A GUIDE TO DOING BUSINESS IN INDIA

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THE POWER OF BEING UNDERSTOOD

RSM IN INDIA

- RSM India (comprising of RSM Astute Consulting Group and affiliates) is consistently ranked amongst India's top 6 tax, accounting and consulting groups [International Accounting Bulletin, July 2018]
- Nationwide presence through offices in 11 key cities across India
- Multi-disciplinary personnel strength of over 1,400
- International delivery capabilities

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RSM AROUND THE GLOBE

- Annual combined fee income of US$ 5.4 billion
- Combined staff of over 41,000 in over 750 offices across 116 countries
- RSM is the fifth largest audit, tax and consulting group in the USA

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A GUIDE TO DOING BUSINESS IN INDIA

FOREWORD

Welcome to India – the fastest growing large economy in the world. According to the World Bank, the Indian economy will grow at 7.3 % in 2018-19, followed by growth rate of 7.5% for next two years.

The year 2019 is a crucial year for the Indian Economy as the central political direction shall be decided by the General Elections due this year. On 1 February, 2019 the Finance Minister of India presented the interim budget 2019, which was targeted majorly towards providing reliefs / cash transfers to the farm sector and the ever growing middle class segment.

STATE OF ECONOMY – KEY ECONOMIC INDICATORS

- Indian economy estimated to achieve growth of 7.2% in 2018-19 as compared to 6.7% recorded in 2017-18.
- Today, India is the 3rd largest economy in the world with GDP of US$ 10.3 trillion (IMF – PPP Method).
- Consumer price inflation index has significantly moderated from 9.9% in 2012-13 to 3.6% in 2017-18
- Fiscal Deficit has reduced to 3.4% in 2018-19 and the current account deficit is likely to be only 2.5% of GDP this year.
- Foreign Direct Investment during the last 5 years was about US$239 Billion. India is one of the World's most Open Economies for FDI
- India has improved its ranking in the 'Ease of Doing Business' index by 23 positions and is currently ranked at 77th position as per the World Bank 'Ease of Doing Business 2019 Report'.

India's leap of 23 ranks in the Ease of Doing Business ranking is significant considering that last year India had improved its rank by 30 places . The implementation of GST with effect from 1 July 2017 subsuming most of the central and state level indirect taxes (except customs duty and stamp duty) for a uniform indirect tax regime across India, is termed as the largest indirect tax reform in the world in the past 2 decades.

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.

RSM INDIA – ONESTOP DESTINATION

When you are looking to cross your national borders for new opportunities, RSM India is committed to assist you in navigating the Indian regulatory and tax regime and establish India presence to achieve your business objectives in a fiscally efficient and compliant manner. 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, July 2018
- Nationwide presence through offices in 11 key cities across India
- Multi-disciplinary personnel strength of over 1,500
- International delivery capabilities

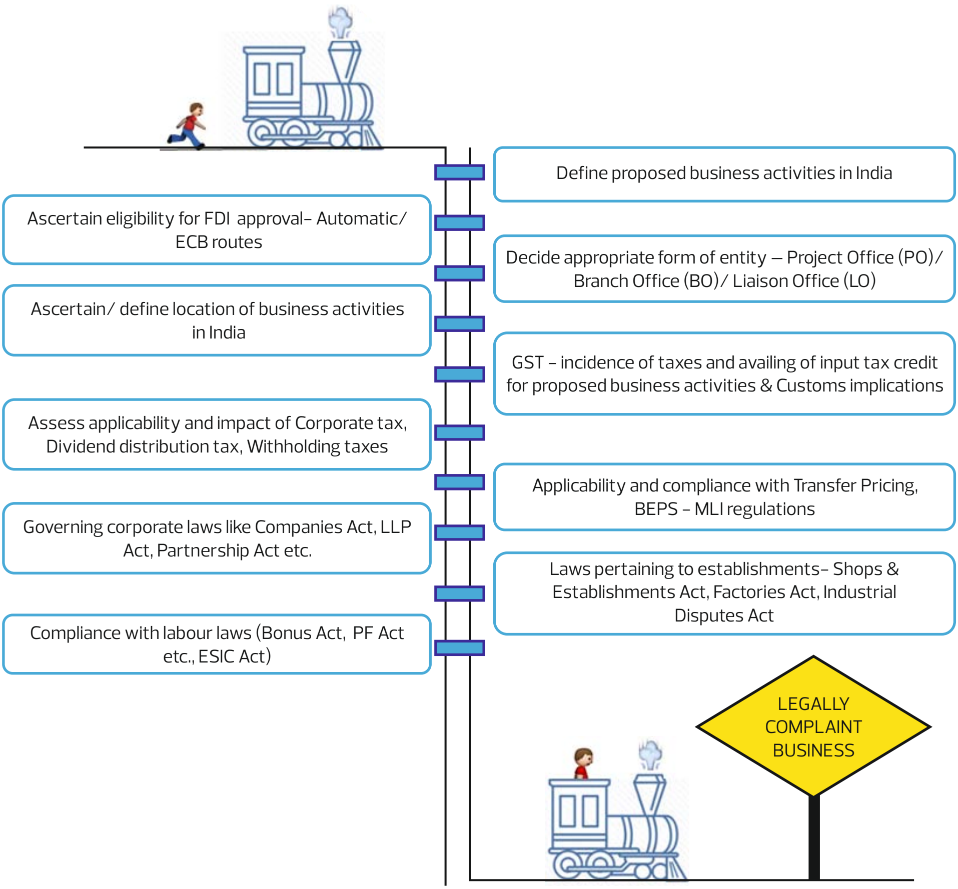
Table of Contents

Table of Contents

India – A Business Perspective

- India witnessed a robust GDP growth of 7.2% in the FY 2018-19
- India's Gross Domestic Product (GDP) in terms of Purchasing Power Parity (PPP) is US$ 10.3 trillion making it the 3rd largest economy in the world.
- FDI Inflows for FY 2017-18 was US$ 62 billion
- Exports and imports for FY 2017-18 stood at US$ 303 billion and US$ 465 billion respectively and is one of the largest exporters of gems & jewellery.
- India will require US$ 4.5 trillion for infrastructure for building 100 smart cities by 2020 on account of growth led by information technology and back office services, textiles, pharma and life sciences, agriculture and agro-based businesses, gems and jewellery as well as infrastructure sector.
- Market Capitalization (BSE): US$ 1.97 trillion as on 31st March 2018
- Political System: Federal Republic with Parliamentary democracy, stable Political regime over last 7 decades
- In terms of ease of doing business, India has been ranked as 77th among the other countries in the world and 80th in terms of starting a business by the World Bank.
- India is the 4th most attractive country on renewal energy index globally.
- India's e-commerce industry to reach US$ 200 billion by 2026.
- India has world's 2nd highest no of USFDA approved plants
- 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 third largest start-up hub in the world with over 1200 technology start-ups that have come into existence till date in 2018 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 is expected to provide Asia with more than 50% workforce in next decade.
- India has 43% share in global internet market.

Onboarding Indian Business Express



Chapter 1

INDIA – A PROFILE

1.1 PHYSICAL FEATURES

1.1.1 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 804' and 3706' North and longitudes 6807' and 97025' 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.

1.1.2 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.

1.2 POPULATION AND SOCIAL PATTERNS

1.2.1 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 2018 is estimated to be 1.35 billion.

1.2.2 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.

1.2.3 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.

1.2.4 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.

1.3 GOVERNMENT AND POLITICAL SYSTEM

1.3.1 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 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.

1.4 LEGISLATIVE AND LEGAL ENVIRONMENT

1.4.1 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.

1.4.2 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.

1.5 INFRASTRUCTURE

1.5.1 Transport

India's infrastructure and transport sector contribute about 5% of its GDP. India has 2nd largest road network in the covering more than 5.6 million kilometers. Qualitatively, India's roads are a mix of modern highways and narrow, unpaved roads. The road density of highway network of India is more than that of Brazil and China which can be considered to be major reason for traffic congestion in India. It is upgrading its infrastructure. According to 2017 estimates, India had completed construction of 10000 km of National Highways in FY 2018 connecting most of its major manufacturing, commercial and cultural centers. According to Economic Survey 2017-18 India's road infrastructure carries 60% of freight and 90% of passenger traffic.

Indian Railways which is the largest public sector undertaking in India is the third largest rail network in the world, with a track length of 115000 kilometers and 7,349 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 been the sixteenth largest maritime country in the world having a coastline of 7,517 kilometers with 13 major ports and 200 notified and intermediate ports which together handle 95% of the country's external trade by volume and 70% by value (rest handled by air). Jawaharlal Nehru Port (Nhava Sheva), Mumbai is the largest public port, while Mundra (Kutch, Gujarat) is the largest private sea port in India.

The airport infrastructure of India includes 132 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.

1.5.2 Communication

The Indian telephone, telex and facsimile services both within India and to international locations are well-developed. According to estimates, the number of telephone subscribers (both fixed and mobile) in India stood at 1.179 billion and the number of broadband internet users in India was 460.24 million till 31st July 2018. The number of mobile internet users in India as on 31st January 2018 is estimated to be around 359.80 million as per TRAI .

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.

1.5.3 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.

1.5.4 Medical Services

India is largest provider of generic drugs globally and 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.

1.5.5 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.

1.6 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 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. India has recently become a member of Australia Group (AG) which is a group of countries voluntarily working together to counter the spread of materials, equipments and technologies that could contribute to the development or acquisition of chemical and biological weapons by terrorist groups.

1.7 CERTAIN KEY INFORMATION FOR VISITORS TO INDIA

1.7.1 Indian Currency

The Indian monetary unit is the Rupee (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 November 2018 was US $ 1 = INR 72.48 and Euro 1 = INR 82.17

1.7.2 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). Due to remarkable growth witnessed by the Indian tourism sector, the government of India introduced tourist visa on arrival scheme for nationals of five countries in January 2010 which was extended to eleven countries in January 2011. This visa can be granted to those individuals not having residence or occupation in India and who visits India solely for the purpose of sight-seeing, recreation, casual visit to friends and relatives. At present the nationals of Finland, Japan, Luxembourg, New Zealand, Singapore, Cambodia, Vietnam, Philippines, Laos, Indonesia, Myanmar are eligible for obtaining tourist visa on arrival.

E-visa also known as Electronic Travel Authorization (ETA) was made operational in 2014 for nationals of 40 countries in India which was further extended to 113 countries 2015. This visa is issued for tourism purposed, medical treatment and short business visits. Accordingly, ETA facility was renamed to e-tourist visa (eTV) in 2017 which was further classified into three categories:

i. E-tourist visa

ii. E-business visa

iii. E-medical visa.

Each type of visa shall be issued depending upon the country to which the applicant belongs to and the conditions of continuous stay attached to the same.

1.7.3 Indian Standard Time

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

1.7.4 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.

1.7.5 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.

1.7.6 Tourism

India is 7th largest tourism economy in the world. Tourism in India is economically important and is growing rapidly. The World Travel & Tourism Council calculated that tourism generated INR 5943.3 billion (US$ 91.3 billion) or 3.7% of the nation's GDP in 2017 and supported 26.14million jobs, 5.0% of its total employment.

The sector is predicted to grow at an average annual rate of 7.9% to INR 2677.9 billion (US$194.7 billion) by 2028 (3.9% of GDP). In 2017, India's medical tourism sector was estimated to be worth US$15.5 billion. It is projected to grow at CAGR rate of 8.8% to a value of US$ 28.0 billion by 2024. In 2017, 495,000 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.

1.7.7 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

Chapter 2 Indian Business And Investment Environment

2.1 FRAMEWORK

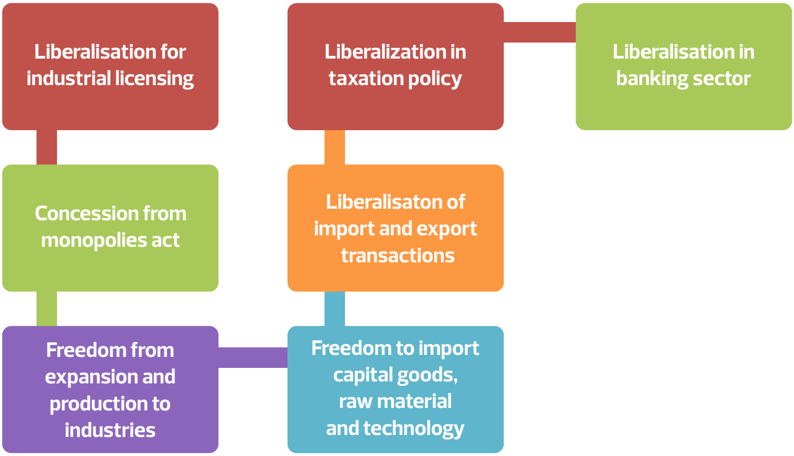
India adopted a mixed economy after independence in the year 1947, resulting in the public and private sectors' co- existence in industrial activity. In the past, the public sector had a dominant role in the economy. However, with the liberalization of the government policies and consequent opening up 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.

2.2 POST-LIBERALIZATION OF THE ECONOMY — AN OVERVIEW



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 investment policy for crucial sectors including single brand retail trading, civil aviation, medical device sectors, construction development, power exchanges,

2.3 ECONOMIC TRENDS

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

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 2017-18 at 7.4%, According to Fitch Ratings Agency, India's Gross Domestic Product (GDP) forecast for current fiscal year 2018-19 has raised to 7.8% from the earlier estimate of 7.4%. It has also estimated the GDP forecast for FY 2019-20 to be around 7.3%

India among the most trusted nations globally

– India is ranked second in the 2019 Edelman Trust Barometer report'

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

- Gross Domestic Product (GDP) for 2017: US$ 10.3 trillion measured in terms of Purchasing Power Parity (PPP) – IMF
- Global Ranking: 3rd largest economy in the world in terms of PPP as per IMF estimates 2017-18
- GDP Growth Rate – FY 2017-18: 6.7% p.a.
- Currency & Exchange Rate per 1 US$ (as on 10th November 2018): 1 US$ = INR 72.48
- Forex Reserves (as on 16 November 2018): US$ 393.01billion
- Market Capitalization (BSE): US$ 1.97 trillion as on 31st March 2018
- Political System: Federal Republic with Parliamentary democracy, stable Political regime over last 6 decades

2.4 INITIATIVES FOR 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:

- India was ranked 77th in Doing Business Report, 2019 as compared to 100th rank in 2018. India has also achieved highest improvement in terms of Doing Business Report ranking by moving up 53 ranks in timespan of 2 years. India ranks among top 25 in the world on account of three indicators- getting electricity, getting credit and protecting minority investors. India's overall rank in 2019 has improved due to improvement in performance indicators like 'starting a business', 'trading across borders' and 'dealing with construction permit'. A report titled "Assessment of State Implementation of Business Reforms" 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 2017-2018 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.

  Note: The Government has changed the name of the Department of Industrial Policy and Promotion (DIPP) in the Ministry of Commerce and Industry to the Department for Promotion of Industry and Internal Trade (DPIIT) on 29 January 2019.

- 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 (for state-wise rankings, refer Annexure IV – Assessment of State Implementation of Business reforms).
- 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.
- 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.
- Notification has been issued on 12 March 2015 by DGFT to limit number of documents required for export and import to three.
- Ministry of Corporate Affairs has introduced an SPICe Form INC-32 which provides for integrated process of incorporation of a company, availability and reservation of company name, application for allotment of DIN simultaneously. This form is a replacement of erstwhile Form INC-29 with additional benefits of allotment of DIN to directors who do not hold a valid DIN and for obtaining PAN, TAN. ESIC registration.
- The Department for Industrial Policy and Promotion (DIPP) has introduced a portal for filing online application forms for Industrial Licence (IL) and Industrial Entrepreneur Memorandum (IEM) which were previously accepted through ebiz portal.
- 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.
- Vide Press Note 5 (2014), initial validity period of Industrial License has been increased to15 years with provision for further extension of 3 years to promote defense manufacturing. This will give enough time to licensees to procure land and obtain the necessary clearances/approvals from authorities. Ministry of Home Affairs (MHA) has stipulated that it will grant security clearance on Industrial Licence Applications within 8 weeks. In matters other than Explosives and FIPB cases, security clearances are valid for every 5 years for a TOP

SECRET Clearance, 10 years for a SECRET Clearance or 15 years for a CONFIDENTIAL Clearance.

- 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.
- 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)
- 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.
- An Investor Facilitation Cell has been created in 'Invest India' to guide, assist and handhold investors during the entire life-cycle of the business.
- Special Economic Zone (SEZ) Units allowed removing goods for repair, replacement, testing, calibration, quality testing and research and development on self-attestation.
- 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/.
- 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. As a part of labour law reforms, the central government has consolidated more than 40 labour laws in force as on date and segregated the same into four different codes as follows:

  I) Code on Wages

  ii) Code on Social Security and Welfare

  iii) Code on Industrial Relations

  iv) Code on Occupational Safety, Health and Working Conditions.

  Draft of these codes have been released and would be finalized after being passed by both houses of Parliament.

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

  i. All returns should be filed on-line through a unified form;

  ii. A check-list of required compliances should be placed on Department's web portal;

  iii. All registers required to be maintained by the business should be replaced with a single electronic register;

  iv. No inspection should be undertaken without the approval of the Head of the Department; and

  For all non-risk, non-hazardous businesses a system of self-certification should be introduced.
- 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. As per the Corporate Affairs Secretary in the Government of India, out of 9,000 cases (that came to NCLT for initiation of insolvency proceedings), 4,400 cases have been disposed off, and rest of them are pending. Bulk of the cases (80-85 per cent), have been disposed off even prior to admission. More than 3,500 cases have been resolved pre-admission resulting in claims amounting to INR 12,00,000 million getting settled.
- 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 34.944%.

- 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 Initiative

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.

Since the launch of 'Make in India' in September 2014, several measures have been taken by the Government to promote indigenous design, development and manufacture of defence & aerospace equipment in the country by harnessing the capabilities of the public and private sector. These measures inter alia include:

- Defence Procurement Procedure (DPP) has been revised in 2016 wherein specific provisions have been introduced for stimulating growth of the domestic defence industry.
- A new category of procurement 'Buy Indian-IDDM (Indigenously Designed, Developed and Manufactured)' has been introduced in DPP-2016 to promote indigenous design and development of defence equipment. It has been accorded top most priority for procurement of capital equipment. Besides this, preference has been accorded to 'Buy (Indian)' and 'Buy and Make (Indian)' categories of capital acquisition over 'Buy (Global)' & 'Buy & Make (Global)' categories.
- Government has notified the 'Strategic Partnership (SP)' Model which envisages establishment of long-term strategic partnerships with Indian entities through a transparent and competitive process, wherein they would tie up with global Original Equipment Manufacturers (OEMs) to seek technology transfers to set up domestic manufacturing infrastructure and supply chains.
- The 'Make' Procedure has been simplified with provisions for funding of 90 % of development cost by the Government to Indian industry and reserving projects not exceeding development cost of INR100 million (Government funded) and INR30 million (Industry funded) for MSMEs.
- Separate procedure for 'Make-II' sub-category has been notified wherein a number of industry friendly provisions such as relaxation of eligibility criterion, minimal documentation, provision for considering proposals suggested suo-moto by industry/ individual etc., have been introduced.

- Foreign Direct Investment (FDI) Policy has been revised and under the revised policy, Foreign Investment up to 49% is allowed through automatic route and above 49% under Government route wherever it is likely to result in access to modern technology or for other reasons to be recorded.
- Industrial licensing regime for Indian manufacturers under IDR (Industries Development and Regulation) Act, 1951 has been liberalised and most of the components/ parts/ sub-systems have been taken out from the list of defence products requiring Industrial Licence. This has reduced entry barriers for new entrants in this sector, particularly SMEs. The initial validity of Industrial Licence under IDR Act, has been increased from 3 years to 15 years with a provision to further extend it by 3 years on a case to case basis.
- Offset guidelines have been made flexible by allowing change of Indian Offset Partners (IOPs) and offset components, even in signed contracts. Foreign Original Equipment Manufacturers (OEMs) are now not required to indicate the details of IOPs and products at the time of signing of contracts. 'Services' as an avenue of discharge of offset have been re-instated.
- The process for export clearance has been streamlined and made transparent & online.
- Defence Investor Cell has been created in the Ministry to provide all necessary information including addressing queries related to investment opportunities, procedures and regulatory requirements for investment in the sector.
- In order to promote innovation in defence sector, iDEX (Innovations for Defence Excellence) scheme has been launched by the Government in April 2018.
- In the Budget Speech of 2018-19, Government has announced setting up of two Defence Industrial Corridors for promoting defence manufacturing under 'Make in India' initiative of the Government. Subsequent to the announcement, Government has decided to set up two Defence Industrial Corridors, out of which one corridor is planned to be set up in State of Uttar Pradesh, spanning across Aligarh, Agra, Jhansi, Chitrakoot, Kanpur and Lucknow.

(b) Digital India

India stands at 2nd position for achieving fastest growth rate of digital adoption amongst 17 major economies. 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

As a part of Digital India initiative, the government introduced various projects as under:

Digi Locker: facility to store personal document such as Aadhar Card, PAN Card, Electricity bill on the cloud

Bharat Net: It is the world's largest rural broadband project which connects 250,000 gram panchayats of the country using optical fibre.

Bharat Interface for Money (BHIM): This app makes payment transactions simple and quick using UPI and enables direct bank to bank instant payments using a mobile number or payment address.

Agrimarket App: This app enables farmers to get information related to prices of crops in market within 50km of their device location to overcome distress sale being undertaken by farmers.

Centre of Excellence on Internet of Things: It will enable rapid adoption of IoT technology to help citizens in services like transport system, parking, electricity, waste management, water management and women's safety to create smart cities, health services, manufacturing and agriculture.

Other programmes include UTS app, Startup India portal and mobile app, Single Window Interface for Trade (SWIFT), Public Financial Management Systems (PFMS), Project monitoring website for e-courts, Open Data, Nirbhaya App, National voters service portal, etc.

Wi-Fi hotspots: Set up of high speed BSNL Wi-Fi hotspots throughout the country to improve digital connectivity

Next Generation Network: This service shall replace 30 year old telephone exchanges for management of all types of communication services.

Digitize India platform: This platform enables digitization of data and records on a large scale to ensure quick and easy accessibility of the same.

eSign framework: Initiative to enable users to digitally sign documents using Aadhar authentication

(a) 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.

