# A GUIDE TO DOING BUSINESS IN INDIA

October 2016

THE POWER OF BEING UNDERSTOOD

RSM

# FOREWORD

Welcome to India – the fastest growing economy in the world, the seventh-largest country by area, the second-most populous country with over 1.33 billion people and the world's largest democracy. According to the World Bank, the Indian economy will grow at 7.6 % in 2016-17, followed by further acceleration to 7.7 % in 2017-18 and 7.8 % in 2018-19. The new visionary political leadership, favorable demographics with over 50% of the population below the age of 24 years and 65% of the population below the age of 35 years and large educated workforce have further fueled this growth.

To facilitate the 'Ease of Doing Business', the Indian Government has taken up significant measures on the taxation and legal fronts and has also launched other initiatives like 'Make in India' and 'Digital India.' This is further enhanced by integration of the economy with the global markets by adopting IFRS conversion and implementation Goods and Services Tax (GST) in the near future.

Each day, doing Business in India is becoming more easy and achievable. When you are looking to cross your national borders for new opportunities, RSM India assures you hassle-free set-up and compliance services by connecting you to our most senior professionals. Our strong local understanding and rich professional experience combined with global vision will keep you a step ahead while operating internationally. This publication provides a broad understanding of various social, legal, tax and commercial framework relevant for doing business in India.

About RSM India

- 6th largest tax, accounting and consulting groups in India [International Accounting Bulletin, September 2016]
- Nationwide presence through offices in 11 key cities across India
- Multi-disciplinary personnel strength of over 1,200
- International delivery capabilities

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# RSM – YOUR GLOBAL NETWORK

The world is changing rapidly. With constant advances in technology, communications and infrastructure, barriers are disappearing and the business landscape is becoming more global every day.

In this fast-paced environment, you need advisers who think ahead and respond quickly to your changing needs, who will put risk in the spotlight, and who will continually look for new opportunities for your business.

RSM is one of the world's leading audit, tax and consulting networks. We build strong relationships based on a deep understanding of what matters most to you. We take the time to understand your business, strategies and goals, and draw on the power of our global network to deliver insights tailored to your precise needs.

By sharing the ideas of our senior professionals, we empower you to move forward, make critical decisions with confidence and take full advantage of the opportunities on the horizon for your business.

It is this strong, collaborative approach that differentiates us. This is the power of being understood. This is RSM.

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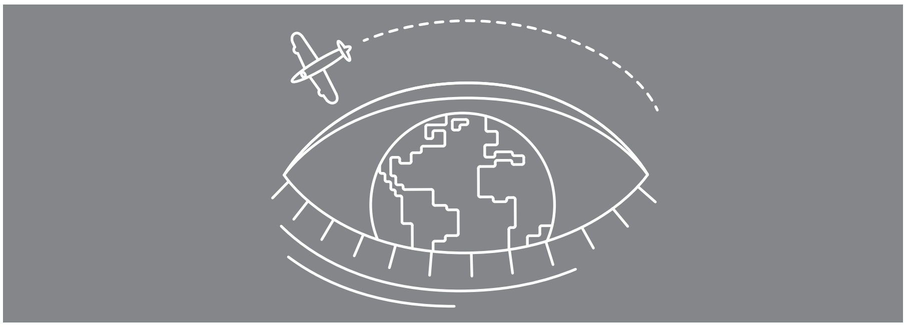
# ALL EYES ON INDIA



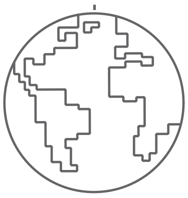
"India is not only the world's largest democracy; it is also a secular, pluralistic society commited to inclusive growth."
–Henry Paulson, Former US Secretary of the Treasury

"India, by contrast, remains a bright spot – with strong growth and rising real incomes."
–Christine Lagarde, MD,IMF

India is definitely a bright spot, its not overdone"
–Jamie Demon,Chairman, JP Morgan Chase

"India is one of the most preferred investment destinations among emerging markets and not only emerging market investors but also global investors are either here or are tracking our markets and top stocks herein. India has a huge market base and a favorable business environment, best foreign policies and able regulatory setup along with good skilled workforce which makes it a highly competitive country".
–Bharat Iyer, MD and Head of Equity Research India, JP Morgan

"I have a strong feeling that 10-15 years from now, despite shaking situation of China, it will surpass the U.S. in GDP...25-30 years from now, India may surpass all countries to become number one,"
–Masayoshi Son, Chairman and CEO Softbank



- We are the 6th largest global audit, tax and consulting network.
- We have firms in over 120 countries and are in each of the top 40 major business centres across the world.
- Across our member firms, we have more than 41,400 staff in over 800 offices covering Africa, Asia Pacific, Europe, Latin America, the Middle East and North America.

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# India – A Business Perspective

## Economy

- India's Gross Domestic Product (GDP) in terms of Purchasing Power Parity (PPP) is US$ 8.64 trillion making it the 3rd largest economy in the world.
- India witnessed a robust GDP growth of 7.9% in the last quarter of FY 2015-16 and for the Financial Year 2016-17, the GDP growth rate of India is expected to be close to 8%.
- FDI Inflows for FY 2015-16 was US$ 40 billion .
- Exports and imports for FY 2015-16, stood at US$ 261 billion and US$ 379 billion, respectively .
- According to the World Fact Book, India is among the world's youngest nations with a median age of 25 years as compared to 43 in Japan and 36 in USA. Of the BRIC-Brazil, Russia, India and China-countries, India is projected to stay the youngest with its working-age population estimated to rise to 70% of the total demographic by 2030, the largest in the world.
- In terms of ease of doing business, India has been ranked as 130th among the other countries in the world and 155th in terms of starting a business by the World Bank.
- India is a part of various trade organizations namely WTO, BRICS, G-20, East Asia Summit, SAARC, International Monetary Fund, World Bank, United Nations.
- India is also the fourth largest start-up hub in the world with over 3,100 technology start-ups in 2015 and much more are expected this year considering the incentives provided in the pursuit of campaigns like "Start Up India", "Make In India", etc.
- India continues to be the most preferred destination-among 50 top countries-for companies looking to offshore their information technology (IT) and back-office functions, according to global management consultancy, AT Kearney.

### Tax Rates at a Glance (Financial Year 2016-17)

| Sr. No. | Particulars | Rates of Income Tax* |
|---|---|---|
| 1. | Domestic Companies | 30% |
| 2. | Foreign Companies | 40% |
| 3. | Partnership Firm/LLP | 30% |
| 4. | Individual/HUFs/AOP/BOI** | 0 to 30% |

*Add Surcharge, EC and SHEC
**As per Income Tax Slab applicable.

# CHAPTER 1: INDIA – A PROFILE

## 1.0 PHYSICAL FEATURES

### 1.1 Geography

India is situated in the Southern peninsula of the Asian continent and is the 7th largest country in the world in terms of size. It lies entirely in the Northern hemisphere and extends from the snow-covered Himalayan mountain ranges in the North to the tropical rain forests of the South. India shares its borders with Afghanistan and Pakistan to the Northwest, China, Bhutan and Nepal to the North, and Myanmar and Bangladesh to the East. Sri Lanka lies to the South of India and is separated from India by a narrow sea channel formed by the Palk Strait and the Gulf of Mannar.

India lies between latitudes 8$^{0}$4' and 37$^{0}$6' North and longitudes 68$^{0}$7' and 97$^{0}$25' East. It measures about 3,214 kilometers from North to South between its extreme latitudes and 2,933 kilometers from east to west between the extreme longitudes. India covers an area of 3,287,263 square kilometers and has a land frontier of 15,200 kilometers. India has a coastline of 7,517 kilometers.

The main land comprises of four regions: the mountain zone in the North, the plains of the Ganges and the Indus rivers, a small desert region in the West and the southern peninsula which consists of the Deccan plateau, mountains and coastal strips.

### 1.2 Climate

India's climate is mainly tropical monsoon type and is affected by two seasonal winds: the north-east monsoon and the south-west monsoon. A year in India can be conveniently divided into four seasons viz. the winter (January and February), the summer (March through May), the rainy south-western monsoon (June through September) and the post-monsoon period (October through December), which is known as the north-east monsoon period in the southern Peninsula.

## 2.0 POPULATION AND SOCIAL PATTERNS

### 2.1 Population

As per the data published for 2011 census, India's population as on March 2011 was 1.21 billion (623 million males and 586 million females), making India the second most populated country in the world after China. The population comprises of 833 million rural and 377 million urban population. The population comprises of 300 million people in the middle class bracket, which is a major consumer class in India. The population growth rate was around 2.14% in the 1990s, which decreased marginally to 1.76% in 2011 and further decreased to 1.2% in 2013. Current Population of India in 2016 is estimated to be 1.33 billion.

## 2.2 Language

India is a land of many languages and dialects. Hindi is the official language of the Indian Federation or the Union, while English is commonly used business language. English language is acceptable for all the legal, commercial and business documentation and communications.

## 2.3 Religion

More than 80% of India's population is Hindus and around 15% are Muslims. The other major religious communities are Christian, Sikh, Buddhist and Jain.

## 2.4 Education

The data published by The World Fact book for 2015 revealed that 71.2% of the total population is literate, consisting of 81% of total Indian men and 61% of total Indian women .

# 3.0 GOVERNMENT AND POLITICAL SYSTEM

## 3.1 Government Structure

The Indian federation or union is organized into 29 states and 7 union territories with a single and uniform citizenship and a single judiciary. The capital of the India is New Delhi.

India is a sovereign, socialist, democratic and secular republic with a parliamentary system of government. The parliament is headed by the President and consists of two houses – the Lok Sabha (the house of the people) and the Rajya Sabha (the council of states). Although the President is the constitutional head of the government, the real executive power resides with the Council of Ministers, with the Prime Minister as its head. The Council of Ministers is collectively responsible to the Lok Sabha.

The Indian Constitution provides for the independence of other government bodies for certain key areas like the judiciary, the Comptroller and Auditor General, the Public Service Commissions and the Election Commission.

# 4.0 LEGISLATIVE AND LEGAL ENVIRONMENT

## 4.1 Legislation

Indian Constitution divides the various responsibilities into three categories: the Union list, the State list and the Concurrent list. Parliament can make laws on subjects in the Union list and the state legislature on subjects in the State list. Both, the parliament and the state legislature can make laws on the subjects included in the Concurrent list. This division helps in regulating the relations between the Union and the States.

## 4.2 Legal Environment

The main sources of law in India are the Constitution statutes, customary laws and judicial precedents. The country's constitution provides for a single integrated system of courts to administer both Union and state laws. The judiciary in India is separated from the executives.

At the apex of the entire judicial system is the Supreme Court of India, which consists of the Chief Justice and other judges. The Supreme Court has original, appellate and advisory jurisdiction and its decisions are binding on all courts within the territory of India. Each state (or two or more states together) has a High Court, a Chief Justice of the High Court and other judges who are appointed by the President in consultation with the Governor of the state. There is a hierarchy of subordinate courts under the various High Courts, which extend to the local courts, which decide civil and criminal disputes of all nature.

## 5.0 INFRASTRUCTURE

### 5.1 Transport

India's infrastructure and transport sector contribute about 5% of its GDP. India has the world's second largest road network in quantitative terms, covering more than 4.3 million kilometers. Qualitatively, India's roads are a mix of modern highways and narrow, unpaved roads. India also has the lowest kilometer lane road density per 100,000 people among G-27 countries — leading to traffic congestion. It is upgrading its infrastructure. As of May 2014, India had completed and placed in use over 22,600 kilometers of recently built 4 or 6-lane highways connecting most of its major manufacturing, commercial and cultural centers. India's road infrastructure carries 60% of freight and 87% of passenger traffic.

Indian Railways which is the largest public sector undertaking in India is the fourth largest rail network in the world, with a track length of 114,500 kilometers and 7,172 stations. This government owned and operated railway network carries an average of 23 million passengers a day, and over a billion tons of freight a year.

India has a coastline of 7,500 kilometers with 13 major ports and 60 operational non-major ports, which together handle 95% of the country's external trade by volume and 70% by value (rest handled by air). Nhava Sheva, Mumbai is the largest public port, while Mundra is the largest private sea port in India.

The airport infrastructure of India includes 125 airports, of which 66 airports are licensed to handle both passengers and logistics. Air India is India's official national carrier operating across both domestic and international routes. Upon the liberalization of the economy, an open sky policy was announced which has resulted in a number of private air taxi companies operating on some of the major trunk routes. Some of the major private air transport companies, operating on domestic and international routes are Jet Airways, Indigo, Spice jet etc.

### 5.2 Communication

The Indian telephone, telex and facsimile services both within India and to international locations are well-developed. The number of telephone subscribers in India stood at 1.059 billion and that of mobile subscribers in India stood at 1.034 billion till April 2016, as per the TRAI estimates. As per the Telecom Regulatory Authority of India - April 2016 report, the broadband Internet users in India was 151.09 million. The number of internet users is estimated to be around 462.12 million in India.

Apart from the above services, India has a fairly well-developed postal services department. In fact, India has the highest number of post offices in any country (approx. 155,000 post offices). Major international courier service companies are also well represented in India.

### 5.3 Education

Apart from schools, which provide education in the local language, India has good day schools and boarding schools that offer a high standard of education in English. In addition, special expatriate schools provide education for American, French, German and Japanese children. Some of the schools also provide international baccalaureate (IB) as part of their curriculum.

Scholarships are available under grants from the Ministry of External Affairs for foreign students from select countries for graduate and postgraduate courses in engineering, technology, management, medicine, pharmacy and general courses.

### 5.4 Medical Services

India has a fairly widespread and reasonably developed network of medical facilities. However, private enterprises and trusts operate a well-developed infrastructure of hospitals and polyclinics in major metropolitan areas and medium-sized towns.

### 5.5 Housing

Adequate housing is available in most of the major metropolitan areas and in large and medium-size towns. The rates tend to be higher in areas closer to the central business district and lower in the suburbs. Apartments and houses are usually available for outright purchase or on rental basis. Deposits equivalent to 10 or 15 times a month's rent are generally required in case of premises to be rented and varies from state to state.

## 6.0 INTERNATIONAL RELATIONS AND ASSOCIATIONS

India has entered into bilateral agreements with a number of countries and is a member of several international organizations, such as the United Nations, the Commonwealth, the GSTP, UNCTAD, WTO, GATT and G20. India has always taken initiatives to develop friendly relations with its neighbors and has adopted a policy of non-alignment to promote co-operation amongst all the nations. India has had an active role in the Non-Aligned Movement and is also an active member of the South Asian Association for Regional Cooperation (SAARC). India is a member of Multilateral Investment Guarantee Agency (MIGA). MIGA serves as an insurer of investments made in member countries against stipulated political risks in the host country and also offers assistance in attracting new investment. India is currently seeking a permanent seat in the UN Security Council, along with the G4 nations.

Apart from the Indo-EC Joint Commission, India has separate bilateral commissions with Belgium, Cyprus, Finland, France, Germany, Italy, Netherlands, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

## 7.0 CERTAIN KEY INFORMATION FOR VISITORS TO INDIA

### 7.1 Indian Currency

The Indian monetary unit is the Rupee (Rs. or INR). The Indian central bank viz. Reserve Bank of India (RBI) is the sole authority for issuing currency in India. Currency converting agencies have a reasonably spread network across all major cities, tourist destinations and airports, where all leading currencies can be converted to Indian rupees and vice versa.

From March 1993, the government has permitted a floating exchange rate for the rupee, which is expressed in terms of the US dollar. The exchange rate for the rupee as on 10th September 2016 was US $ 1 = INR 66.54 and Euro 1 = INR 75.024.

### 7.2 Visitors' Visas

Every foreigner entering India is required to possess a passport and visa. Visas (tourist, business or entry) are issued on application to the Indian High Commission. The visas normally expire in 6 months from the date of issue. If the visa allows more than one entry into the country, it must be used for the first time within 6 months from the issue date. However, in case of businesses visas are generally granted for a period of 5 years (extendable).

### 7.3 Indian Standard Time

Indian Standard Time (IST) is five and one-half hours ahead of Greenwich Mean Time (GMT).

### 7.4 Business Hours

The normal working week in India is usually Monday through Friday (9.30 a.m. to 5.30 p.m.). However, there are many organizations, which also work half day on Saturdays or work on alternate Saturdays. Sunday is a public holiday. Banking hours are generally between 10 a.m. and 3.00 p.m. throughout the week except for Sundays and second and fourth Saturday of every month, though some of the banks are now offering 24 hours banking services. Internet banking and telephone banking is also offered by most of the leading banks.

However, a large section of the young educated class who are working in the Information Technology (IT) sectors, Knowledge Processing Outsourcing (KPOs), Business Process Outsourcing (BPOs), and other service sectors which are engaged in provision of services to the global clientele, the working hours have been adapted to suit the requirement of such diversified global client-base.

## 7.5 Public Holidays

The statutory public holidays vary from state to state and number around 20 in a year. Holidays in private sector organizations generally vary from 10 to 15.

## 7.6 Tourism

Tourism in India is economically important and is growing rapidly. The World Travel & Tourism Council calculated that tourism generated Rs. 8.31 lakh crore (US$120 billion) or 6.3% of the nation's GDP in 2015 and supported 37.315 million jobs, 8.7% of its total employment.

The sector is predicted to grow at an average annual rate of 7.5% to Rs. 18.36 lakh crore (US$270 billion) by 2025 (7.2% of GDP). In October 2015, India's medical tourism sector was estimated to be worth US$3 billion. It is projected to grow to $7–8 billion by 2020. In 2014, 184,298 foreign patients traveled to India to seek medical treatment.

There are various historic sites available to visitors. Hundreds of ancient temples and mosques as well as other monuments provide a view not only of India's past but also its cultural heritage and trade connections with the rest of the world. Also, there are several wildlife and game sanctuaries, winter sports facilities in the northern region and water sports facilities in beach towns. The states of Maharashtra, Goa, Kerala, Tamil-Nadu and Orissa have beautiful beaches, which are popular destinations of visiting foreign tourists. Some of the world's largest hotel chains as well as leading time-sharing leisure resort groups have a presence in India.

## 7.7 Attire Code

India being a tropical country, clothing is often light, including formal office wear. Suits and jackets are common in the cities but are usually restricted to senior corporate executives.

# CHAPTER 2: INDIAN BUSINESS AND INVESTMENT ENVIRONMENT

## 1.0 FRAMEWORK

India adopted a mixed economy after independence in the year 1947, resulting in the public and private sectors' co-existence in industrial activity. In the past, the public sector had a dominant role in the economy. However, with the liberalization of the government policies and consequent opening up of the Indian economy in 1991, the trend is clearly towards a larger role for the private sector. The government has restricted fresh public investments to only strategic and sensitive infrastructure areas. The government is also divesting its equity in public sector enterprises outside these areas.

The majority of business in India has been controlled by state-owned corporations, business families and groups under multinational control. However, this dominance is getting eroded with the entry of technocrats and successful first-generation entrepreneurs. In many substantial private sector companies, the promoters hold a minority stake but are able to retain control because of the widely dispersed holdings. The public financial institutions hold large chunks of equity in many major Indian private sector companies, but their involvement in the management decisions is very limited and neutral. India also has a huge base of closely held small and medium sized businesses, which cater to the local and regional markets.

The Indian government earlier exercised considerable control over the private sector through licensing of the setting up of manufacturing capacities; approval procedures for importing foreign capital, technology, capital goods, and raw materials and allocation procedures for basic raw materials. However, the new policies launched in the 1990s and continued thereafter in the new millennium by the Government are dismantling many of the regulations and restrictions that have previously made business operations in India difficult. Now, the Government has initiated steps for introducing second-generation structural reforms to keep pace with the global environment of competition after removal of trade barriers as per the agreement entered into with World Trade Organization and correct various distortions in the economy. The emerging economic environment is more competitive, dynamic and inviting to foreign investment and technology.

The Indian rupee has been made fully convertible on the trade and current account and full convertibility on the capital account has been recommended. This full convertibility will allow free convertibility of Indian financial assets to foreign financial assets and vice versa at market determined rates. In order to create a suitable legal framework for the implementation of full convertibility on capital account and to liberalize the movement of foreign capital, the Foreign Exchange Management Act (FEMA) has come into effect from 1 June 2000.

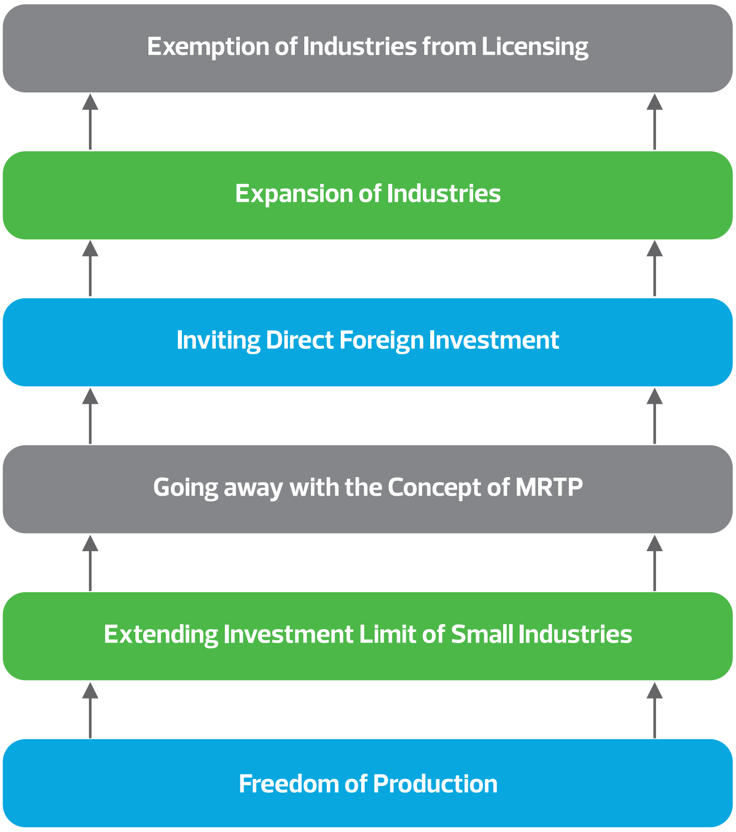
## 2.0 POST-LIBERALIZATION OF THE ECONOMY — An Overview

The liberalization process started in India in 1991 and second-generation reforms started in the first decade of 21st century has virtually opened up the Indian economy for foreign investment in most of the sectors, barring few sensitive sectors.

The World Bank has appreciated the Indian liberalization reforms in one of its Annual Report stating *"India is moving rapidly towards closer integration with the global economy and the reform process, which has been brought about in such a short time, represents an irreversible movement towards a vibrant economy."*

In this process of liberalization, India has taken various measures like de-licensing, permitting foreign institutions to invest in shares and securities under portfolio investment, current account convertibility, liberalizing exchange control regulations, drastically reducing the rates of customs duty and direct taxes, permitting Indian companies to list on foreign stock exchanges and set up overseas operations, permitting resident Indians to buy shares and securities listed abroad etc.

The liberalization of the Indian economy saw six important measures being taken by the government as depicted hereunder:




The period from 2000 till date, has witnessed the increasing globalization of the Indian economy. In the year 2000, a paradigm shift occurred, wherein, except for a negative list, all the remaining activities were placed under the automatic route.Recently, the Government of India significantly liberalized the foreign direct investmentpolicy for crucial sectors including retail, airlines, banks, pharmaceuticals, construction, arms and ammunitions and certain areas of telecommunication.

## 3.0 ECONOMIC TRENDS

In the midst of an uncertain global economic outlook, India is emerging as the new 'global economic hotspot'.

**Indian economy a "bright spot" in global landscape –International Monetary Fund (IMF)**

India has emerged as the fastest growing major economy in the world as per the Central Statistics Organisation (CSO) and International Monetary Fund (IMF). As per the latest World Bank estimates, it has pegged the growth rate in India for Fiscal year 2016-17 at 7.6%, which it said could accelerate to 7.7% in 2017-18 and 7.8% in 2018-19. According to Fitch Ratings Agency, India's Gross Domestic Product (GDP) will likely grow by 7.7 % in FY 2016-17 and slowly accelerate to 8 % by FY 2018-19, driven by the gradual implementation of structural reforms, higher disposable income and improvement in economic activity.

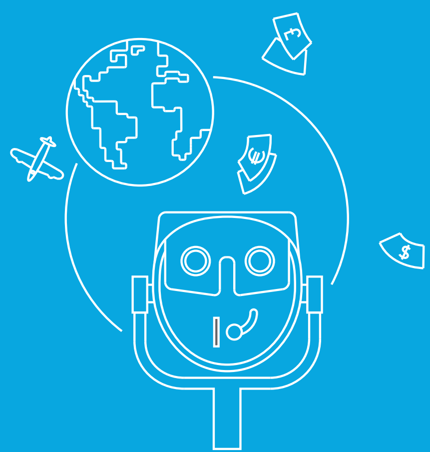
Some of the key highlights of the Indian economy are as hereunder:

- Gross Domestic Product (GDP) for 2016: US$ 8.64 trillion measured in terms of Purchasing Power Parity (PPP) - IMF
- Global Ranking: 3rd largest economy in the world in terms of PPP
- GDP Growth Rate - FY 2016-17: 7.6% p.a.
- Young Demography: 1.33 billion with more than 50% of the population below the age of 25 years
- Currency & Exchange Rate per 1 US$ (as on 5 October 2016): 1 US$ = INR 66.55
- Forex Reserves (as on 23 September 2016): US$ 345 billion
- Market Capitalization (BSE): US$ 1.69 trillion
- Political System: Federal Republic with Parliamentary democracy, Stable Political regime over last 6 decades

Foreign direct investment (FDI) inflows have increased 29 % during April 2015 – March 2016 to reach US$ 40 billion, as compared to same period last year.

As per reports by fDi Intelligence agency, India has replaced China as top destination for foreign direct investment by attracting US$ 63 billion worth FDI projects in 2015.

India's other macroeconomic parameters like inflation; fiscal deficit and current account balance have exhibited distinct signs of improvement. The World Economic Forum has said that India's growth is 'extraordinarily high'.



## 4.0 INITIATIVES ON IMPROVING 'EASE OF DOING BUSINESS' IN INDIA

The Government of India has taken up a series of measures to improve Ease of Doing Business. The emphasis has been on simplification and rationalization of the existing rules and introduction of information technology to make governance more efficient and effective. Some of the measures taken are:

i. India was ranked 142nd in Doing Business Report, 2015. The World Bank has released Doing Business Report, 2016 on 27th October, 2015. India is ranked at 130 (against a recalculated rank of 134th for 2015). India's rank has improved in 'starting a business', 'dealing with construction permit' and 'getting electricity' indicators.

ii. A report titled "Assessment of State Implementation of Business Reforms" was released on 14th September 2015. The report captures the findings of an assessment of reform implementation by States, led by DIPP, Ministry of Commerce and Industry, Government of India with support from World Bank group and KPMG. This assessment has been conducted to take stock of reforms implemented by States in the period 1 January to 30 June 2015 based on a 98-point action plan for business reforms agreed between DIPP and State/UTs and rank them according to the ease of doing business.

iii. The assessment reveals that States are at different levels of implementation on the 98-point action plan. The implementation status of each State has been converted to a percentage, and, on the basis of this the State rankings have been calculated.

| Rank | State | Score | Rank | State | Score |
|---|---|---|---|---|---|
| 1 | Gujarat | 71.14% | 17 | Himachal Pradesh | 23.95% |
| 2 | Andhra Pradesh | 70.12% | 18 | Kerala | 22.87% |
| 3 | Jharkhand | 63.09% | 19 | Goa | 21.74% |
| 4 | Chhattisgarh | 62.45% | 20 | Puducherry | 17.72% |
| 5 | Madhya Pradesh | 62.00% | 21 | Bihar | 16.41% |
| 6 | Rajasthan | 61.04% | 22 | Assam | 14.84% |
| 7 | Odisha | 52.12% | 23 | Uttarakhand | 13.36% |
| 8 | Maharashtra | 49.43% | 24 | Chandigarh | 10.04% |
| 9 | Karnataka | 48.50% | 25 | Andaman and Nicobar Islands | 9.73% |
| 10 | Uttar Pradesh | 47.37% | 26 | Tripura | 9.29% |
| 11 | West Bengal | 46.90% | 27 | Sikkim | 7.23% |
| 12 | Tamil Nadu | 44.58% | 28 | Mizoram | 6.37% |
| 13 | Telangana | 42.45% | 29 | Jammu and Kashmir | 5.93% |
| 14 | Haryana | 40.66% | 30 | Meghalaya | 4.38% |
| 15 | Delhi | 37.35% | 31 | Nagaland | 3.41% |
| 16 | Punjab | 36.73% | 32 | Arunachal Pradesh | 1.23% |

Source: Assessment of State Implementation of Business Reforms, September 2015 published by DIPP.

iv. Process of applying for Industrial License (IL) and Industrial Entrepreneur Memorandum (IEM) has been made online and this service is now available to entrepreneurs on 24x7 basis at the eBiz website. This had led to ease of filing applications and online payment of service charges.

v. 20 services are integrated with the eBiz portal (www.ebiz.gov.in) which will function as a single window portal for obtaining clearances from various governments and government agencies.

vi. Notification has been issued on 12 March 2015 by DGFT to limit number of documents required for export and import to three.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vii. Ministry of Corporate Affairs has introduced an integrated process of incorporation of a company, wherein applicants can apply for Director's Identification Number (DIN) and company name availability simultaneous to incorporation application [Form INC-29].

viii. The Companies (Amendment) Act, 2015 has been passed to remove requirements of minimum paid-up capital and common seal for companies. It also simplifies a number of other regulatory requirements.

ix. Application forms for Industrial Licence (IL) and Industrial Entrepreneur Memorandum (IEM) have been simplified.

x. Vide Press Note 3 (2014), Defence products' list for industrial licensing has been issued, wherein large number of parts/components, castings/forgings etc. have been excluded from the purview of industrial licensing. Similarly dual use items, having military as well as civilian application (unless classified as defence item) will also not require Industrial License from defence angle. For these items only an Industrial Entrepreneur Memorandum (IEM) has to be filed.

xi. Vide Press Note 5 (2014), initial validity period of Industrial License has been increased to three years from two years. This will give enough time to licensees to procure land and obtain the necessary clearances/approvals from authorities.

xii. Ministry of Home Affairs (MHA) has stipulated that it will grant security clearance on Industrial Licence Applications within 12 weeks. In matters other than Explosives and FIPB cases, security clearances are valid for three years unless there is a change in composition of management or shareholding.

xiii. Partial commencement of production is being treated as commencement of production of all the items included in the license. This has obviated the hardship of licensees to get their Industrial License extended even though they have started production.

xiv. To facilitate investors and to reply to their queries, Frequently Asked Questions (FAQs) by applicants for grant of industrial license have been developed and uploaded on DIPP website. (www.dipp.nic.in )

xv. A checklist with specific time-lines has been developed for processing all applications filed by foreign investors in cases relating to Retail/NRI/EoU foreign investments. This has been placed on the DIPP website.

xvi. An Investor Facilitation Cell has been created in 'Invest India' to guide, assist and handhold investors during the entire life-cycle of the business.

xvii. Special Economic Zone (SEZ) Units allowed removing goods for repair, replacement, testing, calibration, quality testing and research and development on self-attestation.

xviii. Process of applying for Environment and Forests clearances has been made online through Ministry of Environment and Forests and Climate Change's portals http://environmentclearance.nic.in/ and http://forestsclearance.nic.in/

xix. The issue of time taken in registration with Employees Provident Fund Organization (EPFO) and Employees State Insurance Corporation (ESIC) was taken up with the Ministry of Labour and Employment, Director General, ESIC and Central Provident Fund Commissioner. Both the processes have been automated and ESIC registration number is being provided on a real-time basis.

xx. An order facilitating revival and rehabilitation of MSMEs through banker's committee has been issued by Ministry of MSME.

xxi. A unified portal for registration of Units for LIN, reporting of inspection, submission of returns and grievance redressal has been launched by Ministry of Labour and Employment.

xxii. DIPP has requested all Secretaries of Government of India and Chief Secretaries of the States/UTs to simplify and rationalize the regulatory environment. In order to improve the regulatory business environment they have been requested to take the following measures on priority:

(a) All returns should be filed on-line through a unified form;

(b) A check-list of required compliances should be placed on Department's web portal;

(c) All registers required to be maintained by the business should be replaced with a single electronic register;

(d) No inspection should be undertaken without the approval of the Head of the Department; and

(e) For all non-risk, non-hazardous businesses a system of self-certification should be introduced.

xxiii Recently, MCA launched a Simplified Proforma for Incorporating a Company Electronically (SPICe) e-Form.The main objective of launching this e-Format proforma, SPICe, is to provide speedy incorporation related services within stipulated time frames which are in line with the international best practices. Existing INC-29 and INC-7 will be phased-out and SPICe will be the sole, simplified & versatile form available for incorporation of a company in India.

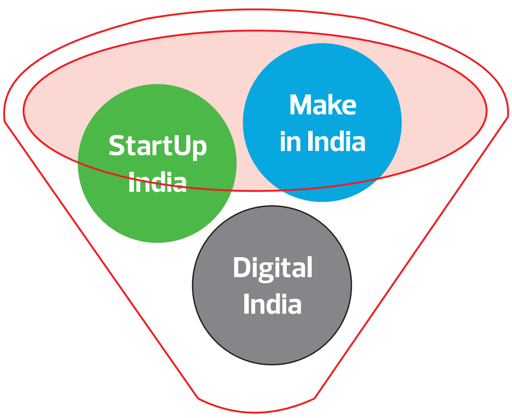
xxiv Hitherto India was lacking the legal and institutional machinery for dealing with debt defaults as per the global standards. With the introduction of new law on bankruptcy i.e. Insolvency and Bankruptcy Code, 2016, India has crossed an important milestone in becoming a world class economy. The new law is a comprehensive and systemic reform, which will give a quantum leap to the functioning of the credit market and would take India from among relatively weak insolvency regimes to becoming one of the world's best insolvency regimes.

xxv. Lower Corporate Tax Rate

A new, lower (25%) corporate tax rate (plus applicable surcharge and cess) for new domestic manufacturing companies incorporated on or after March 1, 2016 shall be applicable (Section 115BA of the Income Tax Act 1961). The normal maximum marginal corporate tax rate in India is 34.608%.

xxvi. Other Government Initiatives

Numerous foreign companies are setting up their facilities in India on account of various government initiatives like Make in India, Start Up India, Digital India.



(a) Make In India

The Prime Minister of India has launched the Make-in-India initiative with an aim to boost the manufacturing sector in India. The primary objective of this programme is to encourage multi-national and domestic companies to manufacture their products in India and promote the growth of manufacturing, infrastructure and service sectors. The above objectives are intended to be fulfilled through:

- Ease of doing business through the measures like:
  - Online application for industrial licensing
  - Validity of industrial licensing extended for 3 years
  - New de-licensing and deregulation measures to remove the complexity
  - Obtaining environmental clearances made online
  - Major components of defense products excluded from industrial licensing
- FDI Liberalization-Easing of FDI in various sectors (discussed in detail Chapter 5 Foreign Investment in India)
- Simplification of regulatory requirements
- Incentives like
  - 10% one-time subsidy for units practicing zero water discharge
  - Financial support for acquiring of technology/ patent
- Infrastructure development activities like
  - North-eastern part of India to be linked to other industrial corridors in cooperation with the government of Japan
  - Approval to 17 National Investment and Manufacturing Zones
- Continuous promotion of India made products

(b) Digital India

The Government has also come up with Digital India initiative, which focuses on three core components: creation of digital infrastructure, delivering services digitally and to increase the digital literacy. The same is intended to be achieved through:

- Broadband highways
- Universal access to mobile connectivity
- Public internet access
- E-governance
- Electronic delivery of services
- Electronics manufacturing
- IT training for jobs
- Early harvest programmes

## (c) Start Up India

The objective of the said programme is to support entrepreneurship development and innovation through simplification and handholding, funding support and incentives, industry-academia partnership and incubation.

India, the fourth largest base for new businesses in the world and home to more than 3,100 tech startups, is set to increase its base to 11,500 tech startups by 2020.

The Union cabinet has approved the establishment of a Fund of Funds for Startups (FFS) at Small Industries Development Bank of India (SIDBI), with a corpus of Rs 10,000 crore (US$ 1.48 billion), which would extend funding support to start-ups and encourage entrepreneurship in the country.

Certain Highlights of the Start-up India scheme:

- Simplified compliance and self-certification
- Ease of collaboration with startup ecosystem partners
- Protection of patents and 80% rebate in application filing
- Exemption from Income Tax for 3 years out of initial 5 years for eligible startups
- Easy access to funds through government funding support
- Gain maximum brand visibility through Start up Fests
- Faster exit formalities

## (d) Setting up of county focus desks for promoting investment

### Japan Plus

India is an attractive investment destination for Japanese companies, with 1,072 companies having 2,542 businesses in India. After the visit of the Prime Minister to Japan, this programme came into effect from October 2014 to promote the trade relations between the two countries and is aimed at facilitating and fast tracking investment proposals from Japan in India. For this purpose, a special management team has also been engaged that would look after the entire spectrum of investment promotion-research, outreach, promotion, facilitation and aftercare. Further, it is worth noting that, Japan has offered to invest in India approx. 3.5 trillion Yen (USD 33.5 billion) by way of public and private investment and financing including Overseas Development assistance.

### Korea Plus

Korea Plus was also introduced on the similar lines as Japan Plus with effect from June 2016, after the visit of the Indian Prime Minister to Korea in May 2015. It was also aimed at facilitating and promoting the investment proposals from Korea in India. The bilateral trade between the two countries stood at USD 16.59 billion in 2015-16.

Further, country focus desks for China, US and Canada have been set up.

## (e) Other Initiatives

Various other programmes like Stand Up India (providing of loans at cheaper rates to promote entrepreneurship among SC/ST and women entrepreneurs) and Invest India (acting as facilitator and partner offering handholding services to the investors) have also been introduced in order to achieve the vision of a truly incredible India.

xxvii. Permanent Residency Status (PRS) to Foreign Investors in Pipeline

Recently the Union Cabinet has approved the scheme for grant of Permanent Residency Status (PRS) to foreign investors subject to the relevant conditions as specified in the FDI Policy notified by the Government from time to time. The scheme is expected to encourage foreign investment in India and facilitate Make in India Programme. The PRS will be granted for a period of 10 years with multiple entry. This can be reviewed for another 10 years if the PRS holder has not come to adverse notice. The scheme will be applicable only to foreign investors fulfilling the prescribed eligibility conditions, his/her spouse and dependents. In order to avail this scheme, the foreign investor will have to invest a minimum of Rs. 10 crores to be brought within 18 months or Rs.25 crores to be brought within 36 months. Further, the foreign investment should result in generating employment to at least 20 resident Indians every financial year. PRS will serve as a multiple entry visa without any stay stipulation and PRS holders will be exempted from the registration requirements. PRS holders will be allowed to purchase one residential property for dwelling purpose. The spouse/ dependents of the PRS holder will be allowed to take up employment in private sector (in relaxation to salary stipulations for Employment Visa) and undertake studies in India.

Finance Minister stated that the government is looking at a number of reforms and resolution of pending tax disputes to attract investments.

## 5.0 ECONOMIC SECTORS

Although India was primarily an agricultural country, currently the service sector is the key driver of economic growth contributing almost 66.1% in 2015-16 to the total Gross Value Added (GVA) at the 2011-12 prices, becoming the important net foreign exchange earner and the most attractive sector for FDI inflows.

Further, the sectors attracting the highest FDI equity inflows are Services Sector (18 %), Construction Development (8%), Computer Software and Hardware (7%), Telecommunications (6%), Automobile (5%), Drugs and Pharmaceuticals (5%), Chemical (4 %), Trading (4%).

## 6.0 REGULATORY ENVIRONMENT

The Indian Regulatory policy is driven by 3 objectives: to promote competition, to protect consumers and investors from restrictive and unfair trade practices, and to maintain the ecological balance and protect the environment.

The major governing statutes for trading, commercial and industrial enterprises in the country are

- Foreign Exchange Management Act, 1999 (FEMA);
- Companies Act, 2013;
- Competition Act, 2002,
- Securities and Exchange Board of India Act, 1992 (SEBI) (Regulations for Listed Companies) and
- Banking Regulation Act, 1949, which governs the operations of banks including foreign banks.

Since, the FEMA regulates foreign investment in India; it has the greatest effect on foreign companies operating in India as well as the foreign investors investing into India through portfolio investment routes.

### 6.1 Price Controls

Prices of certain essential consumption goods, raw materials and intermediate products are directly regulated by the government. The government amended the Monopolies and Restrictive Trade Practices Act ('MRTP') in 1991 to increase protection for consumers. However, the MRTP Act was later scrapped and replaced by the Competition Act. In addition, the Consumer Protection Act created quasi-judicial mechanisms at the district, state and national levels to settle consumer grievances. There is, however, a distinct trend towards reduction in pricing and distribution controls, and the government's policy is to do away with administered prices as far as possible. At present, the new free market has transferred economic power to the more aware and demanding consumer

## 6.2 Registration of Intellectual Property

IP laws are extremely important for the scientific development of a country. Strong IP legislations ensure the progress in varied fields and result in the growth of a country's knowledge bank. However, it is of utmost importance that the strong IP laws must be ably supported by an equally strong enforcement mechanism as well. Fair, strong and non-discriminatory IPR enforcement creates economic incentives that encourage innovation. A strong IPR regime helps attract new investment and allows innovators to develop new technologies. Weak intellectual property enforcement is a major barrier to increased trade.

India being one of the signatories to Trade Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO) has to comply with the provisions of TRIPS which aims to rationalize the laws of Intellectual Property Rights of all member countries which includes Trademarks, Patents, Industrial Designs, Copyrights, Geographical Indications, etc. In view of the above, India has amended its Intellectual Property Laws (IPR) namely, Trade Marks Act, Designs Act, Copyrights Act and Patents Act in line with TRIPS Agreement.

### 6.2.1 Trademarks

The Trade Marks Act, 1999 allows registration of marks not only used in connection with goods but also in respect of marks in relation to services. Trademarks once registered will be valid for a period of 10 years and the same can be renewed for successive periods of 10 years thereafter. Registration of trademarks confers on the registered proprietor of the trade mark the exclusive right to use the trademark in relation to its goods / services in respect of which the trademark is registered and to obtain relief in respect of infringement of the trademark by others. Infringement of trademarks is a cognizable and non-bailable offence with certain exceptions.

### 6.2.2 Patents

The Patent Act, 1970 provides for the grant of a patent for any "invention". Invention means a new product or process involving an inventive step and capable of industrial application. Inventive step means a feature that makes the invention not obvious to a person skilled in the art. Protection under the Patents Act is available for a period of 20 years for every patent.

There is no distinction between Indian nationals and foreign nationals concerning the right to obtain patents. Every international application under the Patents Corporation Treaty for a patent, designating India shall be deemed to be an application under the Patents Act, 1970, provided a corresponding application is filed before the Controller in India. The government has the power to acquire patents for public purpose. In the said event, the act preserves the patent holder's right to be compensated adequately.

After expiry of 3 years from the date of grant of the patent, any person may make a request for grant of license to work on the patented invention by making an application to the Controller of Patents alleging that reasonable requirements of the public with respect to the patented invention have not been satisfied or the patented invention is not available to the public at a reasonable price. Once such license is granted, the Central government or any other person interested may after the expiry of two years from the grant of such order, revoke the patent on the above mentioned grounds.

