indian pharmaceutical sector is expected to grow to US$ 100 billion and medical device market expected to grow US$ 25 billion by 2025. Pharmaceuticals exports from India stood at US$ 19.14 billion in FY19 and US$ 13.69 billion in FY20 (up to January 2020). India's domestic pharmaceutical market turnover reached Rs 1.4 lakh crore (US$ 20.03 billion) in 2019.

XIV. Ports

According to the Indian Ministry of Shipping, around 95 per cent of India's trading by volume and 70 per cent by value is done through maritime transport. India has 12 major and 205 notified minor and intermediate ports. It is the sixteenth largest maritime country in the world, with a coastline of about 7,517 km. The Indian Government plays an important role in supporting the ports sector. It has allowed Foreign Direct Investment (FDI) of up to 100 per cent under the automatic route for port and harbour construction and maintenance projects. It has also facilitated a 10-year tax holiday to enterprises that develop, maintain and operate ports, inland waterways and inland ports. The total traffic handled at major ports in 2019-20 was 704.63 million tonnes.

XV. Power

India is the third largest producer of electricity in the world as per the key world energy statistics. Even in renewable sources, India is ranked fourth in wind power, fifth in solar power and fifth in renewable power installed capacity as of 2018. India ranked sixth in list of countries to make most investments in clean energy with US$ 90 billion. The Government of India's focus on attaining 'Power for all' has accelerated capacity addition in the country. Wind energy is estimated to contribute 60 GW, followed by solar power at 100 GW by 2022 and 15GW from biomass and hydropower. Total installed capacity of power stations in India stood at 368.68 Gigawatt (GW) as of January 2020.

XVI. Real Estate

The construction industry ranks third among the 14 major sectors in terms of direct, indirect and induced effects in all sectors of the economy. It is also expected that this sector will incur more non-resident Indian (NRI) investments in both the short term and the long term. Bengaluru is expected to be the most favoured property investment destination for NRIs, followed by Ahmedabad, Pune, Chennai, Goa, Delhi and Dehradun. Real estate sector in India is expected to reach a market size of US$ 1 trillion by 2030 from US$ 120 billion in 2017 and contribute 13 per cent of the country's GDP by 2025.

XVII. Steel

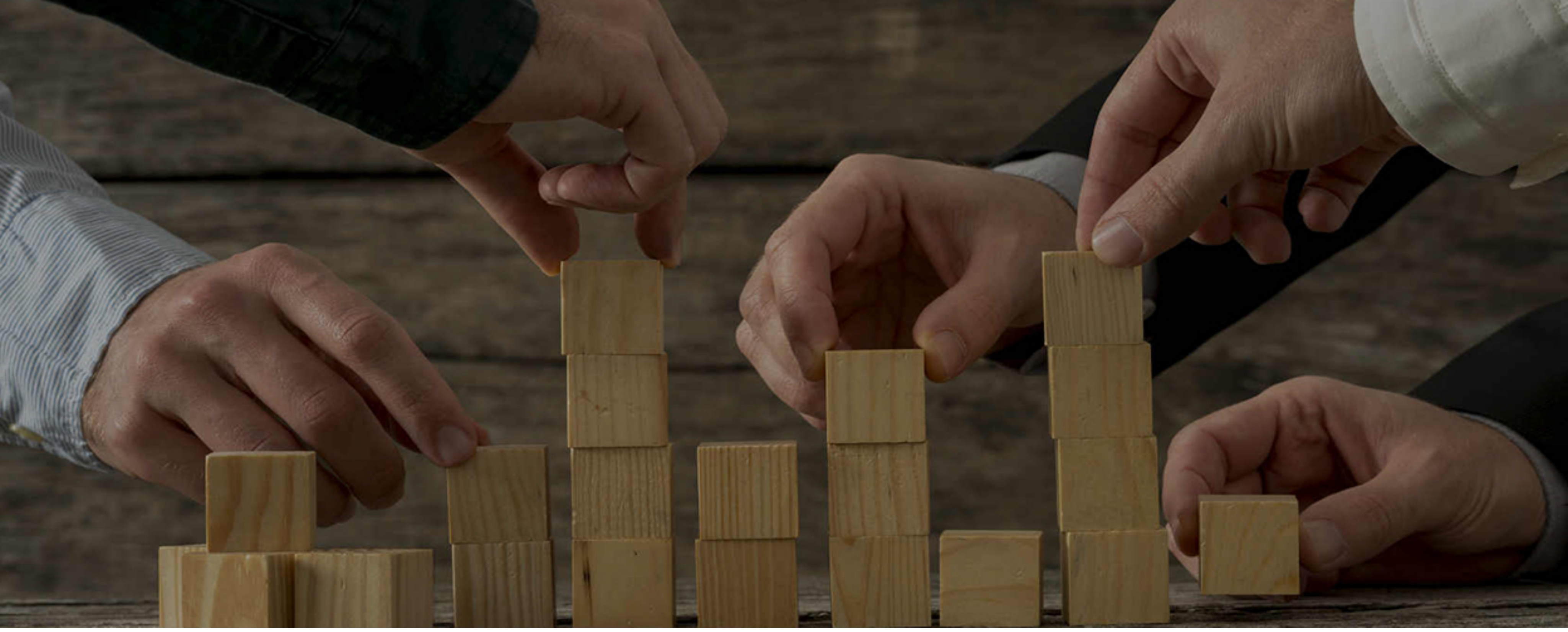
India was the world's second-largest steel producer with production standing at 106.5 MT in 2018. India's steel production capacity has expanded to 137.975 million tones in FY19. India surpassed Japan to become the world's second largest steel producer in 2019, with crude steel production of 111.2 million tonnes.