According to the reports released by NASSCOM, during the period 2013-2018 around 7700 startups have been incepted in India, leading to an overall growth rate of 15% in this period as compared to the previous 5 year period. India is home to 3rd largest technology driven startups and is Youngest Startup nation. Around 1200 startups have been added in 2018 and 8 startups have been valued over $1 billion witnessing India's highest addition to the unicorn club in a single calendar year.

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 INR1,00,000 million (US$ 1.48 billion), which would extend funding support to start-ups and encourage entrepreneurship in the country. The DIPP released INR 5000 million in FY 2015-16 and INR 1000 million in FY 2016-17 to a total of 128 startups so far. In April 2018 SIDBI claimed a commitment of INR 11360 million to 25 venture capital funds which have further committed to invest INR 5690 million in 120 startups. Maximum disbursal of this fund is expected to be achieved by 2025.

Certain Highlights of the Start-up India scheme:

- Simplified compliance and self-certification
- INR 1,00,000 million funding pool
- Opportunity to create innovation hub under Atal Innovation Mission
- No inspections for first 3 years of operation
- Innovation related programmes targeting 500,000 schools and 1 million children
- Stimulate entrepreneurship across India
- 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 Startup Fests
- Faster exit formalities

- Promote India as a startup hub

(b) Setting up of country focus desks for promoting investment

Japan Plus

India is an attractive investment destination for Japanese companies, with 1,305 companies having 4,590 business establishments in India according to 2016 estimates. 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 16.82 billion in 2016-17.

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

(c) Other Initiatives

Various other programmes like Stand Up India and Invest India have been introduced. Standup India is a scheme for providing of loans at cheaper rates to promote entrepreneurship among SC/ST and women entrepreneurs. According to estimates by Department of Financial Services, a total amount of INR 48520 million has been disbursed to 40,934 applicants so far. Invest India is a non-profit venture under DIPP which acts as a first point of reference for investors in India on account of being a national investment promotion and facilitation agency. This scheme has been introduced to achieve the vision of a truly incredible India.

2.5 ECONOMIC SECTORS

Although India was primarily an agricultural country, currently the service sector is the key driver of economic growth contributing almost 55.2% in 2017-18 to the total Gross Value Added (GVA) at the 2017-18 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 according to FY 2017-18 estimates are Services Sector (20 %), Construction Development (4.24%), Computer Software and Hardware (8%), Telecommunications (13%), Automobile (4%), Drugs and Pharmaceuticals (2%), Chemical (3 %), Trading (5%).

2.6 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.

2.6.1 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

2.6.2 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.

- **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. Trademarks Rules, 2017 has been introduced in order to simplify the trademark registration process and reduced the number of registration forms from 74 to 8. These rules have also increased physical filing fees by 125% in order to promote digitalized filing. These rules also provide an option to avail discounted filing fees to startups and individuals, small and medium enterprises.

- **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. With a view to reduce the time for examination of patent application, Patent Rules 2003 was amended in 2016 for expediting the patent application filed by start-ups. 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.

- **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.

- **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
- Sound recordings
- 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.

– **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.

– **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.

2.7 FINANCIAL SECTOR

2.7.1 Banking System

India has a vast network of about 149,891 bank branches that held deposits of about INR 1170,00,000 million in March 2018.

- **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 13 December, 2018, Mr. Shaktikanta Das took over as the new RBI Governor, taking charge from the former governor, Mr. Urjit R Patel.

- **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 6 categories:

i. Public Sector Banks

ii. Private sector Banks

iii. Regional Rural Banks and

iv. Foreign Banks

v. Payment Banks

vi. Cooperative 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 21 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 45 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. At present, there are 6 payments banks operating in India.

- **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.

- **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.

2.7.2 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 2 companies in life insurance business including government corporation i.e. Life Insurance Corporation of India and about 33 companies in the non-life insurance business including government corporation i.e. General Insurance Corporation of India.

2.7.3 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.

2.7.4 Stock Exchanges

India currently has around 23 recognized stock exchanges. The National Securities Depository Limited (NSDL) holds over 17.95 million investor accounts on the other hand, the Central Depository Services Ltd (CDSL) has nearly 16.50 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 (SME) sector. Apart from fulfilling other criteria, the exchange should have a minimum specified amount of net-worth as per the latest audited financials.

- **Bombay Stock Exchange**

The Bombay Stock Exchange (BSE) is India's premier stock exchange. It lists over 5000 companies. BSE has trading terminals in over 400 cities. The market capitalization of the Bombay Stock Exchange as on 31st March 2018 was appx. US$ 1.97 trillion. It was ranked as the World's 10th largest stock exchange as per the market capitalization.

- **National Stock Exchange**

The 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 1600 listed companies in September2018 with a market capitalization of US$ 2.27 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.

- **Metropolitan Stock Exchange**

The 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(73) of the Companies Act, 2013 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

- **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.

2.7.5 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.

2.7.6 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 at the end of August 2018 stood at INR 25 trillion . 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.

2.7.7 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. Apart from these, Acute Ratings & Research Limited, Brickwork Ratings India Private Limited, India Ratings and Research Private Limited, Infometrics Valuation and Rating Private Limited are other credit rating agencies registered with SEBI in India.

2.8 INCENTIVES FOR INDUSTRIES

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

2.8.1 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.The Union cabinet on 2nd August 2018 approved first extension of this scheme for another five years from 2018 to 2023. This scheme has been further liberalized by allowing any company, irrespective of ownership to be eligible for the benefits under this scheme.

2.8.2 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.

2.8.3 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.

2.9 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 18% 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.

2.10 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$478.15 billion during the financial year 2017-18. Major commodities imported in India are crude oil, gold and precious stones, electronics, engineering goods, chemicals, plastics, coal and ores, iron and steel, vegetable oil and other commodities and it's imports were US$ 565.32 billion during the financial year 2017-18.

2.11 OTHER FACTORS

2.11.1 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.

2.11.2 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.

2.11.3 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.

2.11.4 Financial Reliability

Repatriation of capital or dividends for investments made in India is freely allowed. The fiscal deficit during the period 2017-18 was about 3.5% of the GDP. Foreign exchange reserves of India stood at about US$ 400.52 billion as on 23 September 2018, evidencing a decline of increase of US$ 1.265 billion due to a fall in foreign currency assets 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

3.1 FORMS OF BUSINESS ENTITIES

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

i. Companies – public, private and one person company (OPC)

ii. Branches of Foreign Companies

iii. Liaison/Project offices of foreign companies

iv. Partnerships

v. Trusts

vi. Limited Liability Partnerships (LLP).

3.1.1 Enactment of Companies Act, 2013 and repeal of 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, etc. The Companies (Amendment) Act, 2017, however, missed out on a few more progressive corrections to be made to the original Act of 2013 and therefore the Companies (Amendment) Ordinance, 2018, was gazetted on the 2nd day of November, 2018.

3.1.2 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. Further it is also possible now to form a One Person Company. Companies are further classified into companies limited by shares, companies limited by guarantee and unlimited liability companies. However, for business purposes, generally companies limited by shares are formed 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 the 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 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, investments made or held by non-resident/ transfer of shares to non-resident is regulated by Foreign Exchange Management Act, 1999.

3.1.3 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 & regulations thereunder;
- Securities Contract (Regulation) Act, 1956;
- Banking Regulation Act, 1949;
- Insurance Act, 1938;
- Insolvency and Bankruptcy Code, 2016;
- The Competition Act, 2002;
- The Societies Registration Act, 1860;
- The Indian Trusts Act, 1882;

The various regulators that influence financial reporting in India include:

- Ministry of Corporate Affairs (Regulator for all corporate enterprises);
- National Company Law Tribunal;
- 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).
- National Financial Reporting Authority or NFRA
- The Insolvency and Bankruptcy Board of India

3.1.4 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.

3.1.5 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.

3.1.6 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:

  i. Name and address of the Foreign Company;

  ii. Reference no and date of letter awarding contract;

  iii. Particulars of authority awarding the projects/contract;

  iv. Total amount of contract;

  v. Address/e-mail/ telephone/ fax no and tenure of Project Office;

  vi. 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.

3.1.7 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).

3.1.8 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.

3.1.9 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
  - i. two partners
  - ii. 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 held liable.

- 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 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, 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.
- Name of the LLP must end with the suffix "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 properties 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).

- LLPs can convert themselves into companies as well, under the Companies Act,2013; however, no such provision is yet made under the 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 4 millions or contribution exceeds INR 2.5 millions.
- 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 established under the Companies Act, 2013.
- 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:
    i. The applicable tax rates would be 30% (plus applicable surcharge & education cess).
    ii. 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).

iii. No Dividend Distribution Tax (currently at an effective rate of 20.5553% in case of companies) on profits distributed to the partners of LLP.

iv. Remuneration receivable by partners of LLP will be taxed in the hands of the partners as "Income from Business & Profession".

v. The benefits of presumptive taxation are not applicable in case of LLPs.

3.2 SETTING UP A COMPANY

3.2.1 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 online 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 two subscribers and two directors are required for incorporation of a private limited company (seven subscribers and three directors in case of a public limited company and one in case of a one person company [OPC]). 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 / directors shall be duly notarized and apostiled in accordance with Hague Convention or consularised as per Vienna convention, as applicable.

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: –

- Simplified and completely Digital form for Company Incorporation;
- Standard format of e-Memorandum of Association as per Companies Act, 2013;
- Standard format of e-Articles of Association as per Companies Act, 2013;
- Memorandum and Articles will now be filed as linked e-forms (except for Section 8 companies);
- Provision to apply for Company Incorporation with a pre-approved Company Name;
- Mandatory DSCs of Subscribers and Witnesses (max 7+1) in SPICe MOA and SPICe AOA;
- Back Office productivity gains due to faster review of e-MOA and e-AOA by approving authorities. SPICe is 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 , at least two subscribers to the MOA in case of a private company and one in case of one person company.

Only a natural person who is an Indian citizen and resident in India shall be eligible to act as a member and nominee of an OPC.

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 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 million is approximately INR 10,000. 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. Any company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless it is granted a certificate of commencement of business by the ROC. This certificate is issued by the ROC only when a declaration is filed with it that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and a declaration verifying its registered office.

3.2.2 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 vide Companies (Amendment) Act, 2015 dated 29th May, 2015. 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. In case the paid up share capital of an OPC exceeds INR 5 million or its average annual turnover of immediately preceding three consecutive financial years exceeds INR 20 million, then the OPC has to mandatorily convert itself into private or public company.

To get its shares listed on the stock exchange:-

- in case of IPO, minimum post-issue capital of the company shall be INR 100 million and in case of FPO INR 30 million, minimum issue size shall be INR 100 million, minimum market capitalization shall be INR 250 million (market capitalization shall be calculated by multiplying the post-issue paid-up number of equity shares with the issue price) 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 16,000 million.
- at least such percentage equivalent to INR 4,000 million must be offered to the public for subscription if post issue capital of the company calculated at offer price is more than INR 16,000 million but less than or equal to INR 40,000 million.
- 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 40,000 million 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%.

3.2.3 Kinds of Shares

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

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 MOA or AOA.

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.

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

3.2.4 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 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.

3.2.5 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. In addition to private companies, now specified International Financial Services Centre (IFSC) public companies are also allowed to accept deposits from its members not exceeding 100% of the aggregate of paid-up share capital, free reserves and securities premium account.

Relaxation is also provided to private companies through this amendment as it can now accept deposits from its members without any restriction on the amount and which is subject to certain conditions as under:

- Such company is not an associate or a subsidiary of any other company.
- Borrowings from banks, financial institutions or any body corporate is less than twice of its paid-up share capital or INR 500 million, whichever is less.
- The company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under Section 73.

Notably, a start-up incorporated as a private company and in existence for a period of five years from the date of its incorporation, is also allowed to accept deposits from members without any restriction on the amount.

3.2.6 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	One Person Company
Minimum numbers of subscribers/ shareholders/members	7	2	1
Maximum number of subscribers/ shareholders/members	No limit	200	1
Minimum number of directors	3	2	1

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 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 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. The

Companies (Appointment and Qualifications of Directors) fourth Amendment Rules, 2014 effective from 10th July, 2018 requires every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year to submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year on an annual basis.

3.2.7 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 public limited company and listed company, having paid-up capital of INR 100 million 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, subject to the compliance and approval as mentioned in Schedule V of the Companies Act, 2013.

3.2.8 Secretary

Every company including private company with paid-up capital of INR 50 million 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 500 million or more or turnover of INR 2500 million or more.

3.3 STATUTORY REQUIREMENTS FOR COMPANIES

3.3.1 Annual Reports

Following would be required to adopt Ind AS i.e. the Indian Accounting Standards which have been converged with the IFRS with certain minimal exceptions.:

- From 1st April, 2017, listed and unlisted companies having net worth of INR 5000 million or more would be required to adopt Ind AS:
- From 1st April 2017, 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 more than or equal to INR 2500 million but less than INR 5000 million .
- From 1st April 2018, all Banks, NBFCs, and Insurance companies having net worth of INR 5000 million or more.

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:

  i. balance sheet;

  ii. profit and loss account;

  iii. cash flow statement;

  iv. statement of changes in equity;

  v. 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.

3.3.2 Audit Requirements

- **STATUTORY AUDIT**

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.

- **INTERNAL AUDIT**

Every prescribed class of companies is also required to appoint an internal auditor to conduct internal audit of the functions and activities of the company. The internal auditor shall be either a chartered accountant or a cost accountant, or such other professional as may be decided by the Board.

- **SECRETARIAL AUDIT**

Every listed company and public company having a paid-up share capital of INR 500 million or more; or turnover of INR 2500 million or more shall annex with its Board's report, a secretarial audit report, given by a company secretary in practice, in the prescribed form.

3.3.3 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:

- The consideration of the accounts, balance sheet and the reports of the Board of Directors and auditor.
- The declaration of dividend.
- The appointment of directors in place of those retiring by rotation.
- 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:

- AGM must be held in each year.
- AGM to be held within 6 months from the closure of the financial year.
- 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, in case of a company not having share capital or 10% of the paid up share capital, in case of a company having share capital . 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.

3.3.4 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, un-audited quarterly results to the stock exchange.

3.3.5 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 and every officer in default shall be liable to a penalty of INR 50,000 or an amount equal to the amount raised through the issue of shares at a discount, whichever is less.
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 50,000 and every officer of the company who is in default shall be punishable with fine of INR 10,000 to 100,000
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

Sr. No.	Section	Particulars	Penalty for contravention of provisions of section
4.	64 (2)	Notice to be given to Registrar for alteration of share capital	The company and officer in default shall be liable to a penalty of INR 1,000 for each day during which default continues or INR 50,000 whichever is less
5.	74 (3)	Repayment of deposits etc accepted before commencement of the Companies Act, 2013 i.e. before 1st 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 10 million to INR 100 million and 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 2.5 million to INR 20 million, 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 10 million or twice the amount of deposit accepted by the company, whichever is lower but which may extend to INR 100 million and every officer who is in default shall be punishable with imprisonment which may extend to 7 years and fine of INR 2.5 million but which may extend to INR 20 million.
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:- ■ INR 50,000 to INR 3 million and where the failure is a continuing one, with a ■ further fine which may extend to INR 1,000 for every day, after the first during which the failure continues.

Sr. No.	Section	Particulars	Penalty for contravention of provisions of section
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:- ■ which may extend to INR 50,000 and where the failure is a continuing one, with a ■ 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 the company and every officer of the company who is in default shall be liable to a penalty of INR 50,000 and in case of continuing failure, with further penalty of INR100 for each day during which failure continues, subject to maximum of INR 50,000.
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 100,000.
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 100,000 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.

Sr. No.	Section	Particulars	Penalty for contravention of provisions of section
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 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 100,000.
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 punishable with imprisonment for a term which may extend to one year or with fine of INR 50,000 to INR 500,000 or with both.

Sr. No.	Section	Particulars	Penalty for contravention of provisions of section
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 million to INR 500,000, 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 2.5 million and every officer in default shall be punishable with imprisonment for a term which may extend to three years or fine of INR 50,000 to INR 500,000.
17.	185 (4)	Loan to directors etc- not to be made unless to the extent permitted	The company shall be punishable with fine of INR 500,000 to INR 2.5 million, every officer of the company shall be punishable with imprisonment for a term upto six months or with fine of INR 500,000 to INR 2.5 million and 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 500,000 to INR 2.5 million, or with both.

Sr. No.	Section	Particulars	Penalty for contravention of provisions of section
18.	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 500,000 and 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 100,000.
19.	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 (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 500,000, or with both; and (ii) in case of any other company, be punishable with fine of INR 25,000 to INR 500,000.
20.	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.
21.	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.

Sr. No.	Section	Particulars	Penalty for contravention of provisions of section
22.	403 (2)	Prohibition on issue of shares at discount	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 relevant section, 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.
23.	447	Punishment for fraud	The company shall be punishable with fine of INR 25,000 to INR 50,000 and every officer of the company who is in default shall be punishable with fine of INR 10,0000 to 100,000.
24.	56 (7)	Transfer and transmission needs to be carried out in the prescribed manner	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 involving an amount of at least INR 1 million or 1 % of the turnover of the company, whichever is lower, 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. Where the fraud in question involves public interest, the term of

Sr. No.	Section	Particulars	Penalty for contravention of provisions of section
			imprisonment shall not be less than three years. Where the fraud does not involve public interest of an amount less than INR 1 million or 1% of the turnover of the company, whichever is lower, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to INR 5 million or with both.
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 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.

Sr. No.	Section	Particulars	Penalty for contravention of provisions of section
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 to INR 100,000 and shall also be personally liable for all liabilities incurred in such business.

3.4 SIGNIFICANT COMPANY LAW REGULATIONS

3.4.1 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 Government security closest to the period of loan. 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, except when the loan or guarantee is given or where a security has been provided by a company to its Wholly Owned Subsidiary. 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 to any depositor or in payment of any interest on deposits, then such company shall not give any loan, guarantee, and security or make any subscription.

3.4.2 Loans and Guarantees to Directors

According to Section 185 of the Companies Act, 2013 (as amended by Companies Amendment Act, 2017),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 500 million (about US$ 7.46 million) 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 . However, loans or guarantees to any other person in whom director is interested can be given only with the previous approval of the shareholders by a special resolution and when such loan is utilized by the borrower for its principal business activities. 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.

Disclosure of Interest by Directors

Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in the prescribed manner.

3.4.3 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 20.5553% 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.

3.4.4 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 Companies Act, 2013 does not define the term 'merger' but only explains the concept as a combination of two or more entities into one, the desired one effect being not just the accumulation of assets and liabilities of distinct entities, but organization of such entity into one business. The basic regulations covering mergers are governed by Section 230 to Section 234 of the Companies Act, 2013. As compared to erstwhile Companies Act, 1956, the act of 2013 has incorporated substantial changes but acceptance of scheme by three-fourths of shareholders still remains a pre-condition under the new Companies Act, 2013. In India, most mergers involve the transfer of undertaking of 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 NCLT. The power of sanctioning mergers has been transferred from High Courts to National Company Law Tribunal (NCLT) which is an exclusive body dealing in matters pertaining to mergers, liquidation, rehabilitation of sick companies and other corporate matters previously handled by the High Court / Company Law Board / BIFR and. has been constituted with effect from 1 June 2016.

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.

3.4.5 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 buyback is regulated by the regulations framed by Securities Exchange Board of India (SEBI), through SEBI (Buy-Back of Securities) Regulations, 2018 which provides for detailed and stringent disclosure norms.

3.4.6 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 100 million or turnover of not less than INR 1000 million or outstanding loans or borrowings or debentures or deposits of INR 500 million 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. According to 2017 amendment of Companies Act, 2013, a director or officer of a company may enter into a transaction with related party for an amount not exceeding INR 10 million without obtaining any approval from the audit committee, but the same should be ratified by the said committee within 3 months from the date of transaction.

3.4.7 Restriction on number of layers of subsidiaries for certain classes of holding companies

Section 2(87) of the Companies Act, 2013 (Act) defines a subsidiary company as under:

Subsidiary company or subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company-

- controls the composition of the Board of Directors; or
- exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Ministry of Corporate Affairs (MCA) has on 20th September, 2017, notified the commencement of the above proviso vide its notification no. G.S.R. 1176(E) dated 20th September 2017, MCA has also notified 'the Companies (Restriction on number of layers) Rules, 2017' (Rules).

Thus, the Rules and proviso to clause (87) of section 2 of the Act has become operational with effect from 20 September 2017.

The Companies (Restriction on Number of Layers) Rules, 2017 provides following:

- On and from the date of commencement of these rules, no company, other than a company belonging to a class specified in sub-rule (2), shall have more than two layers of subsidiaries: Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country. Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.
- The provisions of this rule shall not apply to the following classes of companies, namely:—
    - I. a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
    - ii. a non-banking financial company as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;

iii. an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 (4 of 1938) and the Insurance Regulatory Development Authority Act, 1999 (41 of 1999);

iv. a Government company referred to in clause (45) of section 2 of the Act.

- The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.
- Every company, other than a company referred to in sub-rule (2), existing on or before the commencement of these rules – shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in subrule (1), whichever is more.

3.4.8 Significant Beneficial Owner (SBO)

The recent changes to Section 90 of the Companies Act, 2013, pertaining to Beneficial Owners, is to determine the identity of the person behind the curtain who is having a significant ownership of the company and is essentially controlling the management and daily affairs of the company; with a view to promote corporate transparency and prevent misuse of corporate vehicles for illicit purposes such as corruption, tax evasion and money laundering.

With this intention, the Ministry of Corporate Affairs had notified the Companies (Significant Beneficial Owners) Rules, 2018 on 13 June, 2018. However, the 2018 Rules were not clear in many aspects and the stakeholders were clueless as to how to determine the SBOs with no clear answers to the many questions they had.

The MCA took note of the various concerns raised by the stakeholders and on 8 February, 2019, it came out with an amended set of Rules to replace the earlier Rules. The amended Rules are known as the Companies (Significant Beneficial Owners) Amendment Rules, 2019.

Definition of Significant Beneficial Owner under Rule 2(h) is as under:

"significant beneficial owner" in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-

- holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares;

- holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;
- has right to receive or participate in not less than ten per cent of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.

3.4.9 Producer Companies

A new concept was 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.