With a view to fulfill the requirements of any treaty, convention or arrangement between India and any other country, the Patents Act allows the Indian government to declare a country as a "convention country". India has entered into bilateral arrangements with Australia, Germany, Switzerland and the Europe to accord their citizens' priority in respect of grant of patents and the protection of patent rights on reciprocal basis.

### 6.2.3 Designs

The Designs Act, 2000 protects all features of shapes, configurations, patterns or ornaments in a design that appeal to the eyes in the finished article. Registration of a design with the Controller General of Patents and Designs confers on the registered proprietor a right to take action against third parties if the design is used fraudulently. The Act provides protection to a registered design for 10 years at first instance which can be further renewed for a period of 5 years (altogether for maximum 15 years) and thereafter it becomes a public property. The design which is either previously published or is contrary to the public morality shall be prohibited from registration.

### 6.2.4 Copyrights

Copyrights vest in authors on the creation of their works and require no registration. If registered, however, registration provides prima facie evidence of a copyright's validity. Copyright is regulated as per the provisions of the Copyright Act, 1957.

Copyrights subsist in the following classes of work:

- Original literary, dramatic or musical
- Artistic works
- Cinematograph films
- Photographs
- Specified computer programs

The copyright shall subsist for a period of 60 years ( plus life time of the author in case of Literary, dramatic, musical photograph, and artistic work) from the beginning of the calendar year next following the year in which the above mentioned work is published.

The Copyrights Act provides for copyright enforcement. A person whose copyright is infringed may sue for civil relief such as an injunction and damages, and may institute criminal proceedings for infringement in certain cases.

The Central Government by order may direct that all or any provisions of this Act shall apply to works of other countries. This means that any person who enjoys a copyright in one of the convention countries automatically enjoys a statutorily protected copyright in India.

### 6.3 Competition Policy

The Competition Act, 2002 has constituted the Competition Commission of India ('CCI') which is empowered to ensure free and fair competition in the market. The Competition Act aims at preventing practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interest of consumers and to ensure freedom of trade carried on by the other participants in the markets in India. The main purposes of the Competition Act are (a) Prohibition of anti-competitive agreements, (b) Prohibition of abuse of dominant position, and (c) Regulation of combinations.

### 6.4 Environmental Regulation

All proposed industrial units have to obtain environmental clearance from the relevant air and water pollution control boards, which operate under the Ministry of Environment and Forests. Further, the industries also need to abide by various environmental regulations laid down under the constitution to avoid any hindrances in its operations and have an evergreen presence.

## 7.0 FINANCIAL SECTOR

### 7.1 Banking System

India has a vast network of about 130,482 bank branches that held deposits of about INR 89,221 billion in March 2015.

### 7.1.1 Reserve Bank of India (RBI)

The Reserve Bank of India (RBI) is India's central bank and its primary function is to act as the banker and financial adviser to the government, securing monetary stability and to operate the currency and credit system in the country. It is the sole authority for the issue of bank notes and the supervisory body for all banking operations in the country. Its other functions include formulation and implementation of the monetary policy, regulating the money flow in the economy and acting as the custodian of India's foreign exchange reserves. It undertakes consolidated supervision of the financial sector comprising commercial banks, financial institutions and non-banking finance companies. On 4 September, 2016, Mr. Urjit R Patel took over as the new RBI Governor, taking charge from the former governor, Mr. Raghuram Rajan.

### 7.1.2 Banking Sector

The Banking Sector in India can be divided into Commercial Banks and Co-operative banks. The commercial banks may be classified into the following 4 categories:

1. Public Sector Banks
2. Private sector Banks
3. Regional Rural Banks and
4. Foreign Banks
5. Payment Banks

The commercial banks transact all types of commercial banking business. They are also allowed to set up (with the prior approval of the RBI) subsidiaries to engage in non-banking finance activities viz. merchant banking, equipment leasing etc. The Commercial banks, apart from providing working capital facilities for various sectors of the economy, also provide capital market advisory services, foreign exchange services, investment consultancy and personal banking services.

**Public Sector Banks:** Public Sector Banks (PSBs) are banks where a majority stake is held by a government. The shares of these banks are listed on stock exchanges. The major objectives of these banks are to prevent concentration of wealth and economic power and to cater to the needs of the priority sectors. There are in total 27 PSBs in India.

**Private Sector Banks:** Private sector banks have gained a strong foothold in the Indian banking scenario during the recent times. The private banks in India offer a wide gamut of banking and financial services. Currently, there are 25 private sector banks in India.

**Regional Rural Banks:** The regional rural banks are set up to increase the flow of credit to smaller borrowers in the rural areas. They may be said to be special purpose banks catering primarily to the rural agricultural sector. Currently, there are about 56 regional rural banks in India.

**Foreign Banks:** Most of the major banks from major countries are represented in India through branches, network offices, and representative office or agency arrangements. Foreign banks offer a variety of services including foreign-currency loan syndication, foreign exchange risk management and other innovative financial products. Currently there are 43 foreign private sector banks operating in India.

**Payment Banks:** The Reserve Bank of India has on 19 August 2015 decided to grant 'in-principle' approval to 11 applicants. The Payment Banks are intended to be an ubiquitous payment network and universal access to savings with differential licensing to offer financial services to the hitherto excluded segments of the population.

The objective of setting up of payments banks was to further financial inclusion by providing small savings accounts and payments/ remittance services to migrant labor workforce, low income households, small businesses, other unorganized sector entities and other users. This will be possible through heavy technological focus, as cost to serve unbanked population will be lower due to technology adoption right from inception.

### 7.1.3 Specialized Financial Institutions

There are numbers of specialized financial institutions in India at the national as well as the state level. India has an integrated structure of financial institutions known as All India Financial Institutions (AFIs), which provide term finance and other assistance to industries. Some of the most important financial institutions, which play a very instrumental role in India's development, are the Industrial Development Bank of India (IDBI), the Industrial Finance Corporation of India (IFCI) and the Industrial Reconstruction Bank of India (IRBI).

India also has other financial institutions, which are set up for specific purposes. These include the National Bank for Agricultural and Rural Development (NABARD), the Shipping Credit Corporation of India, the National Housing Bank and the Discount and Finance House of India, which is a specialized institution to develop an active secondary market for money market instruments.

### 7.1.4 Non-Banking Finance Companies (NBFCs)

The Non-Banking Finance Companies form an integral part of the Indian financial system. They have to conform to the overall framework of the monetary and credit policy of the government. The government has permitted foreign direct investment in NBFCs in merchant banking, underwriting, portfolio management services, investment advisory services, financial consultancy, stock broking, asset management, venture capital, custodial services, factoring, credit rating agencies, leasing and finance(exclusively for finance leases and not operating leases) and housing finance. Foreign direct investment in the NBFC sector is put on automatic route subject to compliance with guidelines to be issued by Reserve Bank of India.

## 7.2 Insurance Sector

The primary legislation that deals with insurance business in India is Insurance Act, 1938 and Insurance Regulatory & Development Authority (IRDA) Act, 1999. The Government of India has opened up the sector to private participation in recent past. Details of permissible foreign investment in this sector are discussed separately in Chapter 5. There are more than 24 companies in life insurance business including government corporation i.e. Life Insurance Corporation of India and about 29 companies in the non-life insurance business including government corporation i.e. General Insurance Corporation of India.

## 7.3 Financial markets

The Financial Markets in India comprises of the Capital Market and the Money Market. The Capital market deals in finances of long term nature whereas money market deals in finances of short term nature.

The Indian capital market is very well-developed, and it is a very important source of finance to both public and private sector companies. The major developments in the capital market include the following:

- The Securities and Exchange Board of India (SEBI) was empowered to oversee the operations of the exchanges, regulate the capital market and protect investors.
- Trading introduced in derivative based on index and in stock options of the certain companies satisfying certain parameters.
- Trading in listed company on stock exchanges in dematerialized form has been made mandatory to reduce the settlement cycle to 2 days.
- The interest rates on convertible and non-convertible debentures are allowed to be market determined.
- Free-market pricing of share issues has increased activity on the stock exchanges.

- The concepts of book building and market making have been introduced.
- Under the Portfolio Investment Scheme, the RBI has permitted investment in shares and debentures of Indian companies by Non-Resident Indians (NRIs) and Foreign Institutional Investors (FIIs).
- Various tax incentives have been offered to encourage foreign institutional investment.
- A new takeover code has been introduced to protect the interests of the small investors and to strengthen the regulatory framework of takeovers.
- Domestic shares are allowed to be reconverted to American Depository Receipt/ Global Depository Receipt.

## 7.4 Stock Exchanges

India currently has around 21 recognized stock exchanges. The National Securities Depository Limited (NSDL) holds over 15.02 million investor accounts on the other hand, the Central Depository Services Ltd (CDSL) has nearly 11.47 million investor accounts.

The stock exchanges deal in securities issued by the central and state governments, public sector companies and public limited companies. Most activities on the stock exchanges occur in corporate securities. Gilt-edged securities consisting of securities issued by the central, state and other government bodies are also listed on recognized stock exchanges. Bombay Stock Exchange and National Stock Exchange account for more than 97% of the total turnover.

Foreign Institutional Investors and Qualified Foreign Investors are also permitted to invest in corporate and government debt subject to overall investment limits.

SEBI is the regulatory authority for all the stock exchanges. In order to facilitate stock exchange transactions, India has been modernizing the operations of its stock exchanges by introducing screen based trading. The trading on stock exchange has been made mandatory in dematerialized form for all scrip commencing from April 2002.

SEBI has also laid down eligibility criteria for setting up dedicated stock exchanges for the Small and Medium Enterprises (SME) sector. Apart from fulfilling other criteria, the exchange should have a minimum specified amount of net-worth as per the latest audited financials.

### 7.4.1 Bombay Stock Exchange

Bombay Stock Exchange (BSE) is India's premier stock exchange. It lists over 5500 companies. BSE has trading terminals in over 400 cities. The market capitalization of the Bombay Stock Exchange as on 5 October 2016 was appx. US$ 1.69 trillion. It was ranked as the World's 10th largest stock exchange as per the market capitalization.

### 7.4.2 National Stock Exchange

National Stock Exchange (NSE) started operations with a view to facilitating transparent trading. The NSE provides nation-wide trading facilities to investors through established network linkages in over 1500 cities and towns nationwide. The NSE has over 1800 listed companies in September 2016 with a market capitalization of US$ 1.62 trillion. The NSE is India's primary exchange for wholesale debt segment. It was ranked as the World's 11th largest stock exchange as per the market capitalization.

### 7.4.3 Metropolitan Stock Exchange

Metropolitan Stock Exchange of India Limited (MSEI) (formerly known as MCX Stock Exchange Ltd.) recognised by Securities and Exchange Board of India (SEBI) under Section 4 of Securities Contracts (Regulation) Act, 1956. The Exchange was notified a "recognised stock exchange" under Section 2(39) of the Companies Act, 1956 by Ministry of

Corporate Affairs, Govt. of India, on December 21, 2012. Shareholders of the Exchange include India's top public sector banks, private sector banks and domestic financial institutions who, together hold over 88% stake in the Exchange. MSEI is subjected to CAG Audit and has an independent professional management. MSEI offers an electronic, transparent and hi-tech platform for trading in Capital Market, Futures & Options, Currency Derivatives and Debt Market segments

7.4.4 Listing Requirements

There is no statutory requirement for public limited companies in India to have their shares listed on a recognized stock exchange. However, the companies have to be listed if their shares or debentures are offered to the public for subscription by prospectus. Companies have to fulfill the stock exchange requirements in order to have their shares listed. In case the company does not satisfy the prescribed conditions of the stock exchange and is not admitted to the exchange, it has to refund the amounts paid by subscribers.

7.5 Investment Institutions

Most of the specialized investment institutions in India are in the public sector. These include the Unit Trust of India, the Life Insurance Corporation of India, General Insurance Corporation, mutual funds set up by subsidiaries of the State Bank of India and other nationalized banks and other financial institutions.

7.6 Mutual Funds

Mutual funds play a significant role in the capital market. They are established in the form of trusts under the Indian Trusts Act and are operated by separate asset management companies. The mutual fund market was dominated by public sector financial institutions and public sector banks till 1993, when the government opened up the sector to private participation. Assets under management for the period July to September 2016 stood at INR 16.11 trillion (US$ 240 billion). Mutual Funds are now permitted to make investment in short term as well as long term foreign debt securities with highest foreign currency credit rating by accredited / registered credit rating agencies in the countries with fully convertible currencies including government securities of the countries having AAA rating.

7.7 Credit Rating Agencies

The credit rating agencies rate corporate debt and equity securities such as debentures, shares and commercial paper. They also rate the credit risk of companies, a factor often used by nationalized banks in evaluating loan applications. Credit ratings have become all the more necessary because it has become mandatory for companies to obtain a credit rating before issuing convertible and non-convertible debentures. The Credit Rating Information Services of India Limited (CRISIL), the first credit rating agency in India was established in January 1988 and the Investment Information and Credit Rating Agency of India (ICRA) was established in March 1991. Credit Analysis and Research Ltd. (CARE) is another leading credit rating agency and was set up in November 1993.

## 8.0 INCENTIVES FOR INDUSTRIES

Various tax incentives are available to industries whether existing or new depending on the industry, location, activity and the purpose like:

8.1 Concessional Finance

New and existing businesses established in specified backward areas of the country are able to obtain finance for major expansion plans at below normal interest rates. Other benefits may include low commitment fees and extended repayment periods.

8.2 Central Government Investment Subsidy

Industrial undertakings located in specified backward areas, which are largely the same as those where concessional finance is available, are eligible for a Central Government subsidy towards the cost of land, buildings, machinery and equipment.

8.3 State Government Incentives

In keeping with a federal structure, many State Governments operate their own incentive programmes to attract industrial investments. Details of incentive packages often vary from one state to another but would broadly include subsidized power, availability of low-cost land, and assistance in feasibility studies, tax breaks and exemptions / deferment of specific duties.

## 9.0 INCENTIVES FOR EXPORTS

Exporters are eligible for a number of special incentives.

**Duty Drawback:** Exporters are entitled to drawback import duties and excise duties paid by them on material inputs of products exported at specified rates, depending upon the type of product exported.

**Freight Concessions:** Freight rate reductions and priority wagon booking facilities are made available on the railways for transport of raw material for export production and finished products for export.

**Export Credit Guarantee:** This guarantee is provided by the Export Credit Guarantee Corporation at low rates of premium to banks and other financial institutions to enable exporters to obtain better credit facilities.

**Advance Licences:** These are issued to exporters for import of raw materials for manufacture of finished products, without payment of custom duties. Duty free import of capital goods may also be permitted if the product to be manufactured is for export.

**Special Import Licences:** These licences for items in the negative list of imports are made available to specified categories of exporters.

**Free Trade Zones:** Several FTZs have been established at various places in India like Kandla, Noida, Cochin, etc. No excise duties are payable on goods manufactured in these zones provided they are made for export purpose.

**Special Economic Zones:** To create stimulating infrastructure facilities of international standards in export production, Special Economic Zones (SEZ) can now be set up in the private, public, joint sector or by state governments. SEZs have been set up in order to meet the shortcomings of the Export Processing Zones(EPZs) Certain existing EPZs have now been converted into SEZ the Units in SEZ have comparably better incentives from units in EPZ.

## 10.0 ENERGY, MINERALS AND OTHER NATURAL RESOURCES

Energy is an essential input for economic development and improving the quality of life. India's major mineral resources include Coal (4th largest reserves in the world), Iron ore, Manganese ore (7th largest reserve in the world), Mica, Bauxite (5th largest reserve in the world), Chromite, Natural gas, Diamonds, Limestone and Thorium (world's largest along coast of Kerala shores). India's oil reserves, found in Bombay High off the coast of Maharashtra, Gujarat, Rajasthan and in eastern Assam meet 25% of the country's demand. Nuclear and solar energy are developing, but still have a long way to go to be truly accepted in India as a major energy provider.

## 11.0 FOREIGN TRADE

The government has announced various policies with the intention of reducing the protection of domestic industry. These policies included substantial reduction in import licensing, de-canalization of imports and exports, and lowering of tariffs. However, international trade has not been completely freed with the primary aim of avoiding a drain of foreign exchange reserves and to discourage the importing of non-essential and luxury items.

Major commodities exported from India are software, petrochemicals, agriculture, leather, jewellery, engineering goods, pharmaceuticals, textiles, chemicals, transportation, ores and other commodities and its exports amounted to US$ 261 billion during the financial year 2015-16. Major commodities imported in India are crude oil, gold and precious stones, electronics, engineering goods, chemicals, plastics, coal and ores, iron and steel, vegetable oil and other commodities and it's imports were US$ 379 billion during the financial year 2015-16.

## 12.0 OTHER FACTORS

### 12.1 Language

The government as well as the industry conducts their activities in English, India has the second largest English speaking population after the United States.

### 12.2 Trained Manpower

India has one of the largest pool of trained, scientific and technical manpower in the world. This manpower is available at reasonable rate when compared to the manpower costs prevailing in developed countries.

### 12.3 Low Research and Development Costs

Research and development costs in India are generally very low when compared to the costs that would be incurred in any major industrialized countries. In the present scenario, it is possible for the foreign companies to establish 100% foreign-owned research and development (R&D) companies in India, and import the laboratory equipment and other facilities required for R&D. Further, to encourage R&D across all sectors of the economy, various tax incentives have also been allowed under the Income Tax Act which have been discussed in detail in the Chapter 6.

### 12.4 Financial Reliability

Repatriation of capital or dividends for investments made in India is freely allowed. The fiscal deficit during the period 2015-16 was about 3.9% of the GDP. Foreign exchange reserves of India stood at about US$ 370 billion as on 23 September 2016, evidencing an increase of US$ 20 billion from the previous year.

India is a member of the convention of the Multilateral Investment Guarantee Agency, which is engaged in the promotion of foreign direct investment (FDI) into developing countries to help support economic growth, reduce poverty, and improve people's lives.

# CHAPTER 3: BUSINESS ENTITIES

## 1.0 FORMS OF BUSINESS ENTITIES

The principal forms of business organizations in India, apart from government organizations and sole proprietorship firms are:

i. Companies – public and private
ii. Branches of Foreign Companies
iii. Liaison/Project offices of foreign companies
iv. Partnerships
v. Trusts
vi. Limited Liability Partnerships (LLP).

### 1.1 Enactment of Companies Act, 2013 and repeal of Companies Act, 1956:

The Companies Bill, 2012 (the Bill) was approved by the lower house of the Parliament i.e. Lok Sabha on 18 December 2012 and by the upper house of the Parliament i.e. Rajya Sabha on 8 August 2013. It received the President's assent on 29 August 2013 and has now become the Companies Act, 2013 repealing the Companies Act, 1956.

The newly legislated Companies Act, 2013 is a progressive and forward looking legislation which promises improved corporate governance norms, enhanced disclosures and transparency, facilitation of responsible entrepreneurship, increased accountability of company managements and auditors, protection of interest of investors particularly small and minority investors, better shareholder democracy, and the like.

### 1.2 Companies

At present, the legislative provisions governing companies are contained in the Companies Act, 2013. Companies in India are broadly classified into public sector companies' viz. with predominant government shareholding and private sector companies' viz. with predominant private shareholding. Private sector companies may further be classified as public limited companies or private limited companies. Companies can also be classified into companies limited by shares, companies limited by guarantee and unlimited liability companies. However, for business purposes, generally companies limited by shares are used and consequently, the discussion regarding companies in this guide is pertaining to such companies. The shares of public companies may or may not be listed on stock exchanges in India. (e.g. NSE, BSE, etc.) The regulatory provisions for private limited companies are less stringent than those relating to public limited companies. Public limited companies whose shares are listed on stock exchanges are subject to the regulations of SEBI and the respective stock exchanges. Private companies that are subsidiaries of public companies (i.e. where shareholding of Public companies is more than 50%) would however be considered as as public companies under the Companies Act,2013. Shares of public limited companies are freely transferable, whereas it is subject to restrictions in case of private limited companies. Further, investment by non-resident/ transfer of shares to non-residents is regulated by Foreign Exchange Management Act, 1999.

## 1.3 Regulations

The financial reporting environment in India is strictly regulated by the government, through various regulators and government agencies. There are a large number of mandatory compliances, the failure of which can lead to penalties and other more severe consequences.

The Indian legal system is constituted by a framework of various laws and enactments based on Common Law and include the following acts that contain provisions and guidelines for the primary functioning of companies in India:

- Companies Act 2013 and Rules framed thereunder;
- Chartered Accountants Act 1949;
- Company Secretaries Act, 1980;
- Reserve Bank of India Act 1934;
- Income Tax Act 1961;
- Securities and Exchange Board of India Act 1992;
- Securities Contract (Regulation) Act 1956;
- Banking Regulation Act 1949;
- Insurance Act 1938.

The various regulators that influence financial reporting in India include:

- Ministry of Corporate Affairs (Regulator for all corporate enterprises);
- Securities and Exchange Board of India or SEBI (Regulator for all listed companies);
- Reserve Bank of India or RBI (Regulator for all Banking and Finance entities);
- Insurance Regulatory and Development Authority or IRDA (Regulator for all Insurance companies);
- Institute of Chartered Accountants of India or ICAI (Regulator for Chartered Accountants and auditors).
- Institute of Company Secretaries of India or ICSI (Regulator for Company Secretaries).

## 1.4 Branches of Foreign Companies Branch Office (BO)

As per RBI circular, foreign companies engaged in manufacturing and trading activities abroad have been allowed to set up branch offices in India with specific approval of the Reserve Bank of India. Permission for setting up branch offices is granted by RBI/FIPB on a case-to-case basis. Application for permission to set up branches is to be made with the designated Authorized Dealer Category –I bank (AD) along with the requisite documents, which would then be submitted with the RBI along with recommendations and suggestions of the AD. The essential parameters considered by RBI on such an application is the worldwide operating history of the foreign company, proposed activities in India, profit making track record of the foreign company in the home country and its net worth. The additional criteria to be satisfied for eligibility regarding track record and net worth are as under:

| Sr.No. | Criteria | Requirements |
|---|---|---|
| 1 | Track Record | A Profit making track record during the immediately preceding five financial years in the home country of the foreign company proposing to establish BO. |
| 2 | Net Worth* | Not less than US $ 100,000 or its equivalent |

* Net worth includes total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name.

As per RBI circular, Foreign companies engaged in manufacturing and trading activities abroad have been allowed to open branch offices to carry on the following activities in India:

- To export / import goods.
- To render professional or consultancy services.
- To carry out research work, in which the parent company is engaged.
- To promote technical or financial collaborations between Indian companies and parent or overseas group company.
- To represent the parent company in India and acting as buying / selling agent in India.
- To render services in Information Technology and development of software in India.
- To render technical support to the products supplied by parent / group companies.
- To act as branch of a foreign airline / shipping company.

A Branch office is not allowed to carry out manufacturing or processing activities in India, directly or indirectly. For establishing additional branches or undertaking additional activities, permission is required to be obtained. Foreign Companies are required to furnish certain specified information and comply with provisions of the Chapter XXII of the Companies Act, 2013 and Companies (Registration of Foreign Companies) Rules, 2014 on establishing a place of business in India.

## 1.5 Liaison / Representative Offices (LO)

One of the preferred routes for foreign companies to enter the Indian markets is setting up a liaison / representative office. Permission to set up such offices is granted for an initial period of 3 years, which may be extended from time to time.

The essential parameters considered by RBI on such an application is the worldwide operating history of the foreign company, proposed activities in India, profit making track record of the foreign company in the home country and its net worth. The additional criteria to be satisfied for eligibility regarding track record and net worth are as under:

| Sr.No. | Criteria | Requirements |
|---|---|---|
| 1 | Track Record | A Profit making track record during the immediately preceding three financial years in the home country of the foreign company proposing to establish LO. |
| 2 | Net Worth* | Not less than US $ 50,000 or its equivalent |

* Net worth includes total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name.

Application for grant of approval is to be made with the designated Authorized Dealer Category – I bank (AD) which would then forward it to the RBI along with suggestions and the requisite documents. RBI may grant approval for setting up a liaison office on receipt of such an application. Some of the criterions which shall be considered by the RBI before granting approval include profit making track record of the foreign company in the home country and its net worth.

Foreign insurance companies can establish Liaison Office in India only after obtaining approval from the Insurance Regulatory and Development Authority.

Foreign banks can establish Liaison Office in India only after obtaining approval from Department of Banking Regulation, RBI.

Generally RBI permits foreign companies to establish an office or to post a representative in India for carrying on liaison activities, subject to the following conditions:

- No Commission or fee is charged or any other remuneration received by the Indian office of the foreign company for its liaison activities in India.
- Except for the liaison work, the office does not undertake any activity of a trading, commercial or industrial nature without the prior permission of the Reserve Bank of India.
- All expenses of the Indian office are met exclusively by remittances from abroad through normal banking channels.
- No borrowing or lending of any money from / to any person in India without the prior permission of RBI.
- The Indian office submits an annual statement to the AD and a copy to the Directorate General of Income Tax (International Taxation), New Delhi, giving details of remittances received from abroad, supported by bank certificates, together with a copy of the final accounts of the Indian office certified by a Chartered Accountant.
- The office in India will not have any signing / commitment powers except than those which are required for normal functioning of the office, on behalf of the head office.

Liaison offices are permitted to carry out the following activities in India:

- To represent the parent company / group companies in India.
- To promote export / import from / to India.
- To promote technical / financial collaborations between parent / group companies and companies in India.
- To act as a communication channel between the parent company and Indian companies.

Foreign companies having only liaison offices and not engaged in any trading, manufacturing or other commercial activity in India, have to furnish certain mandatory information to the Registrar of Companies in India.

Foreign Companies are required to furnish certain specified information and comply with provisions of the Chapter XXII of the Companies Act, 2013 and Companies (Registration of Foreign Companies) Rules, 2014.

## 1.6 Project Office

Foreign companies planning to execute specific projects in India can set up temporary project /site offices in India for such purpose. The standard conditions imposed for operating such offices are:

- The foreign company has secured from an Indian company a contract to execute a project in India.
- The project is funded by inward remittance from abroad; or
- The project is funded by a bilateral or multilateral International Finance Agency; or
- The project has been cleared by an appropriate authority; or
- A company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or bank in India for the project.

- The foreign company shall furnish a report through the concerned AD branch to the concerned Regional Office of the RBI under whose jurisdiction the project office is set up comprising the following details:

  - Name and address of the Foreign Company;
  - Reference no and date of letter awarding contract;
  - Particulars of authority awarding the projects/contract;
  - Total amount of contract;
  - Address/e-mail/ telephone/ fax no and tenure of Project Office;
  - Nature/details of Project Undertaken including AD bank details and undertaking.

  Foreign Companies are required to furnish certain specified information and comply with provisions of the Chapter XXII of the Companies Act, 2013 and Companies (Registration of Foreign Companies) Rules, 2014.

## 1.7 Partnerships

Partnership is the relation between persons who have agreed to share the profits of the business carried on by all or any one of them acting for all as per the terms of Partnership Deed, which may be registered with the Registrar of Firms. The Indian Partnership Act, 1932 lays down provisions regarding rights and obligations of partners, retirement and admission of partners, dissolution of firm and related aspects. Indian laws prohibit partnerships of more than 50 persons from carrying on any business (Section 464 of the Companies Act, 2013).

## 1.8 Trusts

Trusts are generally established in India for business of mutual fund and for charitable, religious and other non-profitable purposes. There are special provisions relating to taxation of mutual funds and charitable trusts which provide for tax exemption under specified circumstances. Real Estate Investment Trusts and Infrastructure Investment Trusts are also now permissible and are regulated by the SEBI.

## 1.9 Limited Liability Partnerships (LLPs)

The concept of LLP is not old to India and the Limited Liability Partnership Act, 2008 has permitted setting up of LLPs with effect from 1 April 2009.

**Some of the salient features of an LLP are as under:**

- LLP is a body corporate having a separate legal entity distinct from its members.

- LLP has a perpetual succession and any change in partners of LLP will not affect the existence, rights or liabilities of the LLP.

- Any individual, body corporate including foreign companies, LLP (including a foreign LLP) can be a partner in LLP.

- LLP shall have at least

  - two partners

  - two designated partners who are individuals and at least one of them shall be resident in India.

- If all the partners of any LLP are a body corporate or LLP, they shall nominate their respective individuals to act as designated partners, of whom at least one shall be resident in India.

- Designated Partner's are liable for compliance under the Act and in the event of non-compliance will be liable for the penalties.

- In an LLP, there is no upper limit on maximum number of partners unlike an ordinary partnership firm where the maximum number of partners cannot exceed 50.
- Every partner of LLP is the agent of the LLP for the purpose of the business of the LLP, but not of other partners.
- Every designated partner shall obtain a Designated Partner Identification Number (DPIN) which is similar to Director Identification Number (DIN) as provided under the Companies Act, 2013.
- An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP. The liabilities of the LLP shall be met out of the property of the LLP.
- While the LLP is a separate legal entity, liable to the full extent of its assets, however, the liability of the partners is limited to their agreed contribution in the LLP which may be of tangible or intangible nature or of both tangible and intangible in nature.
- No partner is liable on account of the independent or unauthorized actions of other partners, thus, allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.
- Registering authority of LLP is the Registrar of Companies.
- The name of an LLP must end with the words "limited liability partnership" or the acronym "LLP".
- The mutual rights and duties of partners of an LLP inter se and those of LLP and its partners shall be governed by an agreement between the partners or between LLP and the partners subject to the provisions of the proposed legislation. In the absence of any such agreement, the same shall be governed by Schedule I to the Act.
- The right of a partner to share profits and losses of the LLP are transferable either wholly or in part. The transfer in such a way shall not cause the disassociation of the partner or the dissolution and winding up of the LLP. Further, the transfer of right does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the LLP or access information concerning the transactions of the LLP.
- The provisions of the Indian Partnership Act 1932 shall not apply to LLPs.
- Other entities such as firms, private companies and unlisted public companies can get themselves converted into LLPs. Upon conversion, all property of firm or company shall be transferred to and shall vest in the LLP and the firm or the company shall be deemed to be dissolved and removed from the records of the Registrar of firms or Registrar of Companies as the case may be. Transfer of assets upon such conversion does not involve any payment of stamp duty. (Section 58 of LLP Act, 2008)
- The payment of remuneration and interest to partners is deductible if conditions which are stipulated under the Limited Liability Partnership Act and Income Tax Act are satisfied.
- LLPs shall be obliged to maintain annual accounts, file a statement of accounts and solvency and annual return with the Registrar of Companies every year and all these documents shall be open for public inspection at the office of the Registrar of Companies.
- Audit of LLP is mandatory only if annual turnover exceeds INR 40 lacs or contribution exceeds INR 25 lacs.
- The financial year of an LLP has to compulsorily end at 31 March.

- The Central Government has the powers to investigate the affairs of an LLP.
- LLP shall by its name, have the power of suing and being sued.
- LLP can acquire, own, hold, develop or dispose of property both movable and immovable.
- The winding up of LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 2013. Till the tribunal is established, the power in this regard shall vest with High Court.
- Compromise or arrangement including merger and amalgamation can be made between LLP and it creditors and LLP and its partners and between LLPs.
- Foreign Direct Investment is allowed in LLPs under the government approval route, in those sectors where 100% FDI is allowed, through automatic route, and there are no FDI-linked performance related conditions.
- Some of the basic taxation aspects applicable to an LLP includes:
    - The applicable tax rates would be 30% (plus applicable surcharge & education cess)
    - Minimum Alternate Tax (MAT) provisions are not applicable in case of LLPs, however they are subject to Alternate Minimum tax (AMT) of 18.50% (plus applicable surcharge & education cess)
    - No Dividend Distribution Tax (currently at an effective rate of 20.36% in case of companies) on profits distributed to the partners of LLP
    - Remuneration receivable by partners of LLP will be taxed in the hands of the partners as "Income from Business & Profession".
    - The benefits of presumptive taxation are not applicable in case of LLPs.

## 2.0 SETTING UP A COMPANY

### 2.1 Incorporation of a Company

The steps involved in the incorporation of a company include obtaining Digital Signatures, Directors Identification Numbers, availing a suitable name for the company, determining the location of the registered office of the company, determining the authorised share capital, drafting the Memorandum of Association and Articles of Association and thereafter drafting and submitting the other necessary documents and forms to the Registrar of Companies (ROC). The Ministry of Corporate Affairs has introduced MCA-21 e-Governance programme with a view to providing all services relating to ROC offices on-line in e-Governance mode. Accordingly all filings with the ROC including compliances with respect to Incorporation of a Company have to be done electronically duly authenticated by digital signatures of the authorized persons.

A minimum of seven subscribers are required for incorporation of a public limited company (two in case of a private limited company). The procedure of incorporation generally takes 4-6 weeks.

All documents pertaining to incorporation of a company having foreign individuals / foreign companies residing outside India as shareholders shall be certified by an official of the Government to whose custody the original is committed and be duly apostiled / notarized in accordance with Hague Convention.

#### A. Newly launched Simplified Proforma for Incorporating a Company Electronically (SPICe) e-Form

The Ministry of Corporate Affairs has taken another bold initiative in Government Process Re-engineering

(GPR) and launched a Simplified Proforma for Incorporating a Company Electronically (SPICe) e-Form, on 3 October 2016.The main objective of launching this e-Format proforma, SPICe, is to provide speedy incorporation related services within stipulated time frames which are in line with the international best practices.

SPICe's USP is as follows: -

1. Simplified and completely Digital form for Company Incorporation
2. Standard format of e-Memorandum of Association as per Companies Act, 2013
3. Standard format of e-Articles of Association as per Companies Act, 2013
4. Memorandum and Articles will now be filed as linked e-forms (except for Section 8 companies)
5. Provision to apply for Company Incorporation with a pre-approved Company Name
6. Mandatory DSCs of Subscribers and Witnesses (max 7+1) in SPICe MOA and SPICe AOA
7. Back Office productivity gains due to faster review of e-MOA and e-AOA by approving authorities.

Existing INC-29 and INC-7 will be phased-out and SPICe will be the Sole, Simplified & Versatile form available for incorporation of a company in India.

On registration, a Certificate of Incorporation is issued which is conclusive evidence of the company having been incorporated. There is an office of the Registrar of Companies in each Indian State and in some cases, for a group of adjoining States. A company needs to be registered only once with the Registrar in the State based on the location of its registered office and can then do business all across the country.

## B. Memorandum of Association (MOA)

The MOA sets out the constitution of the company. The MOA of every company should state the following:

- The name of the company with 'Limited' as the last word of the name in the case of a public company and with 'Private Limited' as the last words of the name in the case of a private company;
- The State in which the registered office of the company is situated;
- The main objects to be pursued by the company on its incorporation along with objects incidental or ancillary to attainment of the main objects;
- The liability of its members,
- The authorised share capital (i.e. the amount of share capital with which the company is to be registered) and division thereof into shares of a fixed amount.

The objects clause is generally comprehensive in nature but the same can be amended by a special resolution of the shareholders.

There should be at least seven subscribers to the MOA in case of a public company and at least two subscribers to the MOA in case of a private company.

### C. Articles of Association (AOA)

The AOA contain the rules and regulations for managing the internal affairs of the company and achieving the objects set out in the MOA. This document is subordinate to the MOA.

The AOA sets out the internal rules of the company. They contain provisions relating to share capital, the rights of members, procedure for the conduct of various general meetings of members, rights of members at general meetings, constitution of the Board of Directors, powers of Board and other similar matters regarding internal regulations of a company. A company need not register its own individual articles, but may adopt the model articles provided under the Companies Act, 2013.

Draft copies of the memorandum, articles and prospectus should be submitted to the stock exchange for approval in case the company wishes to list its shares by offering the same to the members of the public.

### D Registration Fees and Stamp Duty

The costs for formation of company includes drafting and printing of the MOA and AOA, stamp duty and company registration fee which is linked to the quantum of authorized capital.

Registration fee is calculated on a specified scale based on the company's authorized share capital. The registration fees for companies with authorized share capital upto INR 1,00,000 is approximately INR 15,000. Stamp duty is payable on the basis of authorized share capital which varies from state to state.

### E. Certificate of Incorporation

The Registrar of Companies on being satisfied that all the requirements pertaining to incorporation have been met and the objectives of the company being considered are lawful, issues the Certificate of Incorporation. The Company thereafter comes into existence as a legal person distinct from its members. Where a company has issued a prospectus inviting the public to subscribe to its shares, the company cannot commence business until the amount of minimum subscription stated therein has been received.

## 2.2 Capital Requirements

Under the Companies Act, 2013, it is no longer required for a Company, public or private to have a minimum paid up share capital. The erstwhile Companies Act,1956 mandated private limited companies to have a minimum paid up share capital of Rs. 1 lac and public limited companies to have a minimum paid up share capital of Rs. 5 lacs. This would mean that Companies can draw a capital structure as per its strategic planning and requirement rather than doing the same based out of compulsion.

To get its shares listed on the stock exchange:-

- in case of IPO, minimum post-issue capital of the company shall be is INR 10 crores and in case of FPO INR 3 crores, minimum issue size shall be INR 10 crores, minimum market capitalization shall be, and
- at least 25% of the issued capital must be offered to the public for subscription if post issue capital of the company calculated at offer price is less than or equal to INR 1,600 crores.
- at least such percentage equivalent to INR 400 crores must be offered to the public for subscription if post issue capital of the company calculated at offer price is more than INR 1,600 crores but less than or equal to INR 4,000 crores.
- 10% of the issued capital can be offered to the public for subscription in case the post issue capital of the company calculated at offer price is more than INR 4,000 crores or more.

However, the minimum equity capital is much lesser for listing on the Over the Counter Exchange of India. A public limited company cannot make any listing and allotment of shares unless a minimum subscription of 90% of the issue amount has been subscribed. For continuation of listing all listed companies should maintain public shareholding of at least 25%.

## 2.3 Kinds of Shares

A company limited by shares is allowed to have only two classes of share capital namely equity and preference shares.

2.3.1 Equity shares are further divided into shares with:

- voting rights; or
- with different rights as to dividend, voting or otherwise as per the rules prescribed.

As per Rule 4 of Companies (Share Capital and Debentures) Rules, 2014, only such companies fulfilling certain basic criteria are allowed to issue shares with differential voting rights viz., three year track record of distributable profits, non-default inter alia in respect of filing of accounts, annual returns, repayment of deposits, redemption of debentures, payment of dividend etc. Approval of the shareholders for issuing such shares should be obtained at a General Body Meeting of the shareholders and in case of listed companies through system of postal ballot. Such shares, however, can be issued to the extent of 26% of the company's total post issue equity share capital. These restrictions however, would not apply to a Pvt. Ltd if it provides for the same in its AOA.

2.3.2 Preference shares, which carry a pre-determined coupon rate for payment of dividend each year can be of different types i.e. Cumulative, Non-cumulative, Convertible and Non-convertible. Only redeemable preference shares can be issued and the maximum period within which such shares should be redeemed should not exceed twenty years. Preference shareholders have voting rights only in respect of certain resolutions placed before the company such as resolutions directly affecting the rights of preference shareholders, resolution for winding up of the company, repayment/ reduction of the equity or preference capital. Preference shareholders have right to vote on all resolutions placed before the company where the dividend is not paid for 2 or more years. The above restrictions however, are not applicable to a private limited company.

On winding up, preference shareholders receive first priority for repayment of capital, with the equity shareholders being entitled to the remaining surplus, if any.

2.3.3 A company may issue shares at a premium, which can be utilized only for specified purposes provided under the Companies Act, 2013.

## 2.4 Debentures

Companies may also issue debentures. A debenture is an acknowledgement of debt of the company. They are normally secured by a charge on the company's assets, bearing a fixed rate of interest and are redeemable at a future date. Debentures may be wholly or partially convertible into shares at a stated date. The money raised through debentures forms a part of company's capital structure though it does not form part of the company's share capital.

Deposit by way of loan or any other forms (excluding the prescribed categories) constitute 'deposit' under the Companies Act, 2013 and the prescribed compliances have to be done in respect of such deposits. Prescribed class of Debentures is not considered as deposits under the provisions of the Companies Act, 2013 read with Rule 2 of Companies (Acceptance of Deposits) Rules, 2014.

Public limited listed companies are allowed to issue debentures as per the guidelines framed by SEBI. SEBI now permits companies to issue convertible or non-convertible debentures. Every listed Company desirous of issuance of debentures must list all debentures with the stock exchange irrespective of the mode of issuance i.e. whether issued on private placement basis or through public/rights issue, and it shall be done through a separate Listing Agreement on Debentures. Some of the important conditions are compulsory credit rating, appointment of Trustees and creation of Debenture Redemption Reserve.

## 2.5 Deposits

As per the provisions of the Companies Act, 2013 deposits have been defined to mean any receipt of money by way of deposit or loan or in any other form by the company, but does not include prescribed categories. Thus this made the definition much wider. A Company accepting deposit needs to comply with the provisions of the Companies Act, 2013 along with the Companies (Acceptance of Deposit) Rules, 2014. Acceptance of deposits from the public is another major source of raising funds. The Government in consultation with RBI has prescribed the upper limits, the manner and the conditions subject to which, deposits may be invited or accepted by a company from the public/ members of that company. Only a Public Limited Company can raise such public deposits. However, limits are prescribed for acceptance of deposits together with the amount of outstanding deposit/ renewal of deposit by companies from its member is at 10% of the aggregate of the paid-up share capital and free reserves of the Company from public at 25% /or at 35% in case of acceptance of deposit by a government company. However, private companies can accept deposit upto 100% of its paid up share capital and free reserves from its members.

## 2.6 Directors

A company primarily acts through two agencies, a general body of shareholders and the Board of Directors. The Board of Directors is a managerial body and its accountability to shareholders must be assured.

The requirements for public and private companies are as follows:

| Particulars | Public | Private |
|---|---|---|
| Minimum numbers of subscribers/shareholders/members | 7 | 2 |
| Maximum number of subscribers/shareholders/members | No limit | 200 |
| Minimum number of directors | 3 | 2 |

The Companies Act, 2013 has introduced certain new provisions like having at least one Resident Director, and in certain cases also a Woman Director, Independent Directors etc.

Directors are responsible for management of the day to day affairs of the company. Unless otherwise required by the company's articles, directors need not be shareholders. The directors should meet periodically by convening Board Meetings. There should be at least one board meeting in each quarter and four board meetings in a year with a gap not more than 120 days between two consecutive meetings. Decisions taken are resolved by passing appropriate Board Resolutions. The directors can pass resolution by circulation in certain circumstances without holding a Board Meeting.

In case of every public company (and a private company, which is a subsidiary of a public company) at least two-thirds (2/3) of the total number of directors are liable to retire by rotation (one-third of such directors shall retire at every AGM). The remaining one-third (1/3) directors (non-rotational) may be appointed as provided in the company's AOA.

In the case of a private company, which is not a subsidiary of a public company, the appointment of directors may be as per the procedure specified in its AOA. Where the AOA do not provide otherwise, the directors are to be appointed in a General meeting. The provisions relating to rotational retirement of directors do not apply in case of a private company, which is not a subsidiary of a public company.

A person cannot be a director in more than 10 public limited companies. Directorships in private companies which are neither subsidiaries nor holding companies of a public company are not considered for the above purpose.

Every public limited company should have at least 3 directors. On other hand, a private limited company must have at least 2 directors. Companies can increase the no of directors beyond 15 with the special resolution passed by the company.

An alternate director may be appointed by the Board of Directors when a director is expected to remain outside India for a continuous period of three months. Directors can be appointed by the shareholders in the annual general meeting, by the board of directors and also by the central government. Director appointed by the Board holds office as an additional Director till the ensuing Annual General Meeting. Directors may also be nominated by financial institutions and debenture holders where terms of grant of loan or issue of debentures so provide.

A listed company may have a director appointed by the Small shareholders. Small shareholders mean shareholders holding shares of nominal value of INR 20,000.