XVIII. Telecommunication

India is currently the world's second-largest telecommunications market with a subscriber base of 1.20 billion. With 4.8 billion downloads of mobile applications registered in India in first three months of 2019, India has become a pivot market globally. The deregulation of Foreign Direct Investment (FDI) norms with 100% parent has made the sector one of the fastest growing and a top five employment opportunity generator in the country.

XIX. Textiles

India's textiles sector is one of the oldest industries in Indian economy dating back several centuries. The Indian textiles industry, currently estimated at around US$ 150 billion, is expected to reach US$ 250 billion by 2019. India's textiles industry contributed seven per cent of the industry output (in value terms) of India in 2018-19. It contributed two per cent to the GDP of India and employs more than 45 million people in 2018-19. The sector contributed 15 per cent to the export earnings of India in 2018-19. India's textile and apparel exports stood at US$ 38.70 billion in FY19 and is expected to increase to US$ 82.00 billion by 2021. The government has also permitted 100 per cent FDI in the Indian textiles sector under the automatic route.



3. FORMS OF ENTERPRISES

I. Sole Proprietorship

This is the simplest form of business. The business in such form is owned and managed by the individuals. Its salient features are:

- Profits or losses are solely borne by the proprietor
- No separate legal existence
- Unlimited liability of the proprietor
- Resident Indian, Non Resident Indian (NRI) and Person of Indian Origin (PIO) residing outside India are eligible to carry business in India as sole proprietor. However restrictions may be placed in specific sectors wherein the NRI/PIO cannot invest. Investments can be made through inward remittance or out of specified bank accounts held by NRI or PIO.
- Usually no formal business registration is required under Indian law. However, the sole proprietor may be required to obtain a license specific to the line of business.

II. Partnership Firm

Partnership is easy to form. A partnership consist of group of persons who have agreed to share the profits/ losses of a business conducted by them or any of them. Its salient features are:

- The firm has no separate legal existence of its own i.e. the firm and the partners are one and the same in the eyes of law.
- The liability of the partner's is unlimited.
- The minimum number of partners must be two, while the maximum number can be 10 in case of banking business, and 20 in all other types of business.
- Non resident Indian or Person of Indian Origin (NRI/PIO) residing outside India is allowed to invest in an Indian partnership firm on non–repatriable basis. Repatriation benefits are available with prior approval from Reserve Bank of India.
- NRI or a PIO cannot invest in a partnership firm engaged in specified sectors
- A person resident outside India (other than NRIs or PIOs) can make investments in partnership firm after obtaining approval of the RBI or FIPB

III. Limited Liability Partnership

Limited Liability Partnership (LLP) is a new corporate structure that combines the flexibility of a partnership and the advantages of limited liability at a low compliance cost. Limited Liability Partnership is governed by the provisions of the Limited Liability Partnership Act 2008. Its salient features are:

- The offers flexibility of partnership firms with combined benefits of the company
- Legal identity separate from its partners
- Partner's liability is limited to their contribution
- FDI in an LLP is permitted under the automatic route subject to investment condition
- LLP can also raise funds through ECB

- Minimum two designated partners who are required of which at least one being resident of India
- Designated partners are responsible function and legal compliance of the LLP
- An LLP incorporated in India is permitted to make outbound investments, subject to applicable guidelines as said down.