3.4.10 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).

- SEBI notified SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018 on 31st May, 2018 thereby making an amendment and restricting the applicability of Regulation 3(2) of SEBI SAST regulations (2011) to acquisition made by company pursuant to resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016.
- On 11th September, 2018 SEBI notified SEBI (SAST) (Second Amendment) Regulations, 2018. The following amendments were made by the said notification:

Clause (j) of Regulation 2(1)	Clause (j) of Regulation 2(1) which defined 'frequently traded shares' was amended to prescribe that traded turnover of shares would be determined during the period of 12 months from the month preceeding the month in which public announcement was actually required to be made. This amendment was made keeping in mind failure to make open offer by the company wherein the period of 12 months would be counted from the date public announcement was required to be made instead of the actual date on which public announcement was made.
Clause (ja) was inserted in Regulation 2(1)	Clause (ja) was inserted in Regulation 2(1) to define fugitive economic offender which shall have the same meaning as assigned to it under section 12 of Fugitive Economic Offenders Act, 2018 (17 of 2018).
Regulation 5A	Regulation 5A was amended to provide more clarity regarding upfront declaration of intention to delist shares of the target company. The said amendment added a proviso which specifically provides that such a declaration shall only be made at the time of publication of detailed public statement and any such kind of declaration made at a later point in time shall not suffice.
Regulation 6B	Regulation 6B has been inserted which prohibits any kind of acquisition by fugitive economic offender as defined under Regulation 2(ja). Accordingly, announcement of an open offer or competing offer for acquiring shares or voting rights or control of a target company is prohibited by a fugitive economic offender.
Regulation 7(2)	Regulation 7(2) has been amended to provide that minimum offer size for voluntary offer shall be additional 10% of voting rights.

Regulation 10	Regulation 10 which provides exemption to inter se transfer between group companies was amended to provide more clarity by adding a proviso which states that reference to a company shall include a body corporate.
Regulation 17(3)	Regulation 17(3) which provides for the form of escrow account was amended by adding an explanation to the regulation which mentions that cash component of escrow account should be maintained in interest bearing account subject to assurance by the merchant banker regarding the availability of funds at the time of making payment to shareholders.
Regulation 18(2)	Regulation 18(2) which provides for mode of sending letter of offer has been amended by adding an explanation which prescribes electronic mode as the eligible mode for sending letter of offer to the shareholders. However, physical format of the same shall be available on the request made by shareholder.

3.5 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 SEBI has introduced amendments in LODR Regulations on 9 May, 2018 While some of the amendments were made effective with immediate effect, some other amendments would come into force a little later depending upon the applicability of the revised regulation to various companies upon meeting required criteria mentioned therein. A snapshot of the amendments introduced is given below:

Changes with immediate effect

- Disclosure of accounts to stock exchanges in XBRL format.
- Additional disclosures to be made with respect to observation of board evaluation pertaining to actions taken in previous year and current year.
- Additional disclosures regarding changes in key financial ratios to be included in management discussion and analysis part of Annual report.

W.e.f. October, 2018	■ Prohibition on appointment and continuation in office of an alternate director in place of independent director. ■ Requirement for annual report to be published on website of the company before dispatching the same to shareholders alongwith AGM notice. ■ Disclosure of credit rating obtained for all outstanding instruments and revision in ratings for all debt instruments as soon as such revision takes place. ■ All top 500 entities shall provide for insurance for all independent directors.
W.e.f April 2019 onwards	■ Mandatory requirements for listed companies having subsidiaries to submit quarterly consolidated financial statements. ■ Mandatory disclosure of half yearly cashflows, related party transactions to be disclosed within 30 days of publishing of annual report and material adjustments made in results of last quarter of earlier period shall be disclosed by way of note. ■ Requirement to get approval from shareholders for royalty and brand payments in excess of 2% of consolidated turnover. ■ Aggregate number of directorships to be limited to 8 companies which shall be reduced to 7 companies w.e.f. April 2020. ■ Grant of permission to related parties to cast vote. ■ Requirement for Annual report to be accompanied with secretarial audit report. ■ Mandate to conduct limited review of 80% of the consolidated revenue, assets and profits. ■ Board of directors to identify and disclose core skills and competencies , w.e.f April 2020 Names of directors who have been so identified shall be separately disclosed. ■ Disclosures regarding reasons for resignation of auditor and independent director shall be made within 24 hours and 7 days of resignation respectively to stock exchanges. ■ Requirement for independent director to provide declaration of being unaware of any circumstances impacting his/ her ability to discharge duties.

Rejection of recommendation of any committee of board which was mandatorily required in a financial year shall be accompanied with reasons therefor.

- Requirement for top 100 companies to hold annual general meeting within 5 months from the end of financial year and provide on way live webcast of the AGM proceedings.
- All top 500 companies shall mandatorily have one women independent director and set up a risk management committee specifically dealing with cyber security which should meet atleast once in a year. All such companies shall mandatorily appoint a non-executive director who shall not be related to MD/ CEO.
- All top 1000 companies (to be made applicable to top 2000 companies w.e.f. April 2020) shall have minimum 6 directors on board and the quorum for meetings of such companies should be 1/3rd of total strength or 3 directors, whichever is higher with atleast one independent director. Such companies shall mandatorily appoint one independent woman director from April 2020 onwards.

3.6 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.

3.7 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.

3.8 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 NCLT under the Insolvency and Bankruptcy Code,2016.
- Compulsory winding up by way of petition made to NCLT by the company, contributories, registrar or the central/ state government.
- Striking off of the name of the Company from the Register of Members maintained by the ROC.

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

FOREIGN INVESTMENT IN INDIA

4.1 INTRODUCTION

4.1.1 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.

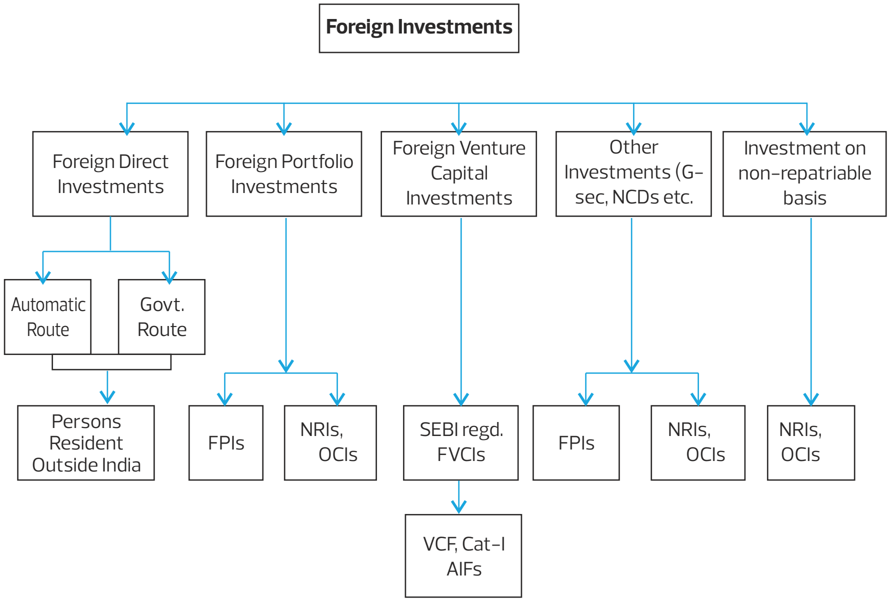
4.1.2 Accordingly, foreign investment in India is still regulated among other legislations, by the foreign exchange regulations although under new regulations, the focus has been shifted on promoting and managing foreign exchange markets instead of regulating the same. In this note, we have restricted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

4.2 FOREIGN EXCHANGE REGULATIONS – FOREIGN INVESTMENTS

4.2.1 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 as compared to provisions under FERA. Recently, the FDI policy is further liberalized under which FDI upto 100% is permitted under automatic route in most sectors / activities.

Foreign Investment in India– Schematic Representation



4.2.2 Foreign Direct Investment in India by a person resident outside India / Eligibility for investing in India —Schedule –I

- 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 Pakistan or is an entity incorporated in Bangladesh or Pakistan can invest in India only under the Government route and in sectors / activities other than defence, space and atomic energy and sectors / activities prohibited for foreign investment.

- 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.

- 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.

- Prohibited activities for investment by a person resident outside India: -

FDI is prohibited in:

- Lottery Business including Government / Private Lottery, online lotteries.
- Gambling and Betting including casinos.
- Chit Funds.
- Nidhi Company.
- Trading in Transferable Development Rights (TDRs).
- Real Estate Business or Construction of Farm Houses.
- For the purpose of this regulations, "Real Estate Business" shall not include development of townships, construction of residential / commercial premises, roads or bridges, and Real Estate Investment Trusts (REITs) registered and regulated under SEBI (REITs) Regulations, 2014.
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- Activities / sectors not open to private sector investment Eg. (I) Atomic energy and (II) Railway operations.
- 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.

"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."

4.2.3 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 Capital Instruments (i.e. the equity shares, fully, compulsorily and mandatorily convertible preference shares, fully, compulsorily and mandatorily convertible debentures and share warrants) of an Indian Company under two routes; Automatic Route and Approval / Government Route.

– **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 Capital Instruments under the FDI scheme, should report such issue in Form FC-GPR in the Single Master Form not later than 30 days from the date of allotment. With effect from 1st September 2018, Form FC-GPR has been replaced with SMF (Single Master Form). The reporting requirement under the ARF (Advance Remittance Form) for companies has also been merged into the SMF.

Foreign investment coming as equity or convertible instruments 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.

– **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 Department of Industry Policy and Promotion, Government of India as the case may be. Application can be made in Form FC-IL, which can be downloaded from 'http://www.dipp.gov.in'.

– **Foreign investment in investing companies**

- Foreign investment in investing companies not registered as Non-Banking Financial Companies with Reserve Bank and in core investment companies (CICs), both engaged in the activity of investing in the capital of other Indian entities, will require prior Government approval.

- Foreign investment in investing companies registered as Non-Banking Financial Companies with Reserve Bank will be under 100% automatic route.

- Audit of the Indian investee company having foreign investment, by an international audit firm of its choice, must be carried out jointly with another audit firm which does not belong to the same network as the international audit firm.

- **Certain important aspects of the FDI scheme**

  Price of capital instruments of an Indian Company issued to persons resident outside India should not be less than: -

- the price worked out in accordance with relevant SEBI guidelines in case of listed Indian companies.

- Valuation of capital instruments to be done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a SEBI registered Merchant Banker or a Chartered Accountant or a practicing Cost Accountant in case of an unlisted Indian Company.

- 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.

  Explanation - In case of convertible capital instruments, the price/ conversion formula of the instrument should be determined upfront at the time of issue of the instrument. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant FEMA regulations.

  However, where shares in an Indian company are issued to a person resident outside India in compliance with the provisions of the Companies Act, 2013, by way of subscription to Memorandum of Association, such investments shall be made at face value subject to entry route and sectoral cap.

- **Portfolio Investment Scheme for FPI —Schedule 2**

- Foreign Portfolio Investor (FPI) can purchase or sell the capital instruments of an Indian company on a recognised stock exchange in India.

- Any investment made by a person resident outside India through Capital Instruments where such investment is less than 10% of the paid up share capital on a fully diluted basis of a listed Indian Company or less than 10% of the paid up value of each series of Capital Instruments of a listed Indian Company, it shall be regarded as Foreign Portfolio Investment.

- The total holdings of all FPIs put together shall not exceed 24% of the paid up share capital on a fully diluted basis of a listed Indian Company or paid up value of each series of Capital Instruments of a listed Indian Company. The aggregate limit of 24% may be increased by an Indian company up to the sectoral cap/ statutory ceiling, as applicable, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively.
- If the total holding of an FPI increases to 10% or more of the total paid up equity capital on a fully diluted basis or 10% or more of the paid up value of each series of Capital Instruments of a listed Indian Company, such investments are re-classified as FDI subject to the conditions as specified by SEBI and RBI in this regard and the investee company and the investor complying with the reporting requirements.
- FPI may undertake short selling as well as lending and borrowing of securities subject to such conditions as may be stipulated by RBI and SEBI from time to time.
- The amount of consideration for purchase of capital instruments should be received from abroad through banking channels through inward remittance or out of funds held in a foreign currency account and/ or a Special Non-Resident Rupee (SNRR) account maintained in India.

– **Portfolio Investment Scheme for NRIs / OCIs – Schedule 3**

NRIs or OCIs is allowed to purchase or sell capital instruments of a listed Indian Company on repatriation basis, on a recognised Indian Stock Exchanges subject to following conditions:

- The purchase and sale is done through a designated authorised dealer branch.
- The total holding by any individual NRI or OCI should not exceed 5% of the total paid-up equity capital on a fully diluted basis or should not exceed 5% of the paid-up value of each series of capital instruments issued by an Indian company.
- The total holdings of all NRIs and OCIs put together should not exceed 10% of the total paid-up equity capital on a fully diluted basis or should not exceed 10% of the paid-up value of each series of capital instruments issued by an Indian 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.

- Payment for purchase of capital instruments 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 account maintained in India.

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

A. Purchase or Sale of Capital Instruments or convertible notes of an Indian company or Units or contribution to the capital of an LLP by NRI or OCI on Non-Repatriation basis

- NRIs / OCIs (including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs) are allowed to acquire / contribute any capital instrument issued by a company or units issued by an investment vehicle either on the stock exchange or outside it or capital of a LLP or convertible notes issued by a startup company without any limit.
- The said investments are deemed to be domestic investment at par with the investment made by residents.
- An NRI or an OCI (including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs) cannot invest in capital instruments or units of a Nidhi company or a company engaged in agricultural/ plantation activities or real estate business or construction of farm houses or dealing in Transfer of Development Rights.
- The amount of consideration shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE / FCNR / NRO account maintained with a bank in India.
- The sale maturity proceeds of the capital instruments acquired or disinvestment proceeds of LLP shall be credited only to NRO account irrespective of the type of account from which the consideration was 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.

  'Startup' shall mean an entity, incorporated or registered in India not prior to five years, with an annual turnover not exceeding INR 250 million 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.

'Convertible Note' means an instrument issued by a startup company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such startup company, within a period not exceeding 5 years from the date of issue of the convertible note, upon occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument.

B. Investment in a firm or a proprietary concern

- A NRI or an OCI is permitted to invest, on a non-repatriation basis, by way of contribution to the capital of a firm or a proprietary concern in India provided such firm or proprietary concern is not engaged in any agricultural/ plantation activity or print media or real estate business.
- The amount of consideration should be received from abroad through banking channels or paid out of funds held in NRE/ FCNR(B)/ NRO accounts maintained in India.
- The disinvestment proceeds should be credited only to the NRO account of the person concerned, irrespective of the type of account from which the consideration was paid. The amount invested for contribution to the capital of a firm or a proprietary concern and the capital appreciation thereon cannot be repatriated abroad.

  '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. Earning of rent income on lease of the property, not amounting to transfer, will not amount to real estate business. Real estate broking service is excluded from the definition of "real estate business" and 100% foreign investment is allowed in real estate broking services under automatic route. Investment in units of REITs registered and regulated under SEBI is also excluded.

– Investment in Limited Liability Partnership (LLP) – Schedule 6

- A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity incorporated in Pakistan or Bangladesh), not being a FPI or a FVCI, may contribute to the capital of a LLP operating in sectors/ activities where foreign investment up to 100% is permitted under automatic route and there are no FDI linked performance conditions.

- Investment by way of 'profit share' will fall under the category of reinvestment of earnings.
- Investment in an LLP is subject to the conditions prescribed in the Limited Liability Partnership Act, 2008.
- A company having foreign investment, engaged in a sector where foreign investment up to 100% is permitted under the automatic route and there are no FDI linked performance conditions can be converted into an LLP under the automatic route.
- A LLP, having foreign investment, engaged in a sector where foreign investment up to 100% is permitted under the automatic route and there are no FDI linked performance conditions, can be converted into a company under the automatic route.
- Investment in LLP either by way of capital contribution or by way of acquisition/ transfer of profit shares, should not be less than the fair price worked out as per any valuation norm which is internationally accepted/ adopted as per market practice and a valuation certificate to that effect shall be issued by the Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government.
- In case of transfer of capital contribution/ profit share from a person resident in India to a person resident outside India, the transfer shall be for a consideration not less than the fair price of capital contribution/ profit share of an LLP. Further, in case of transfer of capital contribution/ profit share from a person resident outside India to a person resident in India, the transfer shall be for a consideration which is not more than the fair price of the capital contribution/ profit share of an LLP.
- Payment by an investor towards capital contribution of an LLP shall be made by way of an inward remittance through banking channels or out of funds held in NRE or FCNR account maintained with a Bank in India.

– **Investment by a Foreign Venture Capital Investor (FVCI) – Schedule 7**

- A FVCI is permitted to invest in securities (not listed on a recognised stock exchange at the time of issue), of an Indian company engaged in the following sectors:

  I. Biotechnology;

ii. IT related to hardware and software development;

iii. Nanotechnology;

iv. Seed research and development;

v. Research and development of new chemical entities in pharmaceutical sector;

vi. Dairy industry;

vii. Poultry industry;

viii. Production of bio – fuels;

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

x. Infrastructure sector.

- An FVCI can invest in securities issued by a startup, irrespective of the sector in which the startup is engaged.
- An FVCI can acquire units of a Venture Capital Fund (VCF) 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.
- Investment by an FVCI in capital instruments of an Indian company will be subject to the reporting, sectoral caps, entry routes and attendant conditions.
- 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.
- FVCI may invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000.
- FVCI may acquire/ transfer securities/ instruments permitted for it at a price that is mutually acceptable to the buyer and the seller/ issuer. In case of sale to a person resident outside India, the buyer should be an eligible acquirer.
- The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/ or a SNRR account maintained with Bank in India.

– **Investment by a person resident outside India in an Investment Vehicle – Schedule 8**

- A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity incorporated in Pakistan or Bangladesh) may invest in units of Investment Vehicles.

- The sale/ transfer/ redemption of units acquired/ purchased in accordance with this schedule are subject to the regulations framed by SEBI or the directions issued by RBI.
- An Investment vehicle may issue its units to a person resident outside India against swap of capital instruments of a Special Purpose Vehicle (SPV) proposed to be acquired by such Investment Vehicle.
- An Alternative Investment Fund Category III which has received any foreign investment shall make portfolio investment in only those securities or instruments in which a FPI is allowed to invest.
- The amount of consideration shall be paid as inward remittance from abroad through banking channels or by way of swap of shares of a Special Purpose Vehicle or out of funds held in NRE or FCNR account maintained with a Bank in India.

– **Investment in Depository Receipts by person Resident outside India – Schedule 9**

- Depository Receipt is a foreign currency denominated instrument, whether listed on an international exchange or not, issued by a foreign depository in a permissible jurisdiction on the back of eligible securities issued or transferred to that foreign depository and deposited with a domestic custodian and includes global depository receipt.
- In terms of Depository Receipts Scheme, 2014 (DR Scheme, 2014), Depository Receipts can be issued against any security or unit in which a person resident outside India is allowed to invest under these regulations.
- A person is permitted to issue or transfer eligible instruments to a foreign depository for the purpose of issuance of depository receipts in accordance with the DR Scheme, 2014.
- The aggregate of eligible instruments which may be issued or transferred to foreign depositories, along with eligible instruments already held by persons resident outside India, shall not exceed the limit on foreign holding of such eligible instruments under the extant FEMA regulations.
- The eligible instruments shall not be issued or transferred to a foreign depository for the purpose of issuing depository receipts at a price less than the price applicable to a corresponding mode of issue or transfer of such instruments to domestic investors under the applicable law.

– Issue of Indian Depository Receipts (IDRs) – Schedule 10

- Companies incorporated outside India may issue IDRs through a Domestic Depository, to person resident in India and outside India, subject to the following conditions:

    i. the issue of IDRs is in compliance with the Companies Act, 2013 and SEBI Regulations.

    ii. any issue of IDRs by financial/ banking companies having presence in India, either through a branch or subsidiary, shall require prior approval of the sectoral regulators.

    iii. IDRs shall be denominated in Indian Rupees only.

    iv. the proceeds of the issue of IDRs shall be immediately repatriated outside India by the companies issuing such IDRs.

- An FPI or an NRI or an OCI may purchase, hold or sell IDRs, subject to the following conditions:

    i. NRIs or OCIs may invest in the IDRs out of funds held in their NRE/ FCNR(B) account in Bank;

    ii. Limited two way fungibility of IDRs shall be permissible subject to the terms and conditions stipulated by Reserve Bank;

    iii. IDR shall not be redeemable into underlying equity shares before the expiry of one year from the date of issue.

- Redemption/ conversion of IDRs into underlying equity shares of the issuing company shall comply with ODI Regulations.

4.2.4 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: -

- In the case of shares of a listed Indian company , at a price as determined by the company;
- In the case of shares of an unlisted Indian company, 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.

4.2.5 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 / convertible 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.

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

- In case a Scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company has been approved by NCLT/ Competent Authority, the transferee company or the new company, as the case may be, can issue capital instruments to the existing holders of the transferor company who are resident outside India, subject to the following conditions:

    i. The transfer or issue should comply with entry routes, sectoral caps or investment limits, as the case may be, and the attendant conditionalities of foreign investment.

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

- In case a Scheme of Arrangement for an Indian company has been approved by NCLT/ Competent Authority, the Indian company can, with effect from December 31, 2013, issue non-convertible redeemable preference shares or non-convertible redeemable debentures to shareholders who are resident outside India, including depositories that act as trustees for the ADR/ GDR holders, out of its general reserves by way of distribution as bonus, subject to the following conditions:

    i. The original investment made in the Indian company by a person resident outside India is in accordance with these Regulations and the conditions specified therein;

ii. The said issue is in accordance with the provisions of the Companies Act, 2013 and the terms and conditions, if any, stipulated in the scheme approved by NCLT/ Competent Authority;

iii. The Indian company is not engaged in any activity/ sector in which foreign investment is prohibited.

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

An Indian company may issue ESOPs and / or sweat equity shares to its employees / directors or employees / directors of its holding company or joint venture or wholly owned overseas subsidiary who are resident outside India, subject to the following conditions:

- The scheme has been drawn either under SEBI Regulations or the Companies Act, 2013.
- The ESOP / sweat equity shares are in compliance with the sectoral cap applicable to the said company.
- Issue of ESOP/ sweat equity shares in a company where foreign investment is under the approval route shall require prior Government approval.
- Issue of ESOP / sweat equity shares to a citizen of Bangladesh / Pakistan requires prior Government approval.