The day to day management of the company resides with the board of directors, although some of the specified matters require approval of the shareholders.

Only individuals can be appointed as Directors of a company. Every individual intending to be appointed as a Director of a company or who is already a Director of a company before the commencement of the Companies (Amendment) Act, 2006, must obtain Director Identification Number (DIN) from Ministry of Corporate Affairs, Government of India. Every existing Director to whom DIN has been allotted, shall intimate the DIN within one month from the date of its receipt to the company(s) where he is Director. Every company shall in-turn intimate the DIN to Registrar of Companies with one week of the receipt of intimation from the Director.

### 2.7 Managing Director

The company is managed by the Board of Directors who may delegate any of its powers, except where any transaction requires approval of the Board of Directors under the Companies Act, to any director or managing director. Only individual can be appointed as a Managing Director of a company.

Every listed public limited company, having paid-up capital of INR 10 crores or more, must have a key managerial personnel i.e. managing director/CEO/whole time director, Chief Financial Officer and Company Secretary. The total remuneration to all directors shall not exceed 11% of the net profits of the company.

### 2.8 Secretary

Every company including private company with paid-up capital of INR 5 crores or more must have a full time secretary who should be a member of the Institute of Company Secretaries of India (ICSI), who is responsible for the compliance of company law, SEBI regulations and other allied laws. Secretarial audit is mandatory for the prescribed class of companies i.e. every listed company and every public company having paid up share capital of INR 50 crores or more or turnover of INR 250 crores or more.

## 3.0 STATUTORY REQUIREMENTS FOR COMPANIES

### 3.1 Annual Reports

From the financial year 2016-17, companies whose equity or debt securities are listed or are in the process of listing on any stock exchange in India or outside India and having net worth of Rs. 500 crores or more as well as unlisted companies having net worth of Rs. 500 crores or more would be required to adopt Ind AS i.e. the Indian Accounting Standards which have been converged with the IFRS with certain minimal exceptions.

All corporate entities in India irrespective of their size are required to prepare and file audited financial statements in accordance with Accounting Standards ("AS") issued by the Institute of Chartered Accountants of India ("ICAI") and their governing statute which may include:

- Companies Act for all incorporated entities;
- Reserve Bank of India (RBI) Guidelines and Prudential Norms, and the Banking Regulation Act, for banking companies;
- RBI regulations and Master Directions for Non-Banking Financial Companies;
- The Insurance Act and the Insurance Regulatory and Development Authority Act for insurance companies;
- Electricity Acts for power companies, etc.
- Listing Agreement entered between the listed Companies and Stock Exchange with which they are listed.

A set of financial statements in India generally includes:

- balance sheet;
- profit and loss account;
- cash flow statement;
- statement of changes in equity
- explanatory notes to the financial statements and supplementary schedules.

Financial statements do not, however, include such items as reports by directors, statements by the chairman, discussion and analysis by management and similar items that may be included in a financial or annual report, which all form part of overall financial reporting.

Financial Statements including consolidated financial statements of all subsidiaries including associates and joint ventures of the company should be presented to the shareholders for their approval in annual general meeting with certain exceptions. The board of directors' report should also include a Directors Responsibility Statement and other prescribed details. Directors' Responsibility Statement basically aims at highlighting the accountability of Directors in good corporate governance.

## 3.2 Audit Requirements

Every company is required to get its accounts audited under the Companies Act, 2013. The auditor should be a member of the Institute of Chartered Accountants of India (ICAI) holding a Certificate of Practice. There are mandatory audit requirements under certain other laws as well. In case of certain specified industries, in addition to the regular audits, an audit of cost accounts is required by a qualified cost accountant who is a member of the Institute of Cost & Works Accountants of India (ICWAI) holding a certificate of practice. Companies Act, 2013 mandates the appointment of internal auditors for prescribed class of companies. It also states that in case of certain class of companies the auditor can be appointed only for a period of 5 years in case of individual auditor and 10 years in case of audit firm i.e. provisions for rotation of auditors has been introduced.

## 3.3 Shareholders' Meetings

Every company must hold an Annual General Meeting (AGM). The time limit between two AGMs should not exceed 15 months. The matters considered at an AGM (which are known as ordinary business) normally include:

i. The consideration of the accounts, balance sheet and the reports of the Board of Directors and auditor.

ii. The declaration of dividend.

iii. The appointment of directors in place of those retiring by rotation.

iv. The appointment of and the fixing of the remuneration of the auditor.

Any other business in the AGM or in case of any other meetings is referred to as special business. Every member entitled to vote at the AGM must receive a written notice of the meeting at least 21 days in advance.

First AGM can be held within 9 months from the closure of the first financial year and subsequent AGMs can be held as follows:

(a) AGM must be held in each year

(b) AGM to be held within 6 months from the closure of the financial year

(c) AGM to be held within 15 months from the previous AGM.

In addition to the AGM, the Companies Act also provides for extraordinary general meetings (EGMs). The board of directors may call EGMs at their discretion. The directors must call an EGM, however, on a request from members with at least 10% of the voting rights. A simple majority of votes carries an ordinary resolution but special resolutions must be supported by the votes of at least 75% of the members voting. Special resolutions are generally those of significant nature for the company such as, a resolution to alter the certain clauses of memorandum of association or articles of association or the registration of a private company as a public company or vice versa, buy back of share capital, reduction of share capital, etc.

**A. Directors Identification Number (DIN)**

Director Identification Number (DIN) is a unique identification number for an existing director or a person intending to become the director of a proposed company. In the scenario of e-filing, obtaining DIN for every director is a pre-requisite for filing certain company related documents.

**B. Digital Signature Certificate (DSC)**

A Digital Signature is the electronic signature duly issued by the Certifying Authority that shows the authenticity of the person signing the same. Every user i.e. Director or Authorised Representative of a Foreign Company who is required to sign an e-Form for submission with MCA (i.e. through internet) requires a Digital Signature Certificate.

## 3.4 Filing of Documents / Returns

Every company must file its financial statements and annual return with the Registrar of Companies ('ROC') within 30 and 60 days respectively from the date of the annual general meeting (which is required to be held within 6 months of the financial year end and once in every year) along with the following:

- Director's report;
- Auditor's report;

Further in addition, listed companies are also required to send copies of the annual report, cash flow report, unaudited quarterly results to the stock exchange.

## 3.5 Filing of applications, documents, inspections etc. through electronic form

Any applications, balance sheet, prospectus, annual returns, forms, declarations, memorandum or articles of associations, particulars of charges, notices or any communications, intimations, as may be required to be filed or delivered under the Companies Act or any rules made thereunder shall be filed electronically and authenticated in such manner as may be specified in the rules. Registrar shall maintain all the applications, documents filed under this Act in the electronic form and registered or authenticated in such manner as may be specified in the rules. Inspection of these documents can be made by any person electronically. All fees, charges or other sums shall be paid electronically. Registrar shall register these documents filed or delivered under this Act or rules made thereunder and issue such certificates or perform duties or discharge functions or exercise power under this act or rules made there under.

An indicative list of the major Penalties for non-compliance under the Companies Act, 2013 can be highlighted as under:

| Sr. No. | Section | Particulars | Penalty for contravention of provisions of section |
|---|---|---|---|
| 1. | 53 (3) | Prohibition on issue of shares at discount | The company shall be punishable with fine of INR 1,00,000 to INR 5,00,000 and<br><br>every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine of INR 1,00,000 to INR 5,00,000, or with both. |
| 2. | 56 (6) | Transfer and transmission needs to be carried out in the prescribed manner | The company shall be punishable with fine of INR 25,000 to INR 5,00,000 and<br><br>every officer of the company who is in default shall be punishable with fine of INR 10,000 to 1,00,000 |
| 3. | 56 (7) | Transfer and transmission needs to be carried out in the prescribed manner | Without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447 |
| 4. | 64 (2) | Notice to be given to Registrar for alteration of share capital | The company and officer in default shall be punishable with fine which may extend to INR 1,000 for each day during which default continues or INR 5,00,000 whichever is less |
| 5. | 74 (3) | Repayment of deposits etc accepted before commencement of the Companies Act, 2013 i.e. before 01st April 2014 | The company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine of INR 1 crore to INR 10 crores and<br><br>every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine of INR 25 lacs to INR 2 crores, or with both |
| 6. | 76A | Contravention of section 73 or section 76 (Deposits to be accepted in prescribed manner) | In addition to the re-payment of deposit along with interest the company shall be liable to pay fine of INR 1 crore to INR 10 crores and<br><br>every officer who is in default shall be punishable with imprisonment which may extend to 7 years or fine of INR 25 lacs to INR 10 crores, or with both. |
| 7. | 88 (5) | Register of members needs to be maintained in prescribed manner | The company and every officer of the company who is in default shall be punishable with fine of |

| Sr. No. | Section | Particulars | Penalty for contravention of provisions of section |
|---|---|---|---|
| | | | – INR 50,000 to INR 3,00,000 and where the failure is a continuing one, with a<br>– further fine which may extend to INR 1,000 for every day, after the first during which the failure continues |
| 8. | 89 (5) | Declaration in respect of beneficial interest needs to be submitted in prescribed manner | If any person fails, to make a declaration as required under this section, without any reasonable cause, he shall be punishable with fine<br>– which may extend to INR 50,000 and where the failure is a continuing one, with a<br>– further fine which may extend to INR 1,000 for every day after the first during which the failure continues |
| 9. | 92 (5) | Annual return preparation and filing in prescribed manner | If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine of INR 50,000 to INR 5,00,000 and<br>every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine of INR 50,000 to INR 5,00,000, or with both |
| 10. | 94 (4) | Place of keeping and inspection of registers, returns etc | The company and every officer in default liable to penalty of INR 1,000 for every day during default maximum to INR 1,00,000 |
| 11. | 99 | Punishment for default in complying with provisions of sections 96 to 98 (holding of AGM in prescribed manner). | If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to INR 1,00,000 and in the case of a continuing default, with a further fine which may extend to INR 5,000 for every day during which such default continues. |
| 12. | 118 (11) | Minutes of proceedings of general meeting, meeting of Board and other meeting and resolutions passed by postal ballot needs to be in prescribed manner | The company shall be liable to penalty of INR 25,000 and<br>every officer in default shall be liable to penalty of INR 5,000 |
| 13. | 118 (12) | Minutes of proceedings of general meeting, meeting of Board and other meeting and resolutions passed by postal ballot needs to be in prescribed manner | If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine of INR 25,000 to INR 1,00,000 |
| 14. | 128 (6) | Books of accounts etc- to be kept by the company in prescribed manner | If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director,whole-time director in charge of finance, Chief Financial officer or such other person of the company |

| Sr. No. | Section | Particulars | Penalty for contravention of provisions of section |
|---|---|---|---|
| | | | punishable with imprisonment for a term which may extend to one year or with fine of INR 50,000 to INR 5,00,000 or with both. |
| 15. | 129 (7) | Financial statements to be in prescribed manner | If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine of INR 50,000 to INR 5,00,000, or with both |
| 16. | 134 (8) | Financial statements, Board's report etc to be in prescribed manner | The company shall be punishable with fine of INR 50,000 to INR 25,00,000 and<br><br>every officer in default shall be punishable with imprisonment for a term which may extend to three years or fine which of INR 50,000 to INR 5,00,000 |
| 17. | 137 (3) | Copy of financial statement to be filed with Registrar | If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of INR 1,000 for every day during which the failure continues but which shall not be more than INR 10,00,000, and<br><br>the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine of INR 1,00,000 to INR 5,00,000, or with both |
| 18. | 185 (2) | Loan to directors etc- not to be made unless to the extent permitted | The company shall be punishable with fine of INR 5,00,000 to INR 25,00,000, and<br><br>the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine of INR 5,00,000 to INR 25,00,000, or with both |
| 19. | 186 (13) | Loan and investment by company- to be made in prescribed manner | The company shall be punishable with fine of INR 25,000 to INR 5,00,000 and<br><br>every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine of INR 25,000 to INR 1,00,000 |

| Sr. No. | Section | Particulars | Penalty for contravention of provisions of section |
|---|---|---|---|
| 20. | 188 (5) | Related party transactions | Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,<br>(i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine of INR 25,000 to INR 5,00,000, or with both; and<br>(ii) in case of any other company, be punishable with fine of INR 25,000 to INR 5,00,000 |
| 21. | 229 | Penalty for furnishing false statement, mutilation, destruction of documents | Person as per this section shall be liable to penalty of fraud in the manner prescribed in section 447 |
| 22. | 347 (4) | Disposal of books and papers of company | If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to INR 50,000, or with both |
| 23. | 403 (2) | Fee for filing within the time etc | Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default |
| 24. | 447 | Punishment for fraud | Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud |
| 25. | 451 | Punishment in case of repeated default | If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence |
| 26. | 453 | Punishment for improper use of "Limited" or "Private Limited" | If any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with |

| Sr. No. | Section | Particulars | Penalty for contravention of provisions of section |
|---|---|---|---|
| | | | limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine of INR 500 to INR 2,000 for every day for which that name or title has been used |
| 27. | 464 (3) | Prohibition of association or partnership of persons exceeding certain number | Every member of an association or partnership carrying on business in contravention of sub-section (1) shall be punishable with fine which may extend toINR 1,00,000 and shall also be personally liable for all liabilities incurred in such business |

## 4.0 SIGNIFICANT COMPANY LAW REGULATIONS

### 4.1 Loans and Guarantees to Companies

Companies can give loan, guarantees, or provide security in connection with a loan to other body corporates or acquire by way of subscription, purchase or otherwise the securities of any other body corporate upto 60% of its paid up share capital and free reserves and securities premium account or 100% of its free reserves and securities premium whichever is higher. A company can give loan only at a rate of interest not lower than prevailing yield of 1,3,5,10 year of Government security. If the above limit of 60% or 100% is exceeded then the approval of the shareholders at a general body meeting by way of special resolution is required. In case any term loan taken from any financial institution is outstanding and there is a default in repayment of loan installments in that event for making investment, giving loan and guarantees prior approval of the financial institution should be obtained. The above restrictions are however not applicable to insurance companies, banking companies, housing finance companies, company engaged in financing of companies or of providing infrastructural facilities, etc. If a company has defaulted in repayment of any depositor in payment of any interest thereon shall not give any loan, guarantee, and security or make any subscription. However, these restrictions does not apply to transactions between Holding Company and its Wholly Owned Subsidiary.

### 4.2 Loans and Guarantees to Directors

No public company and certain classes of private companies such as company having investment from body corporate, having borrowing from certain persons of twice of its paid up share capital or of INR 50 crores (about US$ 7.46 milliion) or more shall give any loan to, or any guarantee or provide any security to any of its directors of the lending company or its holding company, his relatives and associated enterprises or to any other person in whom director is interested. Any other person in whom the director is interested means a) any director of lending company, or of a company which is its holding company or any partner or relative of such director b) any firm in which such director or relative is partner c) any private company of which such director is a director or member d) any body corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by such director or two or more such directors together e) any body corporate, the board of directors, managing director or manager whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

### 4.3 Disclosure of Interest by Directors

Every director of the company who is any way directly or indirectly concerned or interested in a contract or proposed contract to be entered into by or on behalf of the company should disclose his concern or interest at a meeting of the Board of Directors. A general notice at the first meeting of the Board in each financial year stating that he is a director or a member of such body corporate and as such is deemed to be interested in case of any contract which may be entered into by the company after the date of the said notice is also a sufficient disclosure of interest.

As per the provisions of the Companies Act, 2013 a Key Managerial Personnel must disclose his concern or interest in respect of any items of special business to be transacted at the meeting which is likely to be annexed to notice. He shall also disclose his shareholding interest (provided it is greater than 2% of the Paid up Share Capital ) in another company with which a transaction is proposed in the special business. A KMP needs to disclose his specified details within 30 days of his appointment.

Any benefit accruing to a KMP due to inadequate disclosure or non-disclosure with respect to a transaction in which he is interested, shall be held by the KMP in trust for the company.

## 4.4 Dividends

A company must pay dividends only out of its undistributed profits for the year or out of profits for the previous years after providing for depreciation in accordance with the provisions of the Companies Act, 2013 and after transfers to reserves such percentage of profits for that financial year as it may consider appropriate, in the manner prescribed in the Companies Act, 2013 and in rules applicable to the declaration of dividends. In case of inadequacy of profits and loss to the company while declaring the dividend out of surplus the company need to adhere to prescribed conditions such as a) the total amount to be drawn shall not exceed 1/10 of paid up share capital and free reserves, b) the amount so drawn shall be first utilized to set off the losses incurred in the financial year c) the balance of reserve shall not fall below 15% of its paid up share capital d) dividend is not declared at the rate higher than the average rate of the dividend declared by the company immediately preceding 3 financial years etc. The Board of directors recommends the declaration of dividend based on which the shareholders decide the rate of dividends to be declared. A tax of 20.36% is payable on the amount of profits to be distributed as dividends in addition to the corporate tax by the company. Simultaneously, dividends have been exempted from tax in the hands of the recipients. The amount of divided shall be deposited in scheduled bank account within 5 days of its declaration. The dividends declared must be paid within 30 days of its declaration and the unpaid amount, if any, needs to be transferred to a special bank account (Unpaid Dividend Account) within 7 days from the expiry of the said 30 days. Any money of unpaid dividend account remains unpaid/ unclaimed for seven years needs to be transferred to the Investor Education and Protection Fund in prescribed manner.

## 4.5 Mergers

The trend towards globalization has increased the intensity of mergers, in a bid to create more focused, competitive, viable large players in each industry. The recent liberalization of the earlier state controlled, sluggish Indian economy has made mergers necessary and acceptable. The basic regulations covering mergers are governed by the Companies Act, 1956 (Companies Act 2013 replaced Companies Act, 1956, however, provisions of Companies Act 2013 relating to mergers i.e. compromise and arrangement are not yet notified and this is governed by the provisions of the Companies Act, 1956) while the procedural aspects are covered by the Company Court Rules, 1959. In India, most mergers involve the transfer of undertaking of an several existing companies to another existing company of which all the members of the transferor company or companies become or have the right to become the members and the subsequent dissolution of the transferor company or companies. However, it is also possible to effect amalgamations by transfer of undertaking of two or more existing companies to a new company formed to takeover the same, of which all the members of the transferor companies become or have the right to become members and the subsequent dissolution of the transferor companies. The merger is effected only after obtaining confirmation from the shareholders, creditors, and the High Courts of the respective states of the companies. The power of sanctioning mergers has been transferred from the High Court to the National Company Law Tribunal (NCLT). NCLT will be an exclusive body dealing in matters pertaining to mergers, liquidation, rehabilitation of sick companies and other corporate matters previously handled by the Company Law Board. Central Government has constituted NCLT with effect from 1 June 2016. Ministry is in the process of conferring the powers to NCLT including powers pertaining to corporate restructuring, to deal with such matters in efficient manner in comparison to High Courts, since it will be an exclusive body dealing with the said matters. However, as on date the authority to sanction the scheme of restructuring including mergers/ demergers vests with the High Court.

Further, the Listing Agreement has been amended in order to safeguard the interest of the shareholders, whereby the listed company as well as unlisted company which are getting merged shall be required to appoint independent merchant bankers for giving a fairness opinion on the valuation done by valuers for the company and unlisted company.

## 4.6 Buy-Back of Shares

The Companies can buy-back their own shares or other specified securities from their free reserves, share premium account or proceeds of any issue of any shares or other specified securities made specifically for buy-back purpose upto a limit of 25% of the total paid up capital and free reserves. However, the buy-back of equity shares in any financial year shall not exceed 25% of its total paid-up equity capital and free reserves in that financial year. The buy-back of shares should be authorized by the provisions of the Articles of Association of the Company and also by special resolution passed in general meeting of the company. In case the buy-back is or less than 10% of the total paid up equity capital and free reserves then the buy-back can be by means of a resolution of the Board of Directors. Buy back shall be carried out as per the provisions of the Companies Act, 2013 and Companies (Share Capital and Debentures) Rules, 2014. In case of listed companies, the buy back is regulated by the regulations framed by Securities Exchange Board of India (SEBI), through SEBI (Buy-Back of Securities) Regulations, 1998 which provides for detailed and stringent disclosure norms.

## 4.7 Audit Committees

For better corporate governance constitution of an audit committee is mandatory in case of public companies (listed and unlisted) having paid-up share capital of not less than INR 10 crores or turnover of not less than INR 100 crores or outstanding loans or borrowings or debentures or deposits of INR 50 crores or more . Audit Committee should consist of not less than three directors with independent directors forming majority and majority of members of Audit committee including Chairperson shall be the persons with ability to read and understand financial statements. The recommendations of the Audit Committee on any matter relating to financial management including the audit report, are binding on the Board of Directors. In case the Board of Directors do not accept the recommendation of the Audit Committee, the same shall be disclosed in the Board's report along with the reasons thereof. The composition of the Audit committee also needs to be disclosed in the Board's report.

## 4.8 Producer Companies

A new concept had introduced in the Companies Act, 1956 enabling incorporation of co-operative societies as producer companies and conversion of existing cooperatives into companies, on optional basis. Companies Act, 2013 has not repealed the provisions of Companies Act, 1956 relating to the producer companies and these provisions are still applicable until enactment of special act relating to producer companies.

## 4.9 Takeovers

The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 popularly known as the Takeover code, contains the guidance to be followed by the acquirers of controlling stakes in a listed Indian company.

### Regulation 3 Substantial acquisition of shares or voting rights

- No acquirer, either himself or with 'person acting in concert' (PAC) shall acquire shares or voting rights in a target company which (along with already held shares and voting rights by them) entitle them to exercise 25% or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer of such acquisition.

- An acquirer and PAC, having more than 25% but less than maximum permissible non-public shareholding in the target company, shall not acquire more than 5% of additional voting rights in the target company in one financial year, unless the acquirer makes a public announcement of such open offer for the proposed acquisition. However, such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above maximum permissible non-public shareholding.

- Further, the requirement of open offer applies to individual shareholding threshold also, irrespective of whether there is change in aggregate shareholding (i.e. acquirer and PAC together).

### Amendments

- Amendment dated 5 May 2015 added one more category in the exemptions granted for making public offer viz conversion of debt into equity under Strategic Debt Restructuring Scheme done in accordance with RBI guidelines and in accordance with sub regulations (5) or (6) of regulation 70 of ICDR Rugulations, 2009.

- Amendment dated 14 August 2015 proviso to sub-regulation (3) of regulation 1 that these regulations shall not apply to direct or indirect acquisition of shares or voting rights in, or control over a company listed without making a public issue, on the institutional trading platform of a recognized stock exchange.

- Amendment dated 22 December 2015 added one more exemption category in category in the exemptions granted for making public offer viz in sub regulation 1 of regulation 10 as 'j' increase in voting rights arising out of the operation of sub-section (1) of section 106 of the Companies Act, 2013 or pursuant to a forfeiture of shares by the target company, undertaken in compliance with the provisions of the Companies Act, 2013 and its articles of association.

- Amendment dated 17 February 2016 granted exemption from open offer to one more category of the acquisition by adding sub regulation 4 to the existing regulation 3 viz. nothing contained in this regulation shall apply to acquisition of shares or voting rights of a company by the promoters or shareholders in control, in terms of the provisions of Chapter VI-A of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

- Amendment dated 25 May 2016 provided the definition of the willful defaulter and imposed certain restrictions on willful defaulters to make open offer or enter into any transaction which would trigger the open offer.

## 5.0 CORPORATE GOVERNANCE

Securities and Exchange Board of India (SEBI) on 2 September 2015 issued SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) effective from 1 December 2015. The Companies Act and the LODR contain several requirements relating to corporate governance. The main requirements applicable to listed companies can be highlighted as follows:

- The Board of Directors shall have optimum combination of executive and non- executive directors with at least one woman director and not less than 50% of the board of director should be non-executive directors.

- One third of the board or one half should be of independent directors depending upon the position of the chairman.

- All fees/compensation, if any paid to non-executive directors, including independent directors is required to be recommended by the board and approved by the shareholders in general meeting.

- The meetings of the board are required to be held at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.

- A director shall not be a member in more than 10 committees or act as Chairman of more than 5 committees across all companies in which he is a director. Furthermore it should be a mandatory annual requirement for every director to inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.

- The board is required to lay down a code of conduct for all board members and senior management of the company and the annual report is required to contain a declaration of its compliances duly signed by CEO.
- The Board of Directors should set up two mandatory committees to be called Audit Committee, Nomination and remuneration Committee, Shareholders Relationship Committee, and Risk Management Committee (Risk management committee is applicable to top 100 listed entites).
- Audit committee is required to be set up with minimum 3 directors as members and two thirds of the members of audit committee should be independent directors. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise and chairman of the audit committee is necessarily required to be an independent director. The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries.
- The audit committee should meet at least four times in a year and not more than 120 days should elapse between two meetings. Broad term of reference has been set out for the working of the audit committee.
- At least one independent director on the Board of Directors of the holding company is required to be director on the board of directors of a material non listed Indian subsidiary company.
- The listed entity shall formulate a policy on materiality of related party transactions. All related party transactions shall require prior approval of the audit committee, Audit committee may grant omnibus approval (valid for one year) subject to specified conditions. The audit committee shall review at least on quarterly basis, the details of related party transactions entered into by listed entities pursuant to each omnibus approval.
- All material related party transactions shall require approval of shareholders. Provisions relating to approval of Audit Committee and the approval of shareholders shall not be applicable in respect of specified transactions.
- Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of underlying business transactions.
- The company is required to lay down procedures to inform members of board of directors about risk assessment and minimization procedures.
- Remuneration paid to directors and all other pecuniary relationship of director with the company is required to be disclosed in the corporate governance section of the annual report.
- Corporate governance section has to include a section of management discussion and analysis of industry structure and developments, the threats, opportunities, risks, concerns, outlook, internal control system and their adequacy, etc.
- The CEO i.e. the Managing Director or Manager appointed in terms of the Companies Act, Chief Finance Officer has to certify that they have reviewed financial statements and these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading and these statements present a true and fair view of the company's affairs and are in compliance with the existing accounting standards, applicable laws and regulation.
- The company has to obtain a certificate from either the auditors or practicing company secretaries regarding compliances of conditions of corporate governance as stipulated in the listing agreements and annex the

same to the director's report which is sent annually to all the shareholders. The same shall also be filed with the stock exchange along with the annual report filed by the company.

- The company shall submit a quarterly compliance report on corporate governance to the stock exchanges within 15 days from the close of the quarter.

## 6.0 DORMANT COMPANY

The Companies Act, 2013 (Section 455) has introduced the provisions pursuant to which the companies fulfilling prescribed conditions may voluntarily apply in prescribed format to obtain the status of a dormant company. Upon obtaining such status these companies would enjoy exemptions from certain provisions of the Companies Act, 2013. Further an application to make the status of the company as an active company can also be made at a later date as per prescribed procedure.

## 7.0 CLASS ACTION

The Companies Act, 2013 (Section 245) has also introduced, what was hitherto absent in the old Act, i.e. provisions relating to class action suits enabling prescribed class of members or depositors to file a suit in prescribed manner if the conduct or affairs of the company are being conducted in a manner prejudicial to the interest of the company, members or depositors. This section enables the prescribed class to seek damages/compensation from the audit firm if improper or misleading statement is made in the audit report or audit firm has acted in the fraudulent, unlawful or wrongful manner.

## 8.0 WINDING UP

Companies registered under the Companies Act, 1956 / 2013 can be dissolved in the following manner:

- Winding up;
- Being declared a defunct company.

A company may be wound up in the following manner:

- Voluntarily (by the shareholders/ by the creditors) by passing a special resolution and with the approval of High Court;
- Voluntarily by the High Court.

Winding up is a means by which a company is dissolved and its assets are realized and applied to payment of its debts. Once the debts are satisfied, the balance amount is paid back to the members in proportion to their contribution to the capital of the company.

In case the ROC is of the view that a company is not carrying on business or is not in operation, he may strike off the company's name from the ROC, only after providing the company with an opportunity to be heard.

Where a body corporate incorporated outside India (which has been carrying on business in India) ceases to carry on business in India, it may be wound up as an unregistered company.

# CHAPTER 4: HUMAN RESOURCES

## 1.0 BACKGROUND

India is endowed the largest young workforce (65% of population below the age of 35 years).
India's pool of trained workers, one of the largest in the world includes scientists, computer software and electronics professionals, finance professionals, accountants, advertising and marketing experts. The government encourages new investment in regions with high unemployment and setting up of small-scale units.

As employment creation is central to growth and development strategy, Government is working for bringing transparency and accountability in enforcement of Labour Laws. In this regard the Government is working to simplify, consolidate and rationalize the provisions of the 43 labour laws in 4 Labour Codes viz. Labour Code on Wages; Industrial Relations; Social Security & Welfare and Safety & Working Conditions. Also the Shram Suvidha Portal launched by Prime Minister in 2014 is gearing for a greater momentum in common Electronic Challan cum Return (ECR) facility for EPFO and ESIC; common Registration under 5 Central Labour Acts by integrating with DIPP's E-Biz Portal; filing of Single Online Return for 8 Labour Acts and facility of return submission under Mines Act for DGMS. The ease in compliance is expected to translate into more and better compliance.

## 2.0 LEGISLATIVE PROVISIONS

The laws governing labour in India are very complex in nature and favor the employees. Employers are required to provide most employees with a written statement of the terms and conditions of their employment. The statement must have details about salary, hours of work, disciplinary rules and complaint procedures, the notice period for termination, holidays, the provident fund, pensions, gratuities and other terms of employment. Violation of labour law is viewed with strictness and severe punishment is imposed on errant employers if violations are observed. Prosecutions under most of the Labor Laws are subject to criminal proceedings having serious implications.

Employees are entitled to a minimum period of notice of termination (subject to applicable labour laws) and terms of employment. Legislation protects employees from unfair dismissal. Law addressing industrial disputes between employer and employee requires prior approval of government for lay-off of employees (in case of the employer employing more than 100 workmen and 300 workmen in case of some States such as Rajasthan during preceding 12 months.)

### 2.1 Mandatory Employee Benefits

Certain mandatory employee benefits required to be made by an employer in India (including social security schemes) are as follows, please note that the regulations are applicable to all employees employed in India:

| Employee benefit | What is it? | Applicability | Other details– like cost to employer |
|---|---|---|---|
| **Provident fund (PF)** | It is a social security program introduced by the government, where<br>– employers are required to deduct contributions at a specified rate from the salary payable to an employee.<br>– In addition, the employer must contribute an amount equal* to the employee's contribution.<br>– The aggregate amount is then deposited in a fund called Provident Fund. | ▪ Applicable to every business organization in India employing 20 or more persons in the scheduled Industry.<br>▪ Mandatory for employees earning monthly wages lesser than Rs 15,000 per month.<br>▪ In case of international workers, PF is applicable on the entire salary. | ▪ The current rate of interest on PF deposits is 8.60%<br>▪ The Fund primarily aims at providing income to the employee, on his/her retirement or death and there are some restrictions on withdrawal<br>▪ Limited withdrawals from the fund are allowed for housing, medical expenses etc.<br>▪ Withdrawals are also permitted on resignation, termination and retirement. |
| **Gratuity** | Employees who have rendered continuous service of not less than 5 years are entitled to Gratuity at the time of retirement / resignation / superannuation. | ▪ Applicable to every business organization in India employing 10 or more persons.<br>▪ Payable upon termination to employee completing 5 years of continuous service. | ▪ If termination is due to death or disablement, completion of continuous period of 5 year shall not be necessary<br>▪ Gratuity has to be paid at the rate of 15 days wages for each completed year of service subject to a maximum of INR 10,00,000.<br>▪ 15 days wages are calculated as [15 / 26 * (wages of last month of employment) )* no of completed years]<br>▪ Employee can be entitled to better terms of gratuity. |
| **Employees' State Insurance** | ▪ It provides workers with medical relief, sick pay, maternity benefits and compensation for employment injuries, including employment related fatalities.<br>▪ Contributions by the employer and the employee are paid to | ▪ Applicable to every business organization in India (non-seasonal) employing 10 or more persons.<br>▪ Mandatory only for employees earning monthly wages lesser than Rs 15,000 (21,000 under health insurance scheme) per month. | ▪ The employer and employee are required to contribute 4.75% and 1.75% respectively of the wages.<br>▪ Cost to the employer is 4.75% of the wages |

| Employee benefit | What is it? | Applicability | Other details– like cost to employer |
|---|---|---|---|
| | the Employee State Insurance Scheme. | | |
| **Bonus** | Annual payment of a lump-sum bonus to employees, which is linked to the employer's profitability. | ▪ Applicable to every business organization in India employing 20 or more persons.<br>▪ Mandatory only for employees earning monthly salary or wages lesser than INR 21,000 per month. | ▪ Employers must pay a bonus of 60% of the allocable surplus, which is calculated after deducting a return on investment from profits after tax, limited to 20% of an employee's salary Calculation ceiling is INR 7,000.<br>▪ The act also provides for a minimum bonus of 8.33% of an employee's salary or INR 100 whichever is higher, is payable even if the employer is in losses.<br>▪ The bonus must be paid within eight months after the close of the accounting year.<br>▪ The cost to the employer can vary from 8.33% of the salary to 20 % of salary |
| **Deposit Linked Insurance Scheme** | Additional social security in the form of life insurance to the family of the deceased employee (member of the scheme). The scheme is linked with amount of accumulation in the provident fund account | Applicable to all establishments to which Employees' Provident scheme applies. | Employee does not contribute anything, but the employer contributes 0.5% of the total wages. |
| **Maternity Benefit** | A welfare legislation to regulate the employment of women in certain establishments for certain period before and after Child birth, miscarriage and to provide maternity benefit. | Applicable to factories covered under the Factories Act, 1948, mine, plantation, and also to Shops & Establishments in which 10 or more workers are employed, but do not apply to any factory or establishment to which the provisions of Employee State Insurance Act, 1948 apply | ▪ Maternity benefit at the rate of the average daily wage for the period of the employees' actual absence immediately preceding the day of her delivery and for the six weeks immediately following that day.<br>▪ In case of miscarriage, leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage.<br>▪ In case of tubectomy operation, leave with wages at the rate of maternity benefit for a period of two weeks immediately following the tubectomy operation. |

| Employee benefit | What is it? | Applicability | Other details– like cost to employer |
|---|---|---|---|
| **Minimum Wages** | The Minimum Wages Act 1948 provides minimum wages to employees in certain employments in order to prevent the exploitation of the unorganized labour. | Applicable to employees employed as casual, daily rated, temporary or permanent working in the industries specified in the schedule to the Act. Many states in India have included Shops and Commercial establishment in the schedule and as such the Act is applicable to shops and commercial establishments | The employers have to ensure the compliance of the Minimum wages notifications issued by the Central / State Government from time to time. |

The term wages is defined differently for calculation of above benefits under various laws.

## 2.2 Employees' Compensation Act, 1923

The Employees' Compensation Act provides employees with a convenient and easy method to claim compensation for personal injury from an employment related accident.

## 2.3 Trade Unions Act , 1926

The Trade Unions Act provides for registration of Trade unions and to confer on the registered trade unions certain protection and privileges.

## 2.4 Industrial Employment (Standing Orders) Act ,1946

The object of the Industrial Employment (Standing orders) Act is to require the employers in industrial establishments formally to define conditions of employment of workmen employed by them.

## 2.5 Industrial Disputes Act, 1947

Industrial Disputes Act is aimed to resolve or reduce the difference between employers and the workmen with a view to bring industrial peace and thereby increasing industrial production in the country. Matters related to change of service conditions, retrenchment, lay off and closures of industrial units are regulated under this Act.

## 2.6 The Contract Labour (Regulation and Abolition) Act, 1970

The Contract Labour (Regulation and Abolition) Act is aimed to regulate the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act mandates registration of principal employer and the contractor who are covered under the Act. However the Act is not applicable to establishments performing work only of an intermittent or casual nature.

## 2.7 The Equal Remuneration Act, 1976

The Equal Remuneration Act provides for payment of equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on the ground of sex against women in the matter of employment. It extends to all the categories of employment.

## 2.8 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Sexual Harassment Act has been enacted with the objective of providing women protection against sexual harassment at the workplace and for prevention and redressal of complaints of sexual harassment. Sexual harassment is considered as a violation of the fundamental rights of the women.

This Act provides what would constitute sexual harassment of women, provides for the constitution of Internal complaints committee and local complaint committee and a mechanism to resolve such complaints in order to provide protection against the sexual harassment.

## 2.9 The Factories Act, 1948

Employers have a legal duty to take reasonable care of their employees. An employee who is injured at work may be able to claim compensation for the employer's negligence.

Generally regulations relating to working conditions in commercial establishments as per the relevant state legislations cover the following aspects:

- Daily and weekly hours of work
- Holidays in a week
- Opening and closing hours for women, intervals for meal, etc.
- Minimum leave days and leave with wages
- Wages for overtime work

The Factories Act, 1948 specifically covers the health and safety of workers. The main objectives of the Act are to regulate the working conditions in factories and to ensure that employers meet basic minimum requirements of health, safety and welfare for factory workers. In addition, the Act regulates working hours, leave, holidays, overtime, and the employment of women and children.

Some of the key working condition requirements as per the Factories Act, 1948 are as follows:

### 2.9.1 Cleanliness

- Daily removal of dirt.
- Floor to be washed once a week
- Effective drainage of the effluents
- Repainting of the factory walls once in five years
- If painted in the washable paints, repaint once in three years and washed once in six months
- Check relevant washing rules according to the paint used.
- Register of these dates to be maintained.

### 2.9.2 Disposal of wastes and effluents

- The company shall make effective arrangements for the treatment of wastes and effluents resulting from the manufacturing process.

2.9.3 Ventilation and temperature

- The company should maintain the prescribed measuring instruments and records.
- If dust or fume given off due to manufacturing activities, effective measures to be taken to prevent inhalation and accumulation in work room.

2.9.4 Artificial humidification:

- Methods and tests for determining the humidity of the air to be carried out and recorded.
- Water from public supply/drinking water/purified water

2.9.5 Over crowding

- No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.
- 14.2 cubic meters per workman employed in each workroom is the space specified in the Act.

2.9.6 Lighting

- In all places of works passage, sufficient lighting is required.
- Windows/skylights shall be kept clean on inner and outer sides.

2.9.7 Drinking water

Arrangement of drinking water points at convenient locations within the factory premises should be ensured.

- All points drinking water points shall be marked legibly
- In cases where more than 250 workers are ordinarily employed in a factory, arrangement for appropriate cooling of water (during hot weather) and distribution thereof should be ensured.

The Factories Act safeguards against the use and handling of hazardous substances. Employers have a duty to provide a clean and safe working environment. In addition, they must ensure that any member of the public who might be affected by their working practices is similarly protected.

## 3.0 BILATERAL SOCIAL SECURITY COOPERATION

Bilateral social security agreements protect the interests of expatriate workers on a reciprocal basis by providing for exemption from social security contribution in case of short-term contracts (provided the worker is covered under the home country's social security system), exportability of pension in case of relocation to the home country or any third country and totalization of the contribution periods pertaining to both countries.

As on date, India has signed and operationalized similar comprehensive Social Security Agreements (SSAs) with 15 countries. They are: Belgium, Canada, Czech Republic, Denmark, Finland, France, Hungary, Luxembourg, Netherlands, Norway, Sweden, Switzerland, South Korea, Austria, and Australia. India also signed a comprehensive SSA with Portugal, which is in the process of getting operationalized. In addition, India has a partial SSA with Germany, which is already operationalized. The comprehensive SSA with Japan will operationalize with effect from 1st October 2016.

## 4.0 LABOUR REFORMS (PROPOSED AMENDMENTS)

Reforms in labour laws are an ongoing process to update legislative system to address the need of the hour and to make them more effective and contemporary to the emerging economic and industrial scenario.

**The Factories (Amendment) Bill, 2016**

On 10th August 2016, the Union Cabinet, chaired by the Prime Minister gave its ex-post facto approval for amendment of Section 64 and section 65 and consequential amendment of section 115 of the Factories Act, 1948 by introducing the Factories (Amendment) Bill, 2016 in the Parliament. The approved amendments will give boost to the manufacturing sector and facilitate ease of doing business with an aim to enhance employment opportunities.

These amendments relate to increase in overtime hours from the existing 50 hours per quarter to 100 hours (Section 64) and existing 75 hours per quarter to 125 hours (Section 65).

**Amendments to the Maternity Benefit Act, 1961**

Recently, the Union Cabinet, chaired by the Prime Minister give its ex-post facto approval for amendments to the Maternity Benefit Act, 1961 by introducing the Maternity Benefit (Amendment) Bill, 2016 in Parliament. The maternity benefit Act 1961 protects the employment of women during the time of her maternity and entitles her of a 'maternity benefit' - i.e. full paid absence from work - to take care for her child. The act is applicable to all establishments employing 10 or more persons. The amendments will help 1.8 million (approx.) women workforce in organised sector.

The amendments to Maternity Benefit Act, 1961 are as follows:

- Increase Maternity Benefit from 12 weeks to 26 weeks for two surviving children and 12 weeks for more than two childern.
- 12 weeks Maternity Benefit to a 'Commissioning mother' and 'Adopting mother'.
- Facilitate 'Work from home'.
- Mandatory provision of Creche in respect of establishment having 50 or more employees.

## 5.0 ENGAGEMENT OF FOREIGN NATIONALS

Indian firms / companies may engage the foreign nationals (including non-resident persons of Indian nationality / origin) to provide services without prior approval of Reserve Bank of India having an Employment Visa. A foreign national coming for executing projects / contracts will also have to come only on an Employment Visa.

Foreign national can remit abroad income earned from employment subject to deduction of applicable withholding tax thereon. The foreign nationals who are resident but not permanently resident in India can avail facility of recurring remittance for family maintenance, etc. of their net salary (i.e., after deduction of contribution to provident funds and taxes payable).

All foreigners including foreigners of Indian origin visiting India on long term (more than 180 days) vide Employment Visa will be required to get themselves registered with the appropriate Foreigner's Regional Registration Office (FRRO) within 14 days of arrival in India, irrespective of the duration of their stay.

# CHAPTER 5: FOREIGN INVESTMENT IN INDIA

## 1.0 INTRODUCTION

1.1 The liberalization process started in India in 1991 and second-generation reforms started in the first decade of 21st century has virtually opened up the Indian economy for foreign investment in most of the sectors, barring few sensitive sectors. The liberalization process has thrown open opportunities for inbound investment (foreign companies investing in India) as well as outbound investment (Indian companies investing out of India) in almost every field of business from the consumer durables sector to core infrastructure sector. In this process of liberalization, India has taken various measures like de-licensing, permitting foreign institutions to invest in shares and securities under portfolio investment, current account convertibility, liberalizing foreign exchange regulations, drastically reducing the rates of customs duty and direct taxes, permitting Indian companies to list on foreign stock exchanges and set up overseas operations, permitting resident Indians to buy shares and securities listed abroad, and properties abroad, etc.

