

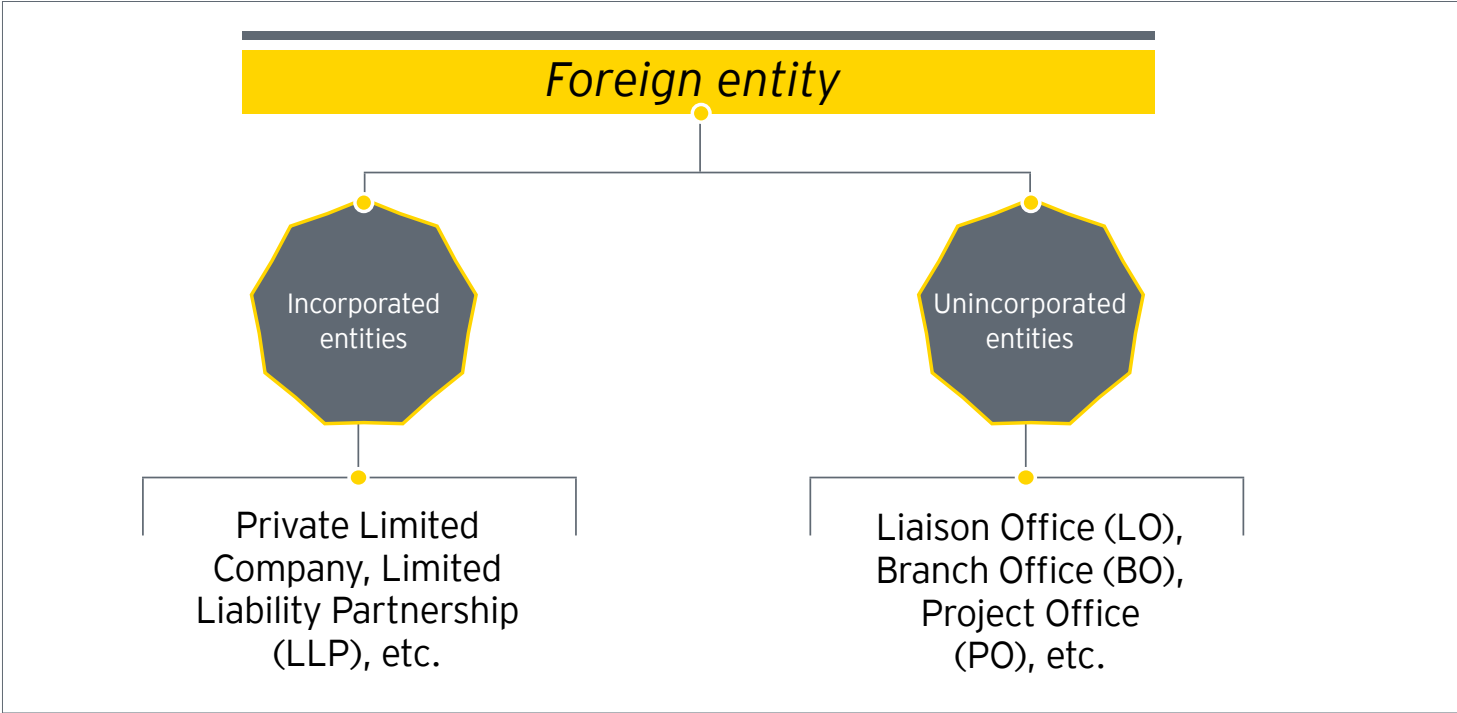
D Entry options in India



D

A foreign entity can set up their business operations in India either as an incorporated or unincorporated entity.

Every foreign investor planning to enter India should select an appropriate form of business presence, keeping in mind the business objective of its foreign entity in India. The right selection is likely to go a long way to ensure efficiency (from an operational/legal/regulatory/tax perspective) and would also help to ensure that the business can be financed and run efficiently.



The following table gives a snapshot of some of the commonly preferred business forms in India

Particulars	Liaison office (LO)	Project office (PO)/Branch office (BO)	Private Limited Company	Limited Liability Partnership (LLP)
Legal	Represents the parent company and acts only as a communication channel of the foreign parent company.	Both BO and PO are extended arms of the parent company. A PO is generally set-up for specific projects, whereas a BO is set-up for carrying activities in the course of the business ¹ .	Independent status	Independent status
Approval for commencement	<ul style="list-style-type: none"> ▶ Required from an authorized dealer bank (AD Bank), which is subject to fulfilment of prescribed conditions². ▶ Required from RBI in exceptional scenarios. 	<ul style="list-style-type: none"> ▶ Required from an AD Bank, which is subject to fulfilment of the prescribed conditions². ▶ Required from RBI in exceptional scenarios. 	A company can be set up subject to FDI guidelines.	An LLP can be set up subject to FDI guidelines.
Permitted activities	Liaison activities No commercial/business activities are permitted.	Restricted scope Activities listed by RBI are only allowed to be undertaken.	Activities specified in Memorandum of Association of the company, subject to FDI guidelines.	Activities specified in LLP agreement, subject to FDI guidelines.
Income tax rate	An LO is not subject to tax in India, since it is not permitted to undertake any business activity.	Liable to tax on income earned in India @ 40% ³ .	<ul style="list-style-type: none"> ▶ Liable to tax on global income @ different corporate tax rates (15%/22%/25%/30%)³ depending upon the nature of activities, annual turnover and fulfilment of certain conditions (please refer section 'L' for details on applicable tax rates). ▶ Company is liable to Minimum Alternate Tax (MAT) @ 15%³ on its book profit. 	<ul style="list-style-type: none"> ▶ Liable to tax on global income @ 30%³. ▶ An LLP is liable to Alternate Minimum Tax (AMT) @ 18.5%³ on its book profits.
Repatriation of accumulated profits	Not applicable as LO is not permitted to undertake any business activity.	A BO/PO is permitted to remit post-tax profits outside India upon fulfilling procedural compliances.	No statutory approval required; procedural compliances to be undertaken.	No statutory approval required; procedural compliances to be undertaken.
Ease of exit	Prior approval of AD Bank and ROC authorities is required.	Prior approval of AD Bank and ROC authorities is required.	<ul style="list-style-type: none"> ▶ It may be complex depending on the strategy adopted. ▶ Exit can be through sale of shares or liquidation. 	<ul style="list-style-type: none"> ▶ It may be complex depending on the strategy adopted. ▶ Exit can be through sale of interest or dissolution.

Funding of Indian businesses



E

Equity share capital

Features

Voting rights are given to shareholders in proportion to the shareholding.