'Sweat equity shares' means sweat equity shares as defined under the Companies Act, 2013.

4.2.8 Issue of Convertible Notes by an Indian startup company

- A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered/ incorporated in Pakistan or Bangladesh), is permitted to invest in convertible notes issued by an Indian startup company up to INR 2.5 million or more in a single tranche.
- A startup company, engaged in a sector where investment by a person resident outside India requires Government approval, can issue convertible notes to a person resident outside India only with such approval.
- Issue of equity shares against such convertible notes should be in compliance with the entry route, sectoral caps, pricing guidelines and other attendant conditions for foreign investment.
- The payment consideration can be received by inward remittance through banking channels or by debit to the NRE/ FCNR/ Escrow account maintained with Bank in India.

- An NRI or an OCI may acquire convertible notes on a non-repatriation basis in accordance with Schedule 4 of these Regulations.
- A person resident outside India can acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the entry routes and pricing guidelines as prescribed for capital instruments.
- Convertible notes as an investment option was permitted for startup companies with effect from January 10, 2017.

4.2.9 Transfer of capital instruments of an Indian company by a person resident outside India

A person resident outside India holding capital instruments of an Indian Company or units in accordance with these Regulations, may transfer such capital instruments or units so held by him in compliance with these Regulations and subject to terms and conditions. General permission available for the followings:

- A person resident outside India (Other than NRI and OCI or erstwhile OCB) may transfer by way of sale or gift the capital instruments of an Indian company or units to any person resident outside India (including NRIs).
- NRI / OCI may transfer by way of sale or gift capital instruments or units held by them to any person resident outside India.
- A person resident outside India can transfer capital instruments or units to a person resident in India by way of sale / gift or may sell the same on a recognised stock exchange in India as prescribed by SEBI, provided the same shall be in compliance with pricing guidelines and reporting requirements.
- NRI / OCI or an eligible investor under Schedule 4 holding capital instruments of an Indian company or units on a non-repatriation basis, may transfer the same by way of gift to a NRI or OCI or an eligible investor under Schedule 4 who shall hold it on non-repatriable basis.

4.2.10 Transfer of capital instruments by a person resident in India

- A person resident in India holding capital instruments of an Indian company or units or NRI or OCI or an eligible investor under Schedule 4, holding capital instruments of an Indian company or units on non-repatriation basis, may transfer the same to a person resident outside India by way of sale, subject to the entry routes, sectoral cap, pricing guidelines and reporting requirements.
- A person resident in India (or NRI / OCI or eligible investor under schedule 4

holding capital instruments on non-repatriation basis) may transfer the same to a person resident outside India by way of gift with prior approval of RBI and subject to prescribed conditions.

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

- An Indian company have been granted general permission for conversion of ECB including those which are matured but unpaid into equity, subject to the following conditions and reporting requirements :-

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

    ii. The foreign equity after conversion of ECB into Equity is within sector cap, if any.

    iii. Applicable Pricing guidelines for the shares as per FDI policy are complied with.

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

    v. If the borrower concerned has availed of other credit facilities from the Indian banking system, including overseas branches/subsidiaries, the applicable prudential guidelines issued by RBI, including guidelines on restructuring are complied with.

    vi. Consent of other lenders, if any, to the same borrower is available or atleast information regarding conversions is exchanged with other lenders of the borrower.

4.2.12 Downstream Investment

Downstream Investment means indirect foreign investment by an Indian entity or an Investment Vehicle into another Indian Company / LLP, by way of subscription or acquisition.

Indirect Foreign Investment means downstream investment received by an Indian entity from another Indian entity which has received foreign investment and the Indian entity is not owed and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India.

'Ownership of an Indian Company' shall mean beneficial holding of more than 50% of the capital instruments of such company. 'Ownership of an LLP' shall mean contribution of more than 50% in its capital and having majority profit share.

'Control' shall mean the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement. For the purpose of LLP, 'Control' shall mean the right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP.

– Indian entity which has received indirect foreign investment shall comply with the entry route, sectoral caps, pricing guidelines and other attendant conditions as applicable for foreign investment.

Explanation: Downstream investment by an LLP not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India is allowed in an Indian company operating in sectors where foreign investment up to 100% is permitted under automatic route and there are no FDI linked performance conditions.

– **Downstream Investment made into Indian Companies will be subject to the following conditions:**

- The downstream investment should have the approval of the Board of Directors and also a Shareholders' Agreement, if any.
- For the purpose of downstream investment, the Indian entity making the downstream investment shall bring in requisite funds from abroad and not use funds borrowed in the domestic markets. Downstream investments can be made through internal accruals. For this purpose, internal accruals means profits transferred to reserve account after payment of taxes. Further, raising of debt and its utilisation shall be in compliance with the Act, rules or regulations made thereunder.
- Capital instrument of an Indian company held by another Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India may be transferred to:

  i. A person resident outside India, subject to reporting requirements in Form FCTRS;

  ii. A person resident in India subject to adherence to pricing guidelines.

  iii. An Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India.

- The first level Indian company making downstream investment shall be responsible for ensuring compliance with the provisions of these regulations for the downstream investment made by it at second level and so on and so forth. Such first level company shall obtain a certificate from its statutory auditor on an annual basis. Such compliance shall be mentioned in the Director's report in the Annual Report of the Indian company. In case statutory auditor has given a qualified report, the same shall be immediately brought to the notice of the Regional Office of the Reserve Bank in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the RO.

- The provisions at (c) and (d) above shall apply accordingly for an LLP.

– An Indian entity or an investment vehicle making downstream investment in another Indian entity shall notify the Secretarial for Industrial Assistance, DIPP within 30 days of such investment, even if capital instruments have not been allotted along with modality of investment in new / existing ventures. Further, an Indian entity or an investment vehicle making downstream investment shall file Form DI with RBI within 30 days from the date of allotment of capital instruments.

4.2.13 Establishment in India of a Branch or Liaison office or project offices in India

- 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).
- 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.
- 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:

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

  ii. 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;

  iii. 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.

iv. The applicant is a Non-Government Organization (NGO), Non-Profit Organization, Body / Agency / Department of a foreign government. However, if such entity is engaged, partly or wholly in any of the activities covered under Foreign Contribution (Regulation) Act, 2010 (FCRA), they shall obtain a certificate of registration under the said Act and shall not seek permission under this regulation.

- 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.

- 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.

- Other key points regarding Branch office :

  I. A branch or office or any other place of business in India, other than a liaison office, established by a person resident outside India, may acquire immovable property in India which is necessary for or incidental to the activity carried on in India by such branch or office. However, acquisition of immovable property in India by a branch, office or other place of business of persons of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea origin/ nationality/ ownership requires the prior approval of the Reserve Bank.

  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 I bank.

- 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:

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

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

  iii. 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.

- 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.

- 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

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

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

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

iv. 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.

- 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:

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

  ii. 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.

4.3 CROSS BORDER MERGER

4.3.1 Introduction

Cross border merger means any merger, amalgamation or arrangement between an Indian company and foreign company in accordance with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 notified under the Companies Act, 2013.

– **Inbound Merger**

In an Inbound merger, a foreign company will merge into an Indian company and accordingly, all properties, assets, liabilities and employees of the foreign company will be transferred to the Indian company subject to following conditions:

- Any issue or transfer of security by the resultant Indian company, to a person resident outside India pursuant to the Inbound Merger, should comply with the pricing guidelines, entry routes, sectoral caps, attendant conditions and reporting requirements for foreign investment laid down in FDI policy.

- If a JV/WOS of an Indian company merges with its Indian parent company, the Indian parent company shall have to comply with the conditions prescribed for transfer of shares of such JV/WOS as laid down in ODI Regulations.

  If the JV/WOS has further step-down subsidiaries outside India, the merger of the JV/WOS with the Indian parent company will result in the Indian parent company acquiring shares of the foreign step down subsidiaries of the JV/WOS and accordingly, the Indian parent company shall have to comply with Regulation 6 and 7 of the ODI Regulations.

- Any offices outside India of the foreign company merging with the Indian company pursuant to the Inbound Merger shall be deemed to be the branch/office outside India of the Indian company in accordance with Foreign Exchange Management (Foreign Currency Account by a Person Resident in India) Regulations, 2015.

- Any outstanding borrowings or guarantees from overseas sources obtained by the merging foreign company, that becomes borrowing of the Indian company, or any borrowing from overseas sources entering into the books of the resultant Indian company pursuant to the Inbound Merger, should comply with Borrowing and Lending regulations, 2018, within a period of 2 years from the date of sanction of such merger by the NCLT. Further, end use restrictions will not apply to such borrowings. Also, no remittance can be made for the repayment of such liability from India, within the abovementioned period of 2 years.

- The Indian company may acquire and hold any asset outside India of the foreign company (pursuant to a cross border merger), which an Indian company is permitted to acquire under FEMA. Such assets can be transferred by the Indian company if such a transaction is permitted under FEMA.

  If the Indian company is not permitted under FEMA to acquire and hold any asset/security, then such Indian company shall have to sell such asset/security within 2 years from the date of sanction of the merger by the NCLT and the sale proceeds must be repatriated to India immediately through banking channels.

– **Outbound Merger**

  In an Outbound Merger, an Indian company will merge into a foreign company and accordingly, all properties, assets, liabilities and employees of the Indian company will be transferred to the foreign company subject to following conditions:

- A person resident in India, being a holder of securities in the Indian company, is permitted to acquire or hold securities of the foreign company, in accordance with the ODI Regulations. If a resident individual acquires securities of a foreign company, the fair market value of such securities should be within the limits prescribed under the Liberalised Remittance Scheme (presently USD 250,000 million per financial year).

- Any offices in India of the Indian company merging with the foreign company pursuant to the Outbound Merger shall be deemed to be the branch office in India of the foreign company and shall be required to comply with the provisions of FEMA (including restrictions on activities applicable to a branch office).

- Any guarantees and outstanding borrowings of the Indian company, which shall be transferred to the foreign company pursuant to the Outbound Merger, shall be repaid in terms of the scheme of merger sanctioned by the NCLT. Any assumption of liability in Rupees by a foreign company towards an Indian lender must comply with FEMA and must be consented to by such Indian lender.

- The foreign company may acquire and hold assets in India which a foreign company is permitted to acquire under FEMA. Any transfer of assets acquired by the foreign company (pursuant to the Outbound Merger) must comply with FEMA.

  If FEMA bars a foreign company from acquiring and holding any asset/security that is proposed to be transferred pursuant to the Outbound Merger, then such foreign company would have to sell such asset/security within two years from the date of sanction of the merger by the NCLT and the sale proceeds must be repatriated outside India immediately through banking channels.

- The foreign company is permitted to open a Special Non-Resident Rupee Account (SNRR Account) with the Bank for a maximum period of 2 years from the date of sanction of the cross border merger by the NCLT, for undertaking the transactions contemplated by the FEMA Regulations.

– **Valuation**

  The valuation of the Indian company and the foreign company shall be done in accordance with Rule 25A of the Companies (Compromises, Arrangement or Amalgamation) Rules, 2016.

– **Reporting**

  The FEMA Regulations provide that the resultant company and/or the companies involved in the cross-border merger shall be required to furnish reports as may be prescribed by the RBI.

4.4 EXTERNAL COMMERCIAL BORROWINGS (ECB)

Recently, RBI issued new ECB Framework to rationalize the extant framework for the ECB and Rupee Denominated Bonds in light of the experience gained to improve the ease of doing business. The revised framework has expanded the eligible borrowers such as limited liability partnership, service sector and trading entities in line with the FDI Policy. The revised framework merged the Tracks I and II as "Foreign Currency denominated ECB" and merged the Track III and Rupee Denominated Bonds framework as "Rupee Denominated 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. ECB can be raised either under automatic route or approval route. The revised framework of ECB is provided hereunder:

4.4.1 Currency of borrowing

ECB can be raised in any freely convertible foreign currency as well as in Indian Rupees.

4.4.2 Eligibility of Borrowers

All entities are eligible to receive foreign direct investment as per extant FDI policy including Start-ups. Accordingly, the entities such as a limited liability partnership and an entity engaged in trading activity and service sector can also be eligible to avail ECB if they are eligible to receive FDI. In addition, specific entities such as Port Trusts, Units in SEZ, SIDBI, EXIM Bank are permitted to raise foreign currency denominated ECB as well as INR denominated ECB. Also, the registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/cooperatives and Non-Government Organisations are permitted only to raise INR denominated ECB.

4.4.3 Recognised Lenders

The lender should be resident of FATF or IOSCO compliant country. Further, Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders. It is specifically provided that foreign investor who is individual can be recognized as lender if he qualifies as foreign equity holder or for subscription to bonds/debentures listed abroad.

4.4.4 Minimum Average Maturity Period (MAMP)

MAMP for all ECBs will be 3 years. However, for ECB raised from foreign equity holder and utilized for working capital or general corporate purposes, the MAMP would be 5 years. Similarly, for ECB up to USD 50 million per financial year raised by the manufacturing sector, which has been given a special dispensation, the MAMP would be one year. Also, it is provided that call and put option, if any, shall not be exercisable prior to completion of minimum average maturity.

4.4.5 All-in-cost

- For ECBs raised in foreign exchange, the maximum spread over the benchmark of 6-month LIBOR or applicable benchmark for the respective currency will be 450 basis points per annum.
- For ECBs raised in Indian Rupees, the maximum spread will be 450 basis points per annum over the prevailing yield of the Government of India securities of corresponding maturity.

4.4.6 Other Costs

Prepayment charge/ Penal interest, if any, for default or breach of covenants should not be more than 2% over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.

4.4.7 End-uses (Negative list)

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- Real estate activities*;
- Investment in capital market;
- Equity investment;
- Working capital purposes except from foreign equity holder;
- General corporate purposes except from foreign equity holder;
- Repayment of Rupee loans except from foreign equity holder;
- On-lending to entities for the above activities.

* Real Estate Activity means any real estate activity involving own or leased property for buying, selling and renting of commercial and residential properties or land and also includes activities either on a fee or contract basis assigning real estate agents for intermediating in buying, selling, letting or managing real estate. However, this would not include construction/development of industrial parks/integrated township/SEZ, purchase/long term leasing of industrial land as part of new project/ modernisation of expansion of existing units or any activity under 'infrastructure sector' definition.

4.4.8 Security for raising ECB

AD Category I banks are permitted to allow creation/ cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/ or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised / raised by the borrower, subject to following:

- the underlying ECB is in compliance with the extant ECB guidelines,
- In Loan Agreement, security clause requires the ECB borrower to create/ cancel charge, in favour of overseas lender / security trustee, on immovable assets / movable assets / financial securities / issuance of corporate and / or personal guarantee, and
- No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

Once the aforesaid stipulations are met, the AD Category I bank may permit creation of charge on immovable assets, movable assets, financial securities and issue of corporate and / or personal guarantees, during the currency of the ECB with security co-terminating with underlying ECB subject to the certain conditions.

4.4.9 Individual Limits of borrowing

All eligible borrowers may raise ECB of up to USD 750 million per financial year. For Startups, the amount would be limited to USD 3 million per financial year. Further, in case of FCY denominated ECB raised from direct foreign equity holder, ECB liability-equity ratio cannot exceed 7:1. However, this ratio is not applicable if outstanding amount of all ECBs is up to USD 5 million.

4.4.10 Change of currency of borrowing

Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted. However, change of currency from INR to any freely convertible foreign currency is not permitted.

4.4.11 Parking of loan amount abroad

ECB proceeds can be parked abroad pending utilisation. 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 cumulatively.

4.4.12 Refinancing of existing ECB

Refinancing of existing ECB is allowed by raising fresh ECB provided that the outstanding maturity of the original borrowing or weighted outstanding maturity in case of multiple borrowings is not reduced and all-in-cost of fresh ECB is lower than the all-in-cost of existing ECB or weighted average cost in case of multiple borrowings.

4.4.13 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.

4.4.14 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:

- Change of AD Category I Bank;
- Cancellation of LRN;
- Refinancing of existing ECB;
- Conversion of ECB into Equity;
- Security for raising ECB.

4.4.15 Late Submission Fees (LSF) for delay in reporting

As per revised ECB framework, any borrower who is otherwise in compliance of ECB guidelines, except for a delay in reporting of drawdown of ECB proceeds before obtaining LRN or Form ECB 2 returns, can regularize the delay by payment of late submission fee for delay in reporting. The fees will have to be paid via demand draft in favor of RBI, or any mode specified therewith. The computation of late submission fees is as under:

Form	Period of delay	Applicable LSF
Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000
Form ECB 2 /Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year
Form ECB 2 / Form ECB	Beyond three years from due date of submission/date of drawdown	INR 100,000 per year

4.5 FOREIGN CURRENCY EXCHANGEABLE BONDS

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.

4.5.1 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.

4.5.2 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).

4.5.3 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.

4.5.4 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.

4.5.5 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.

4.5.6 End-use of FCEB proceeds: Issuing Company:

- 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 (abroad).

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

4.5.7 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.

4.5.8 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.

4.5.9 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.

4.5.10 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:

- 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
- 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.

4.5.11 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.

4.5.12 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.

4.5.13 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.

4.6 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.

4.6.1 Purpose

Trade Credits can be raised for the purpose of import of non-capital and capital goods as permitted under the extant Foreign Trade Policy of the DGFT and for purchase of non-capital and capital goods within a Special Economic Zone (SEZ) or from a different SEZ subject to terms and conditions as stipulated by the Reserve Bank from time to time.

4.6.2 Currency of borrowing

Trade credits can be raised in any freely convertible foreign currency as well as in Indian Rupees or any other currency as specified by the Reserve Bank.

4.6.3 Amount of borrowing

Importers can raise trade credit up to USD 50 million equivalent per import transaction for import of capital or non-capital goods or any other amount as decided by the Reserve Bank.

4.6.4 Period

The period of trade credit reckoned from the date of shipment shall be as under:

- For import of non-capital goods – Maximum period of up to one year and linked with the operating cycle, or for a period as per the guidelines issued by the

Reserve Bank from time to time for any import of any goods / for import by any specific sector.

- For import of capital goods – Maximum period of three years or for a period as per the guidelines issued by the Reserve Bank from time to time.

4.6.5 Recognised Lenders

Overseas suppliers, banks and other financial institutions, foreign equity holders and financial institutions in International Financial Services Centres (IFSCs) in India or any other entities as decided by the Reserve Bank.

4.6.6 Cost

- For trade credits in foreign exchange, the maximum spread over the benchmark of 6-month LIBOR or applicable benchmark for the respective currency will be 250 basis points per annum or as prescribed by the Reserve Bank.

- For Rupee denominated trade credit, the all-in-cost shall be commensurate with prevailing market conditions or as prescribed by the Reserve Bank.

4.6.7 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 9 months from the date of export. However, 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 15 months from the date of shipment of goods.

Further, it is provided that the Reserve Bank or the authorized dealer may for a sufficient and reasonable cause shown, extend the period of 9 months or 15 months, as the case may be.

4.6.8 Time period for payment towards Import obligations

Remittances of payments against imports should be completed not later than 6 months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance.

4.7 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.