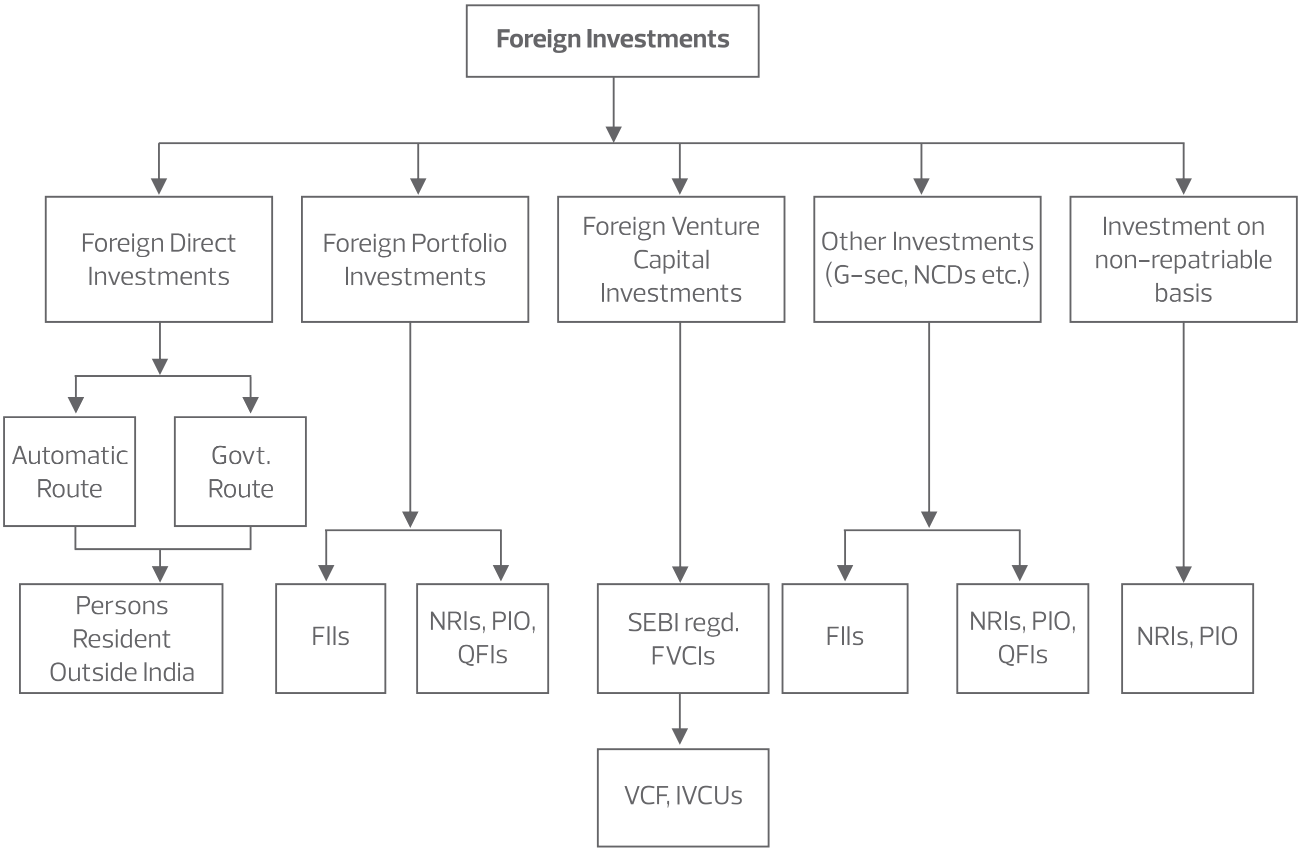
1.2 Accordingly, foreign investment in India is still regulated among other legislations, by the foreign exchange regulations although under new regulations, the focus has been shifted on promoting and managing foreign exchange markets instead of regulating the same. In this note, we have restricted our discussion on Foreign Investments in India.

## 2.0 FOREIGN EXCHANGE REGULATIONS – FOREIGN INVESTMENTS

### 2.1 Introduction

In India, till 31 May 2000, foreign exchange transactions were regulated by Foreign Exchange Regulation Act, 1973 ('FERA'). FERA has been repealed by the Foreign Exchange Management Act, 1999 ('FEMA'), which has come into force with effect from 1 June 2000. The provisions under FEMA are liberal compared to provisions under FERA. The analysis of FEMA provisions contained herein is updated as on 5 July 2016.

**Foreign Investment in India– Schematic Representation**




## 2.2 Foreign Direct Investment in India by a person resident outside India / Eligibility for investing in India –Schedule -I

2.2.1 A person resident outside India or an entity incorporated outside India can invest in India, subject to the FDI Policy of the Government of India. A person who is a citizen of Bangladesh or an entity incorporated in Bangladesh can invest in India only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest only under the Government route, in sectors / activities other than defence, space and atomic energy and sectors / activities prohibited for foreign investment.

2.2.2 NRIs, resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in capital of Indian companies under FDI Scheme on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

2.2.3 Overseas Corporate Body (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least 60% by Non-Resident Indians and includes overseas trust in which not less than 60% beneficial interest is held by Non-resident Indians, directly or indirectly, but irrevocably.

OCBs have been de-recognized as a class of investors in India with effect from 16 September, 2003. Erstwhile OCBs which are incorporated outside India and are not under adverse notice of Reserve Bank can make fresh investments under the FDI scheme as incorporated non-resident entities, with the prior approval of Government of India if the investment is through Government Route; and with the prior approval of Reserve Bank if the investment is through Automatic Route.

#### 2.2.4 Prohibited Sectors: –

FDI is prohibited in:

(a) Lottery Business including Government / Private Lottery, online lotteries, etc.

(b) Gambling and Betting including casinos etc.

(c) Chit Funds

(d) Nidhi Company

(e) Trading in Transferable Development Rights (TDRs)

(f) Real Estate Business or Construction of Farm Houses

(g) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

(h) Activities / sectors not open to private sector investment. ("Railway operations other than permitted activities" after words 'Atomic Energy' )

*"TDRs means certificates issued in respect of category of land acquired for public purpose either by the Central or the State government in consideration of surrender of land by the owner without monetary compensation which are transferable in part or whole."*

*"Real Estate Business" means dealing in land and immoveable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential / commercial premises, roads or bridges, and Real Estate Investment Trusts (REITs) registered and regulated under SEBI (REITs) Regulations, 2014"*

Note: Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

### 2.3 Investment under Foreign Direct Investment ('FDI') Scheme

**Entry routes for investments in India**

Foreign investment is freely permitted in almost all sectors except certain prohibited sectors. Under Foreign Direct Investments (FDI) Scheme, investments can be made by non-residents in the equity shares / compulsory convertible preference shares fully, compulsorily and mandatorily convertible debentures of an Indian Company under two routes; Automatic Route and Approval / Government Route.

#### 2.3.1 Automatic route of FDI

The Government of India has substantially expanded the scope of foreign investment under the Automatic Route to include all items / activities, except certain items, for investment under FDI. FDI up to 100% is allowed under the automatic route from foreign / NRI investors without prior approval in most of the sectors including the services sector. FDI in sectors / activities under automatic route does not require any prior approval either by the Government or RBI.

An Indian company receiving investments from outside India for issuing equity shares / convertible debentures / convertible preference shares under the FDI scheme, should report the details of the amount of consideration to the RBI within 30 days, in Advance Reporting Form, through ebiz portal from the date of receipt of inward remittances. Upon allotment of shares /debentures, it is required to file Form FCGPR through ebiz portal within 30 days from the date of allotment.

Foreign investment coming as equity or fully convertible preference shares would be treated as part of share capital. This would be included in calculating foreign equity for purposes of sectoral caps on foreign equity, where such caps have been prescribed.

Foreign investment coming as any other type of preference shares (non-convertible, optionally convertible or partially convertible) would be considered as debt and shall require conforming to External Commercial Borrowings (ECB) guidelines / ECB caps.

### 2.3.2 Investments in sectors where 100% FDI under automatic route is not available

FDI in activities not covered under the automatic route requires prior approval of the Government which are considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance. Application can be made in Form FC-IL, which can be downloaded from http://www.dipp.gov.in.

### 2.3.3 Certain important aspects of the FDI scheme

i. Price of shares issued to persons resident outside India under the FDI Scheme: -

a. On the basis of SEBI guidelines in case of companies listed on any recognized stock exchange in India.

b. Valuation of shares has to be done by a SEBI registered Merchant Banker or a Chartered Accountant as per internationally accepted pricing methodology on arm's length basis, in case of companies not listed on any recognized stock exchange in India.

c. The price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank of India from time to time, where the issue of shares is on preferential allotment.

However, it has been decided that in cases, where non-residents (including NRIs) make investment in an Indian company in compliance with the provisions of the Companies Act, as applicable, by way of subscription to Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

ii. The rate of dividend on preference shares issued by an Indian company to a person resident outside India should not exceed 300 basis points over the Prime Lending Rate of State Bank of India prevailing as on the date of the Board meeting of the company in which issue of such shares is recommended.

### 2.3.4 Portfolio Investment Scheme for FII and FPI – Schedule 2 and 2A

Foreign Institutional Investor (FII) and Foreign Portfolio Investors (FPI) can invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI below 10% of the capital of the company and the aggregate limit for FII/FPI investment to 24% of the capital of the company.

This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII/FPI investment, individually or in conjunction with other kinds of foreign investment, will not exceed sectoral/statutory cap.

### 2.3.5 Portfolio Investment Scheme for NRIs – Schedule 3

NRIs can invest/trade through a registered broker in the capital of Indian Companies on recognised Indian Stock

Exchanges under Schedule 3 on repatriation basis .

i. NRIs can invest through designated ADs, on repatriation under PIS route up to 5% of the paid up capital / paid up value of each series of debentures of listed Indian companies. The aggregate paid-up value of shares / convertible debentures purchased by all NRIs cannot exceed 10% of the paid-up capital of the company / paid-up value of each series of debentures of the company. The aggregate ceiling of 10% can be raised to 24%, if the General Body of the Indian company passes a special resolution to that effect.

ii. The NRI investor has to take delivery of the shares purchased and give delivery of shares sold. Short Selling is not permitted.

iii. Payment for purchase of shares and / or debentures on repatriation basis has to be made by way of inward remittance of foreign exchange through normal banking channels or out of funds held in NRE / FCNR account maintained in India.

iv. NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.

v. A person resident outside India can transfer any security to a person resident in India by way of gift.

**2.3.6 Investment by NRIs on non-repatriation basis—Schedule 4**

i. NRIs are allowed to acquire and hold equity shares, convertible preference shares, convertible debentures, warrants or units on non-repatriation basis, which will be deemed to be domestic investment at par with the investment made by residents.

ii. Without loss of generality, it is stated that:-

a. An NRI may acquire, on non-repatriation basis, any security issued by a company without any limit either on stock exchange or outside it.

b. An NRI may invest, on non-repatriation basis, in units issued by an investment vehicle without any limit, either on the stock exchange or outside it.

c. An NRI may contribute, on non-repatriation basis, to the capital of a partnership firm, a proprietary firm or a Limited Liability Partnership without any limit.

iii. Payment for purchase of shares and / or debentures has to be made by way of inward remittance of through normal banking channels from abroad or out of funds held in NRE / FCNR / NRO account maintained with a bank in India.

iv. The sale maturity proceeds of the securities or units acquired shall be credited only to NRO account irrespective of the type of account from which the considerations for acquisitions were paid. The amount so invested and the capital appreciation thereon shall not be allowed to be repatriated abroad.

*'Investment Vehicle' shall mean an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and shall include Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014 and Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012.*

A company, trust and partnership firm incorporated outside India and owned and controlled by non- resident Indians will be eligible for investments under Schedule 4 and such investment will also be deemed domestic investment at par with the investment made by residents.

An NRI shall not make any investment under this Schedule 4 in shares or convertible debentures of an Indian company if the company concerned is a Nidhi company or is engaged in agricultural/plantation activities or real estate business or construction of farm houses or dealing in Transfer of Development Rights.

*"Real estate business" means dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships. Further, earning of rent income on lease of the property, not amounting to transfer, will not amount to real estate business.*

### 2.3.7 Investment by Qualified Foreign Investors (QFIs) in listed equity shares – Schedule 8

i. Qualified Foreign Investors are permitted to invest through SEBI registered Qualified Depository Participants (QDPs):

   a. In equity shares of listed Indian companies through recognized brokers on recognized stock exchanges in India.

   b. In equity shares of Indian companies which are offered to public in India in terms of the relevant and applicable SEBI guidelines / regulations.

   c. Equity shares by way of right shares, bonus shares or equity shares on account of stock split / consolidation or equity shares on account of amalgamation, demerger or such corporate actions

ii. QFIs shall be allowed to sell the equity shares so acquired by way of sale: -

   a. Through recognized brokers on recognized stock exchanges in India; or

   b. In an open offer in accordance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; or

   c. In an open offer in accordance with the SEBI (Delisting of Securities) Guidelines, 2009; or

   d. Through buyback of shares by a listed Indian company in accordance with the SEBI (Buyback) Regulations, 1998.

iii. For QFI investments under this scheme, a single non-interest bearing Rupee Account would be operated by the QDP with an AD Category- I bank in India for the limited purpose of routing the receipts and payment for transactions relating to purchase and sale of equity shares of listed Indian companies.

iv. **Limits -** The individual and aggregate investment limits for the QFIs shall be 5% and 10% respectively of the paid up capital of an Indian company. These limits shall be over and above the FII and NRI investment ceilings prescribed under the Portfolio Investment Scheme for foreign investment in India.

   However, wherever there are sectoral caps under the extant FDI policy, these limits for QFI investment in equity shares shall also be within such overall FDI sectoral caps.

v. **Eligibility –** QFI would have to meet eligibility criteria as prescribed by SEBI from time to time.

## 2.4 Investment by a registered Foreign Venture Capital Investor – Schedule 6

i. Foreign Venture Capital Investors (FVCIs) registered with SEBI may purchase: -

   a. Equity or equity linked instruments or debt instruments, issued by an Indian Company engaged in sectors mentioned in Point vi and whose shares are not listed on a recognized stock exchange at the time of issue of such securities / instruments.

b. Equity or equity linked instruments or debt instruments issued by a startup, irrespective of sector in which it is engaged.

c. Units of a Venture Capital Fund or of a Category I Alternative Investment Fund (Cat – I AIF) or units of a scheme or of a fund set up by a VCF or by a Cat – I AIF.

ii. A registered FVCI may also purchase the securities / instruments mentioned above either from the issuer of the securities / instruments or from any person holding these securities / instruments or on a recognized stock exchange.

iii. Payment for purchase has to be made by way of inward remittance through normal banking channels or out of sale / maturity proceeds or income generated from investment already made.

iv. The purchase / sale of shares, debentures and units can be at a price that is mutually acceptable to the buyer and the seller.

v. Only for the purpose of carrying out such transactions, FVCI can open a foreign currency account and / or a rupee account with a designated branch of an AD Category – I bank.

vi. List of sectors in which a FVCI is allowed to invest as per Point I are: -

a. Biotechnology

b. IT related to hardware and software development

c. Nanotechnology

d. Seed research and development

e. Research and development of new chemical entities in pharmaceutical sector

f. Dairy industry

g. Poultry industry

h. Production of bio – fuels

i. Hotel–cum–convention centers with seating capacity of more than three thousand.

j. Infrastructure sector

*An IVCU is defined as a company incorporated in India whose shares are not listed on a recognized stock exchange in India and which is not engaged in an activity under the negative list specified by SEBI.*

*A VCF is defined as a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996 which has a dedicated pool of capita raised in a manner specified under the said Regulations and which invests in Venture Capital Undertakings in accordance with the said Regulations.*

*'Startup' shall mean an entity, incorporated or registered in India not prior to five years, with an annual turnover not exceeding INR 25 Crores in any preceding financial year, working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property, Provided that such entity is not formed by splitting up, or reconstruction of a business already in existence.*

*For this purpose,*

*(i) 'entity' shall mean a private limited company (as defined in the Companies Act, 2013), or a registered partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008.*

*(ii) the expression 'turnover' shall have the same meaning as assigned to it under the Companies Act, 2013.*

*(iii) An entity is considered to be working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialize (a) a new product or service or process; or (b) a significantly improved existing product or service or process that will create or add value for customers or workflow. Provided that it will not include the mere act of developing (a) products or services or processes which do not have potential for commercialization; or (b) undifferentiated products or services or processes or (c) products or services or processes with no or limited incremental value for customers or workflow.*

## 2.5 Purchase of other securities by FIIs/QFIs / RFPIs–Schedule 5

Foreign Institutional Investors (FIIs), QFIs and RFPIs can buy Government securities / treasury bills, listed non-convertible debentures / bonds issued by Indian companies and units of domestic mutual funds etc. either directly from the issuer of such securities or through a registered stock broker on a recognized stock exchange in India. Purchase of debt instruments by FIIs /QFIs / RFPIs are subject to limits notified by SEBI.

## 2.6 Purchase of other securities by NRIs

i. On non-repatriation basis

NRI can without any limit purchase, on non-repatriation basis, dated Government securities, treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds, or National Plan / Savings certificate.

Government of India has notified that NRIs are not permitted to make Investments in Small Savings Schemes including PPF in any case.

ii. On repatriation basis

An NRI can purchase on repatriation basis, without limit, Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds; bonds issued by a public sector undertaking (PSU) in India and shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

Further a NRI may also subscribe to National Pension Scheme governed and administered by Provident Fund Regulatory and Development Authority (PFRDA) subject to its eligibility under PFRDA Act.

## 2.7 Issue of rights / bonus shares

FEMA provisions allow Indian companies to freely issue Rights / Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap, if any. However, such issue of bonus / rights shares has to be in accordance with other laws / statutes like the Companies Act, 2013, SEBI (Disclosure and Investor Protection) Guidelines (in case of listed companies), etc. The price of shares offered on rights basis by the Indian company to non-resident shareholders shall be: –

a. In the case of shares of a company listed on a recognized stock exchange in India, at a price as determined by the company;

b. In the case of shares of a company not listed on a recognized stock exchange in India, at a price which is not less than the price at which the offer on right basis is made to resident shareholders.

OCBs have been de-recognized as a class of investors with effect from 16 September 2003. Therefore, companies desiring to issue rights shares to such erstwhile OCBs will have to take specific prior permission from the Reserve Bank. As such, entitlement of rights shares is not automatically available to OCBs. However, bonus shares can be issued to erstwhile OCBs without RBI approval.

### 2.8 Additional allocation of rights shares by resident to non-residents

Existing non-resident shareholders are allowed to apply for issue of additional shares / convertible debentures / preference shares over and above their rights share entitlements. The investee company can allot the additional rights shares out of unsubscribed portion, subject to the condition that the overall issue of shares to non residents in the total paid-up capital of the company does not exceed the sectoral cap.

### 2.9 Issue and acquisition of shares after merger or de-merger or amalgamation of Indian companies

Mergers / de-merger / amalgamations of companies in India are usually governed by an order issued by a competent Court on the basis of the Scheme submitted by the companies undergoing merger / de-merger / amalgamation. Once the scheme of merger / de-merger / amalgamation of two or more Indian companies has been approved by a Court in India, the transferee company or new company is allowed to issue shares to the shareholders of the transferor company resident outside India subject to the conditions that:

a. The percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the sectoral cap.

b. The transferor company or the transferee or the new company is not engaged in activities which are prohibited under the FDI policy.

### 2.10 Issue of shares under Employee Stock Options Scheme (ESOP) to person resident outside India

An Indian company may issue ESOPs to its employees / directors or employees / directors of its holding company or joint venture or wholly owned overseas subsidiary who are resident outside India, provided that: -

a. The scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013, as the case may be.

b. The ESOPs issued to non-resident employees / directors under the applicable rules/regulations are in compliance with the sectoral cap applicable to the said company.

c. Issue of ESOPs by a company where foreign investment is under the approval route shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.

d. Issue of ESOPs under the applicable rules / regulations to an employee / director who is a citizen of Bangladesh / Pakistan shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.

e. The issuing company shall furnish to the Regional Office concerned of the Reserve Bank of India under whose jurisdiction the registered office of the company operates, within 30 days from the date of issue of ESOPs, a return as per the Form-ESOP.

## 2.11 Transfer of shares and convertible debentures of an Indian company by a person resident outside India

Foreign investors can also invest in Indian companies by purchasing / acquiring existing shares from Indian shareholders or from other non-resident shareholders. General permission has been granted to non-residents / NRIs for acquisition of shares by way of transfer subject to the following:

i. A person resident outside India (Other than NRI and OCB) may transfer by way of sale or gift the shares or convertible debentures to any person resident outside India (including NRIs).

ii. NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.

iii. A person resident outside India can transfer any security to a person resident in India by way of gift.

iv. A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a registered broker registered with stock exchange or a merchant banker registered with SEBI.

v. A person resident in India can transfer by way of sale, shares / convertible debentures (including transfer of subscriber's shares), of an Indian company in all sectors under private arrangement to a person resident outside India, subject to the prescribed guidelines.

vi. General permission is also available for transfer of shares / convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, engaged in an activity earlier covered under the Government Route but now following under Automatic Route, as well as transfer of shares by a non-resident to an Indian company under buyback and / or capital reduction scheme of the company.

vii. The above General Permission also covers transfer by a resident to a non-resident of shares / convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route of RBI, as well as transfer of shares by a non-resident to an Indian company under buy-back and / or capital reduction scheme of the company.

## 2.12 Transfer of shares / convertible debentures by a person resident in India

A person resident in India who proposes to transfer to a person resident outside India any security by way of gift shall make an application to the RBI in the prescribed form along with prescribed documents.

## 2.13 Conversion of ECB / Lump sum Fee / Royalty etc. into Equity

i. An Indian company have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) into shares / preference shares, subject to the following conditions and reporting requirements

   a. The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company.

   b. The foreign equity after conversion of ECB into equity is within the sectoral cap, if any,

   c. Pricing of shares is as per the prescribed provisions.

   d. Compliance with the requirements prescribed under any other statute and regulation in force.

ii. The conversion facility is available for ECBs availed under the Automatic or Approval Route. This would also be applicable to ECBs, due for payment or not, as well as secured / unsecured loans availed from non-resident collaborators. General permission is also available for issue of shares / preference shares against lump-sum technical know-how fee, royalty due for payment subject to entry route, sectoral cap and pricing guidelines and compliance with applicable tax laws.

## 2.14 Issue of shares by Indian companies – ADR / GDR

i. Depositary Receipts (DRs) are negotiable securities issued outside India by a Depository Bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded in Stock Exchanges in the US, Singapore, Luxembourg, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded elsewhere are known as Global Depository Receipts (GDRs). In the Indian context, DRs are treated as FDI.

ii. Indian companies can raise foreign currency resources abroad through the issue of ADRs / GDRs, in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India thereunder from time to time.

## 2.15 Investment in firm or proprietary concern in India

2.15.1 A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest by way of contribution to the capital of a firm or a proprietary concern in India on non-repatriation basis provided:

a. Amount is invested by inward remittance or out of NRE / FCNR (B) / NRO account maintained with Authorized Dealers / Authorized banks.

b. The firm or proprietary concern is not engaged in any agricultural / plantation or real estate business or print media sector.

c. Amount invested shall not be eligible for repatriation outside India.

2.15.2 Foreign investment in any form is prohibited in a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as, Trusts) which is engaged or proposes to engage in the following activities:

i) Agricultural / Plantation activity

ii) Real Estate Business - (para 2.2.4)

iii) Print Media Business

iv) Prohibited Sectors (para 2.2.4)

"Real Estate Business" means dealing in land and immoveable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential / commercial premises, roads or bridges, and Real Estate Investment Trusts (REITs) registered and regulated under SEBI (REITs) Regulations, 2014.

FDI is not permitted in Trusts other than in 'VCF' registered and regulated by SEBI and 'Investment vehicle'.

## 2.16 Establishment in India of a Branch or Liaison office or project offices in India

i. Applications from foreign companies (a body corporate incorporated outside India, including a firm or other association of individuals) for establishing BO / LO / PO in India shall be considered by the AD Category-I bank as per the guidelines given by Reserve Bank of India (RBI).

ii. If the principal business of the entity resident outside India falls under sectors where 100 percent Foreign Direct Investment (FDI) is allowed and the entity seeks to open a BO / LO / PO, the AD Category-I bank may consider such applications under the delegated powers.

iii. An application from a person resident outside India for opening of a BO/LO/PO in India shall require prior approval of Reserve Bank of India in the following cases:

a. The applicant is a citizen of or is registered / incorporated in Pakistan;

b. The applicant is a citizen of or is registered / incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO / LO / PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;

c. The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting.

In the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by / entered into an agreement with Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings. No separate approval is required from Reserve Bank of India for such cases only.

d. The applicant is a Non-Government Organization (NGO), Non-Profit Organization, Body / Agency / Department of a foreign government.

iv. Activities permitted in India to Liaison office

i. Representing in India the parent company / group companies.

ii. Promoting export / import from / to India.

iii. Promoting technical / financial collaborations between parent / group companies and companies in India.

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

v. Activities permitted in India to Branch office of a Foreign Company

i. Export / Import of goods

ii. Rendering professional or consultancy services.

iii. Carrying out research work, in areas in which the parent company is engaged.

iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.

v. Representing the parent company in India and acting as buying / selling agent in India.

vi. Rendering services in Information Technology and development of software in India.

vii. Rendering technical support to the products supplied by parent / group companies

viii. Representing foreign airline / shipping company.

vi. Other key points regarding Branch office

i. Branch Offices are permitted to acquire property for their own use and to carry out the permitted / incidental activities but not for leasing or renting out the property. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Nepal, Bhutan, Macau or Hong Kong are not allowed to acquire immovable property in India even for a Branch Office. These entities are allowed to lease such property for a period not exceeding five years.

ii. Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes.

iii. BO / LO / Po have to submit Annual Activity Certificates from Chartered Accountants to the Authorized Dealer - category 1 bank.

vii. Branch Office in Special Economic Zones (SEZs)

RBI has given general permission to foreign companies for establishing branch / unit in Special Economic Zones (SEZs) to undertake manufacturing and service activities. The general permission is subject to the following conditions:

a. Such BOs are functioning in those sectors where 100 % FDI is permitted;

b. Such BOs comply with part XXII of the Companies Act 2013;

c. Such BOs function on a stand-alone basis.

In the event of winding-up of business and for remittance of winding up proceeds, the branch shall approach an AD Category – I bank with the documents prescribed.

viii. Branches of banks

Foreign Banks do not require approval under FEMA, if such Bank has obtained necessary approval under the provisions of the Banking Regulation Act, 1949 from the Reserve Bank.

ix. Project Offices

Reserve Bank has granted general permission to foreign companies to establish Project Offices in India, provided they have secured a contract from an Indian company to execute a project in India, and

a. The project is funded directly by inward remittance from abroad; or

b. The project is funded by a bilateral or multilateral International Financing Agency; or

c. The project has been cleared by an appropriate authority; or

d. The company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project.

However, if the above criteria are not met, the foreign entity has to approach the Reserve Bank for approval.

x. Remittance of profit

Remittance of profit by a branch or remittance of surplus after completion of the project by the project office will be allowed by the authorized dealer on submission of following documents:

a. A certified copy of audited Balance Sheet and Profit and Loss Account for the relevant year.

b. A Chartered Accountant's certificate certifying:

- The manner of arriving at the remittable profit;
- That the entire remittable profit has been earned by undertaking the permitted activities; and
- That the profit does not include any profit on revaluation of the assets of the branch.

## 3.0 EXTERNAL COMMERCIAL BORROWINGS (ECB)

External Commercial Borrowings (ECB) refer to commercial loans in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments such as floating rate notes and fixed rate bonds availed from non-resident lenders. The framework for raising loans through ECB comprises of the following three tracks:-

| | |
|---|---|
| Track I | Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years. |
| Track II | Long term foreign currency denominated ECB with minimum average maturity of 10 years. |
| Track III | Indian Rupee (INR) denominated ECB with minimum average maturity of 3 / 5 years. |

ECB can be accessed under two routes, viz., (i) Automatic Route and (ii) Approval Route.

### 3.1 Forms of ECB

The ECB framework enables permitted resident entities to borrow from recognized non-resident entities in the following forms:

i. Loans including bank loans

ii. Securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares / debentures)

iii. Buyer's credit

iv. Supplier's credit

v. Foreign currency convertible bonds (FCCBs)

vi. Financial lease

vii. Foreign Currency Exchangeable Bonds (FCEBs)

### 3.2 Minimum Average Maturity Period

The minimum average maturities for the three tracks are set out as under: -

| Track I | Track II | Track III |
|---|---|---|
| a. 3 years for ECB upto USD 50 million or its equivalent.<br>b. 5 years for ECB beyond USD 50 million or its equivalent.<br>c. 5 years for eligible borrowers under para '3.3(d)' below,, irrespective of the amount of borrowing.<br>d. 5 years for (FCCBs)<br>/ (FCEBs) irrespective of the amount of borrowing. The call and put option, if any, for FCCBs shall not be exercisable prior to 5 years. | 10 years irrespective of the amount. | Same as under Track I. |

## 3.3 Eligible Borrowers

The list of entities eligible to raise ECB under the three tracks is set out in the following table

| Track I | Track II | Track III |
|---|---|---|
| a. Companies in manufacturing and software development sectors.<br>b. Shipping and airlines companies.<br>c. Small Industries Development Bank of India (SIDBI).<br>d. Units in Special Economic Zones (SEZs).<br>e. Export Import Bank of India (Exim Bank) (only under the approval route).<br>f. Companies in infrastructure sector, Non-Banking Financial Companies—Infrastructure Finance Companies (NBFC-IFCs), NBFCs—Asset Finance Companies (NBFC-AFCs), Holding Companies and Core Investment Companies (CICs). | a. All entities listed under Track I.<br>b. Companies in infrastructure sector.<br>c. Holding companies.<br>d. Core Investment Companies (CICs).<br>e. Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITs) coming under the regulatory framework of the Securities and Exchange Board of India (SEBI). | a. All entities listed under Track II.<br>b. All Non-Banking Financial Companies (NBFCs) coming under the regulatory purview of the Reserve Bank.<br>c. NBFCs — Micro Finance Institutions (NBFCs – MFIs), Not for Profit companies registered under the Companies Act, 1956 / 2013, Societies, trusts and cooperatives (registered under the Societies Registration Act, 1860, Indian Trust Act, 1882 and State - level Cooperative Acts / Multi — level Cooperative Act / State - level mutually aided Cooperative Acts respectively), Non—Government Organizations (NGOs) which are engaged in micro finance activities.<br>d. Companies engaged in miscellaneous services viz. research and development (R&D), training (other than educational institutes), companies supporting infrastructure, companies providing logistics services.<br>e. Developers of Special Economic Zones (SEZs) / National Manufacturing and Investment Zones (NMIZs). |

## 3.4 Recognized lenders

The list of recognized lenders / investors for the three tracks will be as follows

| Track I | Track II | Track III |
|---|---|---|
| a. International banks.<br>b. International capital markets.<br>c. Multilateral financial institutions (such as, IFC, ADB, etc.) / regional financial institutions and Government owned (either wholly or partially) financial institutions.<br>d. Export credit agencies.<br>e. Suppliers of equipment.<br>f. Foreign equity holders.<br>g. Overseas long term investors such as:<br>– Prudentially regulated financial entities;<br>– Pension funds;<br>– Insurance companies;<br>– Sovereign Wealth Funds;<br>– Financial institutions located in International Financial Services Centers in India.<br>h. Overseas branches / subsidiaries of Indian banks. | All entities listed under Track I but for overseas branches / subsidiaries of Indian banks. | All entities listed under Track I but for overseas branches / subsidiaries of Indian banks. In case of NBFCs -MFIs, other eligible MFIs, not for profit companies and NGOs, ECB can also be availed from overseas organizations and individuals. |

## 3.5 Individual Limits

The individual limits refer to the amount of ECB which can be raised in a financial year under the automatic route.

i. Upto US$ 750 million or equivalent for the corporates in infrastructure and manufacturing sector, NBFCs—Infrastructure Finance Companies, NBFC-Asset Finance Companies, holding companies and Core Investment Companies.

ii. Upto US$ 200 million or equivalent for companies in software development sector.

iii. Upto US$ 100 million or equivalent for companies engaged in micro finance activities; and

iv. Upto US$ 500 million or equivalent for remaining entities.

ECB proposals beyond aforesaid limits will come under the approval route. For computation of individual limits under the Track III, exchange rate prevailing on the date of agreement should be taken into account.

## 3.6 All-in-cost

| Track I | Track II | Track III |
|---|---|---|
| a. The all-in-cost ceiling is prescribed through a spread over the benchmark as under:<br>– For ECB with minimum average maturity period of 3 to 5 years - 300 basis points per annum over 6 month LIBOR or applicable bench mark for the respective currency.<br>– For ECB with average maturity period of more than 5 years– 450 basis points per annum over 6 month LIBOR or applicable bench mark for the respective currency.<br>b. Penal interest, if any, for default or breach of covenants should not be more than 2 per cent over and above the contracted rate of interest. | a. The maximum spread over the benchmark will be 500 basis points per annum.<br>b. Remaining conditions will be as given under Track I. | The all–in-cost should be in line with the market conditions. |

## 3.7 End-use

| Track I | Track II | Track III |
|---|---|---|
| i. ECB proceeds can be utilised for capital expenditure in the form of:<br>a. Import of capital goods including payment towards import of services, technical know-how and license fees, provided the same are part of these capital goods;<br>b. Local sourcing of capital goods;<br>c. New project;<br>d. Modernisation / expansion of existing units;<br>e. Overseas direct investment in Joint ventures (JV) / Wholly owned subsidiaries (WOS);<br>f. Acquisition of shares of public sector undertakings at any stage of disinvestment under the disinvestment programme of the Government of India;<br>g. Refinancing of existing trade credit raised for import of capital goods;<br>h. Payment of capital goods already shipped / imported but unpaid;<br>i. Refinancing of existing ECB provided the residual maturity is not reduced.<br>ii. SIDBI can raise ECB only for the purpose of on-lending to the borrowers in the Micro, Small and Medium Enterprises (MSME sector), where MSME sector is as defined under the MSME | i. The ECB proceeds can be used for all purposes excluding the following:<br>a. Real estate activities<br>b. Investing in capital market<br>c. Using the proceeds for equity investment domestically;<br>d. On-lending to other entities with any of the above objectives;<br>e. Purchase of land<br>ii. Holding companies can also use ECB proceeds for providing loans to their infrastructure SPVs. | i. NBFCs can use ECB proceeds only for:<br>a. On-lending for any activities, including infrastructure sector as permitted by the concerned regulatory department of RBI;<br>b. Providing hypothecated loans to domestic entities for acquisition of capital goods / equipment; and<br>c. providing capital goods / equipment to domestic entities by way of lease and hire – purchases<br>ii. Developers of SEZs / NMIZs can raise ECB only for providing infrastructure facilities within SEZ / NMIZ.<br>iii. NBFCs-MFI, other eligible MFIs, NGOs and not for profit companies registered under the |

| Track I | Track II | Track III |
| --- | --- | --- |
| Development Act, 2006, as amended from time to time.<br>iiii. Units of SEZs can raise ECB only for their own requirements.<br>iv. Shipping and airlines companies can raise ECB only for import of vessels and aircrafts respectively.<br>v. ECB proceeds can be used for general corporate purpose (including working capital) provided the ECB is raised from the direct / indirect equity holder or from a group company for a minimum average maturity of 5 years.<br>vi. NBFC-IFCs and NBFCs-AFCs can raise ECB only for financing infrastructure.<br>vii. Holding Companies and CICs shall use ECB proceeds only for on – lending to infrastructure Special Purpose Vehicles (SPVs).<br>viii. ECBs for the following purposes will be considered only under the approval route:<br>a. Import of second hand goods as per the Director General of Foreign Trade (DGFT) guidelines;<br>b. On-lending by Exim Bank. | | Companies Act, 1956 / 2013 can raise ECB only for on-lending to self – help groups or for micro - credit or for bonafide micro finance activity including capacity building.<br>iv. For other eligible entities under this track, the ECB proceeds can be used for all purposes excluding the following:<br>a. Real estate activities<br>b. Investing in capital market<br>c. Using the proceeds for equity investment domestically;<br>d. On-lending to other entities with any of the above objectives;<br>e. Purchase of land |

## 3.8 Parking of ECB proceeds

ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilization. Till utilization, these funds can be invested in the following liquid assets:

a. Deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody's;

b. Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above

c. Deposits with overseas branches/ subsidiaries of Indian banks abroad.

ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months. These term deposits should be kept in unencumbered position.

## 3.9 Prepayment

Prepayment of ECB may be allowed by AD Category I banks subject to compliance with the stipulated minimum average maturity as applicable to the contracted loan as per the prescribed guidelines.

## 3.10 Refinancing of ECB

Refinancing of existing ECB with fresh ECB is permitted provided the fresh ECB is raised at lower all–in–cost and residual maturity is not reduced. Indian banks are not permitted to participate in refinancing of existing ECB.

### 3.11 Procedure

For approval route cases, the borrowers may approach the RBI with an application in prescribed format Form ECB for examination through their AD Category I Bank. Such cases shall be considered keeping in view the overall guidelines, macro-economic situation and merits of the specific proposals.

### 3.12 Rationalization of Procedures

Any changes in the terms and conditions of the ECB after obtaining LRN (Loan Registration Number) requires prior approval of RBI. However, the following powers have been delegated to the AD category I banks to approve the following requests from the ECB borrowers subject to specified conditions:

(i) Changes / modifications in drawdown / repayment schedule;

(ii) Changes in the currency of borrowing

(iii) Change of the AD Category I Bank

(iv) Changes in the name of the Borrower company

(v) Transfer of ECB

(vi) Change in the recognized lender

(vii) Change in the end-use of ECB proceeds

(viii) Reduction in amount of ECB

(ix) Change in al-in-cost of ECB

(x) Refinancing of existing ECB

(xi) Change in the name of lender

(xii) Cancellation of LRN

(xiii) Prepayment of ECB

### 3.13 Foreign Currency Exchangeable Bonds

i. Foreign Currency Exchangeable Bond (FCEB) means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. The FCEB may be denominated in any freely convertible foreign currency.

ii. **Eligible Issuer:** The Issuing Company shall be part of the promoter group of the Offered Company and shall hold the equity share/s being offered at the time of issuance of FCEB.

iii. **Offered Company:** The Offered Company shall be a listed company, which is engaged in a sector eligible to receive Foreign Direct Investment and eligible to issue or avail of Foreign Currency Convertible Bond (FCCB) or External Commercial Borrowings (ECB).

iv. **Entities not eligible to issue FCEB:** An Indian company, which is not eligible to raise funds from the Indian securities market, including a company which has been restrained from accessing the securities market by the SEBI shall not be eligible to issue FCEB.

v. **Eligible subscriber:** Entities complying with the Foreign Direct Investment policy and adhering to the sectoral caps at the time of issue of FCEB can subscribe to FCEB. Prior approval of the Foreign Investment Promotion Board, wherever required under the Foreign Direct Investment policy, should be obtained.

vi. **Entities not eligible to subscribe to FCEB:** Entities prohibited to buy, sell or deal in securities by the SEBI will not be eligible to subscribe to FCEB.

vii. **End-use of FCEB proceeds:**

**Issuing Company:**

(i) The proceeds of FCEB may be invested by the issuing company overseas by way of direct investment including in Joint Ventures or Wholly Owned Subsidiaries abroad, subject to the existing guidelines on overseas investment in Joint Ventures / Wholly Owned Subsidiaries.

(ii) The proceeds of FCEB may be invested by the issuing company in the promoter group companies.

viii. **Promoter Group Companies:** Promoter group companies receiving investments out of the FCEB proceeds may utilize the amount in accordance with end-uses prescribed under the ECB policy.

ix. **End-uses not permitted:** The promoter group company receiving such investments will not be permitted to utilize the proceeds for investments in the capital market or in real estate in India.

x. **All-in-cost:** The rate of interest payable on FCEB and the issue expenses incurred in foreign currency shall be within the all-in-cost ceiling as specified by Reserve Bank under the ECB policy.

xi. **Pricing of FCEB:** At the time of issuance of FCEB the exchange price of the offered listed equity shares shall not be less than the higher of the following two:

(i) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on the stock exchange during the six months preceding the relevant date; and

(ii) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on a stock exchange during the two week preceding the relevant date.

xii. **Average Maturity:** Minimum maturity of FCEB shall be five years. The exchange option can be exercised at any time before redemption. While exercising the exchange option, the holder of the FCEB shall take delivery of the offered shares. Cash (Net) settlement of FCEB shall not be permissible.

xiii. **Parking of FCEB proceeds abroad :** The proceeds of FCEB may be retained and / or deployed overseas by the issuing / promoter group companies in accordance with the policy for the ECB or repatriated to India for credit to the borrowers' Rupee accounts with AD Category I banks in India pending utilization for permissible end-uses.

It shall be the responsibility of the issuing company to ensure that the proceeds of FCEB are used by the promoter group company only for the permitted end-uses prescribed under the ECB policy. The issuing company should also submit audit trail of the end-use of the proceeds by the issuing company / promoter group companies to the Reserve Bank duly certified by the designated AD bank.

xiv. **Operational Procedure** – Issuance of FCEB shall require prior approval of the Reserve Bank under the Approval Route for raising ECB. The Reporting arrangement for FCEB shall be as per the extant ECB policy.

xv. **ECB under the erstwhile US$ 5 Million Scheme**

Designated AD Category I banks are permitted to approve elongation of repayment period for loans raised under the erstwhile USD 5 Million Scheme, provided there is a consent letter from the overseas lender for such re-schedulement and the re-schedulement is without any additional cost. Such approval with existing and revised repayment schedule along with the Loan Key/Loan Registration Number should be initially communicated to the Principal Chief General Manager, Foreign Exchange Department, ECB Division, Reserve Bank of India, Central Office, Mumbai within seven days of approval and subsequently in ECB 2 Return.

## 3.14 Trade Credits for imports into India

Trade Credits' (TC) refer to credits extended for imports directly by the overseas supplier, bank and financial institution for maturity of less than 5 years. Depending on the source of finance, such trade credits include suppliers' credit or buyers' credit. Suppliers' credit relates to credit for imports into India extended by the overseas supplier, while buyers' credit refers to loans for payment of imports into India arranged by the importer from a bank or financial institution outside India..

**Routes and Amount of Trade Credit:** The available routes of raising Trade Credit are mentioned below:

- **Automatic Route:** ADs are permitted to approve trade credit for import of non-capital and capital goods up to USD 20 million or equivalent per import transaction.

- **Approval Route:** The proposals involving trade credit for import of non-capital and capital goods beyond USD 20 million or equivalent per import transaction are considered by the RBI.

**Maturity prescription:** Maturity prescriptions for trade credit are same under the automatic and approval routes. While for the non-capital goods, the maturity period is up to one year from the date of shipment or the operating cycle whichever is less, for capital goods, the maturity period is up to five year from the date of shipment. For trade credit up to five years, the ab-initio contract period should be 6 (six) months. No roll-over/extension will be permitted beyond the permissible period.

i. All-in-cost ceilings

The all-in-cost ceiling for raising Trade Credit is 350 basis points over 6 months LIBOR (for the respective currency of credit or applicable benchmark). The all-in-cost include arranger fee, upfront fee, management fee, handling/ processing charges, out of pocket and legal expenses, if any.

ii. Guarantee

AD banks are permitted to issue Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution, up to USD 20 million per transaction for a period up to one year for import of all non-capital goods permissible under Foreign Trade Policy (except gold, palladium, platinum, Rodium, silver etc.) and up to three years for import of capital goods, subject to prudential guidelines issued by Reserve Bank from time to time. The period of such Letters of credit / guarantees / LoU / LoC has to be co-terminus with the period of credit, reckoned from the date of shipment.

### 3.15 Time period for realization of Export payments

The amount representing the full export value of goods / software/ services exported shall be realized and repatriated to India within nine months from the date of export, provided

i. That where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorized dealer as soon as it is realised and in any case within fifteen months from the date of shipment of goods;

ii. Further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorized dealer may, for a sufficient and reasonable cause shown, extend the period of nine months or fifteen months, as the case may be.

### 3.16 Time period for payment towards Import obligations

Remittances of payments against imports should be completed not later than six months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance.