IV. Company

This is the simplest form of business. The business in such form is owned and managed by the individuals. Its salient features are:

Companies may be limited by:

a) Shares - liability of the shareholders is limited to the amount unpaid on their shares

b) Guarantee - liability of the shareholders is limited to the amount guaranteed which may or may not have share capital

The most commonly used form in India is a company limited by shares. Companies may be incorporated as private companies or public companies. Types of companies are:

Types of Companies	Salient Features
One Person Company	I. Only one shareholder II. No perpetual sucessivo III. Minimum 1 director maximum 15 IV. No minimum share capital
Section 8 Company	I. No minimum share capital II. Objective is not for profit. The aim is to further causes like science, culture, research, sports, religion, etc. III. No minimum share capital requirement

Types of Companies	Salient Features
Private Limited Company	I. Minimum number of members required is 2 and maximum is 200. II. Restricts transferability of shares to general public. III. Prohibits invitation or acceptance of deposits from the public other than the directors or their relatives. IV. Prohibits any invitation to the public to subscribe for any shares in or debentures of the company. V. No minimum capital requirements VI. A private company is required to have minimum 2 directors.
Public Limited Company	I. It does not need to satisfy any minimum paid-up share capital requirements. II. It must have a minimum of 7 members and three directors. III. A private company, which is a subsidiary of a public company, is also considered to be a public company. IV. A public limited company may also list its shares on a recognised stock exchange by way of an IPO. Every listed company shall maintain public shareholding of at least 25%.

4. ENTRY OPTIONS IN INDIA

Foreign investors planning to enter India should select an appropriate form of business structure keeping in mind the business objective. Foreign entities can set up their business operations in India through following options:

Type	Salient Features
Liaison Business	I. Acts as a representative of the foreign parent company II. Approval of AD bank under FEMA guidelines required III. Cannot undertake any commercial / business activities IV. Closure requires prior approval of the Central Bank and Registrar of Companies
Project Office	I. Acts as an extended representative of the foreign parent company set up for a specific project II. Approval of AD Bank (and Reserve Bank of India in limited scenario) under FEMA guidelines required III. Can take only restricted commercial activity as permitted IV. Repatriation of post tax profit permitted after approval of AD bank V. Liable to be taxed at maximum marginal rate of tax i.e. 43.68%

Type	Salient Features
Branch Office	I. Acts as an extended representative of the foreign parent company to carry on activity in the course of business II. Approval of AD Bank and Reserve Bank of India under FEMA guidelines required III. Can take only restricted commercial activity as permitted IV. Repatriation of post tax profit permitted after approval of AD bank V. Liable to be taxed at maximum marginal rate of tax i.e. 43.68%
Limited Liability Partnership	I. Separate legal entity II. 100% FDI can be made subject to guidelines III. Repatriation of post tax profit is permitted without any prior approval IV. Liable to be taxed at 34.944% V. Closure requires prior approval
Company	I. Separate legal entity II. FDI can be made subject to guidelines III. Activities as specified in the object clause of the memorandum of the company IV. Repatriation of post tax profit is permitted without any prior approval V. Liable to be taxed at 25.168% /28.6% / 34.944% VI. Closure requires prior approval

5. REPORTING AND AUDIT

Uniform Financial Year

All entities are required to follow uniform financial year ending 31 March.

Audits

All companies are required to get its book audited in accordance with the provisions of Companies Act, 2013 by a practicing chartered accountants. An auditor is appointed for a term of five years. However, the appointment needs to be ratified each year at the AGM.

LLP's have turnover exceeds Rs. 40 lakhs or capital exceeds Rs. 25 lakhs is also required to get its book audited by a practicing chartered accountants.

Financial Reporting

Every company needs to prepare financial statements for every financial year, which gives true and fair view of the state of affairs of the company. The statements consist of Balance Sheet, Profit and Loss Statement, Cash Flow Statement, Change in Equity Statement and Notes. The financial statements of LLP consist of Balance Sheet, Profit and Loss Statement, and Notes.

The financial statements are required to be made in accordance with the Indian Accounting Standards having net worth of INR 250 Crores and holding, subsidiaries, joint ventures or associates of these companies. For others the financial statements are prepared in accordance with the Indian GAAP.

6. DIRECT TAXATION

Direct Tax, by way of mainly, Income Tax is levied by the Central Government. The administration and supervision wing for the direct taxes is called Central Board of Direct Taxes ("CBDT") which is continued under the Ministry of Finance. The Indian financial year extends from 1st April and ends on 31st March of subsequent year.

Introduction

Under the Indian income tax the income is distinguished under the following heads:

- Income from Salary
- Income from House Property
- Income from Business and Professional
- Capital gains on disposition of capital assets
- Income from other sources (i.e. Residual income from non-business activities)

Corporations resident in India are taxed on their worldwide income arising from all sources. Non-resident corporations are taxed on the income earned through a business connection in India or any source in India or transfer of a capital asset situated in India.