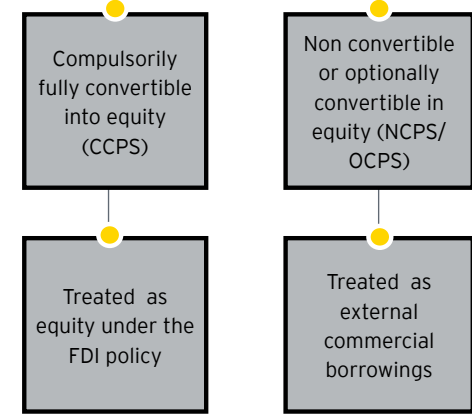
Pay-out via dividend, buyback, capital reduction, etc.

Freely transferable, subject to sector-specific lock-in-conditions.

Additional capital can be raised by any of the following modes subject to regulatory conditions:



Preference share capital



Preference shareholders are entitled to preferential right over equity shareholders with respect to dividend and repayment of capital.

External Commercial Borrowings (ECBs)

- ▶ ECBs are commercial loans raised by eligible resident entities from recognized non-resident entities and should conform to the parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.
- ▶ **The framework for raising loans through ECB comprises of the following two options:**
 - ▶ Foreign currency dominated ECBs in any freely convertible foreign exchange
 - ▶ Indian Rupee dominated ECBs
- ▶ The minimum average maturity period for an ECB is three years except for certain specified categories (such as ECBs raised for working capital purpose or general corporate purpose, ECB raised by manufacturing companies, etc.), where average maturity period can range between 1 year to 10 years.
- ▶ ECBs can be availed under two routes, namely, automatic route and approval route. All ECBs can be raised under the automatic route if they conform to the parameters prescribed under the ECB

framework. Under the approval route, the prospective borrowers are required to send their requests to RBI through their AD Bank for examination.

Debentures and borrowings

- ▶ Companies can also raise funds by issuing debentures, bonds and other debt securities or by accepting deposits from the public. Debentures can be redeemable, bearer or registered, and convertible or non-convertible.
- ▶ Compulsorily fully convertible debentures are treated as equity under the FDI policy. Non-convertible/optionally convertible debentures are construed as ECBs and should conform to the ECB guidelines.

Listed debentures/bonds

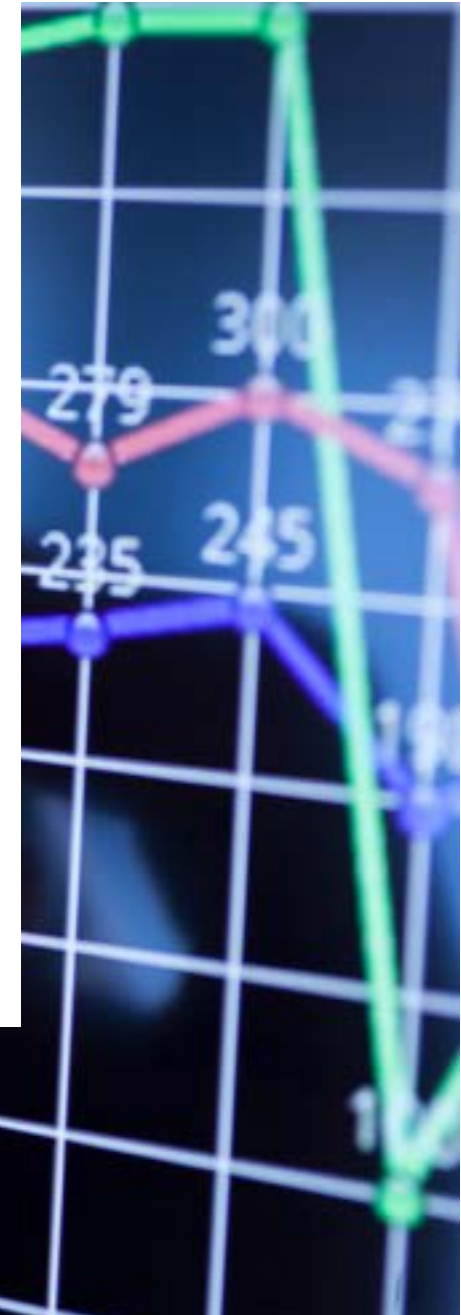
- ▶ SEBI registered Foreign Institutional Investors (FIIs)/Qualified Foreign Investors (QFIs)/Foreign Portfolio Investments (FPIs) are allowed to invest in listed debt securities, subject to regulatory conditions.

American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and foreign currency convertible bonds (FCCBs)

- ▶ Qualifying Indian companies can raise equity capital overseas by issuing ADRs, GDRs or FCCBs (rupee denominated equity shares/bonds) which are subject to sectoral caps and end-use restrictions under the FDI regulations.
- ▶ The FCCBs need to conform to ECB guidelines as specified above.

Funding of an LLP

- ▶ Investment in an LLP is through capital contribution of partners and is subject to conditions under the FDI policy.
- ▶ FDI in LLPs is permitted in sectors where 100% FDI is allowed under automatic route and there are no FDI-linked performance conditions.



F Repatriation of funds



F

Repatriation from an Indian company

Foreign capital invested in India is generally allowed to be repatriated along with capital appreciation, if any, after payment of taxes due. The repatriation is allowed, provided the investment was made on a repatriation basis in terms of FDI/FEMA regulations, and is subject to any lock-in conditions that may be applicable under FDI/FEMA regulations.

Typical modes of repatriation in an Indian company

01 Dividend

- ▶ Profits earned by an Indian company can be repatriated as dividend, subject to availability of sufficient free reserves without RBI's permission. The repatriation is also subject to compliance with other specified conditions.
- ▶ Dividend is taxable at 20% (plus applicable surcharge and cess), subject to beneficial tax rates provided in the applicable treaty in the hands of shareholders.
- ▶ Repatriation can be completed within a week.

02 Buy back

- ▶ Buy back restricted up to 25% of the share capital and free reserves in a financial year subject to satisfaction of the prescribed conditions.
- ▶ Companies who are buying back shares are liable to pay tax @ 20% (plus applicable surcharge and cess) on consideration paid less amount received on issue of shares¹.
- ▶ No tax on shareholders in case of buy back of shares.
- ▶ Buy back price will be subject to pricing conditions prescribed under the FDI regulations in case of non-resident shareholders.
- ▶ Buy back of unlisted shares can be completed within six weeks.

03 Capital reduction

- ▶ NCLT driven process, subject to conditions prescribed under FDI regulations.
- ▶ Consideration to the extent of accumulated profits is taxable at the rate of 20% (plus applicable surcharge and cess) in the hands of

shareholders subject to the beneficial tax rates provided in the applicable treaty.

- ▶ Consideration in excess of accumulated profits subject to capital gains tax in the hands of shareholders.
- ▶ Capital reduction can be completed within four to six months (subject to NCLT's vacations and protracted litigation).
- ▶ Capital reduction should be in compliance with the FEMA guidelines.