## 4.0 EXCHANGE CONTROL REGULATIONS – FOREIGN TECHNOLOGY TRANSFER AND ROYALTY PAYMENTS

A foreign investment is now no longer linked with the technical assistance. As such, now, it is possible for foreign investor to either do equity investment or enter into technology transfer agreement. It is also possible to do foreign investment as well as technical collaboration. Technology transfer can take place in many forms and methods. It comprises of various species of intellectual property like copy right, patents, trade marks, designs, know how etc. Technology transfer agreement may involve a one-time payment of fees or it may involve longer-term arrangements with periodic royalty payments.

The remittance under technical agreements is a current account transaction and as such is freely remittable. The Government of India permits the payments for royalty, lump sum fee for transfer of technology and payments for use of trademark / brand name on the automatic route i.e. without any approval of the Government of India. In other words, there shall be no restriction on limits of royalty payments from India and can be remitted without any approval of Government or Reserve Bank of India.

However, all such payments will be subject to Foreign Exchange Management (Current Account Transactions) Rules, 2000 as amended from time to time. A suitable post-reporting system for technology transfer / collaborations and use of trade mark/ brand name will be notified by the Government separately soon.

## 5.0 Sector-wise FDI cap

5.1 Entry route for non-resident investors in India as well as sector specific investment limits in India are given in para 5.2

5.2 The below mentioned sector limits are further subjected to specified conditions as specified.

| Sector/Activity | % of Equity / FDI Cap | Entry Route |
|---|---|---|
| **Agriculture** | | |
| **5.2.1 Agriculture & Animal Husbandry***<br>a) Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions;<br>b) Development and Production of seeds and planting material; | 100% | Automatic |

| Sector/Activity | % of Equity / FDI Cap | Entry Route |
|---|---|---|
| c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture; and<br>d) Services related to agro and allied sectors<br>*Note: Besides the above, FDI is not allowed in any other agricultural sector/activity* | 100% | Automatic |
| **5.2.2 Plantation Sector** | | |
| 5.2.2.1<br>(i) Tea sector including tea plantations<br>(ii) Coffee plantations<br>(iii) Rubber plantations<br>(iv) Cardamom plantations (v) Palm oil tree plantations (vi) Olive oil tree plantations<br>*Note: Besides the above, FDI is not allowed in any other plantation sector/activity.*<br>*Other condition : -Prior approval of the State Government is required in case of any future land use change.* | 100% | Automatic |
| **Mining and Petroleum & Natural Gas** | | |
| **5.2.3 Mining** | | |
| 5.2.3.1<br>**Mining and Exploration of metal and non-metal ores** including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; subject to the Mines and Minerals (Development & Regulation) Act, 1957. | 100% | Automatic |
| 5.2.3.2<br>Coal & Lignite<br>(1) Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and subject to the provisions of Coal Mines (Nationalization) Act, 1973.<br>(2) Setting up coal processing plants like washeries subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing. | 100% | Automatic |
| 5.2.3.3<br>Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities | 100% | Government |

| Sector/Activity | % of Equity / FDI Cap | Entry Route |
|---|---|---|
| 5.2.3.3.1<br><br>Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities subject to sectoral regulations and the Mines and Minerals (Development and Regulation Act 1957). | 100% | Government |
| **5.2.4 Petroleum & Natural Gas** | | |
| 5.2.4.1<br><br>Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies. | 100% | Automatic |
| 5.2.4.2<br><br>Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs. | 49% | Automatic |
| **Manufacturing** | | |
| 5.2.5 Manufacturing: Subject to the provisions of the FDI policy, foreign investment in 'manufacturing' sector is under automatic route. Further, a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval. | | |
| **5.2.6 Defence***  | | |
| 5.2.6.1<br><br>Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951<br><br>*Note: FDI limit has also been made applicable to Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959.* | 49% | Automatic up to 49%<br><br>Above 49% under Government route wherever it is likely to result in access to modern technology or for other reasons to be recorded. |
| **Services Sector** | | |
| **5.2.7 Broadcasting** | | |
| 5.2.7.1 Broadcasting Carriage Services*<br><br>Infusion of fresh foreign investment, beyond 49% in a company not seeking license/permission from sectoral Ministry, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require FIPB approval | | |
| 5.2.7.1.1<br><br>(1) Teleports(setting up of up-linking HUBs/Teleports); (2)Direct to | 100% | Automatic |

| Sector/Activity | % of Equity / FDI Cap | Entry Route |
|---|---|---|
| Home (DTH);<br>(3) Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability);<br>(4) Mobile TV;<br>(5) Headend-in-the Sky Broadcasting Service(HITS) | | |
| 5.2.7.1.2<br>Cable Networks(Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)) | 100% | Automatic |
| **5.2.7.2 Broadcasting Content Services** | | |
| 5.2.7.2.1 Terrestrial Broadcasting FM(FM Radio),<br>subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations | 49% | Government |
| 5.2.7.2.2<br>Up-linking of 'News & Current Affairs' TV Channels | 49% | Government |
| 5.2.7.2.3 Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels | 100% | Automatic |
| **5.2.8 Print Media** | | |
| 5.2.8.1<br>Publishing of newspaper and periodicals dealing with news and current affairs | 26% | Government |
| 5.2.8.2<br>Publication of Indian editions of foreign magazines dealing with news and current affairs | 26% | Government |
| 5.2.8.3<br>Publishing / printing of scientific and technical magazines / specialty journals / periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting. | 100% | Government |
| 5.2.8.4Publication of facsimile edition of foreign newspapers | 100% | Government |
| **5.2.9 Civil Aviation** | | |
| **5.2.9.1 Airports*** | | |
| (a) Greenfield projects | 100% | Automatic |
| (b) Brownfield projects | 100% | Automatic |
| **5.2.9.2Air Transport Services*** | | |
| (1) (a) Scheduled Air Transport Service /Domestic Scheduled Passenger Airline | 100% FDI | Automatic up to 49% |

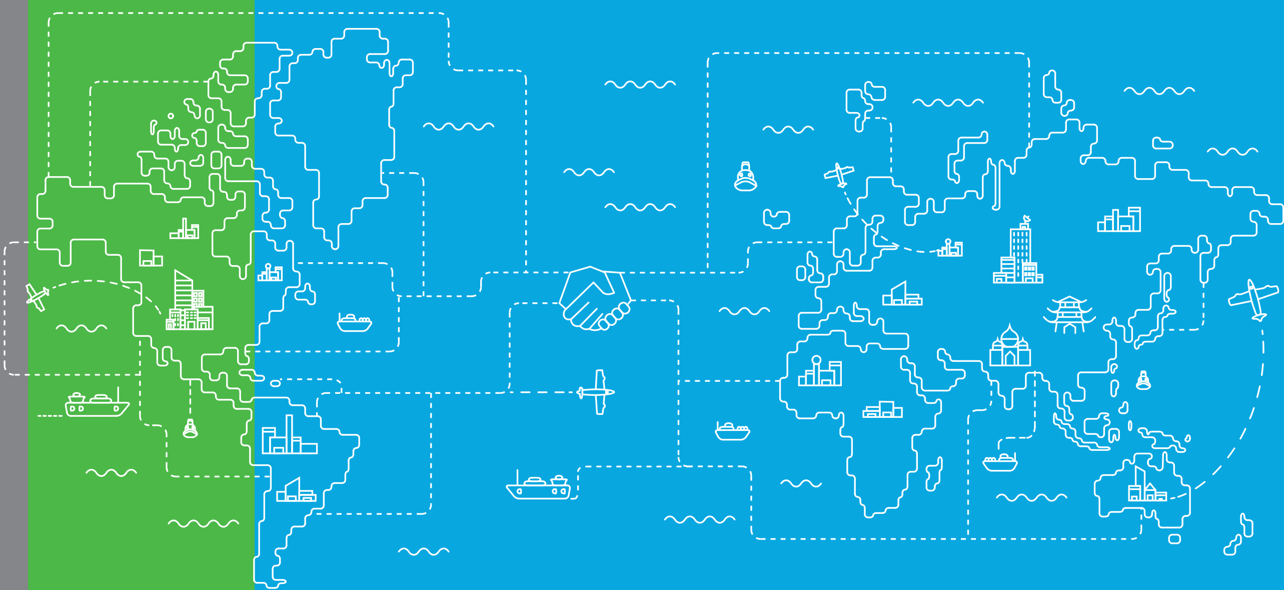
| Sector/Activity | % of Equity / FDI Cap | Entry Route |
|---|---|---|
| (b) Regional Air Transport Service | (100% for NRIs) | Government beyond 49% |
| (2)Non-Scheduled Air Transport Service | 100% | Automatic |
| (3)Helicopter services/seaplane services requiring DGCA approval | 100% | Automatic |
| *Note: Foreign airlines would continue to be allowed to invest in capital of Indian companies operating scheduled and non-scheduled air-transport services up to the limit of 49% of their paid up capital.* | | |
| 5.2.9.3 Other services under Civil Aviation sector<br>(1)Ground Handling Services subject to sectoral regulations and security clearance | 100% | Automatic |
| (2)Maintenance and Repair organizations; flying training institutes; and technical training institutions. | 100% | Automatic |
| **5.2.10 Construction Development: Townships, Housing, Built-up Infrastructure** | | |
| 5.2.10.1<br>Construction-development projects (which would include development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships) | 100% | Automatic |
| **5.2.11 Industrial Parks** | | |
| Industrial Parks -new and existing | 100% | Automatic |
| **5.2.12 Satellites- establishment and operation** | | |
| Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO | 100% | Government |
| 5.2.13 Private Security Agencies* | 74% | Automatic upto 49%<br>Government beyond 49% and upto 74% |
| **5.2.14 Telecom Services** | | |
| Telecom Services<br>(including Telecom Infrastructure Providers Category-I)<br>All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, United Access Services, Unified License (Access Services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability Services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers. | 100% | Automatic up to 49%<br>Government route beyond 49% |
| 5.2.15 Trading*<br>It has now been provided that 100% FDI under government route for trading, including through e-commerce, is permitted in respect of food | 100% | Automatic up to 49%<br>Government route beyond 49% |

| Sector/Activity | % of Equity / FDI Cap | Entry Route |
|---|---|---|
| products manufactured and/or produced in India. | | |
| 5.2.15.1 Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs) | 100% | Automatic |
| 5.2.15.2 E-commerce activities | 100% | Automatic |
| 5.2.15.3 Single Brand product retail trading*<br>*Note: Local sourcing norms have been relaxed up to three years, with prior Government approval, for entities undertaking Single Brand Retail Trading of products having 'state-of-art' and 'cutting edge' technology. For such entities, sourcing norms will not be applicable up to three years from commencement of the business i.e. opening of the first store for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. Thereafter, sourcing norms would be applicable* | 100% | Automatic up to 49%<br>Government route beyond 49% |
| 5.2.15.4 Multi Brand Retail Trading | 51% | Government |
| 5.2.15.5 Duty Free Shops | 100% | Automatic |
| **5.2.16 Railway Infrastructure** | | |
| Railway Infrastructure<br>Construction, operation and maintenance of the following: (i) Suburban corridor projects through PPP, (ii) High speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signaling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivities to main railway line and (x) Mass Rapid Transport Systems. | 100% | Automatic |
| **Financial Services** | | |
| Foreign investment in other financial services, other than those indicated below, would require prior approval of the Government | | |
| **5.2.17 Asset Reconstruction Companies** | | |
| 5.2.17.1'Asset Reconstruction Company' (ARC) means a<br>company registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). | 100% | Automatic |
| **5.2.18 Banking- Private Sector** | | |
| 5.2.18.1<br>Banking- Private Sector | 74% | Automatic up to 49%<br>Government route beyond 49% and up to 74%. |
| **5.2.19 Banking- Public Sector** | | |
| 5.2.19.1 Banking- Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks. | 20% | Government |

| Sector/Activity | % of Equity / FDI Cap | Entry Route |
|---|---|---|
| **5.2.19 Banking– Public Sector** | | |
| 5.2.20.1<br>Credit Information Companies | 100% | Automatic |
| **5.2.21 Infrastructure Company in the Securities Market** | | |
| 5.2.21.1Infrastructure companies in Securities Markets, namely, stock exchanges, commodity exchanges, depositories and clearing corporations, in compliance with SEBI Regulations | 49% | Automatic |
| **5.2.22 Insurance** | | |
| 5.2.22.1<br>(i) Insurance Company<br>(ii) Insurance Brokers<br>(iii) Third Party Administrators<br>(iv) Surveyors and Loss Assessors<br>(v)Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 | 49% | Automatic |
| **5.2.23 Pension Sector** | 49% | Automatic |
| **5.2.24 Power Exchanges**<br>Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 | 49% | Automatic |
| **5.2.25 White Label ATM Operations** | 100% | Automatic |
| **5.2.26 Non-Banking Finance Companies (NBFC)** | | |
| 5.2.26.1<br>Foreign investment in NBFC is allowed under the automatic route in only the following activities:<br>(i) Merchant Banking<br>(ii) Under Writing<br>(iii) Portfolio Management Services<br>(iv) Investment Advisory Services<br>(v) Financial Consultancy<br>(vi) Stock Broking<br>(vii)Asset Management<br>(viii) Venture Capital<br>(ix) Custodian Services<br>(x) Factoring<br>(xi) Credit Rating Agencies<br>(xii)Leasing & Finance | 100% | Automatic |

| Sector/Activity | % of Equity / FDI Cap | Entry Route |
|---|---|---|
| (xiii) Housing Finance<br>(xiv) Forex Broking<br>(xv) Credit Card Business<br>(xvi) Money Changing Business<br>(xvii) Micro Credit<br>(xviii) Rural Credit | | |
| **5.2.27 Pharmaceuticals*** | | |
| 5.2.27.1<br>Greenfield | 100% | Automatic |
| 5.2.27.2<br>Brownfield | 100% | Automatic up to 74%<br>Government beyond 74% |

**The said sectors are updated / amended as per the press release on the "cabinet approval for simplification and liberalization of FDI Policy,2016" dated 31 August, 2016.*



# Chapter 6: TAXATION SYSTEM

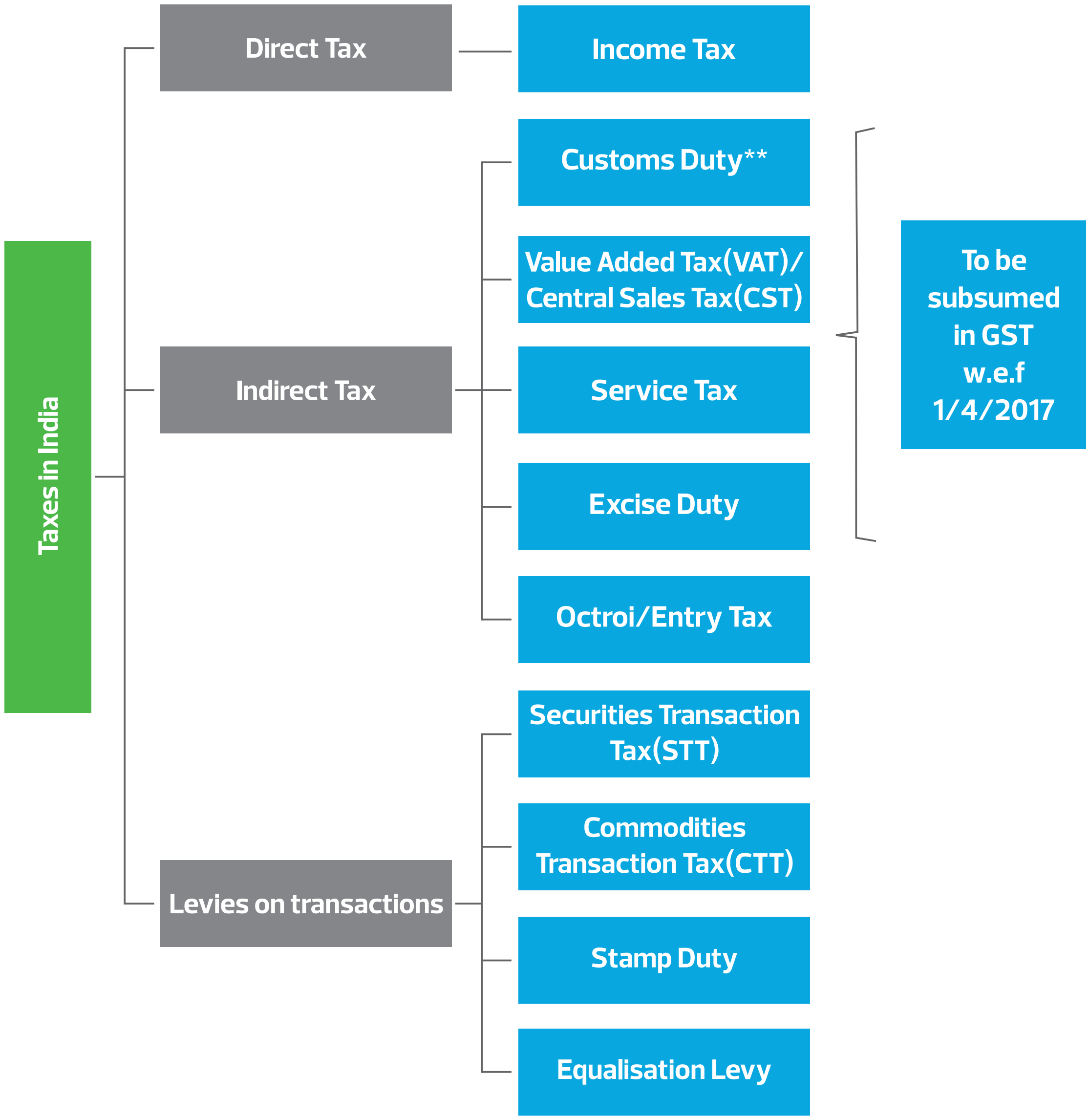
India has a well-developed tax structure with clearly demarcated authority between Central and State Governments and local bodies. Central Government levies taxes on income (except tax on agricultural income, which the State Governments can levy), customs duties, central excise and service tax. Value Added Tax (VAT), stamp duty, state excise, land revenue and profession tax are levied by the State Governments. Local bodies are empowered to levy tax on properties, octroi and for utilities like water supply, drainage etc.

During the past few years, the Indian taxation system has undergone tremendous reforms particularly indirect taxation system. To remove cascading effect of taxes and provide a common nation-wide market for goods and services, India is moving towards introduction of Goods and Services Tax (GST) with effect from 1 April 2017. Under the GST regime both Central and State Governments will have concurrent taxation power to levy tax on supply of goods and services. It is expected that the proposed regime will improve tax collection and minimize leakages, as both Central and State Tax Administrations will monitor and assess same set of taxpayers.

On direct tax front, Wealth tax was abolished with effect from 1 April 2015. The Finance Minister in his Budget Speech, 2015 has indicated that the rate of corporate tax will be reduced from 30% to 25% over the next 4 years along with corresponding phasing out of exemptions and deductions, in a phased manner.

The chart on the next page depicts the Indian Tax Structure.

## Indian Tax Structure




**Countervailing Duty (CVD) & Special Additional Duty (SAD) to be subsumed, Basic Custom Duty not to be subsumed

## I. DIRECT TAX

### 1.0 INTRODUCTION

The Income-tax Act, 1961 contains the law relating to Indian income tax[1]. Revisions in the tax rates and other duties are made through the annual Finance Act or through specific amendments. The tax administrators are not authorized to make changes in the tax legislation but are empowered by the statutes to make rules to carry out the provisions of law. The Ministry of Finance (Department of Revenue) through the Central Board of Direct Taxes (CBDT), an apex tax authority, implements and administers the direct tax laws in India.

### 2.0 INCOME TAX ON CORPORATIONS

#### 2.1 Residential Status

2.1.1 A company is treated as 'resident' in India in any financial year, if:

[1] The Wealth Tax Act,1957 law relating to taxation of certain specified wealth (assets) was abolished though the Finance Act 2015 with effect from 1 April 2015 (FY 2015-16 and onwards)

a) it is an Indian company i.e. a company formed and registered in India under the Companies Act, 1956 / the Companies Act 2013: or

b) during that year, the place of effective management (referred to as 'POEM') is in India during that year.

2.1.2 The place of effective management refers to a place where the key managerial and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made.

2.1.3 Through Finance Act, 2015, India has replaced the erstwhile residency rule in case of a foreign company which was based on control and management situated "wholly" in India with the concept of Place of Effective Management ('POEM'). POEM has been deferred by 1 year and is now applicable from FY 2016-17.

2.1.4 Thus, with effect from FY 2016-17, a Company will be said to be resident in any financial year if it's an Indian Company or if its place of effective management in that year, is in India.

2.1.5 The CBDT had issued draft guidelines for the determination to the POEM on 23rd December, 2015.Certain significant aspects of the said guidelines are as under:

- The process of determination of POEM would be primarily based on the fact as to whether or not the company is engaged in 'active business outside India'.

  A company shall be considered to be in active business outside India if:

  i. the passive income is not more than 50% of its total income and

  ii. less than 50% of its total assets are situated in India; and

  iii. less than 50% of total number of employees are situated in India or are resident in India; and

  iv. the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure ;

- For the purpose of determining whether the company is engaged in active business outside India, the average of the data of the financial year and 2 years prior to that shall be taken into account. In this context, it is worthwhile to note that the definition of the "Passive Income" covers not only income in the form of royalty, dividend, capital gains, interest, or rental income, but also income from transaction where both "the purchase and sale" of goods is from / to its associated enterprise.

- One of the decisive factors in respect of active company is generally the place where the majority of board meetings of the company are held. However, for determination of POEM in case of Company not engaged in active business outside India, firstly, there is a need to identify person or persons who make key management and commercial decisions (which would normally include MD, CEO, CFO, Financial Director, COO and HoDs) and secondly, the place where these decisions are actually made. Due to advancement in information technology, it has been recognized that today it is no longer necessary for the person taking decisions to be physically present at particular location. The draft guidelines provide that, in such cases, the location where the directors or the persons taking the decisions or majority of them usually reside may be a relevant factor.

- If the above factors do not lead to clear identification of POEM, then the following secondary factors can be considered:

  (a) Place where "main and substantial activity" of the company is carried out; or

  (b) Place where the accounting records of the company are kept.

- The draft guidelines specify that the following aspects need to be kept in mind while deciding POEM:
  - Facts and circumstances of each case
  - Concept of substance over form
  - No single principle is decisive in itself and the principles are to be seen with regard to activities performed over a period of time rather than any particular point moment in time
- The final guidelines on POEM are still awaited.
- In case, POEM of a foreign company is established in India, it shall be tax resident of India as per domestic laws. Most of the tax treaties also have concept of POEM as a tie-breaker test. Accordingly, if the POEM of the foreign company is in India, the global income of such companies shall be taxable in India. India will provide tax credit of taxes paid in the foreign country subject to the provisions of the relevant tax treaty.

## 2.2 Taxable Income

An Indian company is taxed on income accruing or arising either in or outside India and on income deemed to accrue or arise in India. The term 'India' to mean the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, Continental shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and the air space above its territory and territorial waters.

A non-resident company is taxed only on income accruing or arising in India or income which is deemed to accrue or arise in India. Actual receipt of income in India is taxable in either of the cases. Income from foreign branches is taxable in India. Double taxation of foreign income of either of the entities is avoided by means of double taxation treaties which also provide for tax relief in respect of specified cases. Income of a subsidiary company is taxed separately as an independent entity.

Some of the categories of income deemed to be Indian sourced income for tax purposes are listed below:

- All income accruing or arising, whether directly or indirectly, through or from any business connection, property, asset or source of income in India or through the transfer of a capital asset situated in India.
- Income by way of interest payable by the government or in respect of any debt incurred, or monies loaned and used for the purposes of a business or a profession carried out in India in case of non-residents.
- Income by way of fees payable in respect of technical services / royaltiespayable by non-resident, utilized in a business or profession carried on in India or for the purpose of making or earning any income from any source in India.

## 2.3 Rates of Tax

2.3.1 The corporate tax year is the year ending 31 March and income of the same is taxed in AY commencing on the succeeding 1 April.

2.3.2 The rates of tax for FY 2016-17 are inclusive of surcharge and education cess applicable thereon, as such the tax rates given herein below are the effective tax rates in respect of taxable income (other than long term capital gains & short term capital gains u/s 111A):

| Entity | Effective Tax Rates (FY 2016-17) | | |
|---|---|---|---|
| | Companies having total income up to Rs 10 Million | Companies having total income above Rs 10 Million but less than Rs 100 Million | Companies having total income above Rs 100 Million |
| Domestic Company | 30.90% | 33.063% | 34.608% |
| Foreign Company | 41.20% | 42.024% | 43.26% |

Note: Special rates of 29% & 25% as against 30% (i.e. base tax rate) are prescribed for Domestic Companies in certain cases

2.3.3 Minimum Alternate Tax (MAT)

If the income-tax payable as computed under the provisions of the Income Tax Act is less than a certain specified percentage of the book profits as referred in the table below, a special tax is levied on certain companies known as the Minimum Alternate Tax (MAT). The applicable rates of MAT for FY 2016-17 are as below:

| Entity | Effective Tax Rates (FY 2016-17) | | |
|---|---|---|---|
| | Companies having total income up to Rs 10 Million | Companies having total income above Rs 10 Million but less than Rs 100 Million | Companies having total income above Rs 100 Million |
| Domestic Company | 19.055% | 20.389% | 21.3416% |

MAT is not applicable to non-corporate entities. MAT paid can be carried forward and set-off in any of the subsequent 10 years against the normal tax liability in excess of MAT payable.

**MAT not applicable to foreign companies with retrospective effect:**

MAT provisions are not applicable to foreign companies with retrospective effect from April 1, 2001 if:

a) the foreign company is a resident of a country with which India has a DTAA and such company does not have a PE in India; or

b) the foreign company is a resident of a country with which India does not have a DTAA and such company is not required to seek registration under any law for the time being in force relating to companies

2.3.4 Dividend Distribution Tax (DDT)

A domestic company is liable for payment of additional income tax (known as Dividend Distribution Tax or DDT) @ 20.36% (15% plus surcharge and cess as applicable after considering the grossing up provisions) on any amount declared, distributed or paid by way of dividends to its shareholders. DDT is not in the nature of withholding tax and thus, non-resident shareholder, in general, cannot claim the credit of DDT in his home country.

From the perspective of the company paying DDT, the tax base for DDT payable is to be reduced by an amount of dividend received from its subsidiary as follows:

- Indian subsidiary - if such subsidiary has paid DDT payable on such dividend.

- Foreign Subsidiary - In case where dividend is received from the foreign subsidiary and tax is payable @ 15% on such dividend received[2].

Dividends (declared / distributed / paid) by a domestic company on shares to an Individual, HUF or firm, being resident in India, shall be exempt upto an aggregate of Rs. 10 lacs. Dividends in such cases, exceeding Rs. 10 lacs shall

[2] Under section 115BBDof the IT Act

be chargeable to tax @ 10% in the hands of the resident Individual / HUF / firm.

**Computation of Gross Total Income**

In order to compute the income of the company, first one has to ascertain the gross total income taking into account, income under each head (ignoring the incomes which are exempted from the tax) viz:

- Income from house property such as rental income of property,
- Income from business or profession,
- Capital gains, and
- Income from other sources such as interest, dividend etc.

The gross total income is reduced by the admissible deductions under Chapter VIA viz. donations, income from new industrial undertakings, income from small-scale industries, export profits of units set up in special economic zones, income from infrastructure undertakings etc. to arrive at the taxable income.

## Income Computation and Disclosure Standards (ICDS)

With effect from FY 2016-17, all taxpayers following the mercantile system of accounting, shall compute business income or Income from other sources having regard to notified ICDS.

The 10 Income Computation and Disclosure Standards (ICDSs) are as under:

| Sr. No. | ICDS | Standards on |
|---|---|---|
| 1 | ICDS-I | Disclosure of Accounting Policies |
| 2 | ICDS-II | Valuation of Inventories |
| 3 | ICDS-III | Construction Contract |
| 4 | ICDS-IV | Revenue Recognition |
| 5 | ICDS-V | Tangible Fixed Assets |
| 6 | ICDS-VI | The Effects of Changes in Foreign Exchange Rates |
| 7 | ICDS-VII | Government Grants |
| 8 | ICDS-VIII | Securities |
| 9 | ICDS-IX | Borrowing Costs |
| 10 | ICDS-X | Provisions, Contingent Liabilities and Contingent Assets |

**Salient features of the ICDS are as under:**

- **Who should follow:** All assessees, (Individual or HUF not covered under tax audit) following the mercantile system of accounting, for the purposes of computation of Business income or Income from other sources.
- **Applicable from:** This will apply for the computation of income for FY 2016-17 (i.e. AY 2017-18) and subsequent years.

- **Not required to maintain two sets of books of accounts:** It has been clarified that the notified ICDS are only for computation of taxable income and thus a taxpayer need not maintain separate set of books of account on the basis of these notified ICDS.

- **Provisions of IT Act to prevail in case of conflict:** It has been expressly provided that in case of conflict between the provisions of IT Act and these notified ICDS, the provisions of IT Act shall prevail over the ICDS.

- **Meaning of undefined terms:** The words and expressions used and not defined in the ICDS but defined in the IT Act shall have the same meaning as given in the IT Act.

- ICDS not applicable for computation of MAT.

- **Transition to ICDS:** Each ICDS contains certain transitional provisions for effective adoption of the same.

2.3.5 Income from House Property

The annual value of property, consisting of any buildings or lands appurtenant thereto, of which the assessee is owner, is chargeable to tax. The tax payer is allowed deduction of municipal taxes paid and also statutory deduction at the rate of 30% is allowed of such net annual value of the property.

2.3.6 Income from Business or Profession

Net profit before tax as shown in Profit and Loss account prepared is the starting point for computing taxable income. Net profit as above is to be increased by the expenditure disallowable and is to be reduced by the expenditure allowable as per the provisions of the Income-tax Act.

The manner of computing business profits are given in the table below:

| Particulars | Amount (Rs.) |
|---|---|
| Profit as per Profit and Loss Account | xxx |
| **Add:** | |
| Expenses disallowable | xxx |
| Expenses debited to Profit and Loss account but allowable under other head | xxx |
| | |
| **Less:** | |
| Expenses which are not debited to profit and loss but allowable | xxx |
| Incomes credited to Profit and loss account but taxable under other heads | xxx |
| | |
| **Income chargeable under Business and Profession** | **xxx** |

Some of the common allowances/disallowances are provided below:

**DISALLOWANCES**

- Cash payments more than Rs. 20,000
- Payments made to residents without witholding tax, 30% of such expenditure is disallowed
- Payments made to non-residents without witholding tax (where applicable), 100% of such expenditure is disallowed
- Unpaid statutory liabilities allowed only in the year of payment
- Provision for gratuity
- Securities transaction tax
- Income tax
- Wealth tax
- Tax on perquisite paid by employer

**ALLOWANCES**

- Rent, rates, repairs and insurance for building
- Repairs and insurances of machinery, plant and furniture
- Depreciation
- Investment allowance
- Bad debts
- Interest
- Employers contribution to recognised provident fund and approved superannuation fund
- Employers contribution to National Pension scheme
- Contribution towards approved gratuity fund
- Employees' contribution to staff welfare schemes
- Family planning expenditure

- Depreciation

While computing profits and gains from business or profession, a taxpayer can claim depreciation on all those assets which it has acquired and used for the purpose of its business or profession. Different depreciation rates are prescribed for different nature of assets.An indicative list of rates of depreciation for certain 'blocks of assets' is as follows:

| S. No | Block of assets | Rates of depreciation (%) [Note-1] |
|---|---|---|
| I | Building | 10 |
| II | Furniture and fittings | 10 |
| III | Plant and Machinery [Note-2] | 15 |
| IV | Computer including computer software | 60 |
| V | Ships | 20 |
| VI | Intangibles viz patents, copyrights, etc. | 25 |

**Note-1:Depreciation at Normal Rates:**Assets that are used for less than 180 days in aparticularyear in which they are acquired and put to use qualify for depreciation at 50% of the above prescribed rates.

**Note-2: Additional Depreciation on New Plant & Machinery** – Additional Depreciation is available @ 20% (35% in certain cases) in the year in which the new Plant and Machinery is put to use. However, if the asset is used for less than 180 days in the first year, depreciation will be allowed at half the rate and the balance 50% depreciation can be availed in subsequent year.

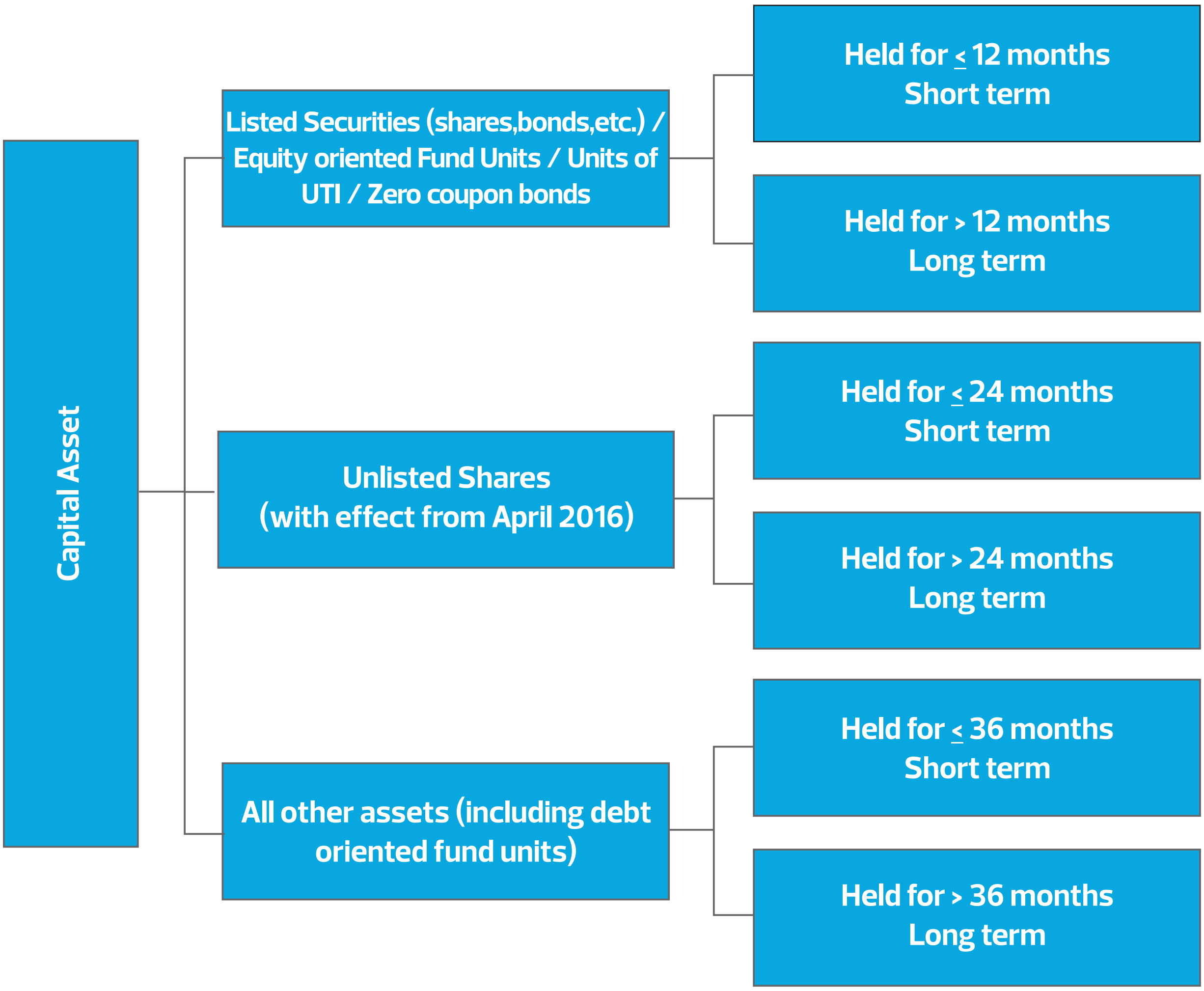
### 2.3.7 Capital Gains

Profits or gains arising from transfer of a capital asset are called "Capital Gains" and are charged to tax under the head "Capital Gains". Generally, a capital asset covers all types of assets i.e. movable, immovable, tangible or intangible, excluding:

- Stock-in-trade held for the purpose of business/profession
- Any movable property held by the tax payer for his personal use such as furniture, motor car, etc. However, jewellery, archeological collections, drawings, paintings, sculptures or any work of art even if held for personal use is included in the definition of capital assets.
- Agricultural land in an Indian rural area

Therefore, profit made on transfer of these excluded assets is not taxable as capital gains.

For the purpose of taxation, capital assets are classified into two categories: short-term or long-term capital asset which is depicted in the chart given below.



Once the capital asset is classified as long term capital asset or short term capital asset depending upon the period of holding as depicted above, the taxability of capital gains arising on the transfer of such capital asset can be determined as follows:

| STCG | LTCG |
|---|---|
| STCG arising from transfer of equity shares / units of equity oriented mutual fund/ units of a business trust on a recognized stock exchange in India are taxable at 15% (plus surcharge and cess) provided that sale of such shares or units is chargeable to STT.<br><br>STCG arising on similar aforesaid transactions through a recognized stock exchange located in any International Financial Services Centre and consideration is paid or payable in Foreign currency is chargeable to tax @ 15% even if transaction of sale is not chargeable to STT.<br><br>In all other cases, STCGs shall be taxed at normal tax rates.<br><br>Note: In case of non-residents, the benefit of the basic exemption limit shall not be available in respect of capital gains under section 111A. | LTCG arising on sale of equity shares on which Securities Transaction Tax (STT) has been paid is exempt under section 10(38).<br><br>Benefit of indexation is available while computing long-term capital gain (except bonds and debentures).<br><br>In all other cases, LTCG is taxed @ 10% without indexation or 20% with indexation, whichever is more beneficial.<br><br>Benefit of charging long-term capital gain @ 10% is available only in respect of listed securities (other than a unit) and Zero coupon bonds.<br><br>**In case of Non-resident:**<br><br>Capital gains earned by non-residents on transfer of shares in or debentures of an Indian company will be computed by converting the cost of acquisition, improvement, or other expenses incurred on transfer and the sale price into the same foreign currency as was initially utilized in the purchase of the shares or debentures and reconverting the capital gain so determined in foreign currency to Indian currency<br><br>Further it should be noted that any long term capital gain on transfer of unlisted securities shall be taxable at 10% (plus surcharge and cess) in the hands of non-resident (without giving benefit of currency fluctuations and indexation).<br><br>Note: In case of non-residents, the benefit of the basic exemption limit shall not be available in respect of capital gains under section 111A. |

**Computation of Capital Gain**

Capital gains are calculated by deducting the cost of acquisition or indexed cost of acquisition, the cost of any improvement or indexed cost of improvement to the asset and transfer expenditure from the sale consideration. The manner of computation of capital gains is tabulated as under:

| Particulars | | Amount (In Rs.) |
|---|---|---|
| | **Full value of consideration** | **xxx** |
| **Less:** | Expenses in connection with transfer | (xx) |
| | **Net Consideration** | **xxx** |
| **Less:** | Cost of acquisition / Indexed cost of acquisition | (xx) |
| **Less:** | Cost of / Indexed Cost of improvement | (xx) |
| | **Capital gain** | **xxx** |

**Cost of Acquisition for assets acquired before 1 April 1981**

In case of a capital asset acquired before 1 April 1981 the cost of acquisition may be taken as the fair market value of the asset as on 1 April 1981 or the cost of acquisition, at the option of the owner.

**Certain Transfer exempt from capital gain tax**

Listed below are some of the transfers of capital assets, wherein the capital gains are exempt from tax provided the necessary conditions, if any, are satisfied:

i. transfer by way of gift, will or irrevocable trust:

ii. transfer by a parent company to a wholly owned Indian subsidiary company;

iii. transfer by a wholly owned subsidiary company to its Indian holding company;

iv. distribution by a company of its assets to its shareholders on liquidation;

v. transfer, in a scheme of amalgamation/ demerger, by an amalgamating/ demerged company to the amalgamated/ resulting company, if the latter is an Indian company;

vi. Transfer, in a scheme of amalgamation/ demerger of shares held in an Indian company by the amalgamating/ demerged foreign company, to the amalgamated / resulting foreign company.

2.3.8 Income from Other Sources

A source of income, which does not specifically fall under any one of the other heads of income, is to be computed and brought to charge under this head of income. Some of the incomes which are taxable under this head are as under:

- Winnings from lotteries, crossword puzzles, races including horse races etc.,
- any sum of money, the aggregate value of which exceeds Rs.50,000 is received without consideration or property (whether movable or immovable) is received without consideration or for an inadequate consideration by an individual or HUF, if the amount of such gift or inadequate consideration exceeds Rs. 50,000.
- Any property being shares of a closely held company received without consideration or for inadequate consideration by the firm or a closely held company if aggregate value of the amount of such shares received without consideration or inadequate consideration exceeds Rs. 50,000.
- Any consideration received for issue of shares(at premium) by a closely held company as exceeding the fair market value of such shares from residents.
- Income by way of interest received on compensation or on enhanced compensation to be taxed in the year in which such interest is received.
- Forfeiture of advance received for transfer of a capital asset.

2.3.9 Buy-Back of shares

- A company may buy back its shares out of its free reserves, its securities premium account or the proceeds of any shares or other specified securities. However, the buy-back of equity shares may not exceed 25% of the company's total paid-up equity capital and free reserves, in that financial year.

- A domestic company undertaking the buy-back of unlisted shares is required to pay an additional tax on 'distributed income' at the rate of 20% (plus applicable surcharge and education cess).

- 'Distributed income' means the difference between the consideration paid by the company on the buy-back of unlisted shares and the amount received by the company at the time of issue of such shares. This is regardless of the gain accruing to the shareholder submitting the shares in buy back and period of holding in their hands. The amount received by the shareholder on such buy-back of shares has consequently been exempted in the hands of shareholders. These provisions, which apply to all domestic companies irrespective of whether their shareholders are Indian tax residents or non-residents, are applicable to distributions made on or after June 1, 2013.

2.3.10 Income of a Foreign Company or Non-resident

Income of a foreign company or non-resident (not being a company) from royalty, technical fees, dividends, interest and income from units is taxed at the following rates as per the Income Tax Act (in the absence of lower rates under Double Taxation Avoidance Agreement):

| Type of Income | Tax Rates as per the IT Act (Note 1) |
|---|---|
| **Royalty or Fees for technical services** | **10% (Note-2)** |
| **Dividend** | **20% (Note-3)** |
| **Interest** | **20% /10% /5% / 40% (Note-4)** |

Note-1: Taxes on payments to non-residents is increased by 2% surcharge (where net income exceeds INR 10 million but is upto INR 100 million) or a 5% surcharge (where net income exceeds INR 100 million) and education cess of 3%.

Note-2: Royalty or FTS received by a non-resident from government or an Indian concern shall be taxed at flat rate of 10%. If royalties and FTS are effectively connected to a PE in India, the payments are taxed on a net income basis at a rate of 40 %(plus applicable surcharge and cess).

Note-3: Dividends on which DDT has been paid are excluded from such calculation.

Note-4: Interest:

(a) 20% in case of interest received by a non-resident or a foreign company from Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency.

(b) 10% in case of interest received from bonds of an Indian company issued in accordance with notified scheme or on bonds of a public sector company sold by the Government, and purchased by non-resident in foreign currency.

(c) 5% in following cases:

- Interest received from an infrastructure debt fund .