4.8 SECTOR-WISE FDI CAP

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

Sector/Activity	% of Equity /FDI Cap	Entry Route
Agriculture		
Agriculture & Animal Husbandry ■ Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions; ■ Development and Production of seeds and planting material; Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture; and ■ Services related to agro and allied sectors *Note: Besides the above, FDI is not allowed in any other agricultural sector/activity*	100%	Automatic

Sector/Activity	% of Equity /FDI Cap	Entry Route
Plantation Sector		
■ Tea sector including tea plantations. ■ Coffee plantations. ■ Rubber plantations. ■ Cardamom plantations (v) Palm oil tree plantations (vi) Olive oil tree plantations *Note: Besides the above, FDI is not allowed in any other plantation sector/activity.* *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		
Mining		
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
Coal & Lignite ■ 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. ■ 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	100%	Automatic

Sector/Activity	% of Equity /FDI Cap	Entry Route
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.		
Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities.	100%	Government
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
Petroleum & Natural Gas		
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
Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic

Sector/Activity	% of Equity /FDI Cap	Entry Route
Manufacturing		
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.	100%	Automatic
Defence		
Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951 *Note: FDI limit has also been made applicable to Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959.*	100%	Automatic route up to 49% 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		
Broadcasting		
Broadcasting Carriage Services 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 Government approval		
■ Teleports(setting up of up-linking HUBs/Teleports); (2)Direct to Home (DTH)	100%	Automatic

Sector/Activity	% of Equity /FDI Cap	Entry Route
■ Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); ■ Mobile TV; ■ Headend-in-the Sky Broadcasting Service(HITS).		
Cable Networks(Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)).	100%	Automatic
Broadcasting Content Services		
Terrestrial Broadcasting FM(FM Radio), 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
Up-linking of 'News & Current Affairs' TV Channels.	49%	Government
Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels.	100%	Automatic
Print Media		
Publishing of newspaper and periodicals dealing with news and current affairs.	26%	Government
Publication of Indian editions of foreign magazines dealing with news and current affairs.	26%	Government

Sector/Activity	% of Equity /FDI Cap	Entry Route
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
Publication of facsimile edition of foreign newspapers.	100%	Government
Civil Aviation		
Airports		
Greenfield projects	100%	Automatic
Brownfield projects	100%	Automatic
Air Transport Services		
■ Scheduled Air Transport Service /Domestic Scheduled Passenger Airline; ■ Regional Air Transport Service.	100% FDI	Automatic upto 49% Government beyond 49% (Automatic upto 100% for NRIs and OCIs)
(2 Non-Scheduled Air Transport Service	100%	Automatic
(3) Helicopter services/seaplane services requiring DGCA approval. *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.*	100%	Automatic
Other services under Civil Aviation sector (1) Ground Handling Services subject to sectoral regulations and security clearance.	100%	Automatic

Sector/Activity	% of Equity /FDI Cap	Entry Route
(2) Maintenance and Repair organizations; flying training institutes; and technical training institutions.	100%	Automatic
Construction Development: Townships, Housing, Built-up Infrastructure		
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
Industrial Parks		
Industrial Parks -new and existing.	100%	Automatic
Satellites- establishment and operation		
Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO.	100%	Government
Private Security Agencies.	49%	Government
Telecom Services		
Telecom Services (including Telecom Infrastructure Providers Category-I) 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	100%	Automatic upto 49% Government route beyond 49%

Sector/Activity	% of Equity /FDI Cap	Entry Route
Number Portability Services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.		
Trading		
Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)	100%	Automatic
E-commerce activities (B2B)	100%	Automatic
Market place model e-commerce	100%	Automatic
Single Brand product retail trading Note: Sourcing norms will not be applicable up to 3 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, condition prescribed will be applicable.	100%	Automatic
Multi Brand Retail Trading	51%	Government
Duty Free Shops	100%	Automatic
Railway Infrastructure		
Railway Infrastructure 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	100%	Automatic

Sector/Activity	% of Equity /FDI Cap	Entry Route
main railway line and (x) Mass Rapid Transport Systems.		
Financial Services		
Foreign investment in other financial services, other than those indicated below, would require prior approval of the Government.		
Asset Reconstruction Companies		
'Asset Reconstruction Company' (ARC) means a 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
Banking- Private Sector		
Banking- Private Sector	100%	Automatic up to 49% Government route beyond 49% and up to 74%
Banking- Public Sector		
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
Credit Information Companies	100%	Automatic
Infrastructure Companies in the Securities Market		
Infrastructure companies in Securities Markets, namely, stock exchanges, commodity exchanges, depositories and clearing corporations, in compliance with SEBI Regulations.	49%	Automatic

Sector/Activity	% of Equity /FDI Cap	Entry Route
Insurance		
(i) Insurance Company (ii) Insurance Brokers (iii) Third Party Administrators (iv) Surveyors and Loss Assessors (v) Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999.	49%	Automatic
Pension Sector	49%	Automatic
Power Exchanges Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.	49%	Automatic
Commodities Spot Exchange Investment shall be subject to guidelines prescribed by the Central / State Government.	49%	Automatic
Other Financial Services Other Financial Services will mean financial services activities regulated by financial sector regulators, viz., Reserve Bank, Securities and Exchange Board of India, Insurance Regulatory and Development. Authority, Pension Fund Regulatory and Development Authority, National Housing Bank or any other financial sector regulator as may be notified by the Government of India.	100%	Automatic
Pharmaceuticals		
Greenfield	100%	Automatic
Brownfield	100%	Automatic up to 74% Government beyond 74%

Chapter 5

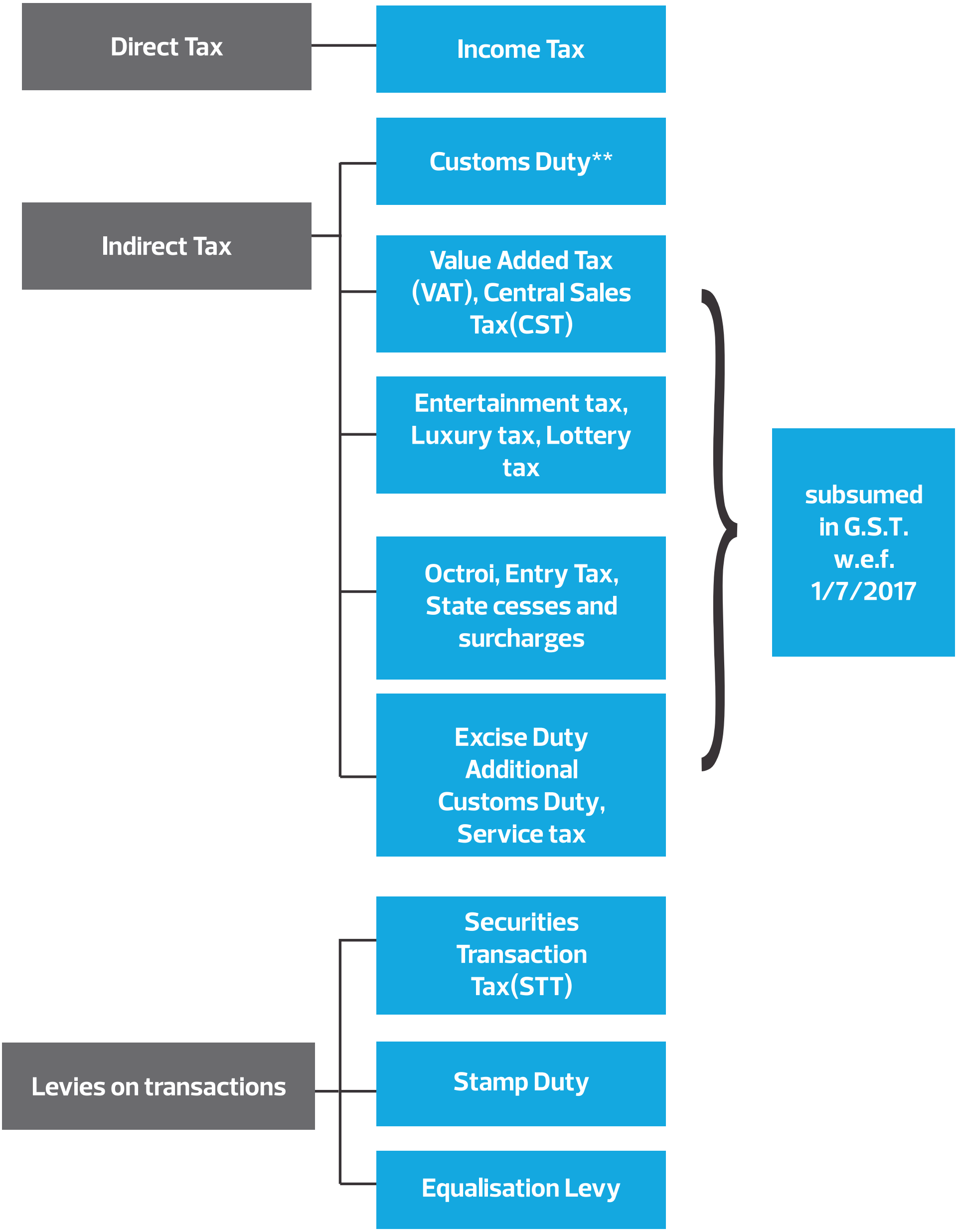
TAXATION SYSTEM

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). After introduction of goods and service tax (GST), CGST and IGST is levied and collected by the central government in place of taxes like central excise duty, additional excise duty, additional customs duty, special additional duty of customs, service tax and excise duty under medicinal and toilet preparations which have been subsumed under GST. Similarly, VAT/ Sales tax, Entertainment tax, luxury tax, octroi tax, purchase tax, taxes on lottery betting and gambling that was levied by the state government under the erstwhile regime have been subsumed under GST and a new levy of SGST has been introduced by state governments.. The GST regime has improved tax collection, reduced cascading tax effect and minimized revenue leakages and is expected to raise India's medium term growth to more than 8%.

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. Accordingly, a reduced tax rate of 25% was introduced by the Finance Minister in budget 2018 for companies having a turnover of less than INR 2500 million in FY 16-17.

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

Indian Tax Structure



**Countervailing Duty (CVD) & Special Additional Duty (SAD) subsumed in GST, Basic Custom Duty still in force.

5.1 INTRODUCTION

The Income-tax Act, 1961 contains the law relating to Indian income tax. 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.

5.2 INCOME TAX ON CORPORATIONS

5.2.1 Residential Status

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

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

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

- 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.
- 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.
- 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.
- The CBDT had issued draft guidelines for the determination to the POEM on 23rd December, 2015.The final notification 29/2018 dated 22nd June 2018 was issued by CBDT which laid final guidelines for a company to be held as resident in India due to its place of effective management (POEM) being in India by introducing Section 115JH under Chapter XVII-B of the IT Act, 1961. These guidelines would be applicable only to foreign companies having annual turnover of more than INR 500 million. Certain significant aspects of the POEM guidelines are as under:

  ■ POEM in India is not applicable to a company when:

i. A company is engaged in active business outside India and

ii. Majority of the board meetings are held outside India.

- 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 ;

- One of the decisive factors in respect of active company could generally be 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:

i. Place where "main and substantial activity" of the company is carried out; or

ii. Place where the accounting records of the company are kept

- The following aspects need to be kept in mind while deciding POEM:

i. Facts and circumstances of each case

ii. Concept of substance over form

iii. 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

- CBDT issued a notification under Section 115JH(1) of IT Act in order to address certain issues related to computation of income of foreign company who is said to be a resident of India upon satisfying the POEM guidelines. The final notification prescribes the method of determining opening WDV of depreciable assets in order to compute depreciation, method of determining unabsorbed depreciation and brought forward losses, measures to be taken by the foreign company if it follows a different accounting year, foreign tax credit entitlement, applicability of TDS provisions etc. This notification shall be applicable from 1st April 2017 onwards.
- 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.

5.2.2 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 / royalties payable 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.

5.2.3 Rates of Tax

- 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.
- From AY 2019-20, Education Cess and Secondary Higher Education Cess of 3%(of tax and surcharge) is discontinued. Health and Education Cess is introduced @4% (of tax and surcharge).
- The rates of tax for FY 2018-19 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 2018-19)		
	Companies having total income up to INR 10 Million	Companies having total income above INR 10 Million but less than INR 100 Million	Companies having total income above INR 100 Million
Domestic Company	31.20%	33.384%	34.944%
Foreign Company	41.60%	42.432%	43.68%

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

- **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 2018-19 are as below:

Entity	Effective Tax Rates (FY 2018-19)		
	Companies having total income up to INR 10 Million	Companies having total income above INR 10 Million but less than INR 100 Million	Companies having total income above INR 100 Million
Domestic Company	19.24%	20.5868%	21.5488%

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:

- 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
- 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

- **Dividend Distribution Tax (DDT)**

A domestic company is liable for payment of additional income tax (known as Dividend Distribution Tax or DDT) @ 20.5553% (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 .

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 INR 1 million. Dividends in such cases, exceeding INR 1 million shall be chargeable to tax @ 10% in the hands of the resident Individual / HUF / firm under section 115BBD of the IT Act

5.2.4 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.

5.2.5 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. It shall also be applicable to assesses opting for presumptive scheme of taxation.
- **Applicable from:** This will apply for the computation of income for FY 2016-17 (i.e. AY 2017-2018) 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 / AMT.
- **Transition to ICDS:** Each ICDS contains certain transitional provisions for effective adoption of the same.

5.2.6 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.

5.2.7 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 (INR)**
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:

Common Disallowances

- Cash payments more than INR 10,000
- Payments made to residents without withholding tax, 30% of such expenditure is disallowed
- Payments made to non-residents without withholding 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

Common 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	40
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 a particular year 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.

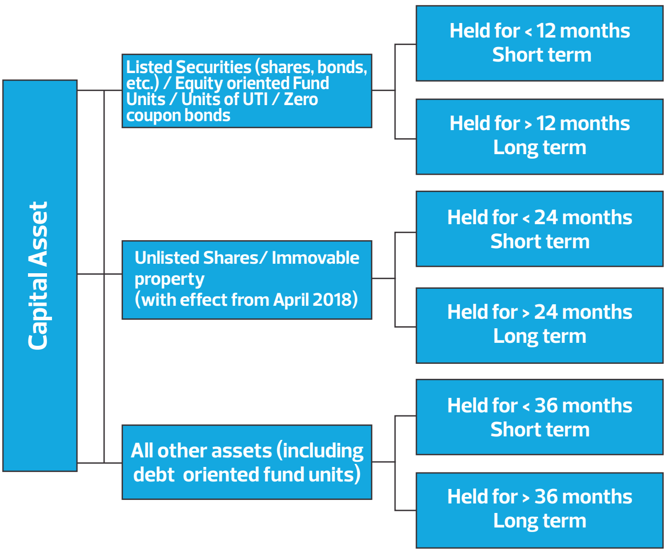
5.2.8 Capital Gains

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. 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. In all other cases, STCGs shall be taxed at normal tax rates. 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 shall be taxed at 10% (plus applicable surcharge and cess) of such capital gains exceeding INR 100,000. The exemption under section 10(38) has been withdrawn. Benefit of indexation is available while computing long- term capital gain (except bonds and debentures). In all other cases, LTCG is taxed @ 10% without indexation or 20% with indexation, whichever is more beneficial. Benefit of charging long-term capital gain @ 10% is available only in respect of listed securities (other than a unit) and Zero coupon bonds. **In case of Non-resident:** 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 Further it should be noted that any long term capital gain on transfer of

STCG	LTCG
	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). 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 (INR)
	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 2001**

In case of a capital asset acquired before 1 April 2001 the cost of acquisition may be taken as the fair market value of the asset as on 1 April 2001 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:

■ transfer by way of gift, will or irrevocable trust:

- transfer by a parent company to a wholly owned Indian subsidiary company;
- transfer by a wholly owned subsidiary company to its Indian holding company;
- distribution by a company of its assets to its shareholders on liquidation;
- transfer, in a scheme of amalgamation/ demerger, by an amalgamating/ demerged company to the amalgamated/ resulting company, if the latter is an Indian company;
- 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.

5.2.9 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 INR 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 INR 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 INR 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.

5.2.10 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.

5.2.11 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 4%.

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:

- 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.
- 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.
- 5% in following cases:

i. Interest received from an infrastructure debt fund .

ii. 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.

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

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

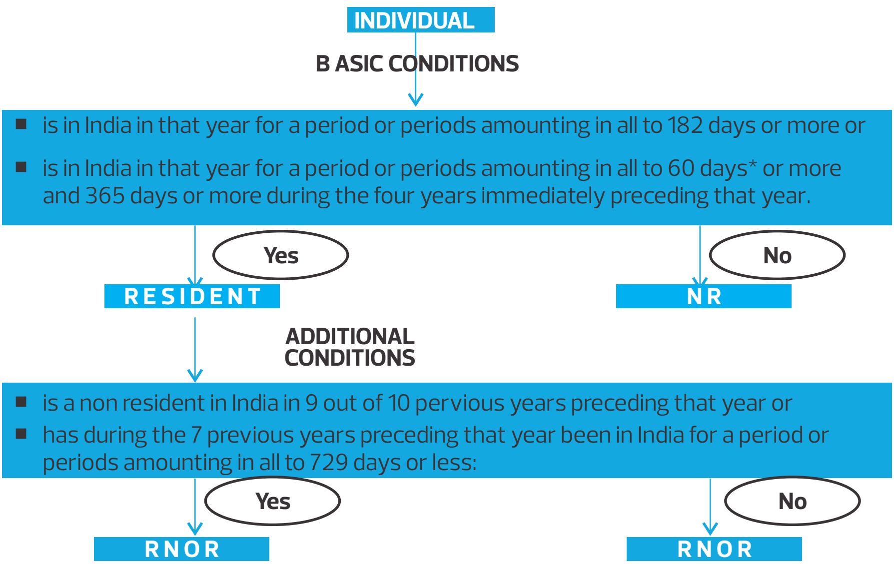
5.3 INCOME TAX ON NON-CORPORATES

5.3.1 Residential Status

- **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:



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 :-
  - i. the purpose of taking up employment outside India; OR
  - ii. 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.

- **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.

- Taxable Income

Sr. No.	Particulars	Residential Status and taxability in India		
		ROR	RNOR	NR
1	Income received or deemed to be received in India	Yes	Yes	Yes
2	Income which accrue or arise or is deemed to accrue or arise in India	Yes	Yes	Yes
3	Income which accrue or arise outside India from:			
	- Business controlled in India or	Yes	Yes	No
	-Other Income	Yes	No	No

Note:

- Residents and Ordinarily Resident (ROR) are liable to tax on their global income.
- 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.
- '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.
- 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.
- Rates of Tax

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

Income Slabs(INR)	**Tax Rates***
0 – 250,000#	Nil
2,50,001# - 500,000 million*	5.20% [tax rate 5% plus education cess4% thereon] of income exceeding INR 250,000
5,00,001 - 1 million	INR 13,000 plus 20.80% [tax rate 20% plus education cess 4% thereon] of income exceeding INR 500,000
10,00,001 – 5 million	INR 1,17,000 plus 31.20% [tax rate 30% plus education cess 4% thereon] of income exceeding INR1 million
50,00,001 - 10 million	INR 15,01,500 plus 34.32% [tax rate 30% plus education cess of 4% thereon] of income exceeding INR 5 million
1,00,00,001^ and above	INR 33,63,750 plus 35.88% [(tax rate 30% plus surcharge 15% thereon) plus education cess 4% thereon] of income exceeding INR10 million

#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 INR 300,000 and INR 500,000 respectively. The tax for other slabs will change accordingly.

*A resident individual having income up to INR 3.5 million is entitled to a rebate of tax payable [excluding education cess] or INR 2, 500 whichever is less.

- Partnership Firms/LLPs

The effective tax rates for partnership firms/LLPs for FY2018-19 are as follows:

Entity	Effective Tax Rates (FY 2018-19)	
	Total income up to INR 10 Million	Total income above INR 10 Million
Partnership Firms/LLPs	31.20%	34.944%

- 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 2018-19)		
	Total income up to INR 10 Million	Total income above INR 10 Million but less than INR 100	Total income above INR 100 Million
Non-corporate assessee	19.24%	21. 164%	22.126%

5.4 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	<u>New eligible unit set up in SEZ on or after 1 April 2005</u> ■ New eligible unit set up in SEZ on or after 1 April 2005 ■ 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. ■ 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. ■ The benefit is also available to units engaged in cutting and polishing of precious and semi-precious stones. ■ 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. ■ The eligible units availing these deductions will be subject to MAT/ AMT @ 18.50% (plus applicable surcharge and education cess) ■ 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. ■ 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. ■ No deduction shall be available to units commencing manufacture or production of article or thing / providing services on or after 1 April 2020. ■ The deduction is allowed only on creation of a specified reserve, which is required to be utilized for specified purposes.	First 5 years Next 5 years Next 5 years	100% 50% 50%

Section	Details of Exemption / Deduction ^	Period	Quantum of Deduction
33AB	**Tea / Coffee / Rubber development allowance** ■ Deduction is available to assessee engaged in the business of growing and manufacturing tea, coffee or rubber in India. ■ 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. ■ The amount has to be utilized by the assessee for specified purposes.	Available for every AY	Up to 40% of profits or amount deposited, whichever is less
33ABA	**Site Restoration Fund – Petroleum or Natural Gas** ■ 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. ■ 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. ■ 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.
32(1)(iia)	**Additional Depreciation** ■ General rate of depreciation for plant and machinery is 15% (other than certain specified types of plant and machinery). ■ 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. ■ 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.		

Section	Details of Exemption / Deduction ^	Period	Quantum of Deduction
	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 (1A) (1B) (2)	**Investment in new plant or machinery** ■ 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 INR 250 million 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. ■ The said deduction is available for investment made in new plant and machinery up to 31 March 2017. 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 year in which new asset is sold or otherwise transferred		
32AD	**Investment in new plant or machinery in certain states** ■ Additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if: 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 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. ■ The above deduction will be allowed over and above the existing deduction under section 32AC of the IT Act. 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).		

Section	Eligibility Criteria, Quantum and Period of Deduction ^
35AD	**Deduction in respect of expenditure on specified businesses** 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. Specified business and the year (in which the operations to be commenced) for availing deduction under this section are tabulated as under:

Sr. No	Specified Business	Specified year of Commencement
1	Setting up and operating a cold chain facility	From 1 April 2009 onwards *
2	Setting up and operating a warehousing facility for storing agricultural produce	From 1 April 2009 onwards *
3	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	From 1 April 2007 onwards
4	Building and operating a hotel of two star and above category as classified by the Central Government anywhere in India	From 1 April 2010 onwards **
5	Building and operating a hospital with at least 100 beds for patients anywhere in India	From 1 April 2010 onwards *
6	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	From 1 April 2010 onwards
7	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	From 1 April 2011 onwards *
8	Production of fertilizers in India through a new plant or a newly installed capacity in an existing plant	From 1 April 2011 onwards *
9	Setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962	From 1 April 2012 onwards
10	Bee-keeping and production of honey and beeswax	From 1 April 2012 onwards
11	Setting up and operating a warehousing facility for storage of sugar	From 1 April 2012 onwards
12	Laying and operating a slurry pipeline for transportation of iron ore	From 1 April 2014 onwards
13	Setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines.	From 1 April 2014 onwards
14	Developing or operating and maintaining or developing, operating & maintaining any infrastructure facilities.	From 1 April 2017 onwards

Section	Eligibility Criteria, Quantum and Period of Deduction ^
	*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. ** 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. ■ 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. ■ 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'. ■ 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. ■ 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** 100% Deduction is allowed subject to fulfillment of certain conditions for any sums paid to: ■ An association or institution for carrying out any programme of rural development ■ An association or institution for training of persons for implementation of rural development programme ■ National Fund For Rural Development ■ National Urban Poverty Eradication Fund
35CCC	**Weighted deduction of expenditure incurred on agriculture extension project** ■ 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. ■ 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.

Section	Eligibility Criteria, Quantum and Period of Deduction ^
35CCD	**Weighted deduction of expenditure incurred on skill development project** ■ 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. ■ 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 being land or building or both 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. This exemption shall be least of the following: (I) Investment in specified assets viz. bonds issued by NHAI and the RECL. The investment is restricted up to INR 5 million per assessee per financial year. (ii) Amount of capital gains. ■ 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 INR 5 millions. ■ Long-term specified asset, for making any investment under this section in bonds issued on or after 1 April 2018, shall mean any bond redeemable after five years.
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. ■ This exemption shall be least of the following: i. Investment in specified assets viz. a unit or units, issued before the 1 April, 2019 of fund notified by the Central Government. ii. INR 5 million per assessee per financial year iii. Amount of capital gains. ■ 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 INR 5 million. ■ The specified asset must be held for a period of 3 years from the date of its acquisition. ■ 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.