Rate of Corporate Tax

Types of Entities	Effective Tax Rate on Profits			
	Up to INR 1 Crore	>INR 1 crore but <= INR 10 Crores	Exceeding INR 10 Crores	MAT/AMT Applicable
A. Domestic Companies				
I. Not claiming prescribed deductions				
i. Manufacturing companies set up post 1st March, 2016	26%	27.82%	29.12%	Yes
ii. Manufacturing companies set up post 1st October, 2017	17.16%			No
iii. Others	25.17%			No
II. Claiming deductions as restricted above				
i. Turnover not exceeding 400 crores in FY 2018-19	26%	27.82%	29.12%	Yes
ii. Others	31.2%	33.38%	34.94%	Yes
B. Foreign Companies	41.60%	42.43%	43.68%	-
C. LLP and Firm	31.20%	34.94%		Yes

Rate of Individual Tax

Income Slab (INR)	Effective Tax Rate if specified exemptions claimed	Effective Tax Rate if specified exemptions not claimed
Upto 250,000	Nil	Nil
250,001-500,000	5.20%	5.20%
500,001-750,000	20.80%	10.40%
750,001-1,000,000	20.80%	15.60%
1,000,001-1,250,000	31.20%	20.80%
1,250,001-1,500,000	31.20%	26%
1,500,001-5,000,000	31.20%	31.20%
5,000,001-10,000,000	34.32%	34.32%
10,000,001-20,000,000	35.88%	35.88%
20,000,001-50,000,000	39%	39%
50,00,0001 and above	42.74%	42.74%

- *There is rebate upto Rs. 12500/- u/s. 87A for individuals whose income does not exceed INR 5,00,000/-*

Due Dates

Particulars	Due Date
In case of Companies/ LLP other than where transfer pricing is applicable	Nil
• Return filing	31st October
• Tax Audit Report filing	30th September
In case of Companies/ LLP where transfer pricing is applicable	20.80%
• Return due date	30th November
• Tax Audit and Transfer Pricing Report filing	31st October
Others where Tax Audit Applicable	
• Return filing	31st October
• Tax Audit Report filing	30th September
Others where Tax Audit Not Applicable	31st July

- *Non resident corporations are also required to file a return in India if they earn income in India or have a physical presence or economic nexus with India. Corporate tax liability needs to be estimated and discharged by way of advance tax on quarterly basis. Late filing of a return and delay in payment or shortfall in taxes attract penalty/ interest.*

Withholding Tax (generally applicable)

Payment to Residents

Particulars	Tax Rate
Salary	Actual Tax rate
Interest (on securities/others)	10%
Dividend	0%
Payments to contractor/sub-contractor: • If recipient is other than company • If recipient is company	 1% 2%
Commission and Brokerage	5%

Rent • Plant and Machinery • Land and Building	 2% 10%
Professional and Technical Services • Recipient engaged in call centre business • Others	 2% 10%
Royalty/ Patent	10%

Payment to Non-Residents

- The rates of with-holding tax rate will be reduced to rates as agreed in the Double Taxation Avoidance Agreements (DTAA) or Tax Treaties. The non-resident will be required to provide Tax Residency Certificate to claim benefit of lower rate.

Particulars	Tax Rate
Interest (INR/foreign currency)	20%/%5
Professional and Technical Services	10%
Royalty/ Patent	10%
Fees for Technicals Services	10%

Audit Requirements

Every company engaged in a business is required to maintain books of accounts and get them audited by an accountant if its total sales, turnover or gross receipts exceed INR 1 crore during the year.

Depreciation

Depreciation on capital assets is allowed on the basis of reducing balance method using varying rates, depending on the nature of assets.

Business Losses

Business losses, other than from speculation business, are permitted to be set off against income from any other source (except income from salary) in the same year. Business losses which can not be so set off, are permitted to be carried forward for setting off against business profits arising in the eight subsequent years. Unabsorbed depreciation is permitted to be carried forward for an unlimited period. Set off within the head is generally permitted with few restrictions, while inter-head set off has tighter constraints to be observed. A loss is generally permitted to be carried forward for a period of 4-8 years, depending upon the nature of head it pertains to.

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

The fundamental difference between MAT and AMT is that MAT is applicable to Companies while AMT is applicable to non-company assesses'. The income tax laws in India requires payment of MAT/AMT on the profits disclosed in their financial statements where the tax payable according to regular tax provisions is less than 15%/18.5% (for companies 15% and for non-company 18.5%) (excluding surcharge and cess) of their book profits. Effective from financial year 2019-20, MAT is not applicable to certain class of companies which do not claim specified deductions and exemptions.

The credit for such tax paid is allowed to be carried forward for 15 years and set off against income tax payable under the normal provisions of the Income Tax to the extent of the difference between tax according to normal provisions and tax according to MAT/AMT.

Equalisation Levy

In line with OECD's BEPS project Action Plan on Digital Economy, India had introduced Equalization Levy ("EL") of 6% on transactions other then E-commerce and 2% on E-commerce transaction. EL is applicable on payment made by a resident carrying on business or profession or the Indian PE of a non-resident to a non-resident providing specified services.

A "specified service" has been defined as an online advertisement, or provision for digital advertising space or any other facility or service for the purpose of online advertisement, online sale of goods or online provision of services or a combination of both, by a non resident e-commerce operators and also includes any other service notified by the central government.