- Interest received from an Indian company or a business trust in respect of money borrowed in foreign currency under a loan agreement or by way of issue of long-term bonds (including long-term infrastructure bond), subject to certain conditions.

- Interest received on rupee denominated bond of an Indian Company or Government securities to a Foreign Institutional Investor or a Qualified Foreign Investor.

(d) In any other case, at the normal tax rate applicable i.e. 40%.

## 3.0 INCOME TAX ON NON-CORPORATES

### 3.1 Residential Status

#### 3.1.1 Individuals

Individuals are classified into 'residents', 'non-residents' and 'residents but not ordinarily residents'. The gamut of income subject to tax is dependent on the residential status irrespective of the nationality of the individual. The residential status of an individual can be determined using the given below chart. Therefore, an individual will be a resident in India in any previous year, if he satisfies at least one of the two basic conditions, else he will be a non-resident and the additional conditions need not be looked at. But once an individual satisfies conditions for a resident, next step would be to determine whether he will be a resident and ordinarily resident of India in that previous year. The conditions determining the residential status can be understood with the help of the following diagrammatic depiction:

**INDIVIDUAL**

BASIC CONDITIONS

- is in India in that year for a period or periods amounting in all to 182 days or more or
- is in India in that year for a period or periods amounting in all to 60 days or more and 365 days or more during the four years immediately preceding that year.

**RESIDENT** | **NR**

ADDITIONAL CONDITIONS

- is a non resident in India in 9 out of 10 pervious years preceding that year or
- has during the 7 previous years preceding that year been in India for a period or periods amounting in all to 729 days or less:

YES → **RNOR** | NO → **ROR**

**Note:** NR = Non-Residents; RNOR = Resident but Not Ordinarily Resident; ROR = Resident and Ordinarily Resident

*Exception: The second condition of 60 days or more is extended to 182 days or more in following two circumstances:

- An Indian citizen leaves India during the previous year for :-
  - the purpose of taking up employment outside India; OR

– as a member of the crew of an Indian ship; OR

- An Indian citizen or a person of Indian origin comes on visit to India during the previous year.

For this purpose, a person is said to be of Indian origin if either he or any of his parents or any of his grandparents was born in undivided India.

**Whether for the purpose of computing the number of days present in India, the days of travel are included?**

The presence of an individual is determined on the basis of entries in the passport. For this purpose, the day on which such person enters India as well as the day on which he leaves India is taken into account. It is not necessary that the stay should be for a continuous period.

## 3.2 Taxable Income

| Type of Income | Residential Status | | |
|---|---|---|---|
| | ROR | RNOR | NR |
| Income received or deemed to be received in India | ✓ | ✓ | ✓ |
| Income accruing/ arising in India or deemed to accrue/ arise in India | ✓ | ✓ | ✓ |
| Income accruing/ arising outside India from | | | |
| ▪ a business controlled in or a profession set up in India | ✓ | ✓ | × |
| ▪ Other income | ✓ | × | × |

Note:

i. Residents and Ordinarily Resident (ROR) are liable to tax on their global income.

ii. Non-residents are liable to tax on income, which accrues or arises or is deemed to accrue or arise in India as well as income, which is received or deemed to be received in India.

iii. ‘Resident but not ordinarily resident’ persons are liable to tax on income specified in (ii) above and income derived from a business controlled from or profession set up in India.

iv. In respect of income earned by non-residents in the form of interest, royalty and fees for technical services, such income shall be deemed to accrue or arise in India whether or not, the non-resident has a residence or place of business or business connection in India or whether the services are rendered in India or not.

### 3.2.1 Other Non-corporate Entities

There are certain other non-corporate entities recognized by the Income-tax law viz partnerships, trusts, Hindu Undivided Families (HUFs), LLPs, etc. These entities are treated as ‘resident’ in India in any financial year, unless the control and management of their affairs are situated wholly outside India, during the year.

## 3.3 Rates of Tax

Income-tax rates for individuals and HUFs regardless of their residential status are as follows:

| Income Slabs(INR) | Tax Rates* |
|---|---|
| 0 – 2,50,000# | Nil |
| 2,50,001# – 5,00,000* | 10.30% [tax rate 10% plus education cess 3% thereon] of income exceeding Rs. 2,50,000 |
| 5,00,001 – 10,00,000 | Rs. 25,750 plus 20.60% [tax rate 20% plus education cess 3% thereon] of income exceeding Rs. 5,00,000 |
| 10,00,001 – 1,00,00,000 | Rs. 1,28,750 plus 30.90% [tax rate 30% plus education cess 3% thereon] of income exceeding Rs.10,00,000 |
| 1,00,00,001^ and above | Rs. 29,09,750 plus 35.535% [(tax rate 30% plus surcharge 15% thereon) plus education cess 3% thereon] of income exceeding Rs.1,00,00,000 |

#Basic exemption income slab in case of a resident individual of the age of 60 years or more (senior citizen) and resident individual of the age of 80 years or more (very senior citizens) at any time during the previous year, is at Rs. 3 lacs and Rs. 5 lacs respectively. The tax for other slabs will change accordingly.

*A resident individual having income up to Rs. 5 lacs is entitled to a rebate of tax payable [excluding education cess] or Rs. 5,000 whichever is less.

## 3.4 Partnership Firms/LLPs

The effective tax rates for partnership firms/LLPs for FY2016-17 are as follows:

| Entity | Effective Tax Rates (FY 2016-17) | |
|---|---|---|
| | Total income up to Rs 10 Million | Total income above Rs 10 Million |
| Partnership Firms/LLPs | 30.90% | 34.608% |

## 3.5 Alternate Minimum Tax (AMT) on Non-corporate Assessees

Non-corporate taxpayers such as partnership firms, LLP, sole proprietorships, AOPs, HUFs, BOIs, individuals, etc., availing specified profit-linked deductions or investment linked deduction, are liable to pay AMT at the rate specified in the table below where regular income tax payable by them is less than the AMT. AMT paid can be carried forward and set-off in any of the subsequent 10 years.:

| Entity | Effective Tax Rates (FY 2016-17) | | |
|---|---|---|---|
| | Total income up to Rs 10 Million | Total income above Rs 10 Million but less than Rs 100 Million | Total income above Rs 100 Million |
| Non-corporate assessee | 19.055% | 21.3416% % | 21.9133% % |

3.5.1 Tax Benefits

The Income tax Act, 1961 provides for tax holidays and other tax incentives for businesses. Some of the significant tax holidays and incentives available to businesses along with the nature of deductions, eligibility criteria, and quantum of deduction and period for which the deductions are eligible have been mentioned. The tax holidays and incentives are subject to fulfillment of specified conditions. These are summarized below:

| Section | Details of Exemption/ Deduction | Period | Quantum of deduction |
|---|---|---|---|
| **10AA** | – New eligible unit set up in SEZ on or after 1 April 2005<br>– Exemption is available to the entrepreneur as referred to in Section (2j) of SEZ Act, 2005 for profits derived from export of articles or things or services, manufactured, or produced or provided by an eligible unit.<br>– The profits and gains derived from on-site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.<br>– The benefit is also available to units engaged in cutting and polishing of precious and semi-precious stones.<br>– The deduction under this section is to be computed in the same proportion, which the export turnover of the eligible unit bears with the total turnover of the said unit.<br>– The eligible units availing these deductions will be subject to MAT / AMT @ 18.50% (plus applicable surcharge and education cess)<br>– MAT / AMT paid shall be allowed to be carried forward up to 10 years and credit of MAT / AMT paid shall be available for set-off against the tax as per normal provisions in subsequent years.<br>– In case deduction has been claimed under section 10AA for the specified business mentioned in section 35AD (8) (c), no deduction under section 35AD shall be available in the same or any other assessment year in respect of such specified business.<br>– **No deduction shall be available to units commencing manufacture or production of article or thing / providing services on or after 1 April 2020.**<br>+ The deduction is allowed only on creation of a specified reserve, which is required to be utilized for specified purposes. | First 5 years<br>Next 5 years<br>Next 5 years | 100%<br>50%<br>50% |
| **33AB** | **Tea / Coffee / Rubber / development allowance**<br>– Deduction is available to assessee engaged in the business of growing and manufacturing tea, coffee or rubber in India.<br>– For claiming the deduction, the amount has to be deposited in a special account with NABARD or any Deposit Account opened by the assessee and approved by the Tea Board or Coffee Board or Rubber Board within 6 months from the end of the financial year or before the due date of furnishing the return of income, whichever is earlier. | Available for every AY | Up to 40% of profits or amount deposited, whichever is less |

| Section | Details of Exemption/ Deduction | Period | Quantum of deduction |
|---|---|---|---|
| | – The amount has to be utilized by the assessee for specified purposes. | | |
| 33ABA | **Site Restoration Fund – Petroleum or Natural Gas**<br>– Deduction is available to assessee engaged in the business of prospecting for, or extraction or production of petroleum or natural gas or both in India and in relation to which the Central Government has entered into an agreement with such assessee.<br>– For claiming the deduction, the amount has to be deposited in a special account with SBI opened by the assessee and approved by the Ministry of Petroleum and Natural Gas before the end of the financial year.<br>– The amount has to be utilized by the assessee for specified purposes. | Available for every AY | Up to 20% of profits or amount deposited, whichever is less. |

| Section | Eligibility Criteria, Quantum and Period of Deduction |
|---|---|
| 32(1)(iia) | **Additional Depreciation**<br>– General rate of depreciation for plant and machinery is 15% (other than certain specified types of plant and machinery).<br>– An assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution or transmission of power can claim the additional depreciation of 20% on the cost of new plant and machinery (other than ships and aircraft) which are acquired and installed after 31 March 2005.<br>– Further, higher additional depreciation @ 35% (instead of above 20%) in respect of the actual cost of eligible new machinery or plant acquired and installed by a manufacturing undertaking or enterprise which is set up in the notified backward area of the State of Andhra Pradesh or Telangana or Bihar or West Bengal on or after the 1 April 2015 and ending before the 1 April 2020. The eligible machinery or plant is mentioned in existing proviso to section 32(1)(iia) of the IT Act.<br>– The above additional depreciation shall be allowed only to the extent of 50% (i.e. 10% or 17.5%) if the machinery is put to use for a period less than 180 days in the year of its acquisition and installation and the balance 50% shall be allowed in the immediate next year. |
| 32AC | **Investment in new plant or machinery** |
| (1A) | – Where a company is engaged in the business of manufacture or production of an article or thing, acquires new assets in any financial year exceeding Rs. 25 crores and such assets are installed on or before 31 March 2017, then there shall be allowed a deduction of 15% of the actual cost of such new assets over and above the normal depreciation under section 32 of the IT Act in the year in which such assets are installed. |
| (1B) | – The said deduction is available for investment made in new plant and machinery up to 31 March 2017. |
| (2) | – In case any new asset is sold or otherwise transferred within a period of 5 years, the deduction allowed above shall be deemed to be the income chargeable under the head 'Profits and Gains of business or profession' of the financial year in which such new asset is sold or otherwise transferred (In addition to taxability of gains on transfer of such new asset). |

<table>
<tr><th>Section</th><th>Eligibility Criteria, Quantum and Period of Deduction</th></tr>
<tr><td>32AD</td><td>
Investment in new plant or machinery in certain states<br>
– Additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if:<br>
i. It sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1 April 2015 in any notified backward areas in the State of Andhra Pradesh or Telangana or Bihar or West Bengal; and<br>
ii. The new assets are acquired and installed for the purposes of the said undertaking or enterprise during the period 1 April 2015 to 31 March 2020.<br>
– The above deduction will be allowed over and above the existing deduction under section 32AC of the IT Act.<br>
– In case any new asset is sold or otherwise transferred within a period of 5 years, the deduction allowed above shall be deemed to be the income chargeable under the head 'Profits and Gains of business or profession' of the financial year in which such new asset is sold or otherwise transferred (In addition to taxability of gains on transfer of such new asset).
</td></tr>
<tr><td>35AC</td><td>
Expenditure on eligible projects or scheme<br>
– Deduction is available for expenditure incurred for promoting social and economic welfare.<br>
– Any assessee can claim deduction as under:
<table>
<tr><th>Assessee</th><th>To whom the payment should be made</th><th>Direct expenditure</th></tr>
<tr><td>Company</td><td>Public sector company, or a local authority or to an association or institution approved by the National committee for carrying out any eligible project or scheme</td><td>A Company can also directly incur expenditure in respect of eligible project and scheme</td></tr>
<tr><td>Others</td><td>Same as above</td><td>Not permitted</td></tr>
</table>
– No deduction shall be available for expenditure incurred on or after 1 April 2017.
</td></tr>
<tr><td>35AD</td><td>
Deduction in respect of expenditure on specified businesses<br>
– Any expenditure of capital nature (other than expenditure incurred on the acquisition of any land or goodwill or financial instrument) incurred, wholly and exclusively, during the year for specified business shall be allowed as deduction subject to the specified provisions.<br>
– Specified business and the year (in which the operations to be commenced) for availing deduction under this section are tabulated as under:
<table>
<tr><th>Sr. No.</th><th>Specified Business</th><th>Specified Year of Commencement</th></tr>
<tr><td>1</td><td>Setting up and operating a cold chain facility</td><td>From 1 April 2009 onwards *</td></tr>
<tr><td>2</td><td>Setting up and operating a warehousing facility for storing agricultural produce</td><td>From 1 April 2009 onwards *</td></tr>
<tr><td>3</td><td>Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network</td><td>From 1 April 2007 onwards</td></tr>
<tr><td>4</td><td>Building and operating a hotel of two star and</td><td>From 1 April 2010 onwards **</td></tr>
</table>
</td></tr>
</table>

| Section | Eligibility Criteria, Quantum and Period of Deduction |
|---|---|
| | <table><tr><th>Sr. No.</th><th>Specified Business</th><th>Specified Year of Commencement</th></tr><tr><td></td><td>above category as classified by the Central government anywhere in India</td><td></td></tr><tr><td>5</td><td>Building and operating a hospital with at least 100 beds for patients anywhere in India</td><td>From 1 April 2010 onwards *</td></tr><tr><td>6</td><td>Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central or State Government, as the case may be, and which is notified by the Board in this behalf in accordance with the guidelines as may be prescribed</td><td>From 1 April 2010 onwards</td></tr><tr><td>7</td><td>The Business of developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed</td><td>From 1 April 2011 onwards *</td></tr><tr><td>8</td><td>Production of fertilizers in India through a new plant or a newly installed capacity in an existing plant</td><td>From 1 April 2011 onwards *</td></tr><tr><td>9</td><td>Setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962</td><td>From 1 April 2012 onwards</td></tr><tr><td>10</td><td>Bee-keeping and production of honey and beeswax</td><td>From 1 April 2012 onwards</td></tr><tr><td>11</td><td>setting up and operating a warehousing facility for storage of sugar</td><td>From 1 April 2012 onwards</td></tr><tr><td>12</td><td>Laying and operating a slurry pipeline for transportation of iron ore</td><td>From 1 April 2014 onwards</td></tr><tr><td>13</td><td>Setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines.</td><td>From 1 April 2014 onwards</td></tr></table><br>*Specified business referred at Sr. No. 1, 2, 5, 7 and 8 in the above table commencing operations on or after 1 April 2012 shall be eligible for deduction of 150% of capital expenditure incurred. The deduction shall be restricted to 100% of capital expenditure incurred on or after 1 April 2017.<br>** Where the assessee builds a hotel of 2 star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the said assessee shall be deemed to be carrying on the 'specified business' of building and operating hotel as referred at Sr. No. 4 in the above table, with retrospective effect from AY 2011-12.<br>- Any asset, in respect of which a deduction is claimed and allowed under this section, shall be used only for the specified business for a period of 8 years beginning with the financial year in which such asset is acquired or constructed. |

| Section | Eligibility Criteria, Quantum and Period of Deduction |
|---|---|
| | – Where such asset is used for any purpose other than the specified business, then, the total amount of deduction so claimed and allowed in any financial year in respect of such asset (after reducing the depreciation allowable under section 32 of the IT Act on deduction allowed under section 35AD of the IT Act), shall be deemed to be income of the assessee chargeable under the head 'Profits and gains of business or profession'.<br>– While computing AMT, adjusted total income shall be increased by the deduction claimed under section 35AD of the IT Act as reduced by the amount of depreciation allowable under section 32 of the IT Act.<br>– In case deduction has been availed under section 35AD of the IT Act on account of capital expenditure incurred for the purposes of specified business in any assessment year, no deduction under section 10AA of the IT Act or under the provisions of Chapter VI-A or under any other provisions of the IT Act shall be available in the same or any other assessment year in respect of such specified business. |
| **35CCA** | **Deduction for payment towards rural development programmes**<br>100% Deduction is allowed subject to fulfillment of certain conditions for any sums paid to:<br>i. An association or institution for carrying out any programme of rural development<br>ii. An association or institution for training of persons for implementation of rural development programme<br>iii. National Fund For Rural Development<br>iv. National Urban Poverty Eradication Fund |
| **35CCC** | **Weighted deduction of expenditure incurred on agriculture extension project**<br>– This section provides for weighted deduction of 150% of the expenditure incurred on agricultural extension project. The conditions for eligibility of agricultural extension project have been provided under Rule 6AAD and Rule 6AAE of the IT Rules. The deduction would be reduced to 100% from FY 2020-21.<br>– Further, where a deduction under this section is claimed and allowed for any assessment year, in respect of any expenditure on agricultural extension project, no deduction shall be allowed in respect of such expenditure under any other provisions of the IT Act for the same or any other assessment year. |
| **35CCD** | Weighted deduction of expenditure incurred on skill development project<br>– Any expenditure (not being expenditure in the nature of cost of any land or building) incurred on skill development project shall be eligible for weighted deduction of 150% in the hands of a company. The conditions of eligibility of skill development project have been provided under Rule 6AAF to Rule 6AAH of the IT Rules. The deduction would be reduced to 100% from FY 2020-21.<br>– Further, where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure on skill development project, no deduction shall be allowed in respect of such expenditure under any other provisions of the IT Act for the same or any other assessment year. |
| **54EC** | – Capital gain on transfer of a long term capital asset shall be exempt from tax, if an assessee invests, within a period of 6 months from the date of transfer of a long-term capital asset, the capital gains in the specified asset. The specified asset must be held for a period of 3 years from the date of its acquisition.<br>– This exemption shall be least of the following: |

| Section | Eligibility Criteria, Quantum and Period of Deduction |
|---|---|
| | – Investment in specified assets viz. bonds issued by NHAI and the RECL. The investment is restricted up to Rs. 5 million per assessee per financial year.<br>– Amount of capital gains. |
| **54EE** | – Capital gain on transfer of a long term capital asset shall be exempt from tax, if an assessee invests the capital gains in the specified assets within a period of 6 months from the date of transfer of a long-term capital asset.<br>– This exemption shall be least of the following:<br>– Investment in specified assets viz. a unit or units, issued before the 1 April, 2019 of fund notified by the Central Government.<br>– Rs. 5 million per assessee per financial year<br>– Amount of capital gains.<br>– Further, the exemption in respect of capital gains upon aforesaid investments made during the financial year in which the original asset or assets are transferred and in the subsequent financial year shall not exceed Rs. 5 million.<br>– The specified asset must be held for a period of 3 years from the date of its acquisition.<br>– Further, in a case an assessee takes any loan or advance on the security of such specified asset, he shall be deemed to have transferred such specified asset on the date on which such loan or advance is taken. |
| **54G** | Capital gains arising on transfer of plant, machinery, land, building or any rights in land / building effected in course of or in consequence of the shifting of an industrial undertaking situated in an urban area to any area (other than an urban area) shall be eligible for exemption. This exemption shall be least of the following:<br>– Amount of capital gains;<br>– Amount of capital gains utilized within a period of 1 year before or 3 years after the date of transfer of the above assets, for purchase of new plant and machinery, land and building and for shifting expenses, subject to specified conditions. |
| **54GA** | Capital gains arising on transfer of plant, machinery, land, building or any rights in land / building effected in course of or in consequence of the shifting of an industrial undertaking situated in an urban area to any SEZ shall be eligible for exemption. This exemption shall be least of the following:<br>– Amount of capital gains;<br>– Amount of capital gains utilized within a period of 1 year before or 3 years after the date of transfer of the above assets, for purchase of new plant and machinery, land and building and for shifting expenses, subject to specified conditions. |
| **54GB** | – Long term capital gains shall be exempt in the hands of an individual or an HUF on sale of a residential property (house or plot of land) on or before 31 March 2017 in case of re- investment of the net consideration in the equity of a newly start-up SME company in the manufacturing sector and the SME company utilizes the said funds for purchase of new plant and machinery, subject to the certain conditions.<br>– Long term capital gains arising on account of transfer of a residential property before 31 March 2019 shall not be charged to tax if such capital gains are invested in subscription of shares of a company which qualifies to be an eligible start-up.<br>– Individual or HUF should hold more than 50% shares of the company and such company should utilize the amount invested to purchase new asset (including computers or computer software |

| Section | Eligibility Criteria, Quantum and Period of Deduction |
|---|---|
| | for technology driven eligible start-up) before due date of filing of return by the investor.<br>- Eligible start-up and eligible business shall have the same meanings as assigned in section 80-IAC(4). |
| **9(1)(i) – Explanation (1)(e)** | In the case of a foreign company engaged in the business of mining of diamonds, no income shall be taxed from the activities which are confined to the display of uncut and unsorted diamond in any special notified zone by the Central Government. |
| **10(34)/ 10(35)** | Dividend referred to in section 115-O and income received in respect of units of mutual fund or shares shall not be included in the total income of assessee (other than resident individual, HUF and firm earning dividend income from shares exceeding Rs. 1 million in a financial year). |
| **10 (34A)** | Any income arising to an assessee, being a shareholder on account of buy back of shares as referred in section 115QA (not being listed on a recognized stock exchange) by the company shall not be included in the total income of assessee. |
| **10(38)** | Capital gain arising from transfer of long term capital asset being an equity share in a company or a unit of an equity oriented fund, on which securities transaction tax is charged, is exempt from tax. However, this exemption is not available for computation of MAT.<br>Further, any long term capital gains arising out of transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency shall also be exempt under the said section. Further, MAT under section 115JB shall be applicable at the concessional rate of 9% plus applicable surcharge and cess. |
| **10 (48A)** | Any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall not be included in the total income subject to approval of Central Government. |
| **115BBD** | Any dividend declared, distributed or paid by the specified foreign company to Indian company (where the Indian company is holding 26% or more of the equity share capital) shall be taxable at a concessional tax rate of 15%. |
| **115BBDA** | Dividends (declared / distributed / paid) by a domestic company on shares to an Individual, HUF or firm, being resident in India, shall be exempt upto an aggregate of Rs. 1 million. Dividends in such cases, exceeding Rs. 1 million shall be chargeable to tax @ 10% in the hands of the resident Individual / HUF / firm |
| **115BBF** | Any royalty income earned by resident patentee in India in respect of a patent developed and registered in India shall be taxable at the concessional rate of 10% (plus applicable surcharge and cess) on the gross amount of royalty. |

| Section | Details of Deduction | Existing Quantum of deduction of sum paid/ expenditure incurred | New Quantum of deduction of sum paid / expenditure incurred |
|---|---|---|---|
| **35(1)(i)** | **Weighted deduction on various expenditure incurred on scientific research**<br>Any expenditure (not being in nature of capital expenditure) laid or expended on scientific research related to business carried on by the assessee. | 100% | 100% |
| **35(1)(ii)** | Any sum paid to an approved research association, (which has its object of undertaking scientific research) | 175% | 150%*<br>100%** |

| Section | Details of Deduction | Existing Quantum of deduction of sum paid/ expenditure incurred | New Quantum of deduction of sum paid / expenditure incurred |
|---|---|---|---|
| | or to a university, college or other institution to be used for scientific research. | | |
| **35(1)(iia)** | Any sum paid to an approved company to be used by it for scientific research. Such approved company will not be entitled to claim weighted deduction under section 35(2AB) of the IT Act. However, deduction to the extent of 100% of the sum spent as revenue expenditure on scientific research, which is available under section 35(1)(I) of the IT Act will continue to be allowed. | 125% | 100%*** |
| **35(1)(iii)** | Any sum paid to approved research association (which has its object of undertaking research) or university, college or other institution to be used for research in social science or statistical research. | 125% | 100%*** |
| **35(1)(iv)** | Any capital expenditure (other than expenditure on land and building) incurred on scientific research related to the business carried on by the assessee. | 100% | 100% |
| **35(2AA)** | Any sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person with a specific direction that the said sum shall be used for scientific research undertaken under a programme approved by the prescribed authority. | 200% | 150%*<br>100%** |
| **35(2AB)** | Any expenditure incurred up to 31 March 2017 (other than expenditure on cost of land and building), on in-house research and development facility, as approved by the prescribed authority, incurred by the company, engaged in the business of bio-technology or manufacture or production of article or thing (except those specified in the Eleventh Schedule). | 200% | 150%*<br>100%** |

* From FY 2017-18 to FY 2019-20
** From FY 2020-21 onwards
*** From FY 2017-18 onwards

| Deductions of Profits derived by Newly Established Industrial Undertakings / Infrastructure Projects / Facilities / Developers of SEZs / Banking units, etc.( Sections – 80-IA / 80- IAB / 80- IAC/ 80- IB / 80-IBA/ 80- IC / 80- ID / 80- IE / 80JJA /80LA) ^ | | | | |
|---|---|---|---|---|
| **Sr. No.** | **Nature of Activity and Location** | **Type of Organization** | **Quantum of Deduction** | **Number of Years** |
| 1 | Specified Infrastructure Projects<br>[Section 80-IA(4)(i)}<br>Enterprise being company or consortium of companies registered in India or any authority or board or a corporation or any other body established or constituted under any Central or State Act, for carrying on business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining of any infrastructure facility (such as road including toll road, bridge, rail system, highway project, water supply project, water treatment system, irrigation project, sanitation and sewage system or solid waste management system, airport, port, inland waterways and inland ports or navigational channel in the sea) commencing its operations on or after 1 April 1995. Widening of an existing road by constructing additional lanes as a part of highway project is also regarded as a new infrastructure facility eligible for deduction as per Circular No. 4/2010 dated 18 May 2010. Deduction shall not be available to a person executing above referred activities as a works contract.<br>No deduction shall be available if the specified activity commences on or after 1 April 2017. | Company / Any other body established or constituted under any Central or State Act | 100% | For any 10 consecutive years out of first 15 years (20 years for road, bridge, rail system, highway project, water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system). |
| 2 | Telecommunication Service Providers<br>[Section 80-IA(4)(ii)]<br>Any undertaking which starts providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service or network of trunking, broadband network and internet services on or after 1 April 1995 but before 31 March 2005.<br>Deduction shall not be available to a person executing the above referred services as a works contract. | All | 100%<br>30% | First 5 years<br>Next 5 years<br><br>Any 10 consecutive years out of first 15 years |
| 3 | Development of Industrial Park<br>[Section 80-IA(4)(iii)]<br>Any undertaking which begins to develop or develops and operates or maintains and operates an industrial park which has commenced operations during 1 April 1997 to 31 March 2011.<br>Deduction shall not be available to person executing the above referred services as a works contract. | All | 100% | Any 10 consecutive years out of first 15 years |
| 4 (a) | Power Undertakings<br>[Section 80-IA(4)(iv)]<br>– Undertaking set up in any part of India for the generation or generation and distribution, of power, which has commenced operations during 1 April 1993 | All | 100% | Any 10 consecutive years out of first 15 years |

| Deductions of Profits derived by Newly Established Industrial Undertakings / Infrastructure Projects / Facilities / Developers of SEZs / Banking units, etc.( Sections - 80-IA / 80- IAB / 80- IAC/ 80- IB / 80-IBA/ 80- IC / 80- ID / 80- IE / 80JJA /80LA) ^ | | | | |
|---|---|---|---|---|
| **Sr. No.** | **Nature of Activity and Location** | **Type of Organization** | **Quantum of Deduction** | **Number of Years** |
| | to 31 March 2017.<br>- Undertaking which starts transmission or distribution by laying a network of new transmission or distribution lines between 1 April 1999 and 31 March 2017.<br>- Undertaking which undertakes substantial renovation and modernization of the existing network of transmission or distribution lines between 1 April 2004 and 31 March 2017.<br>- Deduction shall not be available to a person executing the above referred activities as a works contract. | | | |
| **4 (b)** | Undertakings for revival of Power Generating Units [Section 80-IA(4)(v)]<br>Undertaking owned by Indian Company (formed before 30 November 2005 and notified before 31 December 2005) set up for reconstruction or revival of a power generating unit, which has commenced operations in power before 31 March 2011. Deduction shall not be available to person executing the above referred activities as a works contract. | Indian Company | 100% | Any 10 consecutive years out of first 15 years |
| **5** | Developer of SEZ<br>[Section 80-IAB]<br>Any assessee being developer of a SEZ notified by the Central Government after 1 April 2005 can claim deduction under section 80-IAB.<br><br>No deduction shall be available if the specified activity commences on or after 1 April 2017. | All | 100% | Any 10 consecutive years out of first 15 years |
| **6** | Start-up Undertaking<br>[Section 80-IAC]<br>- Undertaking being an eligible start-up in business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.<br>- The total turnover of the company should not exceed Rs. 250 million in any of the previous years beginning on or after 1 April 2016 and ending on 31 March 2021.<br>- It holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government.<br>- It is not formed by the transfer to a new business of machinery or plant previously used for any purpose (except if such transfer value does not exceed 20% of the total value of plant and machinery).<br>- It is not formed by splitting up, or the reconstruction, of a business already in existence. | Company or LLP incorporated between 1 April 2016 to 1 April 2019 | 100% | Any 3 consecutive years out of first 5 years |

| Deductions of Profits derived by Newly Established Industrial Undertakings / Infrastructure Projects / Facilities / Developers of SEZs / Banking units, etc.( Sections – 80-IA / 80- IAB / 80- IAC/ 80- IB / 80-IBA/ 80- IC / 80- ID / 80- IE / 80JJA /80LA) ^ | | | | |
|---|---|---|---|---|
| **Sr. No.** | **Nature of Activity and Location** | **Type of Organization** | **Quantum of Deduction** | **Number of Years** |
| **7** | Scientific and Industrial Research Company<br>[Section 80-IB(8A)]<br>Any company registered in India with its main object being scientific and industrial research and development which is for the time being approved by the DSIR at any time after 31 March 2000 but before 1 April 2007. | Company | 100% | First 10 years |
| **8** | Production of mineral oil and natural gas<br>[Section 80-IB(9)]<br>– Any undertaking which is engaged in refining of mineral oil and begins such refining on or after 1 October 1998 but not later than 31 March 2012 subject to specified conditions.<br>– The tax holiday is also available in respect of profits arising from commercial production of natural gas from blocks which are licensed under the VIII Round of bidding for award of exploration contracts under the New Exploration Licensing Policy announced by the Government of India and IV Round for Coal Bed Methane and begins commercial production of natural gas on or after 1 April 2009.<br>No deduction shall be available if the specified activity commences on or after 1 April 2017. | All | 100% | First 7 years |
| **9** | Undertaking engaged in processing /preservation / transportation of specified food items<br>[Section 80-IB(11A)]<br>– An undertaking deriving profit from the integrated business of handling, storage and transportation of food grains subject to such business beginning its operations on or after 1 April 2001.<br>– The benefit is extended to undertakings engaged in the business of processing, preservation and packaging of fruits and vegetables.<br>– Further, the benefit is extended to the undertakings engaged in the business of meat and meat products or poultry or marine or dairy products which begin to operate such business on or after 1 April 2009. | Company<br><br>Others | 100%<br>30%<br>100%<br>25% | First 5 years<br>Next 5 years<br>First 5 years<br>Next 5 years |
| **10** | Operating and Maintaining Hospital<br>[Section 80-IB(11C)]<br>– Any undertaking engaged in the business of operating and maintaining a hospital in India other than specified excluded areas.<br>– The undertaking shall be eligible for the deduction if such hospital is constructed in accordance with the local regulations in force; and has at least 100 beds for patients. | All | 100% | First 5 years |

| Deductions of Profits derived by Newly Established Industrial Undertakings / Infrastructure Projects / Facilities / Developers of SEZs / Banking units, etc.( Sections – 80–IA / 80– IAB / 80– IAC/ 80– IB / 80–IBA/ 80– IC / 80– ID / 80– IE / 80JJA /80LA) ^ | | | | |
|---|---|---|---|---|
| **Sr. No.** | **Nature of Activity and Location** | **Type of Organization** | **Quantum of Deduction** | **Number of Years** |
| | – The said tax benefit is available to a hospital which is constructed and has started or starts functioning at any time during the period beginning 1 April 2008 and ending on 31 March 2013. | | | |
| **11** | Affordable Housing Project<br>[Section 80-IBA]<br>– Any undertaking engaged in the business of developing and building housing projects approved by the competent authority between 1 June 2016 and 31 March 2019.<br>– The project should be completed within a period of 3 years from the date of approval.<br>– The deduction is allowed subject to fulfillment of various conditions like minimum area of land, minimum floor area ratio of land, maximum built-up area of residential and commercial unit etc.<br>– Separate books of account in respect of the housing project<br>– Not more than 1 residential unit is allotted to any individual or the spouse or the minor children of such individual.<br>– Deduction shall not be available to a person executing the housing project as works contract. | All | 100% | Not Applicable |
| **12** | Undertakings in special category states<br>[Section 80-IC]<br>– Undertakings and enterprises, which begins to manufacture or produce any article or thing which is not specified in Thirteenth Schedule or undertakings and enterprises, which manufactures or produces any article or thing which is not specified in Thirteenth Schedule and undertake substantial expansion of existing undertakings.<br>– Undertakings and enterprises, which begin to manufacture or produce any article or thing which is specified in Fourteenth Schedule or commences any operation specified in that Schedule or undertakings and enterprises, which manufactures or produces any article or thing which is specified in Fourteenth Schedule or commence any operation specified in that Schedule and undertake substantial expansion.<br>i. If located in Sikkim, from 23 December 2002 to 31 March 2007.<br>ii. If located in North Eastern States*, from 24 December 1997 to 31 March 2007. | } All | 100% | First 10 years |
| | iii. If located in Himachal Pradesh and Uttaranchal, from 7 January 2003 to 31 March 2012. | Company<br>Others | 100%<br>30% | First 5 years<br>Next 5 years |

| Deductions of Profits derived by Newly Established Industrial Undertakings / Infrastructure Projects / Facilities / Developers of SEZs / Banking units, etc.( Sections – 80–IA / 80– IAB / 80– IAC/ 80– IB / 80–IBA/ 80– IC / 80– ID / 80– IE / 80JJA /80LA) ^ | | | | |
|---|---|---|---|---|
| **Sr. No.** | **Nature of Activity and Location** | **Type of Organization** | **Quantum of Deduction** | **Number of Years** |
| **13** | Convention Centre and Hotels in notified areas [Section 80-ID]<br>– Any undertaking engaged in business of hotels in specified area of the National Capital Territory subject to fulfillment of certain conditions:<br>a Engaged in the business of hotel located in specified area; or<br>b Engaged in the business of building, owning and operating a convention centre located in specified area, which has started its operations from 1 April 2007 to31 July 2010.<br>– The aforesaid deduction has been extended to any undertaking engaged in the business of hotel located in specified districts having 'World Heritage Sites' if such hotel is constructed and has started functioning during the period beginning 1 April 2008 and ending on 31 March 2013.<br>– The benefit is available to 2 star, 3 star or 4 star hotels. | All | 100% | First 5 years |
| **14** | Undertakings in North Eastern States [Section 80-IE]<br>– New undertakings and enterprises, which begin to manufacture or produce any eligible article or thing or provide any services or undertake substantial expansion or carry on any eligible business in any of the North Eastern states beginning from 1 April 2007 to 31 March 2017.<br>– The eligible businesses for this purpose are hotel (not below 2 star category), adventure and leisure sports including ropeways, providing medical and health services in the nature of nursing home with a minimum capacity of 25 beds; running an old-age home; operating vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and para-medical, civil aviation related training, fashion designing and industrial training; running information technology related training centre; manufacturing of information technology hardware and bio-technology. | All | 100% | First 10 years |
| **15** | Deduction of Additional Wages [Section 80JJAA]<br>– Deduction of an amount equal to 30% of additional employee cost of any new employee (whose total emolument is less than or equal to Rs. 25,000 per month).<br>– However, no deduction shall be allowed in respect of employees for whom the entire contribution under | All assessee covered under tax audit provisions | 30% of additional employee cost of new employee * | 3 AYs including the AY relevant to the FY in which such employment is provided |

| Deductions of Profits derived by Newly Established Industrial Undertakings / Infrastructure Projects / Facilities / Developers of SEZs / Banking units, etc.( Sections - 80-IA / 80- IAB / 80- IAC/ 80- IB / 80-IBA/ 80- IC / 80- ID / 80- IE / 80JJA /80LA) ^ | | | | |
|---|---|---|---|---|
| **Sr. No.** | **Nature of Activity and Location** | **Type of Organization** | **Quantum of Deduction** | **Number of Years** |
| | notified Employees' Pension Scheme is paid by the Government.<br>- The minimum number of days of employment in a financial year is reduced from 300 days to 240 days. Further, the condition of 10% increase in number of employees each year is deleted.<br>- In the case of an existing business, emoluments are to be paid by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account.<br><br>* 30% of employees' cost in case of first year of business. | | | |
| **16** | Offshore banking unit in SEZ and International Financial Services Centre<br>[Section 80LA]<br><br>Income from:<br>- Offshore banking unit in SEZ or<br>- The business referred to in section 6(1) of the Banking Regulation Act, 1949 or<br>- Any unit of the International Financial Services Center from its approved business. | Scheduled Bank or any bank incorporated by or under the law of a country outside India or a unit of an International Financial Services Center. | 100%<br><br>50% | First 5 years (beginning with the year in which prescribed permissions are obtained)<br><br>Next 5 years |

*The above deduction, exemption, incentive and allowance are subject to fulfillment of specified conditions mentioned in the IT Act.

## 3.6 Tonnage Tax on shipping companies

Indian shipping companies are taxed on a presumptive basis. Tax is levied on the notional income of the shipping company arising from the operation of ships at normal corporate tax rates. The notional income is determined in a prescribed manner on the basis of the tonnage of the ship. Tax is payable even in the case of loss. The scheme is applicable to the shipping companies that are incorporated under the Indian Companies Act (with its effective place of management in India) with at least one ship with minimum tonnage of 15 tons and holding a valid certificate under the Merchant Shipping Act, 1959. Shipping companies have an option to opt for the scheme or for taxation under normal income-tax provisions. Once the scheme has been opted for, it would apply for a mandatory period of ten years and other income-tax provisions would not apply.

## 3.7 Transfer Pricing Regulations

Transfer Pricing Regulations were introduced in order to facilitate determination of the proper taxation methodology of the international transactions between 'associated enterprises' having regard to arm's length principles. As per the transfer pricing regulations, it is required that any income arising from an international transaction is to be computed at the arm's length price. It is also provided that to arrive at such income, the deductible expenses or interest is also to be computed at the Arm's Length Price (ALP). Further, it is provided that when any allocation or apportionment of or any contribution to any cost or expenses between two or more associated enterprises, in international transaction, is required, in connection with a benefit, service or facility provided by one or more enterprise, then the same is to be determined at arm's length price.

Arm's length price means a price that would be obtainable had the transaction taken place between independent parties in uncontrolled conditions. The methods prescribed for computing arm's length price in transfer pricing regulations are as follows:

a) Comparable uncontrolled price method;
b) Resale price method;
c) Cost plus method;
d) Profit split method;
e) Transactional net margin method;
f) Such other method as may be prescribed by the CBDT.

Further, transfer pricing regulations provide for the record keeping regarding international transactions with associated enterprises and obtaining of certificate from the Chartered Accountant. The penalties for non-disclosure of the international transactions could be 2% of the transaction value apart from penalties for misreporting of income which is 200% of the tax sought to be evaded.

- Transfer pricing regulations on certain domestic transactions

The transfer pricing regulations had been extended to cover transactions between related resident parties (i.e. domestic transaction) for the purposes of computation of income, disallowance of expenses, etc. as required under provisions of sections 40A, 80-IA, 10AA, 80A or to transactions as may be prescribed by CBDT, if aggregate amount of all such domestic transactions exceed INR 200 million[3] in a year.

- Use of Multiple Year Data and Adoption of the Range concept

CBDT through a notification has issued the rules for the use of range and multiple year data in line with the announcement made by Finance Minister to align the Indian Transfer Pricing Regulations with international best practices. The Rules were made applicable from 1 April 2014 and would apply for both international transactions as well as Specified Domestic Transaction (SDT) from FY 2014-15 prospectively.

- Advance Pricing Agreements (APA)

Advance Pricing Agreements were introduced with an objective of bringing down the transfer pricing disputes and provide tax certainty.

The salient features of the APA are as follows:

- APA is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future not exceeding 5 consecutive years. In addition, it can also cover up to 4 preceding year in case of roll back.

- APAs shall include determination of the ALP or specify the manner in which ALP shall be determined, in relation to an international transaction which the person undertakes.

- The APA shall be binding only on the person and the income-tax authorities in respect of the transaction in relation to which the agreement has been entered into. The APA shall not be binding if there is any change in law or facts having bearing on such APA.

In this regard, the CBDT has notified the APA scheme along with the procedures for constitution of APA team, procedure for filing the application for APA, terms and conditions, filing fees, relevant forms, annual compliance report,

[3] The threshold limit has been increased from INR 50 million to INR 200 million w.e.f. FY 2015-16

and revision/cancellation/renewal of APA.

- Base Erosion Profit Shifting (BEPS)

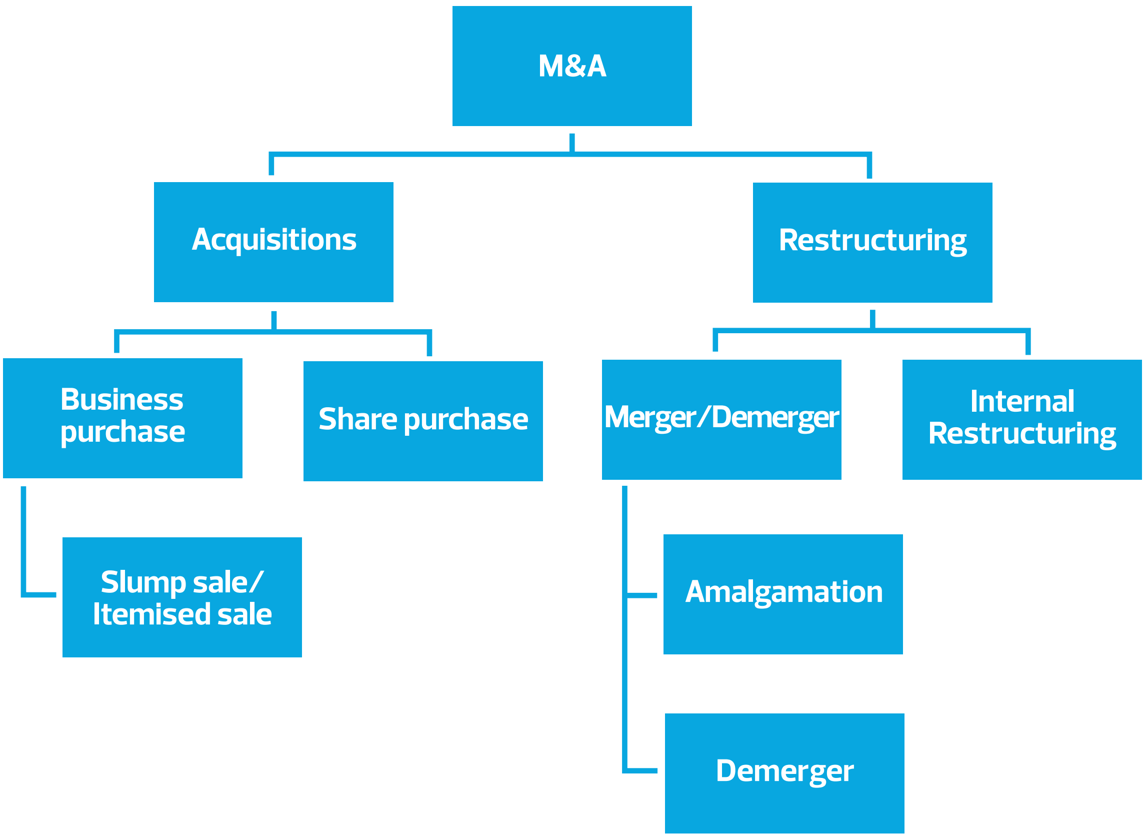
Based on OECD Action Plan 13 of BEPS, a new requirement of a specific reporting regime has been introduced for all group members of Multinational Enterprises (MNE) wherein a three tier structure has been mandated w.e.f. April 2016 consisting of:

- **A Master File**
  Containing standardized information relevant for all multi-national enterprises group members
- **Local File**
  Referring specifically to material transactions of the local tax payer
- **Country by Country Report (CbC)**
  - ✓ Containing certain information relating to the global allocation of the MNEs income and taxes paid together; and
  - ✓ Certain indicators of the location of economic activity within the MNE group

The CbC reporting requirement shall apply in respect of an international group wherein the consolidated revenues of the preceding year of the group, based on consolidated financial statement, exceeds the prescribed threshold of Euro 750 million.