Section	Eligibility Criteria, Quantum and Period of Deduction ^
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: (i) Amount of capital gains; (ii) 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: (I) Amount of capital gains; (ii) 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. ■ 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. 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 for technology driven eligible start-up) before due date of filing of return by the investor. ■ 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 INR 1 million in a financial year).
10 (34A) 10(38)	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. Exemption under section 10(38) on Capital gain arising from transfer of long term capital asset being an equity share in a company or a unit of an equity oriented funds or unit of a

Section	Eligibility Criteria, Quantum and Period of Deduction ^
	business trust, on which STT is charged, is withdrawn. A new section 112A, is introduced in the IT Act to provide that long term capital gains arising from transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust shall be taxed at 10% (plus applicable surcharge and Health and Education cess) of such capital gains exceeding INR 100,000. Certain relief is provided in respect of grandfathering of long term capital gains upto 31 January 2018 and gains after that period shall be taxable under the new rate of 10%. In other words, the cost of acquisition in respect of the long term capital asset acquired by the assessee before 1 February 2018, shall be deemed to be the higher of – ■ the actual cost of acquisition of such asset; and ■ the lower of – (i) the fair market value of such asset as on 31 January 2018; and (ii) the full value of consideration received or accruing as a result of the transfer of the capital asset. The grandfathering benefit would not be available under the MAT regime and would continue to be taxed as per applicable rates on the book profits based on the provisions of Section 115JB related to MAT. As in the case of domestic investors, the FIIs will also be liable to tax on such long term capital gains only in respect of amount of such gains exceeding INR 100,000. The provisions of section 115AD are proposed to be amended accordingly.
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.
10 (48B)	Any income accruing or arising to a foreign company on account of sale of leftover stock of crude oil, if any, from a facility in India after the expiry of an agreement or an arrangement referred to in section 10(48A) shall also be exempt subject to such conditions as may be notified by the Central Government. Section 10(48B) also provides that the benefit of tax exemption in respect of income from left over stock will be available even if the agreement or the arrangement is terminated in accordance with the terms mentioned therein.
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% (plus applicable surcharge and cess).
115B BDA	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 INR 1 million. Dividends in such cases, exceeding INR 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** 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) or to a university, college or other institution to be used for scientific research.	150%* 100%**	150%* 100%**
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.	100%	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.	100%	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.	150%* 100%**	150%* 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).	150%* 100%**	150%* 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				
Sr. No.	**Nature of Activity and Location**	**Type of Organization**	**Quantum of Deduction**	**Number of Years**
1.	Specified Infrastructure Projects [Section 80-IA(4)(I)} ■ 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. ■ 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 [Section 80-IA(4)(ii)] 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. Deduction shall not be available to a person executing the above referred services as a works contract.	All All	100% 30%	First 5 years Next 5 years Any 10 consecutive years out of first 15 years
3.	Development of Industrial Park [Section 80-IA(4)(iii)] ■ Any undertaking which begins to develop or develops and operates or maintains		100%	Any 10 consecutive years out of first 15 years

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Deduction	Number of Years
	and operates an industrial park which has commenced operations during 1 April 1997 to 31 March 2011. ■ Deduction shall not be available to person executing the above referred services as a works contract.			
4.(a)	Power Undertakings [Section 80-IA(4)(iv)] ■ Undertaking set up in any part of India for the generation or generation and distribution, of power, which has commenced operations during 1 April 1993to 31 March 2017. ■ Undertaking which starts transmission or distribution by laying a network of new transmission or distribution lines between 1 April 1999 and 31 March 2017. ■ Undertaking which undertakes substantial renovation and modernization of the existing network of transmission or distribution lines between 1 April 2004 and 31 March 2017. ■ Deduction shall not be available to a person executing the above referred activities as a works contract.	All	100%	Any 10 consecutive years out of first 15 years
4.(b)	Undertakings for revival of Power Generating Units [Section 80-IA(4)(v)] 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 [Section 80-IAB] ■ Any assessee being developer of a SEZ notified by the Central Government after 1 April 2005 can claim deduction under section 80-IAB. ■ 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

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Deduction	Number of Years
6.	Start-up Undertaking [Section 80-IAC] ■ Undertaking being an eligible start-up which is engaged in business of which innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation. ■ The total turnover of the company should not exceed INR 250 million in any of the 7 previous years beginning from the year in which it is incorporated. ■ It holds a certificate of eligible business from the Inter- Ministerial Board of Certification as notified in the Official Gazette by the Central Government. ■ 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). ■ It is not formed by splitting up, or the reconstruction, of a business already in existence. ■ As per section 79 for an eligible start-up, the loss shall be carried forward and set off against the income of the previous year, if all the shareholders of such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred, being the loss incurred during the period of 7 years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year.	Company or LLP incorporated between 1 April 2016 to 1 April 2021	100%	Any 3 consecutive years out of first 7 years
7	Scientific and Industrial Research Company [Section 80-IB(8A)] 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

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Deduction	Number of Years
8.	Production of mineral oil and natural gas [Section 80-IB(9)] ■ 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. ■ 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. ■ 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 [Section 80-IB(11A)] ■ 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. ■ The benefit is extended to undertakings engaged in the business of processing, preservation and packaging of fruits and vegetables. ■ 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 Others	100% 30% 100% 25%	First 5 years Next 5 years First 5 years Next 5 years
10.	Operating and Maintaining Hospital [Section 80-IB(11C)] ■ Any undertaking engaged in the business of operating and maintaining a hospital in India other than specified excluded areas. ■ The undertaking shall be eligible for the deduction if such hospital is constructed in accordance with the local regulations in	All	100%	First 5 years

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Deduction	Number of Years
	force; and has at least 100 beds for patients. ■ 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 [Section 80-IBA] ■ Any undertaking engaged in the business of developing and building housing projects approved by the competent authority between 1 June 2016 and 31 March 2020 (Interim Budget 2019 presented on 1 February 2019 extended this date from 31st March 2019 to 31st March 2020). ■ The project should be completed within a period of 3 years from the date of approval. ■ 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. ■ Separate books of account in respect of the housing project. ■ Not more than 1 residential unit is allotted to any individual or the spouse or the minor children of such individual. ■ 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 [Section 80-IC] ■ 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. ■ Undertakings and enterprises, which begin to manufacture or produce any article or thing which is specified in Fourteenth Schedule or commences any			

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Deduction	Number of Years
	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. i. If located in Sikkim, from 23 December 2002 to 31 March 2007. ii. If located in North Eastern States*, from 24 December 1997 to 31 March 2007. iii. If located in Himachal Pradesh and Uttaranchal, from 7 January 2003 to 31 March 2012.	All Company Others	100% 100% 30%	First 10 years First 5 years Next 5 years
13.	Convention Centre and Hotels in notified areas [Section 80-ID] ■ Any undertaking engaged in business of hotels in specified area of the National Capital Territory subject to fulfillment of certain conditions: i. Engaged in the business of hotel located in specified area; or ii. 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. ■ 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. ■ 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] ■ 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.	All	100%	First 10 years

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Deduction	Number of Years
	■ 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.			
15.	Deduction of Additional Wages [Section 80JJAA] ■ Deduction of an amount equal to 30% of additional employee cost of any new employee (whose total emolument is less than or equal to INR 25,000 per month). ■ However, no deduction shall be allowed in respect of employees for whom the entire contribution under notified Employees' Pension Scheme is paid by the Government. ■ The minimum number of days of employment in a financial year is 240 days. ■ However, the minimum period of employment 150 days in the case of apparel industry, footwear and leather industry. ■ Where a new employee is employed during the previous year for a period of less then 240 days or 150 days, as the case may be, but is employed for a period of 240 days or 150 days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of this section shall apply accordingly. ■ Further, the condition of 10% increase in number of employees each year is deleted.	All assessees 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

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Deduction	Number of Years
	■ 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. * 30% of employees' cost in case of first year of business.			
16.	Offshore banking unit in SEZ and International Financial Services Centre [Section 80LA] Income from: ■ Offshore banking unit in SEZ or ■ The business referred to in section 6(1) of the Banking Regulation Act, 1949 or ■ 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% 50%	First 5 years (beginning with the year in which prescribed permissions are obtained) Next 5 years
17.	**Deduction in respect of income of Farm Producer Companies [Section 80PA]** ■ It is proposed to insert a new section 80PA relating to deduction in respect of certain income of Producer Companies. having a total turnover of INR 1,000 million or less in any FY and whose, gross total income includes any income from: (I) the marketing of agricultural produce grown by its members, or (ii) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or (iii) the processing of the agricultural n produce of its members ■ It is further proposed to provide that where the assessee is entitled also to deduction under any other provision or provisions of Chapter VIA, the deduction under this section shall be allowed from the gross total income as reduced by the deductions under such other provision or provisions of the said Chapter.		100%	5 years beginning from AY 2019-20

*The above deduction, exemption, incentive and allowance are subject to fulfillment of specified conditions mentioned in the IT Act.
It is proposed to amend section 80AC to provide that the benefit of deduction under the entire class of deductions under the heading 'C.—Deductions in respect of certain incomes' in Chapter VIA shall not be allowed unless the return of income is filed by the due date specified under section 139(1) of the IT Act.

5.5 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	■ 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 INR 5000 million or more (about US$ 75 million). ■ Companies not covered in (a) above and having net worth of INR 5000 million or more (about US$ 75 million). ■ Holding, subsidiary, joint venture or associate companies of companies covered above.	■ 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 INR 5000 million (about US$ 75 million). ■ Companies not covered in (a) above and having net worth of INR 2500 million (about US$ 38 million) or more but less than INR 5000 million. ■ Holding, subsidiary, joint venture or associate companies of companies covered above.

Particular	Phase I (FY 2016-17)	Phase II (FY 2017-18)
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.

On 29 March 2018, the Ministry of Corporate Affairs (MCA) notified Ind AS 115, Revenue from Contracts with Customers applicable for companies following Indian Accounting Standards (Ind AS). Ind AS 115 is based on IFRS 15, under IFRS and ASC 606, under US GAAP. With effect from financial year beginning from 1 April 2018, Ind AS 115 would replace the existing Ind AS standards, i.e., Ind AS 18, Revenue, Ind AS 11, Construction Contracts and their associated appendices. The new standard seeks to remove inconsistencies and weaknesses in previous revenue requirements, provide a more robust framework and improve comparability of revenue recognition practices across entities. Ind AS 115 requires retrospective application. The standard allows either 'full retrospective' adoption in which the standard is applied to all of the periods presented, including the comparative period, or a 'modified retrospective' adoption, under which the cumulative effect of retrospective application is recognised at the date of initial application.

5.6 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.

5.7 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:

- Comparable uncontrolled price method;
- Resale price method;
- Cost plus method;
- Profit split method;
- Transactional net margin method;
- 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.

i. 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 , 80-IA(8), 80-IA(10) 10AA, 80A or to transactions as may be prescribed by CBDT, if aggregate amount of all such domestic transactions exceed INR 200 million in a year.

ii. 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.

5.8 ADVANCE PRICING AGREEMENTS

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, and revision/cancellation/renewal of APA.

5.9 BASE EROSION PROFIT SHIFTING (BEPS)

5.9.1 OECD Action Plan 1 of BEPS

- In the past few decades, new business models that run their business remotely through the digital medium have emerged which have no territorial nexus with the country in which they operate and earn revenue. The only physical presence of an e-commerce business is the location of server which itself cannot be the basis for determining "situs" or "territorial nexus". In addition to these complexities, a server can be conveniently placed in a tax haven. This has led to loss of revenue to the source country due to lack of physical presence. The OECD had proposed several options to address the tax challenges of the digital economy under its BEPS (base erosion and profit shifting) Action Plan 1. The

Committee set up by the OECD under Action Plan 1 of Base Erosion and Profit Shifting (BEPS) has recommended a new nexus based on 'significant economic presence'. The Committee has also recommended that an enterprise should be considered to have a significant economic presence on the basis of factors that have a purposeful and sustained interaction with the economy by the aid of technology and other automated tools. It further recommended that revenue factor may be used in combination with the aforesaid factors to determine 'significance economic presence'.

- In alignment with the recommendation of the OECD, the Finance Act, 2018 has amended the definition of 'Business Connection' contained in section 9 of the Income-tax Act, 1961 to provide that significant economic presence of a non-resident in India shall constitute business connection in India bringing income earned by way of such significant economic presence under the tax net in India.
- The Finance Act 2018 defines "significant economic presence" as
  - i. transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
  - ii. systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.
- The Act further postulates that even in case of non-existence of residence or place of business of a non- resident would still constitute a business connection if it falls within the definition of significant economic presence. The threshold limits for qualifying as "significant economic presence" are yet to be notified by the government. The Digital PE provisions will come into force from 1st April 2019.
- The amendment in the Finance Act 2018 is not expected to have any immediate impact on the digital economy transactions in India in view of the existing provisions of Section 90(2) of IT Act which provides that the provisions of Income Tax Act, 1961 or DTAA, whichever is more beneficial to the taxpayer shall prevail. Thus, the success of concept of "significant economic presence" for determining permanent establishment depends upon cooperation by India's tax treaty partners and until such amendments are made in the treaties, this concept would remain domestic law. This clarification is also found in the memorandum to the Finance Bill 2018, which reads as under,

  "Further, it is also clarified that unless corresponding modifications to PE rules are made in the DTAAs, the cross border business profits will continue to be taxed as per the existing treaty rules.''

- The existing treaty provisions being more beneficial to the non-residents and e-commerce firms would be applicable to them, subject to provisions of section 90(2). It would be possible to evidence the effect of this amendment only in case of those countries with which India currently does not have a tax treaty in force.

5.9.2 OECD Action Plan 13 of 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)

  i. Containing certain information relating to the global allocation of the MNEs income and taxes paid together; and

  ii. Certain indicators of the location of economic activity within the MNE group

  iii. The CbC reporting requirement shall apply in respect of an international group wherein the consolidated revenues of the preceding accounting year of the group, based on consolidated financial statement, exceeds the prescribed threshold of INR 55 billion.

  iv. Further, Master File reporting requirement shall apply where

     - Consolidated revenue of such international group as reflected in its consolidated financial statements for the accounting year exceeds INR 5 billion and;

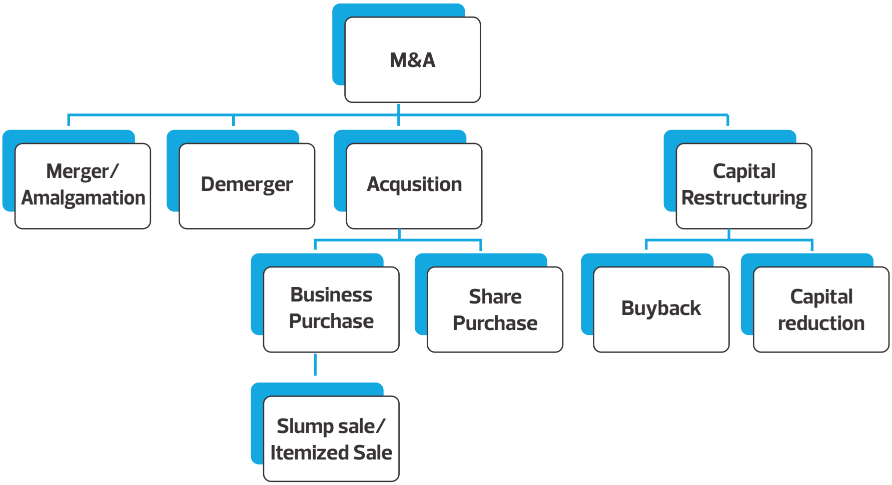
     - The aggregate value of international transactions of the constituent entity:

        - During the accounting year (as per the book of accounts) exceeds INR 500 million or;

- In respect of purchase, sale, transfer, lease, or use of intangible property during the accounting year (as per the book of accounts) exceeds INR 100 million.

Further, penal implications in case of non-compliance have also been introduced.

5.10 MERGERS AND ACQUISITIONS



5.10.1 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
    - i. all the property of the amalgamating company immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation ;
    - ii. all the liabilities of the amalgamating company immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation ;
    - iii. 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—
    - i. the manufacture or processing of goods; or
    - ii. the manufacture of computer software; or
    - iii. the business of generation or distribution of electricity or any other form of power; or
    - iv. 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
    - v. mining; or
    - vi. the construction of ships, aircrafts or rail systems.

5.10.2 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.

5.10.3 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 sale shall 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.

5.10.4 Share transfers

The provisions of capital gains, as discussed in earlier sections, shall apply to such a transfer.

5.10.5 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 8 years, 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).

5.11 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 of the succeeding financial 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.

5.12 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.

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.

The provisions of 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.

5.13 CERTAIN TAX ASPECTS – INDIVIDUAL TAXATION

5.13.1 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.

5.13.2 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:

- Reinvestment of long term capital gain arising from sale of residential house for acquisition of another residential house.
- 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.

- Reinvestment of capital gain arising from sale of a capital asset for investment in specified bonds.
- Reinvestment of capital gains arising from sale of urban agricultural land for acquisition of another agricultural land subject to fulfillment of certain conditions.
- 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.

5.13.3 Deductions and Reliefs

Donations within limits, to approved charities qualify for deduction of 100% or 50%. Cash donation exceeding INR10,000 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.

5.13.4 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.

5.13.5 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

5.14 PRESUMPTIVE TAX SCHEME

5.14.1 For businesses

Eligible assessee engaged in eligible business having a maximum turnover / gross receipts up to INR 20 million during the previous year can opt for the presumptive tax scheme. The presumptive rate of tax is prescribed at 8% of turnover / gross receipts. Rate shall be 6% in case where turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account.

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.

5.14.2 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 million during the previous year The presumptive rate of tax in this case is at 50% of the gross receipts.

5.15 SPECIAL PROVISIONS FOR COMPUTATION OF TAXABLE INCOME OF NON-RESIDENTS

5.15.1 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%)

5.15.2 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.

5.15.3 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.

5.15.4 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.

5.16 WITHHOLDING TAXES

Every person, other than an individual and Hindu Undivided Family 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.

5.17 DOUBLE TAX TREATIES

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.

5.18 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.

- Multilateral Instruments (MLIs)

  In November 2016, over 100 jurisdictions concluded negotiations on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI") that will swiftly implement a series of tax treaty measures to update international tax rules and lessen the opportunity for tax avoidance by multinational enterprises. The MLI already covers 87 jurisdictions and entered into force on 1st July 2018. Signatories include jurisdictions from all continents and all levels of development and other jurisdictions are also actively working towards signature.

  The MLI offers concrete solutions for governments to close the gaps in existing international tax rules by transposing results from the OECD/G20 BEPS Project into bilateral tax treaties worldwide. The MLI modifies the application of thousands of bilateral tax treaties concluded to eliminate double taxation. It also implements agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies.

The BEPS MLI will become effective on January 1, 2019, for the first 47 tax treaties concluded among the 15 tax jurisdictions that have already deposited their ratification instrument to the OECD. These 15 jurisdictions are: Australia, Austria, France, Isle of Man, Israel, Japan, Jersey, Lithuania, New Zealand, Poland, Serbia, Slovak Republic, Slovenia, Sweden, and the UK.

It is expected that the provisions of MLI in India shall be applicable from 2019-20.

5.19 OTHER ADMINISTRATIVE ASPECTS

5.19.1 Audit Reports

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:

- 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$ 1,349,081).
- 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$ 69,540).

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.

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.

5.19.2 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:–

- any arithmetical error in the return; or
- 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**

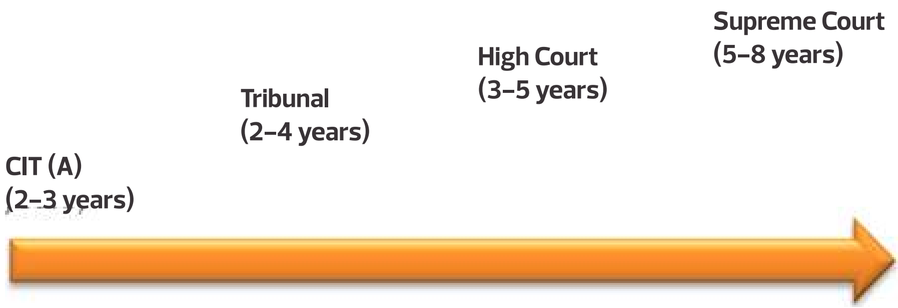
Where no return of income has been made or where after processing the return or completing the regular assessment, AO believes that the income of assessee of any FY has escaped assessment, he can reopen the assessment and complete it as per new information about income or tax. Assessment up to last 6 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.

– **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

– **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.

Nature of applicant	Nature of application	Certain circumstances in which the application cannot be allowed
NR for his own tax liability.	Transaction undertaken or proposed to be undertaken by NR.	■ Question is already pending before any income-tax authority, the Appellate Tribunal or any court. ■ Issue involves determination of fair market value of any property. ■ Relates to a transaction which is designed prima facie for avoidance of income-tax.
Resident for determining tax liability of NR.	Transaction undertaken or proposed to be undertaken by resident with NR.	
Resident for his own tax liability.	Transaction undertaken or proposed to be undertaken by resident and the value of which is INR 1000 million or more.	
Resident or NR himself.	Determine whether arrangement proposed is an impermissible avoidance arrangement and may be subjected to GAAR provisions or not.	
Public sector undertakings (PSUs)	Transaction undertaken or proposed to be undertaken	■ Issue Involves determination of fair market value of any property. Note: PSUs can file an application even if the issue is pending before any income-tax authority, the Appellate Tribunal or any court.

- **Fees for filing the application**

The fees payable along with application for advance ruling shall be in accordance with the following table

Category of applicant	Category of case	Fee
■ NR ■ Resident seeking advance ruling in relation to the tax liability of a NR ■ A resident seeking advance ruling in relation to his tax liability arising out of one or more transactions valuing INR1000 million	Amount of transaction in respect of which ruling is sought does not exceed INR 1000 million.	INR 200,000
	Amount of transaction in respect of which ruling is sought exceeds INR 1000 million but does not exceed INR 3000 million.	INR 500,000
	Amount of transaction in respect of which ruling is sought exceeds INR 3000 million.	INR 1 million
■ Any other applicant	Other cases	INR 10,000

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).

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.