Authority of Advance Ruling (AAR)

In order to provide the facility of achieving certainty on the income tax liability of eligible tax payers (residents as well as non-residents), to plan their income tax affairs well in advance and to avoid lengthy and expensive litigation, a scheme of advance rulings was introduced under the provisions of Income Tax Act. A ruling can be obtained by an applicant with respect to any question of law or fact in relation to the tax liability of the non-resident arising out of a transaction undertaken or proposed to be undertaken. A resident can also approach AAR for determining his tax liability arising out of a transaction undertaken or proposed to be undertaken with a non-resident valuing INR 100 crores or more in aggregate. The decision of AAR are binding on the the applicant and the income tax authority.

General Anti-Avoidance Rule (GAAR)

The Income Tax Act contains anti-avoidance provisions in form of GAAR, which provides extensive powers to the Tax Authority to declare an "arrangement" entered by a taxpayer to be an Impermissible Avoidance Arrangement (IAA). The consequences include denial of tax benefit either under the provisions of the IT Act or the applicable tax treaty. The provisions can be invoked for any step in or part of an arrangement entered, and the arrangement or step may be declared an IAA. However, these provisions only apply if the main purpose of the arrangement or step is to obtain a tax benefit. The provisions of GAAR will not apply where the tax benefit (for all parties) from an arrangement in a relevant tax year does not exceed INR 3 Crores.

Indirect Transfer of Shares

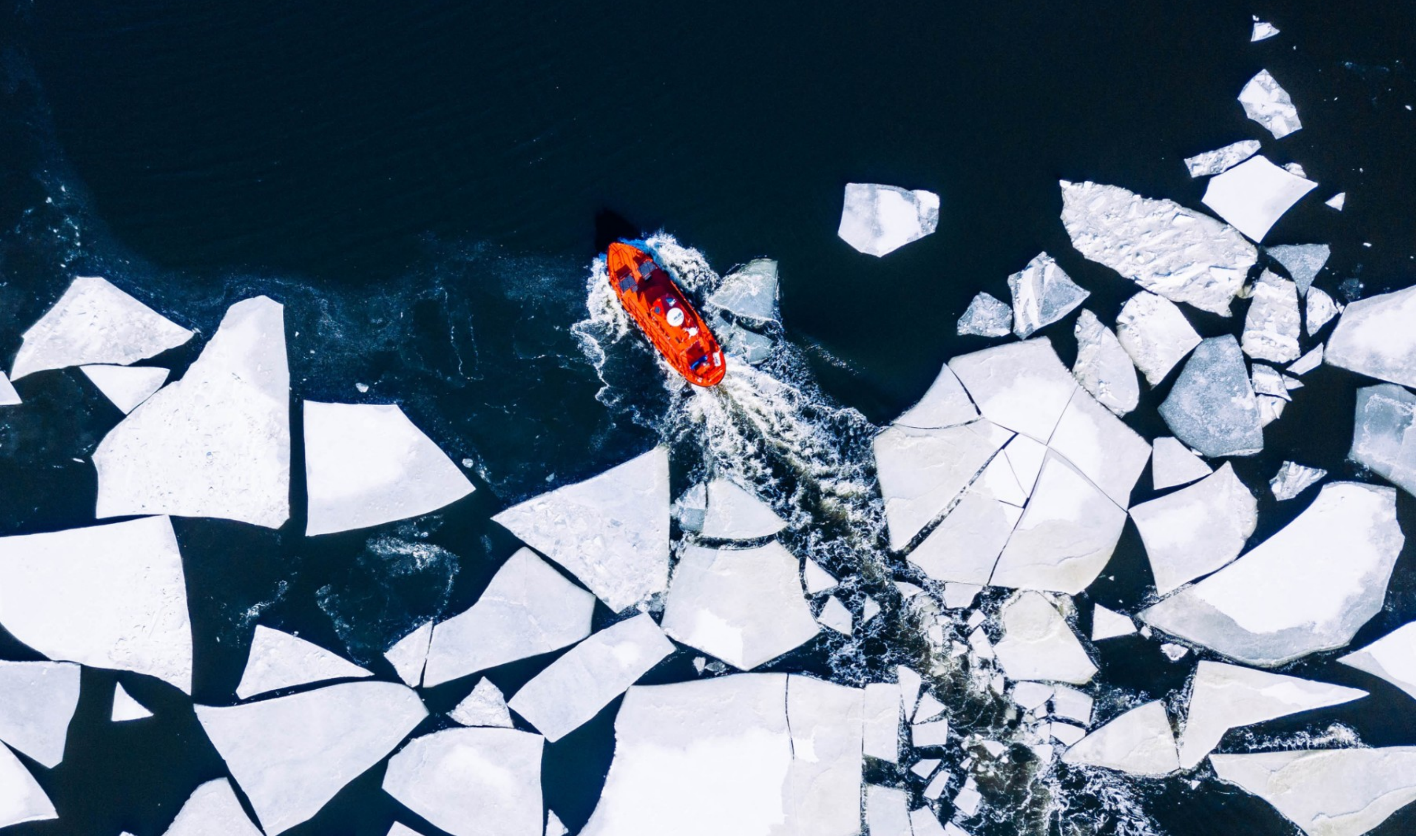
Non-residents are also taxed on capital gains arising on any share or interest in a company or entity registered or incorporated outside India, deriving its value substantially from assets located in India, where the FMV of Indian asset on a specified date exceeds INR 100 mn and represents at least 50% of the value of all assets owned by the foreign corporation. Indirect transfer of shares of an Indian corporation pursuant to merger/ demerger of foreign corporations, subject to satisfaction of specified conditions is not taxable.