Further, penal implications in case of non-compliance have also been introduced.

## 3.8 Mergers and Acquisitions



## Amalgamation

- Amalgamation is the merger of one or more companies with another company or the merger of two or more companies to form one company in such a manner that
  - all the property of the amalgamating company immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation ;
  - all the liabilities of the amalgamating company immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation ;
  - shareholders holding not less than 75% in value of the shares in the amalgamating company become shareholders of the amalgamated company by virtue of the amalgamation,
- Under the IT Act, transfer of a capital asset pursuant to amalgamation is exempt from capital gain tax, if the amalgamated company is an Indian company. On similar lines, any transfer of capital assets being shares by shareholder under the scheme of amalgamation is exempt from tax.
- Where a capital asset became the property of the amalgamated company in a scheme of amalgamation, the cost of acquisition of the said asset to the amalgamated company shall be the cost for which the amalgamating company acquired it.
- The period for which the capital asset was held by the amalgamating company shall also be considered in determining the period of holding of such asset by the amalgamated company.
- Depreciation shall be apportioned between the amalgamating company and the amalgamated company in the ratio of the number of days for which the assets were used by them.
- The accumulated loss and the unabsorbed depreciation of the amalgamating companies are allowed to be carried forward subject to the fact such amalgamating companies own an industrial undertaking and also subject to fulfillment of certain prescribed conditions. The term "industrial undertaking" means any undertaking which is engaged in—
  - the manufacture or processing of goods; or
  - the manufacture of computer software; or
  - the business of generation or distribution of electricity or any other form of power; or
  - the business of providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services; or
  - mining; or
  - the construction of ships, aircrafts or rail systems.

## Demerger

- There is no capital gains tax in case of demerger subject to certain conditions. On similar lines, tax exemption has been provided to shareholders of the demerged company.
- Further, losses/ unabsorbed depreciation directly relatable to the resulting company, then it shall be transferred for carry forward and set off to resulting company. Otherwise, it will be split proportionately between the demerged and resulting entity.
- In year of demerger, depreciation allowable on proportionate basis. Expenses incurred on demerger can be amortized for 5 years.
- The cost of acquisition of the shares in the resulting company shall be original cost of acquisition of shares held in demerged company allocated based on the ratio of net book value of assets transferred by demerged company to net worth of the company immediately before the demerger.
- While computing the period of holding of shares of the resulting company, the period for which the share or

shares held in the demerged company were held by taxpayer shall be included.

### Slump sale

- It is a sale where the assessee transfers one or more undertaking as a whole including all the assets and liabilities as a going concern. The consideration is fixed for the whole undertaking and received by the transferor. It is not fixed for each of the asset of the undertaking.

- Gains arising from the slump saleshall be subject to capital gains tax. Gains shall be in the nature of long-term where undertaking is owned and held for more than 36 months before transfer. Otherwise, it shall be treated as short-term capital gain.

- 'Net worth' of the undertaking or division is deemed to be the cost of acquisition.

- In order to constitute a 'slump sale' the transfer must be as a result of a 'sale' i.e. for a money consideration and not by way of an 'Exchange'.

- A report of an accountant in Form No. 3CEA needs to furnish along with the return of income, certifying the correction of the capital gain and the net worth of the undertaking or division, as the case may be.

## 3.9 Share transfers

The provisions of capital gains, as discussed in earlier sections, shall apply to such a transfer.

## 3.10 Set off and carry forward of Tax losses

Business loss incurred in a tax year and not adjusted against other income can be carried forward for 8 years, and set off against future business profit provided the income tax return for the year of loss is filed on time. Losses from a speculation business can be set off only against gains from speculation business for a maximum of 4 years.

Carry back of losses is not permitted.

Unabsorbed depreciation can be carried forward indefinitely and can be set off against any income under any head of subsequent years. Short-term capital loss also can be carried forward for 8years, and set off against long term as well as short capital gains only. However, long-term capital gain can be set-off only against long-term capital gains. No set-off of losses (except loss from house property and unabsorbed depreciation) will be allowed unless the assessee files return of income within the due date specified under section 139(1).

## 3.11 Returns and Payment of Taxes

Companies are liable to submit their tax returns of the relevant financial year (i.e. year ending 31 March) on or before 30 September every year. However, for companies covered under transfer pricing regulations, the due date would be 30 November.

Tax is payable in advance on income, including capital gains, if the tax computed as payable for any year is INR 10,000/- or more.

Advance tax is payable on specified dates during the financial year in the manner set out below. The advance tax payable is determined by estimating the total income (including capital gains) for the year. Tax is to be calculated at the rates applicable for the financial year and is to be reduced by the amount of withholding tax deductible or collectible in terms of any provision of the Act. While shortfalls or excess payments, consequent upon errors in estimation, may be adjusted in subsequent installments, shortfalls vis-à-vis specified percentages would attract interest. All taxes must be paid before filing return of income. The due dates for payment of advance tax and the amounts payable are:

| Due Date | Amount Payable |
|---|---|
| On or before 15 June | Not less than 15% of advance tax payable |
| On or before 15 September | Not less than 45% of advance tax payable less earlier installment |
| On or before 15 December | Not less than 75% of advance tax payable less earlier installments |
| On or before 15 March | Whole of advance tax payable less earlier installments |

In case of non-payment of specified percentages of advance tax by specified dates, interest @ 1% per month or part thereof is payable on the shortfall.

The unpaid balance of tax is payable before filing the return of income with interest thereon @ 1% per month. Further, interest @ 1% per month or part thereof is payable on such balance tax, if the return is not filed within the specified time.

## 3.12 General Anti-Avoidance Rule (GAAR)

Finance Act, 2012 has introduced the provisions of GAAR in the IT Act. The question of substance over form has been consistently arising in the implementation of taxation laws. In view of the aggressive tax planning with the use of sophisticated structures and other aspects, the statutory provisions are required to codify the doctrine of 'substance over form' where the real intention of the parties and effect of transactions and purpose of an arrangement is taken into account for determining the tax consequences, irrespective of the legal structure that has been superimposed to camouflage the real intent and purpose.

Consistent with the international trend to curb tax avoidance, India introduced GAAR provision few years ago. GAAR is made effective from 1 April 2017. For the proper implementation of GAAR, it is expected that the Government will issue a Guidance Note.

GAAR is a broad set of provisions which empower tax authorities to consider an arrangement to be an impermissible tax avoidance arrangement, if it is entered with the main purpose of a tax benefit. Tax benefit includes relief claimed under the tax treaty. In case GAAR is invoked, it will override the provisions of tax treaty.

Recently, the provisions of GAAR have been amended to provided that GAAR will not be applicable to any income arising from transfer of investment made before 1 April 2017. Further, there are certain cases, where the provisions of GAAR shall not be applicable. For instance, GAAR provisions cannot be invoked where the tax benefit to all parties to the arrangement does not exceed INR 30 million.

### Certain Tax Aspects – Individual Taxation

- Capital Gains Tax

  The provisions relating to computation of capital gains tax applicable to corporate entities are equally applicable to non-corporate entities. In addition to that following exemptions are available.

- Long term Capital Gains - Exemptions

  Individuals and Hindu undivided families are also entitled to claim exemption from long-term capital gains. Some of the circumstances wherein the exemption can be claimed in accordance with the relevant provisions are provided as follows:

  i. Reinvestment of long term capital gain arising from sale of residential house for acquisition of another residential house.

  ii. Reinvestment of sale proceeds arising from sale of a capital asset (other than a residential house) for acquisition of a residential house subject to fulfillment of certain conditions.

iii. Reinvestment of capital gain arising from sale of a capital asset for investment in specified bonds.

iv. Reinvestment of capital gains arising from sale of aurban agricultural land for acquisition of another agricultural land subject to fulfillment of certain conditions.

v. Reinvestment of capital gains arising on the transfer of the long term capital asset provided the investment is made in the specified assets within a period of six months from the date of transfer.

- Deductions and Reliefs

Donations within limits, to approved charities qualify for deduction of 100% or 50%. Cash donation exceeding Rs.10,000 is not allowed as deduction. Further, individuals and HUFs are also entitled to deduction in respect of certain specified savings/investments/expenditure.

The reliefs available to corporate entities discussed above are generally available to non-corporate entities unless specifically excluded.

- Clubbing of minor's Income

Income of minor children, is generally attributable to the parent that has the higher income for tax purposes. However, income of a minor child suffering from a prescribed disability or income arising out of manual work done by him or activity involving application of skill, talent or specialized knowledge and experience is not aggregated but is taxable separately.

- Due dates for Returns of Taxes

The due dates for furnishing of tax returns in case of non-corporate entities are as follows:

| Assessee | Due Date |
|---|---|
| In a case where the accounts of the assessee are required to be audited or report of an accountant is required to be submitted under specified provisions | 30th September |
| In other cases | 31st July |

## PRESUMPTIVE TAX SCHEME

- For businesses

– Eligible assessee engaged in eligible business having a maximum turnover / gross receipts up to INR 20 million[4] during the previous year can opt for the presumptive tax scheme. The presumptive rate of tax is prescribed at 8% of turnover / gross receipts.

– The assessee opting for the above scheme shall be exempted from maintaining books of accounts.

– An assessee with turnover up to INR 20 million (about US$ 2,97,407), who shows an income below the presumptive rate prescribed under these provisions, will, in case his total income exceeds the taxable limit, be required to maintain books of accounts and also get them audited.

– However, this scheme is not applicable for a person carrying on profession or earning income in the nature of commission/brokerage or from agency business.

[4] With effect from FY 2016-17; earlier the limit was INR 10 million

- For profession
  - A new presumptive scheme was introduced w.e.f FY 2016-17 for the eligible assessees engaged in eligible profession whose gross total receipts does not exceed INR 50,00,000 during the previous year. The presumptive rate of tax in this case is at 50% of the gross receipts.

## 4.0 SPECIAL PROVISIONS FOR COMPUTATION OF TAXABLE INCOME OF NON-RESIDENTS

### 4.1 Non-residents engaged in specified business

Taxable income of non-resident individuals and foreign companies engaged in specified businesses is computed at a flat rate varying from 5% to 10% of the specified amount:

- Business of providing services or facilities in connection with prospecting for, or extraction or production of mineral oils (10%)
- Business of operations of Aircraft (5%)
- Shipping Business (7.5%)
- Business of civil construction for turnkey power projects (10%)

### 4.2 Income of Non Resident Indians (NRI) - Special Chapter for NRIs – XII- A

Chapter XII-A of the Income Tax Act lays down certain special provisions relating to long-term capital gains and investment income earned in India by NRIs. The Chapter allows certain benefits like reduced rate of tax, non-filing of returns of income in certain cases.

An NRI is eligible to opt for this chapter if he has only investment income and long term capital gains arising on transfer from the following specified assets provided that they are acquired out of convertible foreign exchange:

- Shares of an Indian company
- Debentures or deposits with an Indian company
- Any security of the Central Government

The provisions of computation of income are tabulated as under:

| Sr. No. | Particulars | Investment Income and LTCG from other assets | LTCG# from specified asset | Any Other Income |
|---|---|---|---|---|
| 1 | Tax rate | 20% | 10% | As per normal provisions |
| 2 | Deduction for expenses | Not allowed | Allowed as per normal provisions | Allowed |
| 3 | Chapter VIA Deductions | Not allowed | Not allowed | Allowed |

# Long term capital gains arising on transfer of a specified asset is exempt if:

- The asset transferred is a long-term asset
- It is acquired out of convertible foreign exchange

- The reinvestment is made in specified assets within 6 months of the transfer (If only a portion of the net consideration is reinvested, then the proportionate exemption is allowed)

- New asset is held for a minimum period of 3 years

An NRI has the option of being continued to be governed by this Chapter even after he becomes a resident if he furnishes a written declaration along with his return of income to that effect.

An NRI may choose to opt out of the provisions of Chapter XII-A (relating to reduced tax rate and non-filing of tax return) for any particular year and he shall be required to submit a written declaration to this effect to the tax officer with his return of income. Accordingly, his total income for that particular year will be computed and taxed as per normal provision.

### 4.3 Income of Foreign Institutional Investors (FIIs) from securities or capital gains arising from their transfer

The provisions relating to computation of income of FIIs can be tabulated as under:

| Sr. No. | Particulars | Income (other than exempt dividend) from securities (other than specified units | STCG from securities (other than specified units) | LTCG from securities (other than specified units) | Other Income |
|---|---|---|---|---|---|
| 1 | Tax rate | 20% (5% in case of specified interest) | 30% (15% in case of STT paid securities) | 10% | As per normal provisions |
| 2 | Deduction for expenses | Not allowed i.e. income to be taxed on gross basis | Allowed as per normal provisions | Allowed as per normal provisions | Allowed |
| 3 | Chapter VIA (80CCC to 80U) Deductions | Not allowed | Not allowed | Not allowed | Allowed |

*Surcharge and cess as may be applicable shall be levied on the rates of tax mentioned above.*

The provisions of Chapter VI relating to set off, carry forward and set off of losses shall however, be applicable. Further, the provisions relating to exchange rate fluctuation benefit and indexation shall not apply to the capital gains out of the transfer of securities referred to above. It may be noted that the Capital gains earned by an FII on the transfer of such securities are not subject to withholding tax in India. However, FIIs are not absolved from the responsibility of filing of tax return.

- **Income of Offshore Funds**

Income of approved offshore funds from units of specified mutual funds and long term capital gains on their transfer are taxed @ 10% plus surcharge and cess at applicable rates if the units are purchased in foreign currency.

## 5.0 WITHHOLDING TAXES

Every person, other than an individual and Hindu Undivided Family (whose business turnover is below INR 10 Million in case of business entities and INR 5 Million in case of profession) making certain specified payments including salary, interest, rent, fees for professional and technical services rendered, brokerage and commission, contract payments is required to deduct tax at source (TDS) at prescribed rates.

Tax is required to be withheld at source when any payment is made to a non-resident, if the amounts paid represent income of the non-resident chargeable to tax in India. There is no threshold limit and tax has to be withheld irrespective of the quantum. It should be noted that:

- The provisions pertaining to withholding taxes are different for salary and payments other than salaries.

- When payment is made by an employer to a non-resident, it is required that the employer pays the salary after withholding tax calculated on the basis of average tax rates applicable to the employee.

- With respect to the payments other than salaries, the payer is required to deduct tax based on rates in force. Rates in force are specified in the Finance Act.

- Further, he is required to check the applicable provisions as per the double taxation avoidance agreement. The income may not be chargeable to tax as per the DTAA or may be taxable at a lower rate. If the provisions of the DTAA are more beneficial, he can consider that rate while withholding taxes. Tax calculated should be increased by surcharges except where DTAA rates are applied.

- Withholding taxes are normally payable within 7 days of the end of the month in which the tax is deducted / collected.

- The person responsible for deducting tax at source is required to file quarterly return of TDS on or before specified dates. The non-filing of quarterly return of TDS or failure to issue certificate within the prescribed period will attract penalty as specified in the Act.

- In case the income of a non-resident is not chargeable to tax in India or is taxable at rates lower than that prescribed for withholding taxes, an application can be made to the tax authorities for permission to deduct withholding taxes at a lower rate than those prescribed under the Act.

- With effect from 24 June 2016, the tax on certain incomes of non-residents shall not be deducted at higher rates in case of failure to furnish the PAN, subject to furnishing of certain alternative documents.

Please refer Annexure III for Withholding tax chart.

## 6.0 DOUBLE TAX TREATIES

The Government of India has entered into comprehensive Double Tax Avoidance Agreements (DTAA) with over 90 countries to avoid double taxation of income. The list of the countries with which India has entered into DTAA and the rates applicable under the treaties is given in **Annexure I**.

Certain other limited agreements are entered into by India to avoid double taxation of income only from shipping and air transport.

**Tax Residency Certificate mandatory for claiming DTAA benefits**

Submission of Tax Residency Certificate ('TRC') containing particulars such as name, status, address, country of incorporation, tax identification number, residential status, and the period for which certificate is valid, is mandatory if DTAA benefit is to be claimed.

### 6.1 Moving Towards Greater Transparency

India is moving towards greater transparency with regards to the cross border business investments as well as personal investments. The 2 primary drivers of this change are (a) the regulatory changes across the world and (b) Information technology advancements making it easier to track investments. These has resulted not only in increased cross border reporting and severe punitive provisions but are of far reaching significance to the global business and investing community. In this context, we can refer to the recent changes in India and the US such as:

- Adaptation to FATCA Reporting – An Inter-Governmental Agreement between India and USA was signed for implementation of Foreign Account Tax Compliance Act (FATCA) In August 2015.

- Greater Transparency through Exchange of Information Framework of OECD – The Government of India has also joined the Multilateral Competent Authority Agreement (MCAA) for Automatic Exchange of Information as per Common Reporting Standard (CRS).

- Further, India has also been taking efforts towards facilitating smooth exchange of information by signing Tax Information Exchange Agreements (TIEAs) with several countries to facilitate exchange of information. Some of the countries with which the TIEAs have been recently signed are Bermuda, British Virgin Islands, Isle of Man, Bahamas, Cayman Islands and Samoa.

## 7.0 OTHER ADMINISTRATIVE ASPECTS

### 7.1 Audit Reports

7.1.1 In addition to get the accounts audited, as per Companies Act for corporate entities, all entities are required to get their accounts audited for tax purposes in case of following:

i. A person carrying on business, if total sales, turnover or gross receipt in business for the accounting year or years relevant to the assessment year exceeds INR 10 million (about US$ 1,49,121).

ii. A person carrying on profession, if his gross receipts in profession for an accounting year or years relevant to any of the assessment year exceeds INR 5 million (about US$ 74,560).

The tax audit reports in cases referred above are to be obtained and filed with the Income-tax authorities within a specified due date for filing return of income.

7.1.2 For claiming deductions from certain export incomes, it is compulsory to obtain audit reports with effect to the same. One of the conditions for claiming exemption on export profits is that within specified period from the close of the accounting year, exchange earnings must be remitted to India.

For claiming deductions by newly established industrial undertakings / infrastructure projects, such entities are required to obtain specific audit report relevant for deduction.

### 7.2 Assessment Procedure

Once the return of income is filed up by the taxpayer, the next step is the processing of the return of income by the Income Tax Department. The Income Tax Department examines the return of income for its correctness. The process of examining the return of income by the Income-Tax department is called as "Assessment".

Under the Income-tax Law, there are four major assessments given below:

- Assessment under section 143(1), i.e., Summary assessment without calling the assessee.
- Assessment under section 143(3), i.e., Scrutiny assessment.
- Assessment under section 144, i.e., Best judgment assessment.
- Assessment under section 147, i.e., Income escaping assessment

- **Intimation u/s 143(1) – Summary Assessment**

  Assessment under section 143(1) is like preliminary checking of the return of income. At this stage no detailed scrutiny of the return of income is carried out. At this stage, the total income or loss is computed after making the following adjustments (if any), namely:-

(i) any arithmetical error in the return; or

(ii) an incorrect claim if such incorrect claim is apparent from any information in the return;

After correcting arithmetical error or incorrect claim (if any) as discussed above, the tax and interest, if any, shall be computed on the basis of the adjusted income. Any sum payable by or refund due to the taxpayer shall be intimated to him.

- **Scrutiny Assessment u/s 143(3)**

  This is a detailed assessment and is referred to as scrutiny assessment. At this stage a detailed scrutiny of the return of income is carried out (roughly 2% to 3% of the total returns are picked up for scrutiny assessment in a year). At this stage a scrutiny is carried out to confirm the correctness and genuineness of various claims, deductions, etc., made by the taxpayer in the return of income.

- **Best Judgement Assessments u/s 144**

  This is an assessment carried out as per the best judgment of the Assessing Officer on the basis of all relevant material he has gathered. This assessment is carried out in cases where the taxpayer fails to comply with the requirements specified in section 144.

- **Income escaping assessment u/s 147**

  Where no return of income has been made or where after processing the return or completing the regular assessment, AO believes that the income of assessee of any FY has escaped assessment, he can reopen the assessment and complete it as per new information about income or tax. Assessment up to last 6 years can be opened. In order to open an income escaping assessment AO has to issue notice u/s 148 to the assessee. Concealment of income and furnishing of inaccurate particulars may result in imposition of penalty 100% to 300% of the tax sought to be evaded under the existing provisions.

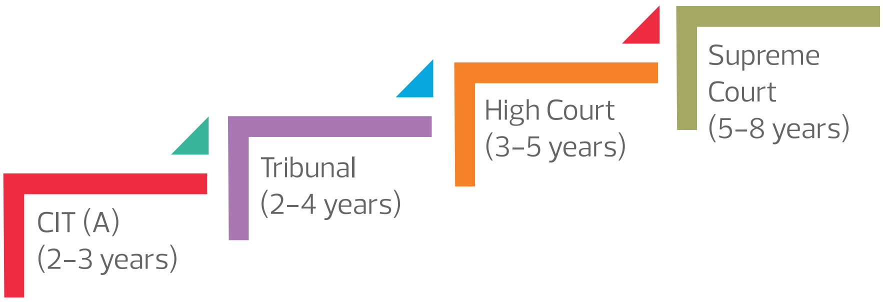
  However, w.e.f April 2017 (i.e. for Financial Year 2016-17 and onwards), the penalty shall be levied as per the new provisions i.e.

  - In case of under-reporting of any income, 50% of the amount of tax payable on such under-reported income; and

  - In case where the under-reported income is in the consequence of misreporting, 200% of the amount of tax payable on such under reported income.

## 7.2 Appeal proceeding

Income tax liability is determined at the level of Assessing Officer first. A tax payer aggrieved by various actions of Assessing Officer can appeal before Commissioner of Income Tax (Appeals). Further appeal can be preferred before the Income Tax Appellate Tribunal. On substantial question of law, further appeal can be filed before the High Court and even to the Supreme Court. The Indicative time involved in Income Tax Litigation is depicted as under:



Thus, a tax dispute on an average takes around 12 to 20 years before it attains finality at Apex Court level

## 7.3 Advance Rulings

The Authority for Advance Rulings (AAR) has been constituted under the Income-tax Act which pronounces rulings on an application made by a non-residents/ residents (in certain cases) with respect to any transaction/proposed transaction which is relevant in determining tax liability. The prime objective is to avoid future litigation and providing greater level of certainty. A time limit of six months has been provided for the pronouncement of an advance ruling. The advance ruling once pronounced is binding on the applicant and on the income tax authorities in respect of the specific transaction for which advance ruling was sought.

<table>
<tr><th>Nature of applicant</th><th>Nature of application</th><th>Certain circumstances in which the application cannot be allowed</th></tr>
<tr><td>NR for his own tax liability</td><td>Transaction undertaken or proposed to be undertaken by NR</td><td rowspan="4">– Question is already pending before any income-tax authority, the Appellate Tribunal or any court<br>– Issue involves determination of fair market value of any property<br>– Relates to a transaction which is designed prima facie for avoidance of income-tax.<br>– Question is already pending before any income-tax authority, the Appellate Tribunal or any court<br>– Issue Involves determination of fair market value of any property</td></tr>
<tr><td>Resident for determining tax liability of NR</td><td>Transaction undertaken or proposed to be undertaken by resident with NR</td></tr>
<tr><td>Resident for his own tax liability</td><td>Transaction undertaken or proposed to be undertaken by resident and the value of which is INR 100 crores or more</td></tr>
<tr><td>Resident or NR himself</td><td>Determine whether arrangement proposed is an impermissible avoidance arrangement and may be subjected to GAAR provisions or not</td></tr>
<tr><td>Public sector undertakings (PSUs)</td><td>Transaction undertaken or proposed to be undertaken</td><td>– Issue Involves determination of fair market value of any property<br>– Note: PSUs can file an application even if the issue is pending before any income-tax authority, the Appellate Tribunal or any court</td></tr>
</table>

### 7.3.1 Fees for filing the application

The fees payable along with application for advance ruling shall be in accordance with the following table

<table>
<tr><th>Category of applicant</th><th>Category of case</th><th>Fee</th></tr>
<tr><td rowspan="4">– NR<br>– Resident seeking advance ruling in relation to the tax liability of a NR<br>– A resident seeking advance ruling in relation to his tax liability arising out of one or more transactions valuing Rs.100 crore<br>– Any other applicant</td><td>Amount of transaction in respect of which ruling is sought does not exceed Rs. 100 crore.</td><td>Rs. 2 lacs</td></tr>
<tr><td>Amount of transaction in respect of which ruling is sought exceeds Rs. 100 core but does not exceed Rs. 300 crore.</td><td>Rs. 5 lacs</td></tr>
<tr><td>Amount of transaction in respect of which ruling is sought exceeds Rs. 300 crore</td><td>Rs. 10 lacs</td></tr>
<tr><td>Other cases</td><td>Rs. 10,000</td></tr>
</table>

7.3.2 An AAR ruling is binding on the taxpayer and the revenue authorities. Advance rulings are not binding upon any court for other matters and other enterprises. Advance rulings do have a persuasive value in other cases with relatable facts. In order to clear the backlogs of AAR Rulings, It has been decided to strengthen the AAR by constituting additional benches (however, the final notification is awaited).

7.3.3 The advance ruling is non-appealable. However, in practice writ petition before the High Court and Special Leave Petition before the Supreme Court may be filed. AAR provides an opportunity for faster resolution of tax disputes as compared normal channel which takes near about 15-20 years.


## 8.0 FOREIGN TAX CREDIT (FTC)

In many countries, detailed rules on credit for foreign tax already exist in their domestic laws, which describe the computation of foreign tax credit under various circumstances. Recently India has also come out with Guidelines on FTC.

As per the said Rules, resident in India shall be allowed a credit for the amount of any foreign tax paid by him abroad in the year in which income corresponding to such tax has been offered to tax in India. However, where income has been offered to tax in more than one year, foreign tax credit shall be allowed across those years proportionately.

Rules provide that FTC shall not be available against any sum payable by way of Interest, Fee or Penalty. In respect of disputed Foreign Tax credit, it provides that no credit of foreign tax (part or full) which is disputed in any manner shall be available except in certain cases subject to some conditions.

The credit of foreign tax shall be the aggregate of amounts of credit computed separately for each source of income arising from a particular country or specified territory. The amount of foreign tax Credit shall be the lower of the two:

- Tax payable under the Act on such income or

- The foreign tax paid on such income

It has been clarified that FTC shall also be available against MAT / AMT

Further, the rules provides for furnishing of certain specified documentation for availing FTC.

For countries with no DTAAs with India, a unilateral tax credit for tax paid in foreign countries is available under Indian domestic law to a resident tax payer.

## 9.0 OTHER DIRECT TAXES

### 9.1 Equalization Levy

A new levy called 'Equalization levy' has been introduced by the Finance Act, 2016, taking a cue from the OECD BEPS-Action 1 which is aimed at addressing the base erosion faced in the digital economy from limitations of current International taxation rules. Salient features of the Equalization levy are as under:

- This levy is outside Income-tax Act, 1961. It is given in the Finance Act, 2016

- This is applicable with effect from 1 June 2016

- Equalization Levy is chargeable @6% on gross payments for specified services made to a non-resident not having a PE in India.

- Specified services, means:

  - Online* advertisement,

  - Provision for digital advertising space , or

  - Any other facility or service for the purpose of online advertisement ,or

  - Any other notified service

*The word 'online' has been defined to mean a facility for service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network.

- Payer (who is a person resident in India carrying out business or profession, or a non-resident having a permanent establishment (PE) in India) is required to withhold tax @6% on the gross sum paid.

- The failure to withhold tax shall result in disallowance of expenses incurred towards specified services [section 40(a)(ib) of the IT Act]. Further, penal interest @ 1% per month or part of the month shall be attracted in such case.

- Aggregate payment should exceed Rs. 1,00,000 ( i.e. approx. USD 1500) in a year.

- The application of Equalization Levy is limited to business-to business (B2B) transactions. The business-to consumer (B2C) transactions are not covered by this levy.

- Payer is required to withhold Equalization Levy on any amount paid or payable to a Non-resident providing specified service and deposit it by 7th of the next month.

- All payments for specified services that are liable to Equalization Levy shall be exempt from Indian Income-tax in the hands of the non-resident.

- As the Equalization Levy is not charged on income, it is not covered by the tax treaties. Thus, no tax credits under the tax treaties will become available to thenon resident, in respect of Equalization Levy charged in India.

## 9.2 Securities Transaction Tax (STT)

STT shall apply to taxable securities transactions entered into through recognised stock exchanges in India.

The taxable securities transaction shall attract STT at the rates specified as under:

| Transaction | Rates | Payable by |
|---|---|---|
| Purchase / Sale of equity shares / units of a business trust (delivery based) | 0.1% | Purchaser/ Seller |
| Purchase of units of equity oriented mutual fund | Nil | Purchaser |
| Sale of units of equity oriented mutual fund (delivery based) | 0.001% | Seller |

| Transaction | Rates | Payable by |
|---|---|---|
| Sale of equity shares, units of equity oriented mutual fund , units of a business trust (non-delivery based) | 0.025% | Seller |
| Sale of an option in securities | 0.05% | Seller |
| Sale of an option in securities, where option is exercised | 0.125% | Purchaser |
| Sale of an option in securities | 0.01% | Seller |
| Sale of units of an equity oriented fund to the Mutual Fund | 0.001% | Seller |
| Sale of unlisted equity shares under an offer for sale to public or sale of units of a business trust by any holder which were acquired in consideration of a transfer referred to in clause section 47 (xvii) | 0.2% | Seller |

### 9.3 Commodities Transaction Tax (CTT)

CTT is levied on sale of commodity derivative at the rate of 0.01% on the value of such transaction and such tax is payable by the seller. Agricultural commodities are excluded. CTT is similar to the securities transaction tax (STT) levied on the purchase and sale of equities in the stock market.

### 9.4 Wealth Tax

Wealth-tax has been abolished with effect from FY 2015-16.

## 10.0 INDIRECT TAXES

### 10.1 GOODS AND SERVICES TAX(GST)

The GST Bill was legislated after passage of The Constitution (122nd Amendment), Bill, 2014 by Rajya Sabha on 3 August 2016 and by Lok Shabha on 8 August 2016 The cabinet ministry of India on 12 September 2016 approved setting up for the GST Council, which will decide on the rate of tax under the new GST regime, which likely to be introduced from 1st April 2017.

The biggest indirect Tax reform since Independence, the GST Bill is expected to bring about an economic integration for the Indian economy. GST is one indirect tax for the whole nation, which will make India one unified common market. GST is a single tax on the supply of goods and services, right from the manufacturer to the consumer. Credits of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages. Keeping in mind the federal structure of India, there will be two components of GST – Central GST (CGST) and State GST (SGST). Both Centre and States will simultaneously levy GST across the value chain. Tax will be levied on every supply of goods and services.

Centre would levy and collect Central Goods and Services Tax (CGST), and States would levy and collect the State Goods and Services Tax (SGST) on all transactions within a State

In case of Inter-State transactions, the Centre would levy and collect the Integrated Goods and Services Tax (IGST) on all Inter-State supplies of goods and services. The IGST would roughly be equal to CGST plus SGST.

The Central Government would frame CGST Act and respective state Government would frame SGST Act for levying CGST/SGST on all intra state supplies of goods/services at the rate to be specified in schedule. Also, CGST law to extend to the whole of India including the state of Jammu and Kashmir.

The said tax is payable by every taxable person in accordance with provision of GST Act. On certain categories of supply, as may be notified,CGST/SGST will be required to be paid under reverse charge mechanism.

The following present taxes shall be subsumed into GST :

**Central Level taxes to be subsumed :**

a. Central Excise duty,

b. Additional Excise duty,

c. Service Tax,

d. Additional Customs Duty,

e. Special Additional duty of Customs

**State Level to be subsumed :**

a. Subsuming of State Value Added Tax/Sales Tax

b. Central Sales Tax,

c. Entertainment Tax (other than the tax levied by the local bodies),

d. Octroi and Entry tax,

e. Purchase Tax,

f. Luxury Tax and

g. Taxes on lottery, betting and gambling

Petroleum and Petroleum products i.ecrude,high speed diesel,motorspirit,aviation, turbine fuel and natural gas shall be subjected to GST on a date to be notified by the GST council. Administration of GST will be responsibility of the GST Council, which will be the apex policy making body for GST. Members of GST council shall comprise of the Central and State ministers in charge of finance portfolio.

The Empowered Committee of State Finance Ministers has released the following two model GST law drafts in the public domain for comments. The release of model GST law on 14 June 2016 is viewed as a major step forward towards implementation of GST in fiscal year 2017.

- The Central/State Goods and Services Act,2016 (CGST Act/SGST Act)

- Integrated Goods and Services Act,2016 (IGST Act)

The draft of following rules have also been released on 26 September 2016 and 27 September 2016 for public comments

- Draft Goods and Service Tax Registration Rules

- Draft Goods and Service Tax Refund Rules

- Draft Goods and Service Tax Return Rules
- Draft Goods and Service Tax Payment Rules
- Draft Goods and Service Tax Invoice Rules

## 10.2 Excise Duty

Excise duty is levied, mainly on an ad valorem basis, on the manufacture of excisable goods within India, and is payable by the manufacturer. For the purpose of levying excise duty, manufacture has been interpreted to mean any process, which brings into existence a new commodity having a distinct name, character, use and marketability.

Peak rate of excise duty is changed from 12% to 12.5% (Education cess and Secondary higher education cess subsumed into excise duty)on most of the items. CENVAT credit is allowed against CENVAT payable in respect of certain inputs and capital goods purchased. The assessee is required to maintain prescribed records for availing of CENVAT credit.

Excise duty is levied on specified goods with reference to maximum retail price.

## 10.3 Customs Duty

Customs duty at varying rates is charged on goods imported into India. The general peak rate of Basic customs duty retained at 10.30% (Tax @ 10%, Education Cess @ 2% and Secondary and Higher Education Cess @ 1%).

Further, countervailing customs duty (CVD) is levied which is equivalent to the excise duty which would have been chargeable had the item been manufactured in India. In respect of such countervailing duty paid, equivalent CENVAT credit is available in certain cases. The customs duties are generally chargeable on ad valorem basis i.e. based on value of imported goods.

In addition to the above, additional duty of customs not exceeding 4% is also levied in order to counter balance various internal taxes like sales tax/value added tax and to provide a level playing field to indigenous goods which have to bear these taxes.

The Central Government can also imposeanti-dumping duty if manufacturers from abroad export goods in India at very low prices compared to prices in their domestic market.

## 10.4 Service Tax

### 10.4.1 Rate of Service Tax

Service tax rate has been increased from 12% to 14% w.e.f 1 June 2015 and effective from 15 November 2015 Swachh Bharat Cess (SBC) was introduced at 0.5% of the value of Taxable Service and further KrishiKalyan Cess (KKC) is imposed on all taxable service at the rateof 0.5% on the value of taxable services with the objective of financing and promoting initiatives to improve agriculture.KKC have come into force from 1June 2016accordingly effective rate of Service Taxpresently is @ 15% (Service Tax @ 14% plus SBC @ 0.5% and KKC @ 0.5% thereon)

### 10.4.2 Taxation of Services Based on Negative List with effect from 1 July 2012

The Service Tax Regime has undergone a sea change wherein the positive list based taxation of services has been shifted to negative list based taxation. Under the erstwhile regulations which were applicable up to 30 June 2012, only certain specified services were liable to Service Tax. Under the negative list based taxation of services, all services except certain services which are either covered under the negative list or are covered within the exemption notification/s, are liable to Service Tax.

### 10.4.3 Place of Provision of Services Rules, 2012, ('PPS Rules')

As per the provisions of service tax law, generally services provided or to be provided in the taxable territory would liable to Service Tax. The fact, whether the services have been provided in the taxable territory or outside the taxable territory, needs to be determined on the basis of Place of Provision of Services Rules, 2012, ('PPS Rules') which have been notified in this regard.Accordingly, cross-border transactions which were hitherto governed by the Export of Services Rules and Import of Services Regulations would now by governed by said PPS Rules.

Further, the PPS Rules, would also be applicable to organization those who have operations with suppliers or customers in the State of Jammu and Kashmir, service providers operating within India from multiple locations without having centralized registration and also for determining services that are wholly consumed within a SEZ, to avail the outright exemption.

### 10.4.4 Reverse Charge Mechanism Extended

The existing provisions of service tax payable under the reverse charge mechanism have been further extended / amended, wherein few more types of transactions / activities have been included wherein the receiver of the said services shall be liable (either fully or partially) to pay service tax under reverse charge mechanism subject to certain conditions as provided.

### 10.4.5 Refund of Service Tax Paid on Specified Services

With effect from 1 July 2012, the refund of service tax paid on the specified services used for export of goods is available subject to fulfillment of certain conditions.

### 10.4.6 Threshold Limits

Small service providers whose aggregate value of taxable services provided during the preceding financial year does not exceed INR 10,00,000 have been given an option to claim exemption from service tax up to an aggregate value of taxable services of INR 10,00,000 in a financial year, subject to certain conditions as prescribed. Benefit of this exemption scheme is not available wherever service tax is payable by a person other than the service provider or the taxable services are provided by a person under a brand name or trade name, whether registered or not, of another person. Threshold limit for obtaining service tax registration is INR 9,00,000.

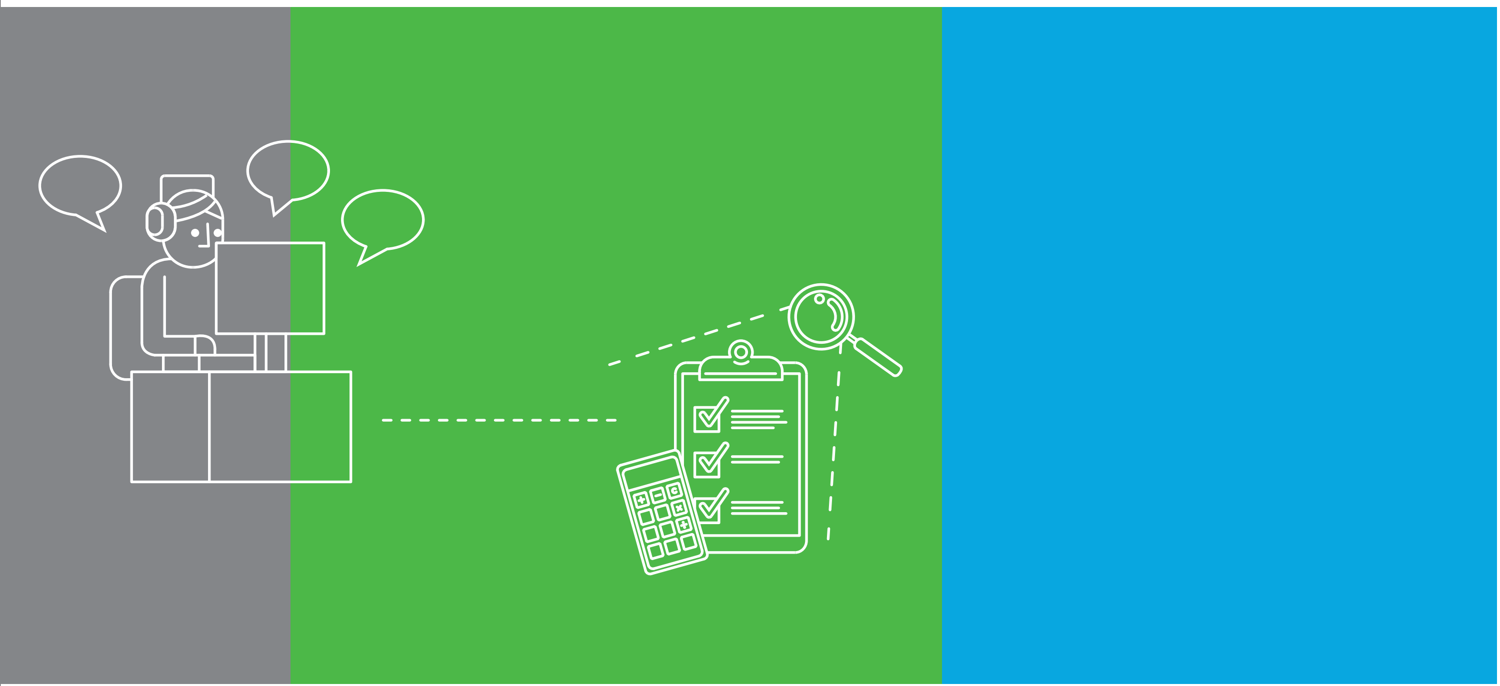
## 11.0 Indian Accounting Standards (Ind AS)

Ind AS stands for Indian Accounting Standards as notified by MCA vide Companies (Indian Accounting Standards) Rules, 2015. These are standards converged with International Financial Reporting Standards (IFRS). The financial reporting for Indian companies has changed completely from financial year 2016-17 with India moving towards IFRS – the most commonly used global financial reporting standards.

This is perhaps the most significant change in respect of financial reporting in the history of corporate India and will have far reaching implications in terms of assets, liabilities, income and expenses, disclosures and will also impact tax on book profits.