- **Dispute Resolution Panel (DRP)**

The IT Act prescribes an alternative dispute resolution mechanism in case of foreign companies and assesses to whom transfer pricing provisions are applicable wherein the case in question shall be referred to a panel comprising of three principal commissioners. This mechanism shall be invoked if the assessee receives draft order containing unfavourable adjustments by AO (assessing officer)/ TPO (transfer pricing officer) and submits the same within 30 days of receipt thereof to DRP. The draft order shall be submitted to the Dispute Resolution Panel along with objections/ acceptance to the variations made by AO/ TPO in the draft order. If no objections are raised or if variations are accepted, then the AO/ TPO shall complete the assessment based on draft order within one month from the end of the month in which the acceptance is received/ period for filing objections expire. In case objections are received, DRP shall after giving due consideration to the evidence furnished and after giving opportunity of being heard to both the parties in this regard, confirm/ reduce/ enhance the variations in the draft order. The panel can make further inquiry or cause further inquiry to be made in this regard by any income tax authority before taking final decision. In case of difference of opinion amongst the members of the panel, the case shall be decided according to the opinion of majority of members. The order of DRP shall be binding upon the AO/ TPO and shall be given effect to within one month from the end of the month in which directions are received by the AO/ TPO in this regard.

5.20 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.

5.21 OTHER DIRECT TAXES

5.21.1 Equalization Levy

India ranks 5th in adoption of automation technologies and has the world's 2nd largest internet market With India's digital payment Industry expected to touch US$ 1 trillion by 2023, a new levy called 'Equalization 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 a part of Chapter VIII of 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:

  i. Online* advertisement,

  ii. Provision for digital advertising space , or

  iii. Any other facility or service for the purpose of online advertisement ,or

  iv. 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 INR 100,000 (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 the non-resident, in respect of Equalization Levy charged in India.

5.21.2 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	0.017%	Seller
Sale of an option in securities, where option is exercised	0.125%	Purchaser
Sale of an future 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

5.21.3 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.

5.21.4 Wealth Tax

Wealth-tax has been abolished with effect from FY 2015-16.

5.22 INDIA INTERIM BUDGET PROPOSAL 2019 – UPDATES

5.22.1 Rates of Income Tax

- Corporate Tax –

  No change in rates - Corporate tax, MAT and DDT.

  No change in Surcharge and Health & Education Cess.

- Personal Tax –

  No change in slab rates and deduction under section 80C. Section 87A proposed to be amended to provide relief to the resident individual taxpayers by increasing the amount of tax rebate to INR 12,500 from existing INR 2,500. The tax rebate shall now be admissible to taxpayers having total taxable income up to INR 500,000, instead of existing INR 350,000.

  Standard deduction for salaried employees increased to INR 50,000 from INR 40,000.

- Other Direct Tax Proposals

  House property income and Affordable Housing Sector –

  i. It is proposed to amend section 23 to provide relief to the taxpayer by allowing an option to claim nil annual value in respect of any 2 houses being declared as self-occupied property instead of 1 such house. However, interest deduction under section 24 shall not exceed the existing limit of INR 200,000 for both houses put-together.

  ii. It is further proposed to amend section 23 to provide that notional rent in respect of unsold inventory (in the form of building or land appurtenant thereto) shall not be charged to tax up to 2 years, instead of existing 1 year. The said period shall be reckoned from the end of the financial year in which the certificate of completion is obtained from the competent authority.

iii. It is proposed to amend section 54 to provide relief to an individual & HUF having capital gains up to INR 20 million arising from transfer of a residential house, by allowing the tax payers a one- time opportunity at his option to utilize the said amount for purchase or construction of 2 residential houses instead of 1 residential house.

iv. In order to augment the supply of affordable houses, it is proposed to amend section 80-IBA by extending the time limit by 1 year to claim the tax holiday benefits i.e. the housing projects approved before 31 March 2020 shall be eligible for availing the said deduction.

5.23 GOODS AND SERVICE TAX (GST)

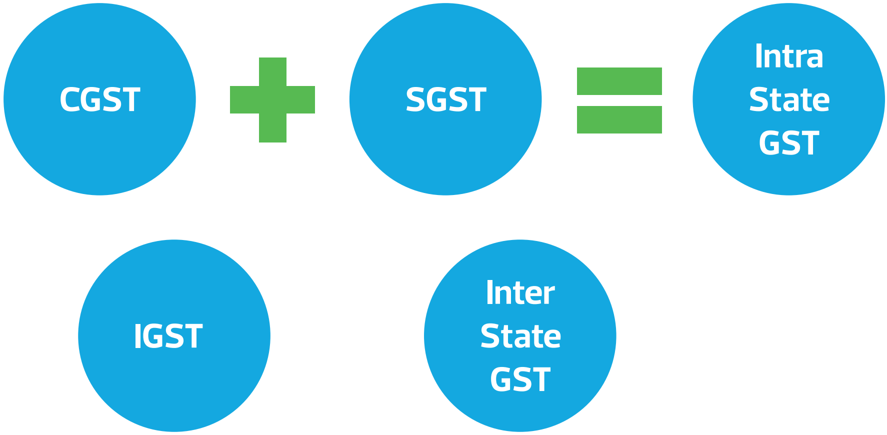
5.23.1 Introduction to GST

The Indian Government has implemented GST from 1 July 2017 as a single indirect tax on sale of goods and provision of services. 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. Tax will be levied on every supply of goods and services The GST has subsumed various indirect taxes such as

Central Taxes	State Taxes
Excise duty	VAT
Additional Customs Duty (CVD)	Entertainment tax
Service tax	Luxury tax
ADC	Lottery taxes
	State cesses and surcharges
	Entry tax not in lieu of octroi

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. 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 has framed CGST Act and respective state Governments have framed SGST Act for levying CGST/SGST on all intra state supplies of goods/services at the rates 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 notified categories of supply, CGST/SGST will be required to be paid under reverse charge mechanism.

Petroleum and Petroleum products i.e crude, high speed diesel, motor spirit, 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.

5.23.2 GST Compliance –

Type of GST return	Previous year aggregate turnover	
	Exceeds INR 15 Million	Less than INR 15 Million
GSTR – 3B (Payment of Tax)	Monthly – 20th of succeeding month	Monthly – 20th of succeeding month
GSTR – 1 (reporting Outward supplies)	Monthly – 11th of succeeding month	Quarterly – 31st of succeeding quarter

GST Audit

- As per Section 2(13) of CGST Act, 2017, GST Audit is required when turnover exceeds INR 20 million.
- GST Audit is to be done by a Chartered Accountant or a Cost Accountant or Tax authorities.

5.23.3 Reverse Charge Mechanism

Normally, the supplier of goods or services pays the tax on supply. In the case of Reverse Charge, the receiver becomes liable to pay the tax, i.e., the chargeability gets reversed. In certain transactions, GST shall be payable under Reverse Charge Mechanism ('RCM') on supply of Goods/Services and the liability to pay GST shall be transferred in the hands of recipient. Whereas, in any other case, GST is collected and paid by supplier of goods / service.

5.23.4 Input Tax Credit (ITC)

- ITC can be claimed on an end-to-end basis.
- Input tax attributable to taxable supplies including zero rated supplies, used for the purpose of business.
- Where goods are received in lots or installments, ITC will be allowed to be availed when the last lot or installment is received.

– **Conditions for availing ITC**

- Supplies should be in furtherance of business.
- Possession of Tax invoice / equivalent document.
- Tax charged is actually paid to the government.

– **Non-eligibility to ITC**

- Payment not made within 180 days from date of issue of invoice.
- No ITC after filing of returns for the month of September of succeeding financial year for the invoice pertaining to any financial year.
- If depreciation of tax component has been claimed.

– **Inadmissible credits as per section 17(5)**

ITC shall not be available in respect of the following inward supplies:

- Motor vehicles and other conveyances except when they are used for making such supplies as defined under the Act.

- Food and beverages, outdoor catering, health service, cosmetic and plastic surgery except where such inward supply is used for making outward supply of same category.
- Membership of a club, health and fitness centre.
- Rent-a-cab, life insurance, health insurance except where the government notifies such services as an obligatory under any law.
- Travel benefits extended to employees on vacation.
- Works contract service for construction of immovable property except plant & machinery.
- Supply received for construction of immovable property on his own account.
- Supply on which tax paid under composition scheme.
- Supply used for personal consumption.
- Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
- Tax paid by reason of fraud or any wilful misstatements/ suppression of facts, detention, seizure and release of goods , confiscation of goods and levy of penalty.

5.23.5 Payment of Consideration

If the recipient does not pay the consideration within a period of 180 days from the date of issue of the invoice, the amount of input tax credit availed proportionate to the amount of consideration not paid would be added to his output tax liability. The ITC so reversed can be reclaimed by the recipient after payment of consideration as well as the tax payable thereon. This provision is applicable to supplies with consideration.

5.23.6 Removal of Goods as Free Samples / for Quality Testing

In the non-GST scenario, finished products used for quality control or kept as sample till their expiry period were not liable for excise duty unless the same were removed outside the factory. Under GST regime, even if the same are sent out for quality test; GST may not be applicable since it does not amount to supply. However, ITC need to be reversed on goods given as free samples.

5.23.7 Return of Expired Goods

- Returns made within specified period (i.e. before end of September or filing annual return whichever is earlier) :- the supplier can reduce his liability provided the recipient reverses the credit and a debit/credit note is duly issued.

- Returns made after the period (as specified above):- the supplier/chemists/stockists are required to pay the GST as the transaction amounts to Supply.
- The manufacturer will not be eligible to take the credit of GST paid on such supply in any of cases above; as the goods are to be destroyed at manufacturer's end.

5.23.8 E-way Bill

- E-Way Bill is an electronic document generated on the GST portal evidencing movement of goods.
- Purpose: to ensure that goods being transported comply with the GST Law and to track movement of goods and check tax evasion.
- Who should generate the e-way bill: the consignor or consignee or the transporter in case the goods are handed over to him and no bill is issued by any above party.
- When to generate the e-way bill: As per Rule 138 of the CGST Rules, 2017, every registered person who causes movement of goods (which may not necessarily be on account of supply) of consignment value more than INR 50,000 is required to submit e-way Bill.

- **Cancellation of E-way bill:** If goods are either not transported or are not transported as per the details furnished in the e-way bill, it can be cancelled within 24 hours of generation.
- **Implementation of E-way Bill System in Different States**

- The monetary limit varies from state to state in the range of INR 10,000 to INR 100,000.
- In few states, the applicability of e-way bill has been restricted only to intercity movement having distance more than 50 Km, while few states have mandated e-way bill for intra-city movements without any limit on kilometres.
- Few states have given exemption to certain goods apart from the goods covered in exemption list of Central Government.
- Though the e-way bill is required to be generated mandatorily in case of supply of goods for job work, the state of West Bengal has exempted the transaction of goods sent to job worker and goods sent to another job worker by the job worker.
- On the contrary, Delhi has exempted the generation of e-way bill in case of supply to unregistered person within the state irrespective of value and distance.

- Further, the states prescribe updated rules for applicability of e-way bill.Hence, the entities having pan-India business need to keep themselves updated with every change in the rules for e-way bill.
- Hence, it can be inferred that the rules of e-way bill are not uniform across the nation and the motto of GST, which is 'One Nation, One tax (law), one market' violates considering the state wise different provisions of e-way bill.

5.23.9 Refunds

- Refund of any tax and interest paid can be claimed by filing of an application before the expiry of 2 years from the relevant date.
- Refund in case of export can be claimed in either of the two options as given below :
    - i. Refund of unutilized ITC allowed for zero rated supply without payment of tax under LUT / Bond in proportion of export turnover ratio.
    - ii. Refund of GST paid in respect of zero rated supply with payment of tax
- Refund can also be claimed where credit has been accumulated on account of rate of tax on inputs being higher than the rate of taxes on outputs.

5.23.10 TDS Provisions under GST

The provisions of TDS under section 51 have been made applicable with effect from 1 October 2018. Any consideration in excess of INR 250,000 to be received from following bodies will be subject to TDS @2% (excluding GST and Cess):

- A department or establishment of the Central or State Government (i.e. Department of Pharmaceuticals);
- Local Authority (i.e. Municipal Corporation);
- Governmental Agencies;
- An authority or a board or any other body set up by an Act of Parliament or a State Legislature or established by any Government with 51% or more participation by way of equity or control (i.e. The Central Drugs Standard Control Organization (CDSCO), RBI, IRDA, SEBI, CCI etc.);
- Societies established by CG / SG / LA under the Societies Registration Act,1860;
- PSUs.

– **Non Applicability of TDS Provisions**

Provisions of TDS will not be applicable when the location of the supplier and the place of supply is in a State or UT, which is different from the State or UT of registration of the recipient.

– **Implication of TDS Provisions**

- Any contract received from above bodies will attract TDS @2%, which will affect net cash inflow;
- TDS deducted will be reflected in Electronic Cash Ledger, which can be utilised for payment of GST liability or can be claimed as refund from Electronic Cash Ledger.

5.23.11 TCS Provisions under GST

- The provisions of TCS have been made applicable with effect from 1 October 2018.
- Every E-commerce operator is required to collect TCS @1% of the net value of supplies made through such platform.

Implication of TCS provisions:

TCS collected will be reflected in Electronic Cash Ledger, which can be utilised for payment of GST liability or can be claimed as refund from Electronic Cash Ledger.

5.23.12 GST Implications on Import and Export

IGST shall be levied at the time of Import of goods in India and IGST shall be charged in the form of Customs duty and goods shall be cleared after payment of Customs duty. Whereas, at the time of Import of Services in India, IGST shall be payable by recipient under reverse charge mechanism.

Export of goods / service from India to any place outside India qualifies the benefits of 'Zero-rated supplies'. The GST rate on such supplies is zero percent (GST rate – 0%). The conditions for zero-rated supplies are notified by government.

The supplier of goods / service can carry out zero-rated supplies in either of the following manners –

- Under the cover of 'Letter of Undertaking' ('LUT') or
- Under the cover of 'Payment of IGST'

Zero-rated supplies under the cover of	Supplier of Goods / Service is eligible for refund of –
LUT	GST for goods / services which are consumed while supplies zero-rated supplies
Payment of IGST	Amount of IGST paid at the time of output supplies

5.23.13 India Budget 2019 – GST Proposals / Updates upto January 2019

The GST proposals approved by the GST Council on 10 January 2019 (Relevant notifications are awaited):

GST Registration

- Basic exemption limit for suppliers of goods, being increased from INR 2 million to INR 4 million with effect from 1 April 2019. The limit for suppliers of services remain the same at INR 2 million .
- Separate registration can be obtained for different places of business within the same State, even in case of single vertical of business.

New Composition Scheme for Services Providers

- In a major relief to MSME sector and small suppliers, supplier of services having annual turnover upto INR 5 million during FY 2017-18, can join this New Composition Scheme.
- The GST rate is proposed at 6% (3% CGST +3% SGST) from the existing 18% GST, GST Payment to be made on a Quarterly basis and only 1 GST Return to be filed annually.

Increase in Limit of the Existing Composition scheme:

- The limit of Composition scheme for suppliers of goods increased from INR 10 million to INR 15 million per annum with effect from 1 April 2019.
- Tax to be paid Quarterly and GST Returns to be filed annually.

Consensus received for charging Calamity Cess in Kerala

Kerala has been given an approval to charge Disaster/calamity cess of up to 1% (applicable on GST rates of 12%, 18% and 24%) on all the intra-state supplies of goods and services within Kerala, for up to 2 years.

Reverse Charge Mechanism (RCM)

- No RCM under GST on Procurement from URP (Un-Registered Persons) [Notification 01/2019 – Central Tax (Rate), 01/2019 Integrated Tax (Rate) dated 29.01.2019].
- The GST Council to decide upon the class of registered persons who shall be liable to pay GST on RCM basis towards supply of goods/ services received from unregistered persons.

E-way Bill

- Linkage of E-way bill with GSTR - Returns have been introduced and presently the option of import consignment to be captured in the GSTR -1 returns have been started.

- Linkage of E-way bill for inter-state and intra-state transaction has been started on a pilot basis and with this facility, taxpayer will not be required to enter data in his Form GSTR-1 for all invoices for which he has generated an e-way bill. This will avoid double data entry by taxpayers. This facility will help taxpayers to fill up their Form GSTR-1 in less time. This will also avoid any data entry mistakes made while filling details.
- There being a huge gap of transaction between the GSTR -1 for Goods and E-way bills generated, the Government has started to measure and check high value transaction of E-way bills generated for inter-state and intra-state transactions.

5.24 CUSTOMS DUTY

Customs duty is levied on goods imported into, and exported from, India. With regard to exports from India, customs duty is levied only on a very limited list of goods. The rate of customs duty applicable to a product imported or exported depends upon its classification under the Customs Tariff Act, 1975. Customs duty is levied on the transaction value of the imported or exported goods.

The customs duty applicable to any product is composed of a number of components, which are as follows:

- Basic Customs Duty (BCD)

  This is the basic component of customs duty. It is applied to the landed value of the goods (i.e. the cost, insurance, and freight [CIF] value of the goods plus landing charges). The rates vary for different items, but the general rate is 10%.

- IGST

  In addition to BCD, IGST shall be levied on import of goods in India. The IGST rate is notified by Government and reference shall be made to GST Act and rates notification.

5.25 FOREIGN TRADE POLICY 2015-2020

The new Foreign Trade Policy (FTP) for the period 2015-2020 is effective from 1 April 2015. Some of the key features of the same have been summarized as under:

- Merchandise Export from India Scheme (MEIS)

  i. Existing multiple schemes such as Focus Product Scheme, Market Linked Focus Product Scheme, Focus Market Scheme, Agri

Infrastructure Incentive Scrip and Vishesh Krishi Gram Udyog Yojana have been merged into a single scheme, ''Merchandise Export from India Scheme'' (MEIS).

ii. Rewards for export of notified goods such as dairy products, vegetables, confectionary, pharmaceutical products, capital goods, etc. to notified markets under 'Merchandise Exports' from India Scheme (MEIS) to be payable as percentage of realized Free on Board (FOB) value (in free foreign exchange).

iii. Debits towards basic customs duty in the transferable reward duty credit scrips allowed adjustment as duty drawback.

- Service Exports from India Scheme (SEIS)

i. Served From India Scheme (SFIS) has been replaced with Service Exports from India Scheme (SEIS).This scheme is applicable to 'Service Providers located in India'.

ii. Service provider with minimum net foreign exchange earnings of USD 15,000 in the preceding financial year is eligible for benefit under the scheme.

iii. Service providers will be issued SEIS scrip of 5% or 7% (depending on the category of service) of net foreign exchange earned.

iv. Incentives (MEIS & SEIS) would be available for units located in Special Economic Zones (SEZ).

v. All scrips issued under MEIS and SEIS and the goods imported against these scrips be fully transferable. . The duty credit scrip cannot be used for payment of GST.

- Export Promotion Capital Goods Scheme (EPCG) .

i. In case of import of capital goods under EPCG scheme, export obligation is 6 times of the duty saved amount on capital goods. In case capital goods are procured from indigenous manufacturers, export obligation will be reduced i.e. 25% lower than normal export obligation.

ii. Exporter registered with the excise authorities has the option to furnish an installation certificate confirming receipt of capital goods from a Chartered Engineer subject to conditions.

iii. Import under EPCG Authorisation Scheme not be eligible for exemption from payment of anti-dumping duty, safeguard duty and transitional product specific safeguard duty.

iv. Installation certificate is normally required to be submitted within 6 months of the completion of the imports. Licencing authority can extend the period of furnishing the installation certificate by another 12 months.

v. Specified guidelines for maintenance of average export obligation and specified export obligation notified in case of exit of an EOU or SEZ unit.

- Miscellaneous – Export Oriented Units (EOU), Electronic Hardware Technology Parks (EHTP), Software Technology Parks (STP) and Bio Technology Parks (BTP)

  i. EOUs, EHTPs and STPs allowed to share infrastructural facilities among themselves.

  ii. Inter unit transfer of goods and services allowed among EOUs, EHTPs, STPs, and BTP.

  iii. EOUs allowed facility to set up warehouses near the port of export.

  iv. STP units, EHTP units, software EOUs allowed facility to use all duty free equipment/goods for training purposes.

  v. 100% EOU units allowed facility of supply of spares/ components up to 2% of the value of the manufactured articles to a buyer in domestic market for the purpose of after sale services.

  vi. In case of EOU period of 5 years for achieving Positive Net Foreign Exchange Earning (NFE) can be extended by one year on ground of adverse market condition or genuine hardship.

  vii. EOUs/EHTP/STP units permitted to transfer capital goods to other EOUs, EHTPs, STPs, SEZ units. If such transferred capital goods are rejected by the recipient, then the same can be returned to the supplying unit, without payment of duty.

  viii. EOUs having physical export turnover of INR100 million and above are allowed facility of fast track clearances of import and domestic procurement.

Chapter 6

HUMAN RESOURCES

Chapter 6 Human Resources

6.1 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 44 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.

6.2 LEGISLATIVE PROVISIONS

The laws governing labour in India are very complex in nature and favour 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 Labour 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 during preceding 12 months.)

6.2.1 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 ■ employers are required to deduct contributions at a specified rate from the salary payable to an employee. [refer note-1] ■ In addition, the employer must contribute an amount equal* to the employee's contribution. ■ The aggregate amount is then deposited in a fund called Provident Fund. ■ The said Social Security benefit is governed by Employees Provident Fund and Miscellaneous Provisions Act, 1952 and Schemes made	■ Applicable to every business organization in India employing 20 or more persons in the scheduled Industry. Once EPF Act applies to an establishment, it continues to be governed by the said Act even if the number of persons falls below 20. ■ Mandatory for employees earning monthly wages lesser than INR 15,000 per month. ■ In case of international workers, PF is applicable on the entire salary.	■ Applicable to every business organization in India employing 20 or more persons in the scheduled Industry. ■ The current rate of interest on PF deposits is 8.55%. ■ The Fund primarily aims at providing income to the employee, on his/her retirement or death and there are some restrictions on withdrawal. ■ Limited withdrawals from the fund are allowed for housing, medical expenses marriage, education etc. ■ Withdrawals are also permitted on resignation, termination and retirement. ■ Employee has option to withdraw maximum upto 75% of accumulated corpus after one month of unemployment and at

Employee benefit	What is it?	Applicability	Other details– like cost to employer
	thereunder (EPF Act) **Note 1:** According to Section 6 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, an employer is under an obligation to make contribution to Provident Fund of an amount equal to 12% percent of the basic wages, dearness allowance and retaining allowance (if any). In the case of Regional Provident Fund Commissioner Vs. Vivekananda Vidya Mandir and Ors. [LSI-62-SC-2019(NDEL)] the Supreme Court on 28.02.2019 held that, the special allowances paid by an establishment to its employees would fall within the expression "basic wages" under Section 2(b)(ii) read with Section 6 of the Act for computation of deduction towards Provident Fund. The		the same time keep the account active with balance 25%. ■ Employee has the option to withdraw the remaining 25% of their funds and go for final settlement of account after completion of two months of unemployment. ■ Where the employee remains unemployed for at least 2 months, he can withdraw his entire corpus. ■ The employer is required to contribute @ 12% (3.67% towards PF & 8.33% towards pension scheme) and 0.50% each towards EDLI. The Employer shall also pay Administrative charges @ 0.5% of wages subject to minimum INR 75 per month for the non-functional establishment having no contributory members and INR 500 per month in case of other establishment (w.e.f. 1 June 2018).