Double Taxation Avoidance Agreements (DTAA)

India has entered into tax treaties, namely DTAAs' with several other countries govern foreign tax relief to avoid double taxation. If there is no such agreement, resident corporations can claim a foreign tax credit for the tax paid by them in other countries subject to meeting certain requirements. The credit amount is the lower of Indian effective rate of tax or the tax rate of the said country on the doubly taxed income. India has entered into DTAA agreements with following 85 countries:

1. Armenia
2. Australia
3. Austria
4. Bangladesh
5. Belarus
6. Belgium
7. Botswana
8. Brazil
9. Bulgaria
10. Canada
11. China
12. Cyprus
13. Czech Republic
14. Denmark
15. Egypt
16. Estonia
17. Ethiopia
18. Finland
19. France
20. Georgia
21. Germany

22. Greece
23. Hashemite Kingdom of Jordan
24. Hungary
25. Iceland
26. Indonesia
27. Ireland
28. Israel
29. Italy
30. Japan
31. Kazakhstan
32. Kenya
33. Korea
34. Kuwait
35. Kyrgyz Republic
36. Libya
37. Lithuania
38. Luxembourg
39. Malaysia
40. Malta
41. Mauritius
42. Mongolia
43. Montenegro
44. Morocco
45. Mozambique
46. Myanmar
47. Namibia
48. Nepal
49. Netherlands
50. New Zealand
51. Norway
52. Oman
53. Philippines
54. Poland
55. Portuguese Republic
56. Qatar
57. Romania
58. Russia
59. Saudi Arabia
60. Serbia
61. Singapore
62. Slovenia
63. South Africa
64. Spain
65. Sri Lanka
66. Sudan
67. Sweden
68. Swiss Confederation
69. Syrian Arab Republic
70. Tajikistan
71. Tanzania
72. Thailand
73. Trinidad and Tobago
74. Turkey
75. Turkmenistan
76. United Arab Emirates
77. United Arab Republic (Egypt)
78. Uganda
79. United Kingdom
80. Ukraine
81. United Mexican States
82. United States of America
83. Uzbekistan
84. Vietnam
85. Zambia



7. TRANSFER PRICING

India has introduced comprehensive transfer pricing regulations (TRPs) effective from April 1, 2001 with the objective of preventing multi-national corporations and non-residents from manipulating prices in intra group transactions ("associated enterprises") such that the profits are not shifted outside India. Effective from April 1, 2012, TPR's have also been extended to certain specified domestic intra-group transactions. Stringent penalties have been prescribed for non-compliance with the procedural requirements and for understatements of profits. TP provisions in India are in line with the TP guidelines for MNCs and tax administrators issued by the OECD, except with certain noteworthy differences.

International Transfer Pricing

International transaction means transaction between two or more associated enterprises, either or both of whom are non-residents, having a bearing on the profits, income, losses or assets of such enterprises. A transaction with a non-AE may also be deemed as an international transaction if a prior agreement or arrangement pertaining to such transaction exists between the non-AE and the taxpayer's AE.

Specified Domestic Transaction (STD)

Specified Domestic Transaction means a transaction other than an international transaction between the units with the related domestic companies or units eligible for tax holiday. SDT is applicable only when the aggregate value of STD's in a finical year exceeds INR 20 crores.

Safe Harbour Rule (SHR)

Safe Harbour Rule indicates circumstances under which the income tax authorities accept the transfer price declared by a taxpayer to be at arm's length. The SHR rates are pre-determined deferring from industry to industry. SHR will be applicable for a maximum period of three years.

Advance Pricing Agreements (APA)

Measures allowing Advance Pricing Agreements (APAs) are made effective from July 2012. Under these measures, the tax administration may enter into an APA with any person undertaking an international transaction. APAs are binding on the taxpayer and the tax authorities and are valid for a maximum period of five consecutive years. The APA scheme provides for a "rollback" mechanism, which is subject to prescribed conditions and procedures.