Royalties and fee for technical services

Indian entities are permitted to make payments to foreign entities under foreign collaboration agreements, subject to certain prescribed conditions. The payment can be for:

- ▶ Royalties and technical know-how
- ▶ Fees for technical services

The entities need to substantiate genuineness of such payments.

Remittances to foreign entities in the nature of royalties and fees for technical services

are subject to tax withholding at 10% (plus applicable surcharge and cess) as per section 115A of the Income-tax Act, 1961 subject to beneficial tax rates provided in the applicable treaty. Furthermore, the said payments will be subject to arm's length test in case the transaction is between associated enterprises.

Other remittances

- ▶ Profits earned by Indian branches of foreign companies (other than banks) can be repatriated to their head offices subject to payment of the applicable taxes. Proceeds from the winding-up of a branch of a foreign company in India can also be repatriated.
- ▶ Profit earned by LLPs can be repatriated by way of distribution of profits to partners/ withdrawal of capital. Repatriation of the profit by the LLP to its partners is exempted from tax in the hands of the partners.

Forms of business enterprises



Sole proprietorship

Sole proprietorships are businesses owned and managed by individuals.

Features

- ▶ Profits or losses are borne by the owner solely
- ▶ No separate legal existence
- ▶ Unlimited liability of the proprietor
- ▶ In case a sole proprietor is an NRI or a PIO residing outside India, it is eligible to carry business in India
- ▶ NRIs/PIOs cannot invest in proprietary concerns engaged in specified sectors
- ▶ Investments can be made through inward remittance or out of specified accounts held by an NRI or a PIO

Partnership firms

Persons who have agreed to share the profits/ losses of a business conducted by them or any of them on their behalf is called partnership.

Features

- ▶ Partners' liability is unlimited
- ▶ Minimum two partners and maximum 50
- ▶ The firm and its partners are legally a single entity
- ▶ Partnership interest is non-transferable (except for existing partners)
- ▶ NRIs/PIOs residing outside India are allowed to invest in an Indian partnership firm on non-repatriable basis. Repatriation benefits are available with prior approval from the RBI
- ▶ NRIs or PIOs cannot invest in a partnership firm engaged in specified sectors
- ▶ A person resident outside India (other than an NRI or a PIO) can make investments in a partnership firm after obtaining an approval of the RBI or Foreign Investment Promotion Board (FIPB)

Limited Liability Partnership

An LLP is a hybrid entity with combined features of a company and a partnership firm.

Features

- ▶ It has a perpetual succession
- ▶ It has a legal identity separate from its partners
- ▶ Partners' liability is limited to their contribution
- ▶ FDI into an LLP is permitted under the automatic route subject to investment conditions¹
- ▶ LLPs with FDI eligible to make downstream investments into a company or an LLP. Such downstream company/LLP to satisfy investment condition¹
- ▶ Conversion of a company with FDI into an LLP is permitted under automatic route. Such LLP to comply with investment conditions¹
- ▶ Minimum two designated partners who are individuals and at least one being a resident of India

- ▶ Designated partners responsible for an LLP should comply with the provisions of LLP laws in India
- ▶ Where the LLP has a body corporate (BC) as a partner, then the BC will have to nominate an individual to act as a designated partner
- ▶ An LLP incorporated in India is permitted to make outbound investments, subject to applicable Indian exchange control conditions

Companies

The Companies Act, 2013 and sub-ordinate rules therein, regulate incorporation of a company, manner of conducting its affairs, responsibilities of its directors and dissolution of a company. The Ministry of Corporate Affairs has the responsibility of ensuring compliance with the provisions of the Companies Act through the offices of Registrar of Companies and the Regional Directors. Securities and Exchange Board of India (SEBI), on the other hand, ensures compliance by the listed companies.

Types of companies

Companies in India can be broadly classified as public and private companies. A company can be registered with its liability as limited or unlimited. It can also be registered as a company limited by guarantee.

One person company

- ▶ Only one member (should be an Indian citizen and resident)
- ▶ At least one director

Small company

- ▶ Not a public company
- ▶ Paid up capital not more than INR5 million and turnover according to latest Profit and Loss account does not exceed INR20 million

Private limited company

- ▶ Company members (2 to 200), minimum two directors
- ▶ Restriction on transfer of shares

Public company

- ▶ Minimum seven members, minimum three directors
- ▶ Limits placed on remuneration paid to the directors

Section 8 Company

- ▶ Company established for charitable purpose
- ▶ Profits to be used for charitable purpose and not to be distributed

Share capital

The Companies Act permits companies to issue two kinds of shares to its members:

01

Equity shares
(common stock)

02

Preference shares
(preferred stock)

Equity share capital with differential rights as to dividend, voting or otherwise can be issued, subject to prescribed conditions and rules

Board of directors

- ▶ The management of a company is entrusted to its board of directors. The board acts on behalf of the company's members and is entrusted with the overall responsibility for conducting its business activities and day-to-day operations.
- ▶ It seeks the confirmation and approval of the company's members on major decisions, by way of passing resolutions at general meetings or through postal ballot.
- ▶ The board may also delegate its powers to a committee of directors or managing director by passing a resolution to this effect.

E-filing

All statutory filings, intimations to Registrar of Companies and central government and other service requests are required to be made online by submitting the e-Forms available on the Ministry of Corporate Affairs website using a digital signature.

Corporate Social Responsibility (CSR)

Eligible Indian and foreign companies working in India are required to ensure that they spend, in every FY, at least 2% of the average net profits of the company, as calculated in accordance with the Companies Act, 2013 towards the CSR activities specified in Schedule VII of the act.

CSR

at least
2%

Financial reporting and audit requirements



- ▶ The government has notified Ind AS¹ for Indian companies, other than those in banking and insurance, to apply in a phased manner. Application of Ind AS is now mandatory for all listed companies and non-listed companies having a net worth of INR2.5 billion and their holding, subsidiary, joint venture or associate companies.
- ▶ Banking and insurance regulators in India have deferred implementation of Ind AS. The implementation timeline for these entities will be notified separately by the respective regulators.
- ▶ Ind AS applies to both standalone and consolidated financial statements of the companies covered above. Companies that are not covered above can either apply Ind AS voluntarily or continue to apply their existing standards, i.e., accounting standards notified under the Companies (Accounting Standards) Rules, 2006. Any such company opting to apply Ind AS will need to prepare its financial statements according to Ind AS consistently. Once Ind AS are applied voluntarily, this option will be irrevocable and such companies will not be required to prepare another set of statutory financial statements in accordance with the existing standards.
- ▶ India has adopted the convergence approach instead of fully adopting International Financial Reporting Standards (IFRS) as issued by the International

Accounting Standards Board (IASB). As a result, financial statements prepared in accordance with Ind AS may not be fully compliant with IASB IFRS.