Ind AS are applicable to companies meeting specified criteria as under:

| Particular | Phase I (FY 2016-17) | Phase II (FY 2017-18) |
|---|---|---|
| Covered companies | a) Companies whose equity or debt securities are listed or are in the process of listing on any stock exchange in India or outside India and having net worth of Rs. 500 crores or more (about US$ 75 million)<br>b) Companies not covered in (a) above and having net worth of Rs. 500 crores or more (about US$ 75 million)<br>c) Holding, subsidiary, joint venture or associate companies of companies covered above | a) Companies whose equity or debt securities are listed or are in the process of listing on any stock exchange in India or outside India and having net worth less than Rs. 500 crores (about US$ 75 million)<br>b) Companies not covered in (a) above and having net worth of Rs. 250 crores (about US$ 38 million) or more but less than Rs. 500 crores<br>c) Holding, subsidiary, joint venture or associate companies of companies covered above |
| Year in which Ind AS to be applied | Accounting period beginning on or after 1 April 2016 | Accounting period beginning on or after 1 April 2017 |
| Comparative figures for preceding accounting period | Required for period ending on 31 March 2016 or thereafter | Required for period ending on 31 March 2017 or thereafter |



## ANNEXURE I: DOUBLE TAXATION AVOIDANCE AGREEMENTS ('DTAA RATES')

**List of the countries with which India has entered into double tax treaties:**

| Sr. No. | Country | Dividend (not being covered under section 115-O) | Interest | Royalty | FTS | Remarks |
|---|---|---|---|---|---|---|
| | | Tax rate | Tax rate | Tax rate | Tax rate | |
| **Rate as per the IT Act** | | **Nil [Note 1]** | **20% [Note 6 and 7]** | **10% [Note 3 and 7]** | **10% [Note 3 and 7]** | **Rate as per IT Act (to be further increased by applicable surcharge and education cess) or DTAA rate, whichever is more beneficial shall apply.** |
| 1 | Albania | 10% | 10% [Note 4] | 10% | 10% | |
| 2 | Armenia | 10% | 10% [Note 4] | 10% | 10% | |
| 3 | Australia | 15% | 15% | 10%/15% [Note 5] | 10%/15% [Covered under Article for Royalty] | |
| 4 | Austria | 10% | 10% [Note 4] | 10% | 10% | |
| 5 | Bangladesh | 10% / 15% | 10% [Note 4] | 10% | No separate provision | 10% tax on dividends if at least 10% of capital of company paying dividend is held by recipient company, in any other case 15%. |
| 6 | Belarus | 10% / 15% | 10% [Note 4] | 15% | 15% | 10% tax on dividends if paid to a Company holding 25% shares, in any other case 15%. |
| 7 | Belgium | 15% | 15% / 10% | 10% | 10% | 1. Interest taxable at 10% if recipient is bank; in any other case 15%.<br>2. MFN clause with respect to Royalty and FTS. |
| 8 | Botswana | 7.50% / 10% | 10% [Note 4] | 10% | 10% | 7.50% tax on dividends if shareholder is a company and holds at least 25% shares in the investee company, in any other case 10%. |
| 9 | Brazil | 15% | 15% [Note 4] | 15% (25% for trademark) | 15% [Covered under Article for Royalty] | 15% tax on dividends if paid to a company; in any other case as per domestic tax laws. |
| 10 | Bulgaria | 15% | 15% [Note 4] | 15% / 20% | 20% | 15% tax on royalties if relating to copyrights of literary, artistic or scientific works, other than cinematograph films or films or tapes used for radio or television broadcasting, in any other case 20%. |
| 11 | Bhutan | 10% | 10% [Note 4] | 10% | 10% | |

| Sr. No. | Country | Dividend (not being covered under section 115-O) | Interest | Royalty | FTS | Remarks |
|---|---|---|---|---|---|---|
| | | Tax rate | Tax rate | Tax rate | Tax rate | |
| 12 | Canada | 15% / 25% | 15% [Note 4] | Note 5 | Note 5 | 15% tax on dividends if at least 10% of the voting power in the company paying the dividends is controlled by the recipient company; in any other case 25%. |
| 13 | China | 10% | 10% [Note 4] | 10% | 10% | |
| 14 | Croatia | 5%/15% | 10 % [Note 4] | 10% | 10% | 5% tax on dividends if at least 10% of the capital of the company paying the dividend is held by the recipient company (other than partnership); in any other case 15%. |
| 15 | Cyprus | 10% / 15% | 10% [Note 4] | 15% | 15% / 10% | 1. 10%, if at least 10% of the capital of the company paying dividend is held by the recipient company, in any other case 15%.<br>2. Technical Fees are taxable @10% under Article 13 if the recipient is the beneficial owner. and Fees for included Services is chargeable @15% under Article 12 if the recipient is the beneficial owner |
| 16 | Czech Republic | 10% | 10% [Note 4] | 10% | 10% | |
| 17 | Colombia | 5% | 10% [Note 4] | 10% | 10% | |
| 18 | Denmark | 15% / 25% | 15% / 10% [Note 4] | 20% | 20% | 1. 15% tax on dividends if at least 25% of the capital of the company paying the dividend is held by the recipient company, in other cases 25%.<br>2. Interest taxable at 10% if recipient is bank; in any other case 15%. |
| 19 | Estonia | 10% | 10% [Note 4] | 10% | 10% | |
| 20 | Ethiopia | 7.5% | 10% [Note 4] | 10% | 10% | |
| 21 | Finland | 10% | 10% [Note 4] | 10% | 10% | MFN clause with respect to Dividend, Interest, Royalty and FTS. |
| 22 | France | 10% | 10% [Note 4] | 10% | 10% | MFN clause with respect to Dividend, Interest, Royalty and FTS. |
| 23 | Fiji | 5% | 10% [Note 4] | 10% | 10% | |
| 24 | Georgia | 10% | 10% [Note 4] | 10% | 10% | |
| 25 | Germany | 10% | 10% [Note 4] | 10% | 10% | |
| 26 | Greece | Taxable as per domestic laws in source country | | | No separate provision | |
| 27 | Hungary | 10% | 10% [Note 4] | 10% | 10% | MFN clause with respect to Dividend, Interest, Royalty and FTS. |

| Sr. No. | Country | Dividend (not being covered under section 115-O) | Interest | Royalty | FTS | Remarks |
|---|---|---|---|---|---|---|
| | | Tax rate | Tax rate | Tax rate | Tax rate | |
| 28 | Indonesia | 10% | 10% [Note 4] | 10% | 10% | |
| 29 | Iceland | 10% | 10% [Note 4] | 10% | 10% | |
| 30 | Ireland | 10% | 10% [Note 4] | 10% | 10% | |
| 31 | Israel | 10% | 10% [Note 4] | 10% | 10% | MFN clause with respect to Dividend, Interest, Royalty and FTS. |
| 32 | Italy | 15% / 25% | 15% [Note 4] | 20% | 20% | 15% tax on dividends if at least 10% of the shares of the company paying the dividend is beneficially owned by the recipient company; in any other case 25%. |
| 33 | Japan | 10% | 10% [Note 4] | 10% | 10% | |
| 34 | Jordan | 10% | 10% [Note 4] | 20% | 20% | |
| 35 | Kazakhstan | 10% | 10% [Note 4] | 10% | 10% | MFN clause with respect to Dividend, Interest, Royalty and FTS. |
| 36 | Kenya | 15% | 15% [Note 4] | 20% | No separate provision | 17.50% tax in case of Management and Professional fees. |
| 37 | Korea | 15% / 20% | 15% / 10% | 15% | 15% | 1. 15% tax on dividends if at least 20% of the capital of the company paying dividend is held by the recipient company; in any other case 20 %.<br>2. Interest taxable at 10% if recipient is bank; in any other case 15%. |
| 38 | Kuwait | 10% | 10% [Note 4] | 10% | 10% | |
| 39 | Kyrgyz Republic | 10% | 10% [Note 4] | 15% | 15% | |
| 40 | Latvia | 10% | 10% [Note 4] | 10% | 10% | |
| 41 | Libya | Taxable as per domestic laws in source country | | | No separate provision | |
| 42 | Lithuania | 5%/15% | 10% | 10% | 10% | 5% tax on dividends if at least 10% of the shares of the company paying the dividend is beneficially owned by the recipient company (other than a partnership); in any other case 15%. |
| 43 | Luxembourg | 10% | 10% [Note 4] | 10% | 10% | |
| 44 | Macedonia | 10% | 10% [Note 4] | 10% | 10% | |
| 45 | Malaysia | 5% | 10% [Note 4] | 10% | 10% | |
| 46 | Malta | 10% | 10% [Note 4] | 10% | 10% | |
| 47 | Mauritius | 5% / 15% | [Note 4] | 15% | No separate provision | 1. 5% tax on dividend, if at least 10% of the capital of the company paying the dividend is held by the recipient company, in any other case 15%. |

| Sr. No. | Country | Dividend (not being covered under section 115-O) | Interest | Royalty | FTS | Remarks |
|---|---|---|---|---|---|---|
| | | Tax rate | Tax rate | Tax rate | Tax rate | |
| | | | | | | 2. 7.5% tax on interest in respect of loans made after 31st March, 2017.<br><br>Interest income of Mauritian resident banks in respect of debt-claims existing on or before 31st March, 2017 shall be exempt from tax in India. |
| 48 | Mongolia | 15% | 15% [Note 4] | 15% | 15% | |
| 49 | Montenegro | 5% / 15% | 10% [Note 4] | 10% | 10% | 5% tax on dividends if at least 25% of the capital is owned by company (other than a partnership); in any other case 15%. |
| 50 | Morocco | 10% | 10% [Note 4] | 10% | 10% | |
| 51 | Mozambique | 7.50% | 10% [Note 4] | 10% | No separate provision | |
| 52 | Myanmar | 5% | 10% [Note 4] | 10% | No separate provision | |
| 53 | Namibia | 10% | 10% [Note 4] | 10% | 10% | |
| 54 | Nepal | 5%/10% | 10% [Note 4] | 15% | No separate provision | 1. 5% tax on dividends if the beneficial owner of the shares is a company which holds at least 10% of the shares of the company paying the dividends; in any other case 10%.<br>2. MFN clause with respect to Royalty, shall be applicable if Nepal enters into treaty with any other country for a lower rate on royalties. |
| 55 | Netherlands | 10% | 10% [Note 4] | 10% | 10% | MFN clause with respect to Dividend, Interest, Royalty and FTS. |
| 56 | New Zealand | 15% | 10% [Note 4] | 10% | 10% | |
| 57 | Norway | 10% | 10% [Note 4] | 10% | 10% | |
| 58 | Oman | 10% /12.5% | 10% [Note 4] | 15% | 15% | 10% tax on dividends if at least 10% of the shares of the company paying the dividend is owned by the recipient company; in any other case 12.50%. |
| 59 | Philippines | 15% / 20% | 15% / 10% [Note 4] | 15% | No separate provision | 1. 15% tax on dividends if at least 10% of the shares of the company paying the dividend is owned by the recipient company; in any other case 20%.<br>2. Interest taxable @ 10% if recipient is Financial Institution (including an insurance company) and where the interest is payable by a company resident of Philippines to a resident of |

| Sr. No. | Country | Dividend (not being covered under section 115-O) | Interest | Royalty | FTS | Remarks |
|---|---|---|---|---|---|---|
| | | Tax rate | Tax rate | Tax rate | Tax rate | |
| | | | | | | India in respect of public issues of bonds, debentures or similar obligations. In any other case 15%.<br>3. Royalty taxable @ 15% if it is payable in pursuance of any collaboration agreement approved by the Government of India. No rates prescribed in any other case. |
| 60 | Poland | 10% | 10% [Note 4] | 15% | 15% | |
| 61 | Portuguese Republic | 10% / 15% | 10% [Note 4] | 10% | 10% | 10% tax on dividends if at least 25% of the capital stock is owned by company for an uninterrupted period of 2 years prior to the payment of dividend; in any other case 15%. |
| 62 | Qatar | 5% / 10% | 10% [Note 4] | 10% | 10% | 5% tax on dividends if at least 10% of the shares are owned by company; in any other case 10%. |
| 63 | Romania | 10% | 10% [Note 4] | 10% | 10% | |
| 64 | Russian Federation | 10% | 10% [Note 4] | 10% | 10% | |
| 65 | Saudi Arabia | 5% | 10% [Note 4] | 10% | No separate provision | |
| 66 | Serbia | 5% / 15%. | 10% [Note 4] | 10% | 10% | 5% tax on dividends if at least 25% of the capital is owned by company (other than a partnership); in any other case 15%. |
| 67 | Singapore | 10% / 15% | 10% / 15% | 10% | 10% | 1. 10%, if at least 25% of the shares of the company paying the dividend is held by the recipient company, in any other case 15%.<br>2. Interest taxable at 10% if recipient is bank or similar financial institution including an insurance company; in any other case 15%. |
| 68 | Slovenia | 5% / 15% | 10% [Note 4] | 10% | 10% | 5% tax on dividends if at least 10% of the shares of the company paying the dividend is held by the recipient company; in any other case 15%. |
| 69 | South Africa | 10% | 10% [Note 4] | 10% | 10% | |
| 70 | Spain | 15% | 15% [Note 4] | 10% / 20% | 20% | 1. 10% tax on royalties if paid for the use or right to use any industrial, commercial or scientific equipment; 20% in case of fees for technical services and other royalties.2. MFN clause with respect to Royalty and FTS. |

| Sr. No. | Country | Dividend (not being covered under section 115-O) | Interest | Royalty | FTS | Remarks |
|---|---|---|---|---|---|---|
| | | Tax rate | Tax rate | Tax rate | Tax rate | |
| 71 | Sri Lanka | 7.5% | 10% [Note 4] | 10% | 10% | |
| 72 | Sudan | 10% | 10% [Note 4] | 10% | 10% | |
| 73 | Sweden | 10% | 10% [Note 4] | 10% | 10% | MFN clause with respect to Dividend, Interest, Royalty and FTS. |
| 74 | Swiss Confederation | 10% | 10% [Note 4] | 10% | 10% | MFN clause with respect to Dividend, Interest, Royalty and FTS. |
| 75 | Syrian Arab republic | 5% / 10% | 10% [Note 4] | 10% | No separate provision | 5% tax on dividends if at least 10% of the shares are owned by company (other than a partnership), in any other case 10%. |
| 76 | Tajikistan | 5% / 10% | 10% [Note 4] | 10% | No separate provision | 5% tax on dividends if at least 25% of the capital is owned by company (other than a partnership); in any other case 10%. |
| 77 | Tanzania | 5% / 10% | 10% [Note 4] | 10% | No separate provision | 5% tax on dividends if at least 25% of the shares are beneficially owned by company; in any other case 10%. |
| 78 | Thailand | 10% | 10% [Note 4] | 10% | No separate provision | As per the revised DTAA with Thailand, effective from 1 April 2016, the rate of withholding tax is 10% in respect of Dividend, Interest and Royalty. There is no specific provision with respect to FTS. |
| 79 | Trinidad and Tobago | 10% | 10% [Note 4] | 10% | 10% | |
| 80 | Turkey | 15% | 10%/15% [Note 4] | 15% | 15% | Interest is taxable at 10% if recipient is bank, insurance company or similar financial institution; in any other case 15%. |
| 81 | Turkmenistan | 10% | 10% [Note 4] | 10% | 10% | |
| 82 | Uganda | 10% | 10% [Note 4] | 10% | 10% | |
| 83 | Ukraine | 10% / 15% | 10% [Note 4] | 10% | 10% | 10% tax on dividends if at least 25% of the capital is owned by company (other than a partnership); in any other case 15%. |
| 84 | United Arab Emirates | 10% | 5% / 12.5% [Note 4] | 10% | No separate provision | Interest taxable at 5% if recipient is bank or similar financial institution; in any other case 12.50%. |
| 85 | United Arab Republic (Egypt) | As per domestic law | As per domestic law | As per domestic law Taxable in source country as per domestic tax rate | No separate provision | |

| Sr. No. | Country | Dividend (not being covered under section 115-O) | Interest | Royalty | FTS | Remarks |
|---|---|---|---|---|---|---|
| | | Tax rate | Tax rate | Tax rate | Tax rate | |
| 86 | United Kingdom | 15% / 10% | 15% / 10% [Note 4] | 10%/15% [Note 5] | 10%/15% [Note 5] | 1. Interest taxable at 10% if recipient is bank; in any other case 15%. 2. Dividend taxable at 15% where dividend is paid out of income derived directly or indirectly from immovable property. In other case-10%. |
| 87 | United Mexican States | 10% | 10% [Note 4] | 10% | 10% | |
| 88 | United States | 15% / 25% | 10% / 15% [Note 4] | 10%/15% [Note 5] | 10%/15% [Note 5] | 1. 15% tax on dividends if at least 10% of the voting stock is owned by company; in any other case 25%. 2. Interest taxable at 10% if recipient is bona fide bank or financial institution including an insurance company; in any other case 15%. |
| 89 | Uruguay | 5% | 10% [Note 4] | 10% | 10% | |
| 90 | Uzbekistan | 10% | 10% [Note 4] | 10% | 10% | |
| 91 | Vietnam | 10% | 10% [Note 4] | 10% | 10% | |
| 92 | Zambia | 5% / 15% | 10% [Note 4] | 10% | 10% | 1. 5% tax on dividends if at least 25% of the shares are owned by company during a period of 6 months immediately preceding the date of payment of dividend; in any other case 15%. |

Notes:

1. As per section 115-O of the IT Act, subject to certain exceptions, any amount declared, distributed or paid by a domestic company by way of dividend shall be chargeable to DDT effectively @ 20.3576%. In such cases, dividend distributed (which is subject to DDT) is not subject to any withholding tax and is tax exempt in the hands of the non-resident shareholders. The rates mentioned in the above table are applicable to dividend other than the dividend declared, distributed or paid by Indian companies on which DDT is applicable. [Such as deemed dividend under Section 2(22)(e) of the IT Act.]

2. Unless otherwise provided in the DTAA, both the countries have right to tax.

3. With effect from FY 2015-16, the rate of tax under the IT Act on Royalty and/or FTS receivable by a non-resident has been reduced to 10% (plus applicable Surcharge and education cess). As per section 90(2) of the IT Act, tax rate as per the provisions of DTAA or the IT Act, whichever is beneficial to the assessee, shall apply. For availing the benefit of DTAA, furnishing of Tax Residency Certificate (TRC) and self-declaration in Form 10F by the payee is mandatory. Form 10F is not required to be furnished if all the particulars stated therein are provided in the TRC itself.

4. Dividend/interest earned by the Government and certain specified institutions, inter-alia, Reserve Bank of India is exempt from taxation in the country of source (subject to certain conditions).

5. Tax rate is 10% in case of Royalties for equipment rental and fees for services ancillary or subsidiary thereto. For other cases, the tax rate is 15%. However, for first 5 years of the agreement, the rate is 20% in case of payer other than Government or specified institution and 15% for the subsequent years.

6. Lower withholding tax of 5% is applicable in case of interest on borrowing in foreign currency, interest on long term bond including long term infrastructure bond, interest from infrastructure debt fund and interest on rupee denominated bond and government securities.

7. In case the payee is not able to furnish PAN to the payer, tax shall be deducted at higher of the following rates:

   (i) rate specified in the relevant provision of the IT Act,

   (ii) at the rates in force or

   (iii) at the rate of 20%

Payments namely interest, royalty and fees for technical services will not require PAN if alternative documents/details such tax residency certificate, tax identification number of country of residence, etc. are furnished by the non-resident to the indian deductor. Accordingly, higher withholding tax @ 20% shall not be applicable if alternative documents are furnished by a non-resident.

## SIGNIFICANT CHANGES IN THE TAX TREATIES

### India-Mauritius DTAA

The Protocol for amending the DTAA between India and Mauritius was recently notified. The significant amendments to the Protocol include introduction of source-based taxation for capital gains on the transfer of shares of Indian companies acquired on or after 1 April 2017, and the source-based taxation of interest income of Mauritian banks.

- Source based taxation of capital gains arising on the transfer of the shares of a resident Indian company held by a Mauritian Tax Resident

| Date of Acquisition | Tax Rate |
|---|---|
| Prior to 1 April 2017 | Exempt from tax |
| Between 1 April 2017 and 31 March 2019 | 50% of the Domestic Tax Rate* |
| After 1 April 2019 | Full Domestic Tax Rate |

*The concession for two years shall be subject to the Limitation of Benefits (LOB) conditions.

- Source based taxation of interest income from banks: Interest arising in India to Mauritian resident banks will be subject to withholding tax in India at the rate of 7.5% in respect of debt claims or loans made after 31 March 2017. However, interest income of Mauritian resident banks in respect of debt-claims existing on or before 31 March 2017 shall be exempt from tax in India.

### India-Singapore DTAA

As India -Singapore tax treaty making specific reference to the India-Mauritius tax treaty (Article 6 of the protocol) provides that so long as the capital gain tax is exempt under the India-Mauritius tax treaty, the exemption shall also continue under the India-Singapore tax treaty. With the above change in the India- Mauritius tax treaty, the capital gain tax exemption currently availed under the India-Singapore tax treaty shall also be impacted. More clarity is awaited in respect of the implications on the India-Singapore tax treaty pursuant to the above amendment in the India-Mauritius tax treaty.

## India-Cyprus DTAA

The amendment in the tax treaty between India and Cyprus is also followed by the amendment of the DTAA with Mauritius. As in the case of Mauritius, the treaty with Cyprus had provided for residence-based taxation of capital gains, which will now be taxed in India for entities resident in Cyprus, subject to double tax relief. In other words, India will have the right to tax capital gains arising in India. The provisions in the earlier treaty for residence-based taxation were leading to distortion of financial and real investment flows by artificial diversion of various investments from their true countries of origin, for the sake of avoiding tax. As in the case of Mauritius, this amendment will deter such activities.

The Protocol will tackle treaty abuse and round tripping of funds, curb revenue loss, prevent double non-taxation, streamline the flow of investment and stimulate the flow of exchange of information between the two Contracting Parties. It will also improve transparency in tax matters and will help curb tax evasion and tax avoidance.

## Annexure II: Tax Deduction at Source (TDS) Rates

| Sr. No. | Nature of Payment | Section | Threshold for Deduction | Rate at which Tax is to be Deducted [Note1] |
|---|---|---|---|---|
| 1 | Salary | 192 | As per slab rates prescribed for senior citizens (includes very senior citizen) and other individuals | |
| 2 | Accumulated balance due to an employee participating in RPF [Note-2 and 6] | 192A | Rs. 50,000 in aggregate | 10% |
| 3 | Interest on Securities including listed debentures [Note-3 and 6] | 193 | Rs. 5,000 for interest on debentures by public company to individuals and HUF | 10% |
| 4 | Interest other than interest on securities [Note-4, 6 and 7] | 194A | Rs. 5,000 / Rs. 10,000 p.a. | 10% |
| 5 | Winning from lottery or crossword puzzle or card game or other game | 194B | Rs. 10,000 | 30% |
| 6 | Winnings from horse race | 194BB | Rs. 10,000 | 30% |
| 7 | Payments to contractors [Note-7 and 8] | 194C | Rs. 30,000 for single transaction or Rs. 1,00,000 annual limit | 2% (1% for individual and HUF) |
| 8 | Insurance commission | 194D | Rs. 15,000 | 5% |
| 9 | Payment in respect of life insurance policy [Note-5 and 6] | 194DA | Less than Rs. 1,00,000 | 1% |
| 10 | Payment to non- resident sportsmen / entertainer / sports association | 194E | No threshold | 20% |
| 11 | Payment in respect of deposits under National Savings Scheme,1987 [Note 6] | 194EE | Less than Rs. 2,500 | 10% |
| 12 | Commission, etc. on sale of Lottery Tickets | 194G | Rs. 15,000 | 5% |
| 13 | Commission or brokerage [Note-7] | 194H | Rs. 15,000 p.a. | 5% |
| 14a | Rent of Land / Building / Furniture or fitting [Note-6 and 7] | 194I | Rs. 1,80,000 p.a. | 10% |
| 14b | Rent of Plant, Machinery or Equipment [Note-6 and 7] | 194I | Rs. 1,80,000 p.a. | 2% |
| 15 | Payment/credit of consideration to a resident transferor of any immovable property (other than agricultural land) | 194IA | Less than Rs. 50,00,000 | 1% |
| 16 | Fees for professional and technical services / royalty / remuneration to Director other than salary [Note-7 and 9] | 194J | Rs. 30,000 p.a. | 10% |

| Sr. No. | Nature of Payment | Section | Threshold for Deduction | Rate at which Tax is to be Deducted [Note1] |
|---|---|---|---|---|
| 17 | Payment of compensation for acquisition of certain immovable property | 194LA | Rs. 2,50,000 p.a. | 10% |
| 18 | Income by way of Interest from Infrastructure Debt Fund | 194LB | No threshold | 5% |
| 19 | Income by way of Interest from Infrastructure Debt Fund Company [Note-10] | 194LC | No threshold | 5% |
| 20 | Income by way of Interest on certain Bonds and Government Securities held by FII and QFI [Note-11] | 194LD | No threshold | 5% |
| 21 | Payment to non-resident of sum chargeable to tax in India | 195 | As per the rate in force or rate specified in the relevant DTAAs, whichever is beneficial [Note-12] | |

**Notes:**

1. In case the payee is not able to furnish PAN to the payer, tax shall be deducted at higher of the following rates:

   (i) rate specified in the relevant provision of the IT Act,

   (ii) at the rates in force or

   (iii) at the rate of 20%

   Certain payments such as interest, royalty, fees for technical services and payment on transfer of capital asset will not require PAN if alternative documents and details such tax residency certificate, tax identification number of country of residence, etc. are furnished.

2. In case PAN is not furnished by the person entitled to receive the accumulated balance in RPF, the tax is to be deducted at the maximum marginal rate of 35.535%.

3. Interest on securities issued by Company and listed on any recognized stock exchange would not be subject to deduction of tax if such securities are held in dematerialized form.

4. Under Section 194A, the threshold limit is Rs.10,000 where the payer is a banking company or a co-operative society engaged in banking business, or in case of deposits with post office under a scheme notified by Central Government and Rs. 5,000 in any other case.

5. Tax is to be deducted on sums payable other than the amount not includible in the total income under section 10(10D).

6. Tax is not to be deducted, if the payee furnishes to the payer a declaration in Form No.15G or 15H, as the case may be.

7. An individual or HUF is not liable to deduct tax. However, an individual or HUF, who is liable to tax audit under section 44AB during the financial year immediately preceding the financial year in which sum is credited or paid, shall be liable to deduct tax under sections 194A, 194C, 194H, 194I and 194J, as the case may be.

8. No tax is required to be deducted at source on credit or payment of transport charges, if the transporter owns ten or less than ten goods carriages at any time during the previous year and furnishes a declaration to that effect along with his valid PAN.

9. Tax is required to be deducted on remuneration paid to a director which is not in the nature of salary.

10. In respect of amount borrowed in foreign currency from a source outside India:

    - under a loan agreement executed after 1 July 2012 but before 1 July 2017; or
    - by way of issue of any long term bond issued after 1 October 2014 but before 1 July 2017; or
    - by way of issue of long term infrastructure bond after 1 July 2012 but before 1 July 2017.

11. Interest payable on or after 1 June 2013 but before 1 July 2017 in respect of investment made by FII or QFI in:

    - Rupee denominated bond of an Indian Company
    - Government Security

12. For the purpose of claiming DTAA benefit, the non-resident payee should furnish a valid TRC from foreign tax authority and a self-declaration in Form 10F. Form 10F is not required to be furnished if all the particulars stated therein are provided in the TRC itself.

13. It has been clarified by CBDT that a payer shall not be required to deduct TDS on service tax component wherever in terms of the agreement between the payer and payee, the service tax component comprised in the amount payable to a resident payee is indicated separately.

## Annexure III: Direct Taxes Compliance Calendar

We have provided an overview of the various direct tax compliances from the perspective of a Company, Partnership Firm (including LLP), Individual and HUF.

| Nature of Compliances | Person | | |
|---|---|---|---|
| | Company | Partnership Firm / LLP | Individual and HUF |
| **I. Due date for filing of Return of Income ('ROI'), obtaining Tax Audit Report and Transfer Pricing (Note 1)** | | | |
| Person covered under tax audit (other than whom transfer pricing is applicable) | 30 September | | |
| Person covered under transfer pricing | 30 November | | |
| Other persons | 30 September | 31 July | 31 July |
| **II. Advance Tax Payments for Income Tax(Note 2 & 3)** | | | |
| 1st Installment – on or before 15 June | 15% | | |
| 2nd Installment – on or before 15 September | 45% | | |
| 3rd Installment – on or before 15 December | 75% | | |
| 4th Installment – on or before 15 March | 100% | | |
| **III. Tax Deducted at Source ('TDS') (Note 4)** | | | |
| Tax must be deducted at the time of payment, in case of salary | Applicable | | Applicable, only if person is covered under tax audit in the preceding previous year |
| In case of payments other than salary, at the time of making payment or credit, whichever is earlier | | | |
| Tax deducted must be deposited in the bank by 7th day of following month except tax deducted for payment or credit made in March must be deposited by 30th April | | | |
| With effect from 1 June 2016, under section 194(1A), tax deducted must be deposited in bank within period of 30 days from the end of month of deduction | Applicable | | |
| **IV. Tax Collected at Source ('TCS') (Note 5)** | | | |
| Tax must be collected at the time of receipt whichever, is earlier | | | Applicable, only if person is covered under tax audit in the preceding previous year |
| Tax collected must be deposited within one week from the last day of the month in which the collection is made. | | | |
| **V. Due dates for filing of TDS Returns (Note 6)** | | | |
| For the Quarter ended June | 31 July | | |
| For the Quarter ended September | 31 October | | |
| For the Quarter ended December | 31 January | | |
| For the Quarter ended March | 31 May | | |
| **Due dates for filing of TCS Returns** | | | |
| For the Quarter ended June | 15 July | | |
| For the Quarter ended September | 15 October | | |
| For the Quarter ended December | 15 January | | |

| Nature of Compliances | Person | | |
|---|---|---|---|
| | Company | Partnership Firm / LLP | Individual and HUF |
| For the Quarter ended March | 15 May | | |
| **VI. Due dates for issue of Form 16 (for Salaries) / Form 16A (for other than Salaries)/Form 16B(for Sale of Property) and Form 27D (for TCS)** | | | |
| Issue of Form 16 annually | 15 June | | |
| Issue of Form 16A / 27D for quarter ended June | 15 August/30 July | | |
| Issue of Form 16A / 27D for quarter ended September | 15 November/30 October | | |
| Issue of Form 16A / 27D for quarter ended December | 15 February/30 January | | |
| Issue of Form 16A / 27D for quarter ended March | 15 June/30 May | | |
| Issue of Form 16B | 15 days from the due date of depositing tax | | |
| **VII. Due dates for payment of DDT** | | | |
| Applicable to all companies declaring/paying or distributing dividend | Within 14 days from the date of declaration or payment or distribution or dividend, whichever is earlier | Not Applicable | |
| **VIII. Due Date of submission in Form 61 by Persons Specified in rule 114D** | | | |
| (Details of Transactions in which PAN to be quoted.) | | | |
| For declarations received in Form 60 by March 2016 (Note 7) | | 31 October | |
| For declarations received in Form 60 by September 2016 | | | |
| **IX. Due dates for submission of payment under section 285 of the IT Act (Note 8)** | | | |
| Non-resident having liaison office in India to file statement in Form 49C | Within 60 days from the end of the financial year | | |
| **X. Due date for filing Annual Information Return under section 285BA of the IT Act** | | | |
| Specified persons to furnish Annual Information Return in Form 61A in respect of specified financial transactions | 31 August | | |
| **XI. Due dates for filling Appeals before the Income-Tax Appellate authorities** | | | |
| Objections before the Dispute Resolution Panel | Within 30 days from the receipt of the draft assessment order | | |
| Appeal to the Commissioner of Income-tax (Appeals) | Within 30 days from the date of service notice of demand or the relevant order sought to be appealed against | | |
| Appeal to the Income-tax Appellate Tribunal (Note 9) | Within 60 days from the date on which order sought to be appealed against is communicated | | |
| **XII. Due dates for deduction and deposit of Equalization Levy under Chapter VIII of Finance Act 2016** | | | |
| Applicable for Amount paid or payable on or after 1 June 2016 towards certain specified services to a non-resident subject to Equalization Levy (Note 10) | | | |
| Time of deduction | When amount is paid or payable | | |
| Rate of Tax | 6% on Gross amount paid | | |
| Date of Deposit | 7th of the next month | | |
| Date of Annual Statement of Specified Services in Form no.1 | 30th June of next year | | |

**Notes:**

1. In case of working partner of a partnership firm, whose accounts are required to be audited under section 44AB of the IT Act, the date of filing of ROI is 30 September.

2. Advance tax payment for income-tax is applicable to every person (except a resident senior citizen not having income from business or profession ) where the amount of income-tax payable is Rs.10,000 or more.

3. An eligible assessee in respect of eligible business referred to in section 44AD opting for computation of profits or gains of business on presumptive basis, shall be required to pay advance tax of the whole amount in one installment on or before the 15th March of the financial year.

4. A NIL Declaration is basically a declaration for non-filing of TDS Statements for those deductors who are not liable to deduct any tax during the relevant quarter or have not deducted tax during any quarter and subsequently did not file a TDS Statement under section 200(3) of the IT Act 1961 for any quarter.

5. Tax Collection at Source (TCS) is to be collected by the seller from the buyer at the time of sale of specified category of goods. The TCS rate is different for each category of goods and TCS so collected by the seller from the buyer is required to be deposited with the government. Further, TCS shall not apply to certain buyers who satisfy the specified conditions.

6. The due dates for filing TDS returns have been revised by CBDT vide notification dated 29th April, 2016, from AY 2017-18.

7. Considering hardship faced by filers CBDT has extended the date of online reporting of declarations in Form No. 61 for quarter ending March, 2016 to 31 October, 2016 .i.e. along with report for quarter ending September, 2016.

8. Every person, being a non-resident having liaison office in India shall, in respect of its activities in a financial year, file a statement in Form No. 49C within 60 days from the end of the financial year, i.e. 30 May to the Assessing Officer.

9. Memorandum of cross objection is to be filed within 30 days from the receipt of notice intimating that the appeal has been preferred before the Tribunal, against any part of the order under appeal, if required.

10. It is to be levied only on payment made for certain specified services and facilities provided by non-resident not having a PE in India. Specified services in this behalf means:

    Online* advertisement,

    Provision for digital advertising space , or

    Any other facility or service for the purpose of online advertisement ,or

    Any other service notified by the Central Government in this behalf;

    *The word 'online' has been defined to mean a facility for service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network.

**Annexure IV: Service Tax Compliance Calendar**

| Nature of Compliances | Due dates / quantum of interest and late filing fees |
|---|---|
| **Due date for payment of service tax (Note 1)** | |
| For One Person Company whose aggregate value of services during previous financial year is Rs. 50,00,000 or less, Individual, partnership firm, LLP or HUF | By 6th of the following month for every quarter |
| For Others (Companies, Trusts, AOP, Societies, etc.) | By 6th of the following month for every month |
| **Interest on late payment of service tax (Note 2)** | |
| Collection of any amount as service tax but failing to pay the amount so collected on or before the date on which such payment becomes due | 24% p.a. |
| In situations other than covered above | 15% p.a. |
| **Filing of service tax returns** | |
| April to September (Note 3) | 25 October |
| October to March (Note 4) | 25 April |
| Annual return | 30 November of succeeding financial year |
| **Late fees for delay in filing of returns (Note 5)** | |
| For delay up to 15 days | Rs. 500 |
| For delay beyond 15 days up to 30 days | Rs. 1,000 |
| For delay beyond 30 days (Note 6) | Rs. 1,000 + Rs. 100 per day beyond 30 days |
| **Due date for filing of appeal** | |
| Appeal to be filed before Commissioner of Central Excise (Appeals) against order of adjudication authority subordinate to Commissioner of Central Excise. | Within 2 months from date of receipt of the order. The Commissioner of Central Excise (Appeals) has the power to condone delay in filing of appeal for a further period of 1 month provided sufficient cause is shown for non-filing the appeal within stipulated period of 2 months. |
| Appeal to be filed before Customs, Excise and Service Tax Appellate Tribunal (CESTAT) against order of Commissioner of Central Excise or Commissioner of Central Excise (Appeals). | Within 3 months from date of receipt of the order. CESTAT has powers to condone the delay in filing of appeal if it is satisfied that there was sufficient cause for not presenting the appeal within the stipulated period. |

**Notes:**

1. The due date for payment of Service Tax for the month or quarter ended on 31 March is 31 March itself.

2. For service provider having turnover below Rs. 60,00,000 in the preceding financial year or period covered under notice, the specified rate shall be reduced by 3%.

3. The due date for filing of service tax returns for the period April to September for Input Service Distributor is 30 October.

4. The due date for filing of service tax returns for the period October to March for Input Service Distributor is 30 April.

5. In case service tax is NIL, the authority may waive the late filing fees on being satisfied that there is sufficient reason for not filing the return.

6. Maximum late filing fees shall not exceed Rs. 20,000.

7. The following categories of person must mandatorily obtain service tax registration and comply with the provisions:

    - Every person liable to pay service tax;
    - An Input Service Distributor;
    - Every provider of taxable service whose aggregate value of taxable service in financial year exceeds Rs. 9,00,000.

# Abbreviations

| Terms | Definition | Terms | Definition |
|---|---|---|---|
| AAR | Authority for Advance Rulings | FPI | Foreign Portfolio Investors |
| AD | Authorised Dealer | FTC | Foreign Tax Credit |
| AGM | Annual General Meeting | FTS | Fees for Technical Services |
| AIF | Alternative Investment Fund | FVCI | Foreign Venture Capital Investors |
| AMT | Alternate Minimum Tax | FY | Financial Year |
| AO | Assessing Officer | GAAR | General Anti Avoidance Rules |
| AOA | Articles of Association | GDP | Gross Domestic Product |
| AOP | Association of Persons | GDR | Global Depository Receipt |
| APA | Advance Pricing Agreement | GST | Goods and Services Tax |
| AY | Assessment Year | HUF | Hindu Undivided Family |
| BEPS | Base Erosion and Profit Shifting | ICDS | Income Computation and Disclosure Standards |
| BOI | Body of Individuals | IFRS | International Financial Reporting Standards |
| BRICS | Brazil, Russia, India, China and South Africa | IGST | Interstate Goods and Service Tax |
| BSE | Bombay Stock Exchange | IMF | International Monetary Fund |
| CAG | Comptroller and Auditor General | Ind AS | Indian Accounting Standards |
| CAGR | Compounded Average Growth Rate | IPO | Initial Public Offer |
| CBDT | Central Board of Direct Taxes | IPR | Intellectual Property Rights |
| CBEC | Central Board of Excise and Custom | IT Act | Income-tax Act, 1961 |
| CEO | Chief Executive Officer | IT Rules | Income-Tax Rules, 1962 |
| CENVAT | Central Value Added Tax | KKC | Krishi Kalyan Cess |
| CESTAT | Customs Excise & Service Tax Appellate Tribunal | LLP | Limited Liability Partnership |
| CGST | Central Goods and Service Tax | LoC | Letter of Comfort |
| CRISIL | Credit Rating Information Services of India Limited | LoU | Letter of Undertaking |
| CTT | Commodities Transaction Tax | MAT | Minimum Alternate Tax |
| CVD | Additional Duty of Customs levied under section 3(1) of the Customs Tariff Act, 1975 | MCA | Ministry of Corporate Affairs |
| | | MFN | Most Favoured Nation |
| DDT | Dividend Distribution Tax | MRTP | Monopolies and Restrictive Trade Practices Act |
| DGFT | Director general of Foreign trade | MNE | Multinational Enterprises |
| DIN | Director's Identification Number | MOA | Memorandum Of Association |
| DIPP | Department of Industrial Policy and Promotion | MSEI | Metropolitan Stock Exchange of India Limited |
| DSIR | Department of Scientific & Industrial Research | MSO | Multi System Operators |
| DTAA | Double Taxation Avoidance Agreement | NABARD | National Bank for Agriculture and Rural Development |
| ECB | External Commercial Borrowing | | |
| EGM | Extraordinary General Meeting | NBFC | Non-Banking Financial Companies |
| EOU | Export Oriented Unit | NCLT | National Company Law Tribunal |
| EPFO | Employee Provident Fund Organisation | NHAI | National Highway Authority of India |
| EPFS | Employees Provident Fund Scheme | NRI | Non-resident Indian |
| ESIC | Employees State Insurance Corporation | NSE | National Stock Exchange |
| ESOP | Employee Stock Option/Ownership Plan | OCB | Overseas Corporate Body |
| FCCB | Foreign Currency Convertible bonds | OECD | Organization for Economic Co-operation and Development |
| FCEB | Foreign Currency Exchangeable Bonds | | |
| FDI | Foreign Direct Investment | PAC | Person Acting in Concert |
| FDI | Foreign Direct Investment | PAN | Permanent Account Number |
| FEMA | Foreign Exchange Management Act, 1999 | PE | Permanent Establishment |
| FII | Foreign Institutional Investors | PIO | Person of Indian Origin |
| FIPB | Foreign Investment Promotion Board | POEM | Place of Effective Management |

# Abbreviations

| Terms | Definition | Terms | Definition |
|---|---|---|---|
| PPP | Public Private Partnership | SME | Small and Medium Enterprises |
| PSU | Public Sector Undertaking | SPV | Special Purpose Vehicle |
| QFI | Qualified Foreign Investor | STT | Security Transaction Tax |
| R&D | Research and Development | TAN | Tax Deduction and Collection Account Number |
| RBI | Reserve Bank of India | TCS | Tax Collected at Source |
| RBI Act | The Reserve Bank of India Act, 1934 | TDR | Transferable Development Rights |
| RCM | Reverse Charge Mechanism | TDS | Tax Deducted at Source |
| RECL | Rural Electrification Corporation Limited | TIEA | Tax Information Exchange Agreements |
| REIT | Real Estate Investment Trust | TP | Transfer Pricing |
| ROC | Registrar of Companies | TRC | Tax Residency Certificate |
| ROI | Return of Income | TRIPS | Trade Related Aspects of Intellectual Property Rights |
| ROW | Return on wealth | | |
| SAARC | South Asian Association for Regional Cooperation | VAT | Value Added Tax |
| SBI | State Bank of India | VCF | Venture Capital Fund |
| SDT | Specified Domestic Transaction | VCU | Venture Capital Undertaking |
| SEBI | Securities and Exchange Board of India | w.e.f. | with effect from |
| SEZ | Special Economic Zone | WOS | Wholly Owned Subsidiary |
| SGST | State Goods and Service Tax | WPI | Wholesale Price Index |
| SIDBI | Small Industries Development Bank of India | WTO | World Trade Organisation |

## RSM India


**Mumbai**
13th Floor, Bakhtawar
229, Nariman Point
Mumbai – 400 021

3rd Floor, A Wing,
Technopolis Knowledge Park
Mahakali Caves Road, Andheri (E)
Mumbai – 400 093

201, Shree Padmini
Teli Galli Junction
Andheri (E), Mumbai – 400 069

**New Delhi – NCR**
2nd Floor, Tower-B
B-37, Sector-1
Noida – 201 301

**Chennai**
Abhinav Centre
No. 4, Co-operative Colony
Alwarpet, Chennai – 600 018

1A, Chamiers Apartments
62/121, Chamiers Road
R. A. Puram, Chennai – 600 028

**Kolkata**
A-6, 12th Floor
Chatterjee International Centre
33A, Jawaharlal Nehru Road
Kolkata – 700 071

**Bengaluru**
Sujaya, No. 1007, 2nd Cross
13th Main, HAL II Stage
Bengaluru – 560 038

**Surat**
DTA-2, G-02 to G-05 Plot
Gujarat Hira Bourse
Ichhapore-2
Surat – 394 510

T-720, Belgium Tower
Opp. Linear Bus Stop
Ring Road, Surat – 395 002

B/604-605, Tirupati Plaza
Athwa Gate, Nanpura
Surat – 395 001

**Hyderabad**
217, Maruthi Corporate Point
Swapnalok Complex
92, Sarojini Devi Road
Secunderabad – 500 003

**Ahmedabad**
B-504, Narnarayan Complex
Navrangpura
Ahmedabad – 380 009

**Pune**
102, 1st Floor
Shree Residency
Baner Balewadi Road
Balewadi, Pune – 411 045

**Gandhidham**
Divyasarika, Plot No. 41
Ward 10-A, Gurukul
Gandhidham – 370 201

**Jaipur**
346, 3rd Floor
Ganpati Plaza, M.I. Road
Jaipur – 302 001

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