Country by Country Reporting (CbCR)

The Indian Government has adopted a three-tiered documentation structure, laying down provisions for additional transfer pricing (TP) documentation and Country-by-Country (CbC) reporting to implement the recommendations contained in the OECD's BEPS report on Action 13. The reporting provisions apply if consolidated revenue of an international group in the prior year exceeds the prescribed limit.

Interest Restrictions

Excluding banking and insurance companies, an Indian company, or a PE in India being a borrower, pays interest exceeding 10 million INR in respect of any borrowings in excess of 30% of cash profits or EBIT of the previous year, whichever is less, shall not be allowed as a deduction. However, the same can be carried forward for 8 years and allowed as a deduction in subsequent years.

8. INDIRECT TAXATION

Post independence, India's biggest tax reform in the form of Goods and Service Tax (GST) was implemented on 1st July, 2017. Various indirect tax taxes levied by the Centre and respective States were hitherto subsumed with GST. GST has been a major transition in the Indian tax framework and in light of government's proactive measures to business regime in India. Other than GST, the central government levies indirect taxes comprising customs duty, stamp duty, profession tax, property tax and entertainment tax. Post GST regime, the states continue to have the authority to levy Professional Tax and Value Added Tax on selected items like petroleum products alcohol, etc.

Goods and Service tax

Introduction

GST is destination based tax aimed to replace various central taxes, duties and Cess such as Central Excise, Service Tax, Central Sales Tax and a multitude of state levies like value Added Tax, Octroi, Luxury Tax, Entry Tax etc. The GST in India is based on dual levy model. Both the Centre and the State are empowered to levy equal amount of tax (in the form of CGST and SGST) on the same taxable base. In case of inter-state transaction, the Centre has the authority to levy IGST, a part whereof will be transferred by the Central Government to the destination State. IGST will also be imposed on imports, while in order to provide incentives to exports, it shall continue to be "zero-rated".

Registration

GST registration is not required if the turnover of a supplier dealing in goods on a is less than INR 40 lakhs in a financial year (in case of some North Eastern states, the threshold is of INR 20 lakhs). For suppliers of services, a lower registration threshold of INR 20 Lakhs (in case of some North Eastern states, the threshold is of INR 10 lakh) has been prescribed. A supplier that only supplies exempt goods and/or services is not required to obtain GST registration.

Rate of Tax

The GST rate slabs for goods and services are exempt, 5%, 12%, 18% and 28%. Essential items like food-grains, milk and services like healthcare and educated have been exempted. Most goods and services are in the 18% bracket, and specified luxury goods or services and 'sin' goods in the 28% slab. Further identified luxury goods are even subject to additional levy of compensation cess.

Input tax Credit (ITC)

Registered taxable person can claim credit of input tax paid provided they satisfy certain conditions. Credit of input tax paid on Non-taxable supplies, Exempt Supplies and Nil rated supplies shall not be available.

Any unutilised credit available under the previous regime was allowed to be carried forward and be utilised for paying taxes on output supplies under GST. ITC will be available only when the tax collected has been deposited by suppliers and they have complied with the associated compliance-related requirements. ITC set-off mechanism is also layered and tricky.

<u>Permissible Setoff:</u>

Credit of	Allowed for Payment of		
	IGST	CGST	SGST
IGST	✔	✔	✔
CGST	✔	✔	✘
SGST	✔	✘	✔

<u>Order of Setoff</u>

Tax Payable	First Set-Off	Then Set-Off
SGST	IGST	SGST
CGST	IGST	CGST
IGST	IGST	CGST/SGST (in either order)

Payment of Tax and Compliance

The supplier is generally is required to make payment of taxes. However, there are specified list of goods and services on which the recipient is required to discharge tax on those transaction under reverse charge mechanism.

Every registered assessed is required to file multiple returns for each registration on monthly basis. Small assessees are given option to file the returns quarterly.

Refund

The refund on input tax credit on inputs and input services are allowed in case such inputs and input services have been used for exports and supplies to SEZ. In case of inverted rate duty i.e. wherein the rate of tax on output is lower than inputs, refunds of tax on inputs is allowed. Refund of applicable Input Tax has been allowed for retail outlets established in the departure area of international airports beyond immigration counters for international tourists.

Authority of Advance Ruling (AAR)

In order to provide the facility of determining classification of goods and services, taxability of transaction, rate of tax as applicable, admissibility of credit and to avoid lengthy and expensive litigation, a scheme of advance rulings was introduced under the provisions of Goods and Service Tax, Act. A ruling can be obtained by an applicant with respect to any proposed transaction or transaction already undertaken. The ruling of AAR is binding only on the applicant and the concerned office for the case of applicant.