Uniform financial year

Companies/LLPs need to uniformly adopt financial year ending 31 March. However, a company which is a holding/subsidiary/associate company of a company incorporated outside India and is required to follow different financial year for consolidation of its accounts outside India, may approach central government to allow different period as its financial year.

Audit

All companies need to get their accounts audited by an auditor who is a practicing member of the ICAI. Under the Companies Act, 2013, an auditor is appointed for a term of five years. Furthermore, all listed companies and those belonging to a prescribed class cannot appoint or reappoint the auditor for more than two

terms of five consecutive years, if the auditor is an audit firm or for more than one term of five consecutive years, if the auditor is an individual.

Financial statement

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. Financial statement in relation to a company includes:

- ▶ Balance sheet at the end of the financial year
- ▶ Profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year
- ▶ Cash flow statement for the financial year
- ▶ A statement of changes in equity, if applicable
- ▶ Any explanatory note annexed to, or forming a part of, any document referred to above

In case a company has one or more subsidiaries, associate or joint venture companies, it is also required to prepare a consolidated financial statement in addition to the standalone financial statements (subject to a few exceptions).

Tax reporting

Income Computation and Disclosure Standards (ICDS) notified by the Central Board of Direct Taxation (CBDT) needs to be followed by all assesseees following the mercantile system of accounting for the purpose of computation of business income or income from other sources chargeable to income tax in India.

ICDS are applicable to all taxpayers, including non-resident taxpayers (corporate or non-corporate), irrespective of the turnover or quantum of income. Presently, 10 ICDSs have been notified by the central government.

Separate maintenance of books is not required for the purpose of ICDS. However, it may necessitate maintenance of memorandum records. Disclosures required under ICDS is to be included in the annual Tax Audit Report (TAR) and return of income (ROI).

ICDS does not impact MAT for corporate taxpayers, which can continue to be based on book profit determined on the basis of the applicable accounting standards.

Economic laws and regulations



The Indian Contract Act, 1872 (ICA)

The ICA governs the formation, implementation and conclusion of a contract. It also provides remedies in case there is breach of a contract. ICA defines a contract as an agreement enforceable by law. To be enforceable by law, a contract must contain the following essential elements:

Free consent of the parties

Parties must be competent to a contract

A contract should be for a lawful consideration

A contract must be with a lawful object

A contract should not be expressly declared by the ICA to be void

Along with dealing in the general principles of law of contract, ICA also deals with special kind of contracts such as contract of indemnity and guarantee; contract of bailment and pledge; and contract of agency. However, it does not cover contracts covered in separate independent legislations such as contract of partnership, contract for sale of goods, etc.

Protection of intellectual property rights

India, being a signatory to the General Agreement on Tariffs and Trade (GATT) and Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, has complied with the obligations therein by enacting necessary statutes governing the following:

- Copyrights and other related rights
- Trademarks
- Geographical indications
- Patents
- Industrial designs

The Copyright Act, 1957 and The Copyright Rules, 1958

The Copyright Act, 1957 read with the Copyright Rules, 1958 governs copyright protection in India. As per the said law, copyright subsists with the author of the original literary, dramatic, musical and artistic work, a cinematographic film and sound recording. In India, copyright is an inherent right of the author towards its creation and therefore, the registration of copyright is not sine qua non.

The Copyright Act provides for both civil and criminal remedies for an infringement of a copyright. When an infringement is proved, the copyright owner is entitled to the remedies by way of injunction, damages and order for seizure as well as destruction of infringing articles.

The Trade Marks Act, 1999 (TM Act) and The Trade Marks Rules, 2017 (TM Rules)

The TM Act and TM Rules provides for protection of trademarks for services and goods, including collective marks and for the assignment and transmission of trademarks. The registration of the trademark is sine qua non for a person claiming to be the proprietor of a trademark wherein, the prior use of the trademark is not a pre-requisite for its registration.


The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) and The Geographical Indication of Goods (Regulation and Protection) Rules, 2002 (GI Rules)

In compliance with the obligations in the TRIPS agreement and the Paris Convention for the Protection of Industrial Property, India enacted the GI Act along with the GI Rules that governs the present geographical indications regime in India.

As per the GI Act, a *geographical indication* means an indication which identifies particular goods as agricultural, natural or manufactured goods that originated or manufactured in the territory of a country or a region or locality, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin.

The Indian Patents Act, 1970

The Patents Act, 1970 provides for grant, revocation, registration, license, assignment and infringement of patents in India. Any infringement of a patent is punishable under the Patents Act.

 The Designs Act, 2000 (Designs Act) and the Design Rules, 2001 (Design Rules)

The Designs Act and the Design Rules were enacted to fulfill India's obligations under WTO agreements. The Designs Act protects novel designs formulated by an owner with the objective of applying them to specific articles, to be manufactured and marketed commercially for a specific period of time.



|| Labor laws

India is a member of the International Labour Organization (ILO) and complies with the conventions that it has ratified. The key labor laws that are applicable are mentioned below:

Legislation	Details of the legislation	Legislation	Details of the legislation
▶ The Industrial Disputes Act, 1947	It provides for an investigation and settlement of industrial disputes, between employers and employees relating to employment or non-employment, the terms of employment, or conditions of labor.	▶ The Payment of Gratuity Act, 1972	It provides a scheme for the payment of gratuity to all employees (whether or not employed in a managerial or administrative capacity) engaged in a factory, shop and other establishment.
▶ The Trade Unions Act, 1926	The act provides for registration of trade unions of workers and is administered by state governments. It confers legal and corporate status on registered trade unions and promotes civil and political interest of its members.	▶ The Employees Compensation Act, 1923	Its objective is to compensate employees or their survivors in the event of an accident resulting in disablement or death during the course of an employment.
▶ The Plantation Labour Act, 1951	It provides for the welfare of plantation labor and regulates the condition of work in plantations. According to the act, the term "plantation" means any plantation to which this Act, whether wholly or in part, applies and includes offices, hospitals, dispensaries, schools and any other premises used for any purpose connected with such plantation, but does not include any factory on the premises to which the provisions of the Factories Act, 1948 apply.	▶ The Industrial Employment (Standing Orders) Act, 1946	It provides for the employers to define the conditions of employment of the workers by issuing standing orders or implementing service rules with respect to classification of workmen, payment of wages, termination of service, etc.
▶ The Payment of Bonus Act, 1965	It provides for payment of bonuses to persons employed in certain establishments on the basis of profits or on production or productivity, as well as for matters connected therewith. This act is applicable to every factory and establishment that has employed 20 or more persons.	▶ The Minimum Wages Act, 1948	The act seeks to determine the minimum rates of wages in certain employments specified in the schedule to the act.
		▶ The Payment of Wages Act, 1936	It seeks to regulate the payment of wages to certain classes of employees in an industry such that the wages are disbursed within the prescribed time limit and without any unauthorized deductions.
		▶ The Factories Act, 1948	It governs the health, safety and welfare of the factory workers. It also comprises of a regulation for the functioning of factories and detailed procedures related to the inspection, registration and licensing of factories.



Legislation

Details of the legislation

▶ The Employees' Provident Fund and Miscellaneous Provisions Act, 1952	It seeks to ensure financial security of employees by providing compulsory savings through a contributory fund payable at retirement. Applicable to international workers subject to exemptions given in act.
▶ The Maternity Benefit Act, 1961	The act regulates the employment of women in certain establishments for a prescribed period before and after a childbirth, abortion or surrogacy. The act is applicable to all establishments employing 10 or more persons. Women are entitled to a paid maternity leave of 26 weeks.
▶ The Employees' State Insurance Act, 1948	It provides for health care and cash benefits to employees in the event of sickness, maternity or injury suffered during employment and for other matters relating thereto. The act is applicable to factories and other establishments employing 10 or more persons. Employees drawing monthly wages up to INR21,000 are entitled to a social security cover under the said act.
▶ The Contract Labour (Regulation and Abolition) Act, 1970 (CLRA)	The act was promulgated to regulate the employment of contractual labor. The establishments covered under the CLRA are required to be registered as principal employers with appropriate authorities. Every contractor is required to obtain a license and cannot undertake or execute any work through contract labor, except in accordance with the license issued by the licensing officer.
▶ The Shops and Establishment Act, 1954	The act regulates working hours, minimum standards of working conditions and overtime, leave-salary payments to workers in certain categories of shops and other establishments.

Anti-trust regulation

In line with the global norms to prevent monopolies from creating trade barriers and reducing competition in India, the government has evolved an anti-trust regulatory framework that principally relates to the following legislations:

The Competition Act, 2002

This has been enacted to achieve objectives such as promote and sustain competition in markets, protect the interest of consumers, ensure freedom of trade carried on by participants, and prevent practices having an appreciable adverse effect on competition. Competition Commission of India was established for adjudication on any anti-competitive practice and for scrutinizing the qualifying acquisitions or mergers or amalgamations which have an effect on relevant markets in India.

The Consumer Protection Act, 1986

This act was enacted for the protection of consumer interest against the manufacturers or service providers providing defective goods or deficient services or for undertaking any trade practice that is likely to be classified as unfair or restrictive under the said act.

The Negotiable Instruments Act, 1881 (NI Act)

The NI Act, governs the law relating to the promissory notes, bills of exchange and cheques. The NI Act prescribes the liabilities of a drawer, a drawee and a holder in due course. The NI Act provides for criminal prosecution, which may extend up to a period of two years and/or a fine which may extend to twice the amount of the negotiable instrument for any default in encashment of any negotiable instrument in India.

The Sale of Goods Act, 1930

The act is complimentary to the ICA. The basic provisions of ICA, i.e., offer and acceptance, legally enforceable agreements, mutual consent, parties competent to contract, free consent, lawful object, consideration, etc., apply to every contract of sale of goods.

The Arbitration and Conciliation Act, 1996

In India, the law relating to arbitration and conciliation is embodied in the act that provides, inter alia, for a mechanism for appointment of arbitrators, objections against an arbitral award as well as enforcement of an arbitral award. Unless the parties otherwise agree, the provisions of the said act will govern every agreement containing arbitration clause.



J Mergers and acquisitions

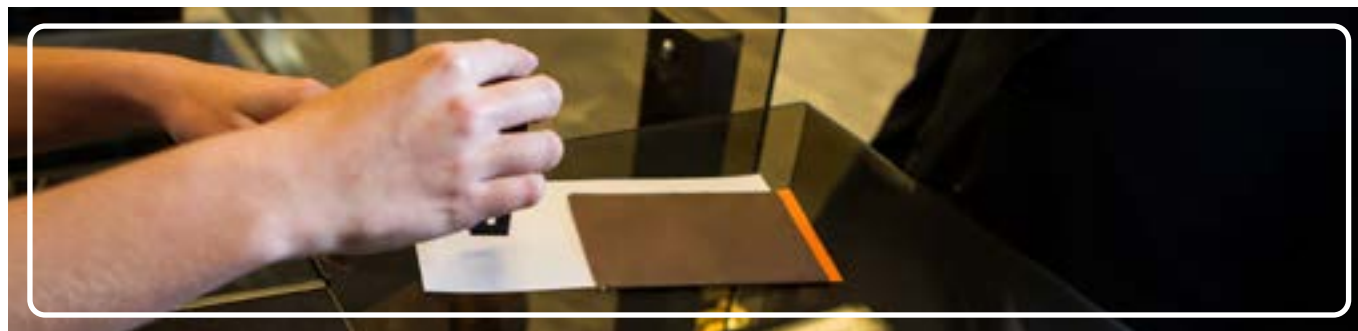


Mode	Merger	Demerger	Slump sale	Share acquisition
Nature	Consolidation of businesses/ entities by pooling of all financial and other resources.	Segregation of one business from another with the objective of value appreciation.	Lock, stock and barrel transfer of a business undertaking for a lump sum consideration.	Gaining direct/indirect control over a company by acquiring its shares with voting rights.
Ideal for	Generally, for a group's reorganization at the time of acquisition and divestment.		Third-party acquisition	
Implementation	Vide a scheme to be approved by jurisdictional National Company Law Tribunal (NCLT).		Vide a business transfer agreement (BTA)/scheme approved by jurisdictional NCLT.	Vide a share purchase agreement.
Regulatory considerations	Approvals of shareholders, creditors, NCLT and various regulatory bodies (RBI, SEBI, CCI, stock exchanges, corporate law authorities and ITA) is required.		Approval required from shareholders and competent authorities under the Income-tax Act, 1961. Also, sectoral caps under FDI regulations will apply.	Generally, prior approval is not required. It is subject to sectoral caps and pricing conditions prescribed under the FDI regulations.
Relaxations under the Companies Act, 2013	NCLT's approval is not mandatory for merger/ demerger between small companies and between wholly-owned subsidiaries and their parent companies. In such case, approval from corporate law authorities is required. NCLT may allow an unlisted transferee company to remain unlisted post-merger/demerger of a listed company. Cross-border mergers undertaken in accordance with the prescribed ¹ regulations to be deemed to be approved by the RBI.		Not applicable	Recognizes enforceable contracts among shareholders such as right of first refusal, liquidation preference, tag/drag along rights, etc.
Taxation	Generally, tax neutral for shareholders and companies, subject to fulfilment of prescribed conditions.		Gains on transfer are subject to capital gains tax ² .	Gains on transfer are subject to capital gains tax ³ . Indirect transfer of shares are subject to capital gains tax in India if prescribed conditions are met ⁴ .