Other Indirect Tax Levy

Introduction

Other than GST, the central government levies indirect taxes comprising customs duty, stamp duty, profession tax, property tax and entertainment tax. Profession tax and State Value Added Tax only on selected items like petroleum products alcohol, etc are still levied by respective state governments. Further duty is levied on electricity as well. Few of important levies are discussed hereunder:

Customs

Customs duty is a duty that is levied on goods that are imported into India and exported from India. Customs duty is levied by the Central Government. Components of custom duty includes:

- Basic Custom Duty
- Integrated Goods and Service Tax (IGST)
- Cess

Stamp Duty

Stamp Duty is levied by states on various transactions like transfer of movable or immovable property, registration of documents etc.

Profession Tax

Profession Tax is levied by state on person engaged in profession, trade or employment of state.

Value Added Tax (VAT)

States continue to levy VAT on petroleum, diesel, air turbine fuel, alcohol etc. even after implementation of GST.

Property tax

Property tax is levied by respective municipal corporation or municipality for maintenance of basic services in the city or region. Water tax may also be levied on consumption over specified limit.

9. REPATRIATION

Foreign capital invested in India is generally allowed to be repatriated along with profits and capital appreciation after payment of taxes due. The repatriation is allowed provided the investment was made on a repatriation basis in accordance with the FDI guidelines and FEMA regulations. Repatriations are generally made through following routes:

- **Dividend in case of Company**
- **(Share of) post tax Profits of LLP, Branch and Project Office**
- **Buy Back of Shares of Company**
- **Share Capital Reduction of Company**
- **Withdrawal of Capital in LLP**
- **Royalties** (may be subject to withholding tax)
- **Fees for Technical Services** (may be subject to withholding tax)

10. ECONOMIC LAWS

Indian Contract Act, 1872

The Indian Contract Act governs the formation, implementation and conclusion of a contract. It also provides remedies for breach of contract. An enforceable contract must be an agreement between two or more competent parties with free consent for a lawful consideration and object and such agreement must not be expressly declared as void.

Intellectual Property

India has enacted following necessary statutes for protection of intellectual property rights:

- Copyright Act, 1958
- Indian Patents Act, 1970
- Trade Marks Act, 1999
- Design Act, 2000

Labour Laws

Act	Brief Details
The Employees' State Insurance Act, 1948	This covers factories and establishments with 10 or more employees and provides for comprehensive medical care to the employees and their families.
The Employees' Provident Funds & Miscellaneous Provisions Act, 1952	This applies to specific scheduled factories and establishments employing 20 or more employees and ensures terminal benefits, provides funds, superannuation pensions, and family pensions in case of death during service.
The Employees' Compensation Act, 1923	This requires payment of compensation to the worker or their family in cases of employment related injuries resulting in death or disability.
The Maternity Benefit Act, 1961	This provides for 26 weeks wages during maternity as well as paid leave in certain other related contingencies.
The Payment of Gratuity Act, 1972	This provides 15 days wages for each year of service to employees who have worked for five years or more in establishments having a minimum of 10 workers.
Payment of Bonus Act, 1965	This applies to factories and establishments employing 20 or more employees for payment of bonuses to person.
Employees Compensation Act, 1923	This provides for compensation of employees or their survivors in the event of accidents resulting in death or disablement of employee
Payment of Wages Act, 1936	This provides for payment of wages to certain class of employees within prescribed time limit, in prescribed in manner and without any unauthorised deduction.
Factories Act, 1948	This provides for health, safety and welfare of the workers in the factories
Trade Union Act, 1926	This provides for registration of trade unions of workers and safeguards their political and civil interests.
Industrial Disputes Act, 1947	This provides for the investigation and settlement of disputes between the employer and employees.
Shops and Establishment Act, 1954	This provides for minimum standards of working conditions, maximum working hours, over-time regulations for establishments.

Anti-Trust Protection Laws

Act	Brief Details
The Competition Act, 2002	The main objective of competition laws is to promote and sustain competition in markets, protect the interest of consumers, ensure freedom of trade. It safeguards against the monopolies and non-competitive arrangements.
Negotiable Instrument Act, 1881	This regulates the promissory notes, bills of ex-change and cheques. It provides for criminal and civil remedy for any default.
Consumer Protection Act, 1986	This is for protection of the consumers.
Real Estate (Regulation and Development), Act	This is for protection of buyers of residential and commercial properties.
Sale of Goods Act, 1930	This provides for the setting up of contracts where the seller transfers or agrees to transfer the title (ownership) in the goods to the buyer for consideration.
Arbitration and Conciliation Act, 1996	This provides for for a mechanism for appointment of arbitrators, objections against an arbitral award as well as enforcement of arbitral award.

NOTES

M. S. Chhajed & Co.

M. S. Chhajed & Co. is a three decade old firm Chartered Accountancy firm based in Ahmedabad and engaged in providing assurance, tax, transaction and advisory services. The firm is acclaimed for its legal acumen, work ethics, transparency and confidentiality.

M. S. Chhajed is an independent member PrimeGlobal *An Association of Independent Accounting Firms*

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