Mode	Merger	Demerger	Slump sale	Share acquisition
Carry forward of losses	Available, subject to fulfilment of prescribed conditions.		Not available	Available in certain scenarios.
Trigger of takeover code (SEBI) ⁵	Exemption available to merger/demerger, subject to fulfilment of prescribed conditions.		Possible only if shares of a listed company are issued in consideration.	Possible if prescribed limits are breached in case of acquisition (direct/indirect) of shares of listed company through transfer/issue.
Competition Commission of India's approval	Approval is required if prescribed thresholds are breached.			
Time limit ⁶ (approximate time limit)	Six to seven months in case of unlisted companies. Eight to ten months in case of listed companies.		One to two months through BTA. Same timeline as merger/demerger if undertaken through scheme approved by jurisdictional NCLT.	One to two months



K Personal tax and immigration



|| Visa and registration requirements

A foreign national visiting India needs to obtain an appropriate visa to enter India. Type of visa to be obtained depends upon the purpose of the visit to India. Below are a few types of Indian visas issued to foreigners.

Business visa

Establishing or exploring the possibility of setting-up of businesses, attending meetings, liaising with potential business partners or functioning as a partner/director, negotiating supplies, conducting trade of goods and providing high-level technical guidance on ongoing projects.

Employment visa

Employment in India, executing projects or contracts, providing technical support or services, transfer of know-how for which royalty is paid and consulting on a contract basis in highly-skilled services.

Project visa

Execution of projects in the power and steel sectors.

Intern visa

Pursuing internship in Indian companies, educational institutions and non-governmental organizations (NGOs), subject to certain checks and conditions specified.

Tourist visa

Recreation, sightseeing, casual visit to meet friends and relatives, etc.

e-Visa

Sub-divided into five categories: e-Tourist Visa, e-Business Visa, e-Conference Visa, e-Medical Visa and e-Medical Attendant Visa. Available for nationals of specified countries for specified durations.

|| Residential permit

Foreign nationals must register with the local FRRO/FRO within 14 days from their date of arrival in India if their visa is valid for longer than 180 days or if the visa stamp specifically requires this registration. Certain categories of visitors are also required to register with the police authorities.

|| Family and personal considerations

Accompanying legal spouses and dependent children of the individuals visiting India for the purpose of business or employment, are required to apply the visas such as *business visa-dependents* or *employment visa-dependent*. Spouses or dependents of working expatriates must obtain a separate employment visa if they need to be employed in India.

|| Social security

Social security in India is governed by The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). The EPF Act applies to the following establishments:

- ▶ An establishment employing 20 or more persons engaged in a specific industry or any other establishment employing 20 or more persons or class of such establishments as notified by the central government.
- ▶ An establishment employing less than 20 persons that voluntarily opts to be covered by the EPF Act.

The covered employers must contribute towards the provident fund and pension scheme for their employees, including employees who are eligible as international workers.

Others: Other types of visas issued for visits to India include transit, medical, entry (X), student, conference, journalist, research, missionary, sports, mountaineering, film visa, etc. Visa on arrival facility is available for nationals of Japan, South Korea and the UAE for specified purposes.

Liability for income tax

Liability for income tax is governed by the residential status of individuals during the tax year. Residential status of an individual is determined based on the conditions prescribed in the table below:

Period of stay in India	Residential status		
	Non-resident (NR)	Resident	
Basic conditions			
≥ 182 days in the tax year (1 April to 31 March)	Satisfies	Satisfies any one	
≥ 60* days in the tax year and ≥ 365 days in four years immediately preceding the tax year	None		
A citizen of India, having total income, other than income from foreign sources, exceeding INR15 lakh during the tax year, who is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature		Deemed Resident	
Additional conditions		Not ordinarily resident (NOR)	Resident and ordinarily resident (ROR)
NR as per basic conditions in at least 9 out of 10 immediately preceding tax years		Satisfies one or both	Does not satisfy both
≤ 729 days in India in seven years immediately preceding tax years			
A citizen of India or a person of Indian origin, having total income, other than income from foreign sources, exceeding INR15 lakh during the tax year, who has been in India for a period or periods amounting in all to 120 days or more but less than 182 days		NOR	
A citizen of India, having total income, other than income from foreign sources, exceeding INR15 lakh during the tax year, who is not liable to tax in any other country or territory by reason of its domicile or residence or any other criteria of similar nature		NOR	

*60 days is substituted by

- 120 days for a citizen of India or a person of Indian origin, who being outside India, comes on a visit to India in any tax year, having total income other than the income from foreign sources exceeding INR15 lakh.
- 182 days for a citizen of India or a person of Indian origin, other than the one referred in (a) above, who being outside India, comes on a visit to India in any tax year.
- 182 days for a citizen of India who being in India, leaves India in any tax year for the purpose of employment outside India.

Rates of income tax for tax year 2020-21

A new and simplified personal income tax regime has been introduced which is optional. Under this scheme, a taxpayer will have an option to pay taxes at the reduced slab rates (mentioned below) which are applicable without certain exemptions and deductions. This option can be exercised every year by furnishing the return of income.

Taxpayers earning business or professional income, can opt into the regime only once on irrevocable basis. Such option will apply to all the subsequent tax years and in case where such an option is withdrawn by the taxpayer, it shall not be eligible to avail the concessional slab rates in subsequent years until it ceases to have business or professional income.

The old slab rates along with its comparison with the new slab rates are as below:

Income levels (INR)	Old rate	New rate
0- 250,000*	Nil	Nil
250,001-500,000	5%	5%
500,001-750,000	20%	10%
750,001-1,000,000	20%	15%
1,000,001-1,250,000	30%	20%
1,250,001-1,500,000	30%	25%
1,500,001-above	30%	30%

*INR250,000 is substituted by INR300,000 for resident individuals who are 60 years old or more but less than 80 years, and INR500,000 in the case of resident individuals of 80 years of age or more.

A rebate of INR12,500 or actual tax payable, whichever is less, is available for resident individuals with total income up to INR500,000.

Surcharge is applicable as in the table below:

Income levels (INR)	Surcharge
0-5,000,000	Nil
5,000,001-10,000,000	10% of total income tax liability
10,000,001-20,000,000	15% of total income tax liability
20,000,001-50,000,000	25% of total income tax liability
50,000,001-above	37% of total income tax liability

In cases where surcharge is applicable, marginal relief is allowed to ensure that the additional amount of income tax payable, including surcharge, on the excess of income over the respective limits of INR5,000,000, INR10,000,000, INR20,000,000 and INR50,000,000 is limited to the amount by which the income exceeds such limits.

Certain specified incomes are taxable at specified rates.

Long-term capital gains are not taxed according to the above slab rates but are generally taxed at a base rate of 20% plus applicable surcharge and cess.

Long-term capital gains exceeding INR100,000 arising from the sale of the following specified assets, on which securities transaction tax (STT) is paid, are chargeable to tax at special rates of 10%:

Equity shares in a company

Units of equity oriented mutual fund

Units of business trust

Short-term capital gains on aforesaid specified assets on which STT is paid (if assets are sold within one year) are chargeable at a special rate of 15%.

The increased rates of surcharge of 25% and 37% are not applicable on the capital gains taxable at special rates in relation to specified assets as provided above and on the dividend income for a taxpayer being an individual, a Hindu undivided family (HUF) and an association of persons, a body of individuals and an artificial juridical person.

The income tax and surcharge calculated, based on the rates specified above, is further increased by health and education cess of 4%.

Income tax filing

All taxpayers, including non-residents (NRs), must file a RoI if their income exceeds the maximum amount that is not liable to tax. Residents (excluding not ordinary residents), who hold foreign assets or income from any source outside India are required to furnish RoI even if the income does not exceed the maximum amount that is liable to tax.

Generally RoI for salaried individuals needs to be filed by 31 July of the year succeeding the tax year. RoI for self-employment or business income must also be filed by 31 July of the year succeeding the tax year or, if accounts are subject to a tax audit, by 31 October of the year succeeding the tax year. However, in the wake of COVID-19 pandemic, the due date for filing of RoI for FY 2019-20 has been extended till 30 November 2020¹. Return forms are notified by the tax authorities on a year-on-year basis.



Direct taxes



The central government levies direct taxes by way of income tax. Its administration, supervision and control lie with the Central Board of Direct Taxes (CBDT).

Administration

The Indian tax year starts from 1 April of a year and ends at 31 March of the subsequent year. **The due date for filing return of income (RoI) is as follows:**

Categories	Date of filing of RoI ¹
A company/an LLP that is required to submit a transfer pricing certificate in Form 3CEB with respect to international transactions	30 November
Other companies/LLPs	31 October (extended to 30 November 2020 for tax year 2019-20 in the wake of COVID-19 pandemic)

Non-resident corporations are also required to file a RoI in India if they earn income in India or have a physical presence or economic nexus with India. However, RoI is not required to be filed in India in case the income earned from India consists of only interest or dividend or royalty or fee for technical services subject to fulfillment of certain conditions.

Corporate tax liability needs to be estimated and discharged by way of advance tax on a quarterly basis.

Late filing of an RoI and delay in payment or shortfall in taxes attract penalty/interest.

Corporate income tax

For Indian income tax purposes, a corporation's income comprises of the following heads of income:

- ▶ Income from house property
- ▶ Income from business
- ▶ Capital gains on disposition of capital assets
- ▶ Residual income arising from non-business activities (i.e. income from other sources)

Corporations residents 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.

The term business connection is used in Indian IT Act instead of a PE, as in tax treaties, to tax profits from business. The term business connection is considered wider in its scope than PE.

Double Taxation Avoidance Agreement (DTAA)

Provisions of the IT Act or the DTAA, whichever is more beneficial are applicable to a non-resident taxpayer. Accordingly, the taxability is likely to be restricted or modified.

Rate of corporate tax

Domestic and foreign corporations are subject to a tax at a specified basic tax rate and depending upon the total income, the basic rate is increased with a surcharge. There is an additional levy of health and education cess at the rate of 4% of the tax payable.

Base tax rates for tax year 2020-2021

Particulars	Base tax rate ²
<i>Domestic company</i>	
Companies having turnover ≤ INR4 billion in FY 2018-19	▶▶ 25%
Companies having turnover > INR4 billion in FY 2018-19	▶▶ 30%
New manufacturing companies established and registered on or after 1 October 2019 and commencing manufacturing up to 31 March 2023 without availing specified deductions or incentives (optional regime)	▶▶ 15%
Domestic companies may opt for concessional tax rate provided they do not avail specified deductions or incentives	▶▶ 22%
Foreign company	▶▶ 40%
LLP	▶▶ 30%

Surcharge rates for tax year 2020-2021

Status	Income from INR10 million to INR100 million	Above INR100 million
Domestic company opting for concessional tax rate of 15% or 22%	10%	10%
Domestic company (other than above)	7%	12%
Foreign company	2%	5%
LLP	12%	12%

There is no repatriation tax cost when profits are distributed by an LLP, as the share of such profits in the hands of the partner(s) is exempt.

Withholding tax rates

Withholding tax rates	Tax rates in % (corresponding note)	
	Paid to a domestic company	Paid to a foreign company
Dividends	10 (d)(g)	20 (a)
Interest	10 (d)(g)	20/5 (a) (b)(d)
Royalty from patents, know-how, etc.	10/2 (d) (e)(g)	10 (a)(c)(d)
Fee for technical services (FTS)	10/2 (d) (f)(g)	10 (a)(c)(d)

Notes

- (a) The rates listed above for withholding tax must be increased by applicable surcharge with reference to the income slabs as indicated in the surcharge table above and health and education cess of 4%.

- (b) This rate of 5% only applies to interest on foreign currency loans. Any other interest is subject to tax at a normal applicable rate of 20% to foreign corporations.
- (c) Royalty or FTS: foreign corporations are taxed with respect to royalties or FTS at the rate of 10% on a gross basis.
- (d) If PAN of the payee (PAN or other specified details/documents in case of a non-resident payee) is not available, tax will be withheld at an applicable rate or at a penal rate of 20%, whichever is higher.
- (e) Reduced withholding tax rate of 2% to apply on royalty paid to residents in consideration for sale, distribution or exhibition of cinematographic films.
- (f) Withholding tax rate of 2% will apply in case of fees for technical services (not being a professional service) and 10% in other cases.
- (g) Withholding tax rates applicable for tax year 2020-21 for payment to domestic company has been reduced by 25% w.e.f. 14 May 2020 in the wake of COVID-19 pandemic.

Depreciation

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

Tax on dividend income

From 1 April 2020, dividend received from domestic companies is taxable in the hands of shareholders. Interest expenses up to 20% of dividend income are deductible expenses.

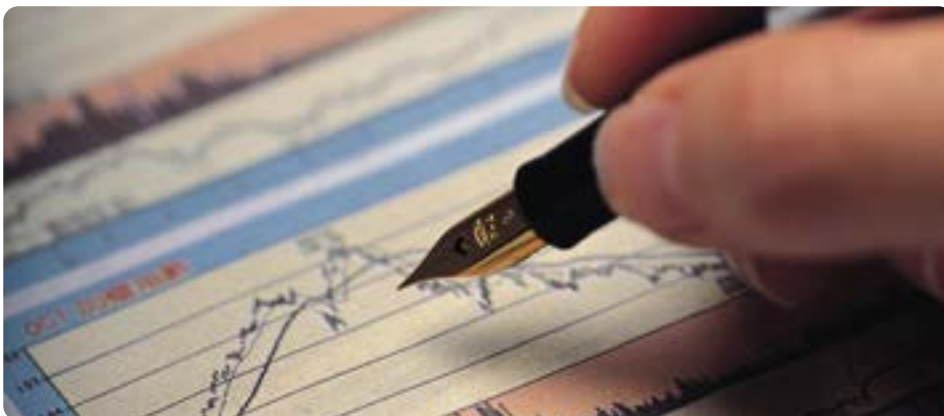
Earlier domestic companies were liable to pay dividend distribution tax at the rate of 20.56% (basic rate of 15% on the gross amount of dividend payable plus the 12% surcharge and the 4% cess) on dividends declared, distributed or paid by them. Dividend distributing companies are required to withhold taxes at the applicable rates (refer withholding tax rate given above) w.e.f. 1 April 2020.

Books of accounts and tax audit

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 INR10 million (INR50 million provided cash transactions are less than 5% in value) during the year.

Relief for losses

Business losses, other than from speculation businesses, are permitted to be set off against income from any other source (except income from employment, i.e., salary income) in the same year. Business losses, which cannot 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.



Indirect transfer of shares of domestic corporations

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 fair market value (FMV) of an Indian asset on a specified date exceeds INR100 million and represents at least 50% of the value of all assets owned by a foreign corporation.

Small shareholders holding 5% or less of the total voting power/share capital, in the foreign corporation or entity directly holding the Indian assets are exempted from indirect transfer tax. Moreover, indirect transfer of shares of an Indian corporation pursuant to merger/demerger of foreign corporations, subject to satisfaction of specified conditions is not taxable.

MAT/Alternate Minimum Tax (AMT)

Indian tax law requires MAT to be paid by corporations on the basis of profits disclosed in their financial statements where the tax payable according to regular tax provisions is less than 15% (excluding surcharge and cess) of their book profits. MAT is not applicable on domestic companies opting for concessional tax rate of 15% or 22%.

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

A modified version of MAT, AMT at 18.5% (excluding surcharge and cess) is applicable to LLPs and certain other taxpayers (other than companies) who are availing specified profit-linked tax incentives. Unadjusted AMT credit can be carried forward for 15 years and set off against income tax payable under the normal provisions of the IT Act to the extent of the difference between tax according to normal provisions and tax according to AMT.

Equalization levy

In line with OECD's BEPS project Action Plan 1 (digital economy), India has introduced an equalization levy on the following transactions:

Equalization levy of 6% is chargeable on the payment made by a resident carrying on a business or profession or the Indian PE of a non-resident to a non-resident providing specified services. 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, and also includes any other service notified by the central government.

From 1 April 2020, equalization levy of 2% is chargeable on the amount of consideration received/receivable by a non-resident (NR) e-commerce operator from e-commerce supply or services made, provided or facilitated by such an NR beyond threshold of INR20 million during a tax year to:

- ▶ A person resident in India or
- ▶ An NR which entails sale of advertisement targeted at a customer resident in India or accessing such advertisement through an Indian IP address or
- ▶ An NR which entails sale of data collected from a person resident in India or from a person who uses Indian IP address or
- ▶ A person who buys goods or services using an Indian IP address

2%

Foreign tax relief

DTAAs entered into by India 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 fulfillment of 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.

Authority for Advance Ruling (AAR)

An advance ruling scheme is available to achieve certainty on the income tax liability of eligible taxpayers (including non-residents), to plan their income tax well in advance and to avoid lengthy and expensive litigation.

A ruling can be obtained by an applicant (resident or non-resident) 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. Additionally, a resident applicant can also approach the AAR for determining its tax liability arising out of a transaction undertaken or proposed to be undertaken with a non-resident valuing INR1000 million or more in aggregate.

General Anti-Avoidance Rule (GAAR)

The IT Act contains anti-avoidance provisions in the 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 the 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 INR30 million.

M Transfer Pricing



Transfer pricing (TP) provisions in India are in line with the TP guidelines for multinational companies and tax administrators issued by the OECD, except with certain noteworthy differences.

Under transfer pricing regulations (TPRs), any international transaction and specified domestic transaction between two or more associated enterprises (AEs) (including PEs) must be conducted at arm's length price (ALP).

Relevant provisions regarding TPR:

International transactions

TPRs define an international transaction as the one that takes between two or more AEs, either or both of whom are non-residents and have a bearing on the profits, income, losses or assets of such enterprises. Furthermore, 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 transactions (SDT)

In case the aggregate value of SDT exceeds INR200 million, within the ambit of TPRs, the same shall be computed having regard to ALP. The transactions covered under TPR(s) include all transactions with related domestic companies or units eligible for tax holiday, or new domestic manufacturing companies chargeable to a lower tax rate.

Safe Harbor Rule (SHR)

SHR indicates circumstances under which tax authorities accept a transfer price declared by a taxpayer to be at arm's length. The SHR (applicable for the period FY 2016-17 to FY 2018-19) has been made applicable for FY 2019-20.

Advance Pricing Agreement (APA)

There is an APA program available in India, wherein the transfer price of goods and services transacted between group entities is determined in advance by the tax authorities (i.e., CBDT in India) and the taxpayers, so as to prevent any dispute arising from controlled transactions between AEs. Application can be filed for unilateral/bilateral/multilateral APAs.

Three-tiered documentation

The Indian Government has adopted a three-tiered documentation structure, comprising of TP documentation, master file and country-by-country (CbC) reporting to implement the recommendations contained in the OECD's BEPS report on Action 13.

Secondary adjustment

In case, there is an increase in the total income or reduction in the loss due to the primary adjustment to the transfer price, the excess money which is available with its AE, if not repatriated to India within the prescribed time, shall be deemed to be an advance made by the taxpayer to such AE (subject to fulfilment of certain conditions). The interest thereon shall be computed in the prescribed manner.

Interest limitation rules

These provisions limit the amount of deductible interest expenditure (in respect of amount lent by a non-resident AE or a third-party debt guaranteed by an AE) to 30% of EBITDA. Excess interest, if any, shall be allowed to be carried forward up to eight successive years.