Employee benefit	What is it?	Applicability	Other details– like cost to employer
	Court held that where no material was available on record to demonstrate that allowances paid to employees were variable or were linked to any production linked output and where it could not be established that the said allowances were paid to those who avail opportunity, the allowances in question were essentially a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. Consequently, the test laid down by the Supreme Court in this landmark judgement may need to be considered for the purpose of computing contribution by employers to Provident Fund.		■ The employee is required to contribute @ 12% (or at such higher rate) of wages as he deems fit towards PF. ■ The Contribution shall be paid within 15 days of the last day of the calendar month in which the contribution falls due for any wage period.

Employee benefit	What is it?	Applicability	Other details– like cost to employer
Gratuity	Employees who have rendered continuous service of not less than 5 years are entitled to Gratuity at the time of retirement / resignation / superannuation /death/disable-ment. The Payment of Gratuity is governed by The Payment of Gratuity Act, 1972 (said Act).	■ Applicable to every business organization in India employing 10 or more persons. Once said Act applies to an establishment, it continues to be governed by the said Act even if the number of persons falls below 10. ■ 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. ■ Gratuity has to be paid at the rate of 15 days wages for each completed year of service subject to a maximum of INR 2 million against tax free. ■ 15 days wages are calculated as [15 / 26 * (wages of last month of employment))* no of completed years]
Employees State Insurance	■ It provides workers with medical relief, sickness benefit, maternity benefits, occupational deceases, funeral expenses and compensation for employment injuries, including employment related fatalities. ■ Contributions by the employer and the employee are paid to ESI Corporation.	■ Applicable to every business organization in India (non-seasonal) employing 10 or more persons. ■ Mandatory only for employees earning monthly wages lesser than INR 21,000 per month.	■ The employer and employee are required to contribute 4.75% and 1.75% respectively of the wages. The Contribution shall be paid within 15 days of the last day of the calendar month in which the contribution falls due for any wage period. ■ Cost to the employer is 4.75% of the wages. ■ Contribution and benefit period: The financial year from April to March has

Employee benefit	What is it?	Applicability	Other details– like cost to employer
			been divided in to two six monthly contribution periods i.e. 1st April to 30th September and 1st October to 31st March of next year. The relevant benefit period corresponding to each contribution period commences three months after the end of the contribution period i.e. Jan to June and July to December (The calendar year from January to December has been divided in to two six monthly benefits periods).
Bonus	■ Annual payment of a lump-sum bonus to employees, which is linked to the employer's profitability. ■ The Bonus payment shall be governed by the Payment of Bonus Act, 1965 (said Act).	■ Applicable to every business organization in India employing 20 or more persons. Once the said Act applies to an establishment, it continues to be governed by the said Act even if the number of persons falls below 20. ■ Mandatory only for employees earning monthly salary or wages lesser than INR	■ 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. For bonus Calculation, ceiling of wages is INR 7,000 or minimum wages whichever is higher. ■ The act also provides for a minimum bonus of 8.33% of an employee's salary or INR 100 whichever is higher, is payable

Employee benefit	What is it?	Applicability	Other details– like cost to employer
		21,000 per month. The employee shall be entitled to bonus under the said Act in accounting year provided he has worked in the establishment for at least 30 working days in that year.	even if the employer is in losses. ■ The bonus must be paid within eight months after the close of the accounting year. ■ The cost to the employer can vary from 8.33% of the salary to 20 % of salary.
Employees Deposit Linked Insurance Scheme (EDLI 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 Fund scheme applies.	■ The average monthly salary (subject to maximum INR15000/-) during the 12 months preceeding the month in which employee died is multiplied by 30 and added to 50% of the average balance of deceased in EPF account subject to ceiling of INR 150,000 to calculate insurance benefit under this scheme. ■ Minimum assurance amount payable under this scheme is INR 250,000 subject to a maximum of INR 650,000. ■ Employee does not contribute anything, but the employer contributes 0.5% of the total wages.

Employee benefit	What is it?	Applicability	Other details– like cost to employer
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. The women employees shall be entitled to maternity benefit under maternity benefit Act, 1961.	■ 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. According to Maternity Benefit (Amendment) Act, 2017, every establishment with more than 50 employees shall mandatorily provide creche facility for working mothers. Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every	■ Maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding and including the day of her delivery, the actual day of her delivery and any period immediately following that day. ■ The average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest. ■ In case of miscarriage, leave with wages at the rate of maternity benefit for a period of six weeks immediately following

Employee benefit	What is it?	Applicability	Other details– like cost to employer
		benefit available under the Act. ■ A woman employee would be entitled to claim maternity benefits only if she has worked for a period of atleast 80 days during the 12 months immediately preceeding the date of her expected delivery. ■ No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. ■ No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical	the day of her miscarriage. ■ 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. ■ Maternity Benefit (Amendment) Act, 2017 has enhanced the duration for maternity benefit to 26 weeks of which not more than eight weeks shall precede the date of her expected delivery. ■ The maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery ■ An additional leave of maximum one month would be available in case of illness arising out of pregnancy, ,delivery; premature birth of child, miscarriage, medical termination of

Employee benefit	What is it?	Applicability	Other details– like cost to employer
		termination of pregnancy. ■ No pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified herein below any work which is of an arduous nature or which involves long hours of standing, or which is any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health. ■ The period of one month immediately preceding the period of six weeks, before the date of her expected delivery; ■ Any period during the said	pregnancy or tubectomy operation which should be supported by doctor's claim.

Employee benefit	What is it?	Applicability	Other details– like cost to employer
		period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.	
Minimum Wages	Applicable to employees employed as casual, daily rated, temporary or permanent working in the industries specified in the schedule to the Minimum Wages Act, 1948. 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.	Applicable to employees employed as casual, daily rated, temporary or permanent working in the industries specified in the schedule to the Minimum Wages Act, 1948. 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.

6.2.2 Employees' Compensation Act, 1923

The Employees' Compensation Act provides employees with a convenient and easy method to claim compensation for personal injury caused to him/her by accident arising out of and in the course of his employment. An Act to provide for the payment by certain classes of employers to their Employees of compensation for injury by accident.

The employer shall not be so liable:–

- In respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

- In respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

  i. the employee having been at the time thereof under the influence of drink or drugs, or

  ii. The wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

  iii. The wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.

6.2.3 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.

6.2.4 Industrial Employment (Standing Orders) Act ,1946

This Act applies to every industrial establishment wherein 100 or more workmen are employed, or were employed on any day of the preceding twelve months (In the State of Maharashtra, the number is 50 workmen).

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. The Ministry of Labour and Employment notified Industrial Employment (Standing Orders) Central (Amendment) Rules 2018 wherein it introduced fixed term employment for all sectors. Futher, this act postulates that notice or pay in lieu thereof shall not be required to be given for termination in case of expiry of fixed term contract without being renewed or as a result of non-renewal of contract or employment – thereby saving employer from frivolous claims.

6.2.5 Industrial Disputes Act, 1947

This Act to make provision for the investigation and settlement of industrial disputes, and applies to industrial establishment or undertaking in which any industry is carried on. 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, strikes, lock out, closures of industrial units and unfair labour practices are regulated under this Act.

6.2.6 The Contract Labour (Regulation and Abolition) Act, 1970

This Act applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour and to every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen. 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.

In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

6.2.7 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.

Also, employer shall not while making recruitment for same work or work of a similar nature or in any service conditions subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

6.2.8 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.

The Companies (Accounts) Amendment Rules, 2018 has amended rule 8 of Companies (Accounts) Rules 2014 in order to require every company to report compliance with the provisions relating to constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Ministry of Women and Child Development (WCD Ministry) has linked SHe-Box, the online portal to report complaints of Sexual Harassment at Workplace, to all the Central Ministries, Departments and 653 districts across 33 States/Union Territories. For prompt disposal of complaints on SHe-Box, each case goes directly to the central/ state authority concerned having jurisdiction to take action in the matter. The portal can be accessed at the following link: http://shebox.nic.in/.

This is a proactive step taken by the WCD Ministry in the wake of the worldwide campaign #MeToo, where women have related their experience of facing sexual harassment and abuse at workplace.

SHe-Box offers the facility of making online complaints of sexual harassment at workplace to all women employees in the country including government and private employees. Those who have already filed a written complaint with the concerned ICC or LCC constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are also eligible to file their complaint through this portal.

6.2.9 The Factories Act, 1948

The Factories Act 1948 regulates the labour in factories. Employers have a legal duty to take reasonable care of their employees and provide the facilities to perform their tasks.

Generally regulations relating to working conditions in commercial establishments as per the relevant state legislations of shops and commercial establishment 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:

- Cleanliness

  i. Daily removal of dirt.

  ii. Floor to be washed once a week.

  iii. Effective drainage of the effluents.

  iv. Repainting of the factory walls once in five years.

  v. If painted in the washable paints, repaint once in three years and washed once in six months.

  vi. Check relevant washing rules according to the paint used.

  vii. Register of these dates to be maintained.

- Disposal of wastes and effluents

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

- Ventilation and temperature

  i. The company should maintain the prescribed measuring instruments and records.

  ii. If dust or fume given off due to manufacturing activities, effective measures to be taken to prevent inhalation and accumulation in work room.

- Artificial humidification:

  i. Methods and tests for determining the humidity of the air to be carried out and recorded.

  ii. Water from public supply/drinking water/purified water.

- Over crowding

  i. No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.

ii. 14.2 cubic meters per workman employed in each workroom is the space specified in the Act.

- Lighting

  i. In all places of works passage, sufficient lighting is required.

  ii. Windows/skylights shall be kept clean on inner and outer sides.

- Drinking water

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

  ii. All drinking water points shall be marked legibly

  iii. 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.

6.3 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 19 countries. They are: Austria, Australia, Brazil, Belgium, Canada, Germany, Czech Republic, Denmark, Finland, France, Hungary, Japan, Luxembourg, Netherlands, Norway, Portugal, Sweden, Switzerland and Republic of Korea.

6.4 LABOUR REFORMS (PROPOSED AMENDMENTS)

Pradhan Mantri Shram Yogi Maan-dhan Scheme, 2019

Ministry of Labour and Employment has, vide Notification No. S.O. 764(E) dated 7 February, 2019, notified the Pradhan Mantri Shram Yogi Maan-dhan Scheme, 2019 (said Scheme) to provide for old age protection to the unorganised workers. The said Scheme shall come into force from 15 February 2019. The unorganised workers have option to become the members of the said Scheme on and from the 15th day of February, 2019. The following are some of the important features of said Scheme.

The eligible subscriber, who joins the said Scheme, shall subscribe to the Pension Fund as determined by the Central Government from time to time at the time of such joining in accordance with the age of the eligible subscriber. The Central Government shall also contribute to the Pension Fund the equal amount as contributed by an eligible subscriber. The minimum age and members monthly contribution is 18 years and INR55 respectively and the maximum age and members monthly contribution is 40 years and INR 200 respectively.

Unorganized worker whose monthly income is not exceeding INR 15000/- and who has a savings bank account in his name and Aadhar number with minimum age of 18 years and maximum 40 years shall be eligible to join the Scheme, if he is not covered under National Pension Scheme contributed by the Central Government or Employees' State Insurance Corporation Scheme under the Employees' State Insurance Act, 1948 or Employees' Provident Fund Scheme under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 or he is an income-tax assessee.

6.5 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.

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% [Notes 6 and 7]**	**10% [Notes 3 and 7]**	**10% [Notes 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%. 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 trade-mark]	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

Sr. No.	Country	Dividend (not being covered under section 115-O)	Interest	Royalty	FTS	Remarks
		Tax rate	Tax rate	Tax rate	Tax rate	
						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%	
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%	10%[Note 4]	10%	10%	
16	Czech Republic	10%	10%[Note 4]	10%	10%	
17	Columbia	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%. 2. Interest taxable at 10% if recipient is bank; in any other case 15%.
19	Egypt	As per domestic law		Taxable in source country as per domestic law	No separate provision	
19	Estonia	10%	10% [Note 4]	10%	10%	
20	Ethiopia	7.50%	10%[Note 4]	10%	10%	
21	Finland	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	
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.
28	Hong Kong	5%	10%[Note 4]	10%	10%	
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	10%	10% [Note 4]	10%	10%	
37	Korea	15%	10%[Note 4]	10%	10%	
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	

Sr. No.	Country	Dividend (not being covered under section 115-O)	Interest	Royalty	FTS	Remarks
		Tax rate	Tax rate	Tax rate	Tax rate	
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%	7.5% [Note 4]	15%	10%	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%. 7.5% tax on interest in respect of loans made after 31 March, 2017. 2. 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. 3. The amended DTAA now provides for specific provision relating to FTS and the same will be taxable at the rate of 10% with effect from 1 April, 2017.
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%	

Sr. No.	Country	Dividend (not being covered under section 115-O)	Interest	Royalty	FTS	Remarks
		Tax rate	Tax rate	Tax rate	Tax rate	
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%. 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%. 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 India in respect of public issues of bonds, debentures or similar obligations. In any other case 15%. 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.

Sr. No.	Country	Dividend (not being covered under section 115-O)	Interest	Royalty	FTS	Remarks
		Tax rate	Tax rate	Tax rate	Tax rate	
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% 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%	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.

Sr. No.	Country	Dividend (not being covered under section 115-O)	Interest	Royalty	FTS	Remarks
		Tax rate	Tax rate	Tax rate	Tax rate	
						2. MFN clause with respect to Royalty and FTS.
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%.

Sr. No.	Country	Dividend (not being covered under section 115-O)	Interest	Royalty	FTS	Remarks
		Tax rate	Tax rate	Tax rate	Tax rate	
84	United Arab Emirates	10%	5% / 12.5% [Note 4]	10%	No separate provision	Interest taxable at 5% if recipient is a bank or similar financial institution; in any other case 12.50%.
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%	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 @ 20.5553%. 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.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 @ 20.5553%. 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. The rate of tax under the IT Act on Royalty and/or FTS receivable by a nonresident is 10% (plus applicable Surcharge and Health 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 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. 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:

- rate specified in the relevant provision of the IT Act,
- at the rates in force or,
- 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.

8. Where the provisions of GAAR are attracted (applicable from FY 2017-18), tax treaty benefit may be denied to a non-resident.

SIGNIFICANT CHANGES IN THE TAX TREATIES

<u>India-Hong Kong DTAA</u>

India and Hong Kong signed a double taxation avoidance agreement (DTAA) on 19th March, 2018 that seeks to improve transparency in tax matters and help curb tax evasion and avoidance. This treaty has been ratified by governments of both the countries and the treaty provisions could be resorted to by residents of either state w.e.f. 1st April, 2019.

<u>India-Mauritius DTAA</u>

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.

<u>India-Singapore DTAA</u>

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.

<u>India-Kuwait DTAA</u>

India-Kuwait DTAA has been amended through a protocol which was notified on 4 May 2018. The Protocol enables sharing of the information received from Kuwait for tax purposes with other law enforcement agencies with authorisation of the competent authority of Kuwait and vice versa," the tax department said in a statement. The protocol was notified on May 4, 2018. The revised DTAA has been notified in the Official Gazette on 19th February, 2018.

<u>India-Kenya DTAA</u>

India Kenya DTAA has been amended and the revised DTAA has been notified in the Official Gazette on 19 February 2018. Some of the key features of the revised DTAA are highlighted as under:

- In order to promote cross border flow of investments and technology, the revised DTAA provides for reduction in withholding tax rates from 15% to 10% on dividends, from 15% to 10% on interest, from 20% to 10% on royalties and from 17.5% to 10% on fees for management, professional and technical services.
- The revised DTAA provides for a new Article on Limitation of Benefits to allow treaty benefits to bonafide residents of both countries, to combat treaty abuse by third country residents and to allow application of domestic law to prevent tax avoidance or evasion.
- The Article on Exchange of Information has been updated to the latest international standard to provide for exchange of information, including banking information for tax purposes, to the widest possible extent.

- A new Article on Assistance in Collection of Taxes has also been provided in the revised treaty which will enable assistance in collection of tax revenue claims between both countries.

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	INR 50,000 in aggregate	10%
3	Interest on Securities including listed debentures [Notes-3 and 6]	193	INR 5,000 for interest on debentures by public company to individuals and HUF	10%
4	Interest other than interest on securities [Notes-4, 6 and 7]	194A	INR 5,000 / INR 10,000** p.a. **Interim Finance bill 2019 increased the threshold to INR 40,000	10%
5	Winning from lottery or crossword puzzle or card game or other game	194B	INR 10,000	30%
6	Winning from horse race	194BB	INR 10,000	30%
7	Payments to contractors [Notes-7 and 8]	194C	INR. 30,000 for single transaction or INR 1,00,000 p.a.	2% (1% for individual and HUF)
8	Insurance commission	194D	INR 15,000	5% %(Resident other than domestic company) 10%(domestic company)
9	Payment in respect of life insurance policy [Notes-5 and 6]	194DA	Less than INR 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 INR 2,500	10%
12	Payment on account of repurchase of unit by mutual fund or unit trust of india	194F	No threshold	20%
13	Commission, etc. on sale of Lottery Tickets	194G	INR 15,000	5%
14	Commission or brokerage [Note-7]	194H	INR 15,000 p.a.	5%

Sr. No.	Nature of Payment	Section	Threshold for Deduction	Rate at which Tax is to be Deducted [Note1]
15a	Rent of Land / Building / Furniture or fitting [Note-6 and 7]	194I	INR 180,000*** p.a. ***Interim Finance Bill 2019 increased it to INR 240,000 pa	10%
15b	Rent of Plant, Machinery or Equipment [Notes-6 and 7]	194I	INR 1,80,000 p.a.	2%
16	Payment/credit of consideration to a resident transferor of any immovable property (other than agricultural land)	194IA	Less than INR 5 million	1%
17	Rent [Note 9]	194-IB	INR 50,000 part of the month or part of a month	5%
18	Monetary Consideration payable under joint development agreement	194-IC	No threshold	10%
19	Fees for professional and technical services / royalty / remuneration to Director other than salary [Notes7, 10 and 11]	194J	INR 30,000 p.a.	10%
20	Payment of compensation for acquisition of certain immovable property [Note-12]	194LA	INR 250,000 p.a.	10%
21	Income by way of Interest from Infrastructure Debt Fund	194LB	No threshold	5%
22 a	Income from units of a business trust by way of interest from a special purpose vehicle	194 LBA	No threshold	10%, (5% for non-residents)
22 b	Income from units of real estate investment trust by way of leasing or leasing out any real estate asset	194 LBA	No threshold	10% and for non-residents as per rate in force or rate specified in the relevant DTAAs, whichever is beneficial [Note-15]
23	Income in respect of units of investment fund	194 LBB	No threshold	10% and for non-residents as per rate in force or rate specified in the relevant DTAAs, whichever is beneficial [Note-15]

Sr. No.	Nature of Payment	Section	Threshold for Deduction	Rate at which Tax is to be Deducted [Note1]
24	Income in respect of investment in securitization trust	194 LBC	No threshold	30% (25% for individual and HUF) and for non-residents as per rate in force or rate specified in the relevant DTAAs, whichever is beneficial [Note-15]
25	Income by way of Interest payable to non-residents from Indian company or a business trust.[Note-13]	194LC	No threshold	5%
26	Income by way of Interest on certain Bonds and Government Securities held by FII and QFI [Note-14]	194LD	No threshold	5%
27	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 15 and 17]	

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:

- rate specified in the relevant provision of the IT Act,
- at the rates in force or
- 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 35.88%.

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 INR10,000 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 INR 5,000 in any other case. However, if the payee is a senior citizen, then the threshold limit is INR 50,000.

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 (not being a company or a firm) 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. An individual or HUF (other than those covered under tax audit) is liable to deduct tax on payment of rent in the last month of the previous year or last month of the tenancy arrangement whichever being earlier, under section 194-IB and he is not required to obtain TAN.

10. Tax is required to be deducted on remuneration paid to a director which is not in the nature of salary. No threshold limit of INR 30,000 p.a. is applicable for the same

11. Tax is to be deducted at the rate of 2% in case of payment made to a person engaged only in the business of operation of call center.

12. If payment is made in respect of any award or agreement which is exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), no tax will be deducted at source under Section 194LA.

13. 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.

14. 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

15. 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.

16. 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. With the introduction of new GST regime, w.e.f. 1 July 2017, CBDT has further clarified to substitute 'Service tax' in an agreement/ contract by 'GST on services' from 1 July 2017.

17. Section 10 is amended so as to provide that the income arising to non-resident or a foreign company, by way of royalty from, or fees for technical services rendered in or outside India to, the NTRO will be exempt from income tax. Accordingly, NTRO will not be required to deduct tax at source on such payments.

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			
Under section 194(IA), 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 receipt whichever, is earlier	Applicable		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			
For Quarter ended June	31 July		
For Quarter ended September	31 October		
For Quarter ended December	31 January		
For Quarter ended March	31 May		
VI. Due dates for issue of Form 16 (for Salaries) and Form 12BA / Form 16A (for other than Salaries)/Form 16B(for Sale of Property) and Form 27D (for TCS)			
Issue of Form 16 and Form 12BA annually	31 May		

<table>
<tr><th rowspan="2">Nature of Compliances</th><th colspan="3">Person</th></tr>
<tr><th>Company</th><th>Partnership Firm / LLP</th><th>Individual and HUF</th></tr>
<tr><td>Issue of Form 16A / 27D for quarter ended June</td><td colspan="3">15 August / 30 July</td></tr>
<tr><td>Issue of Form 16A / 27D for quarter ended September</td><td colspan="3">15 November / 30 October</td></tr>
<tr><td>Issue of Form 16A / 27D for quarter ended December</td><td colspan="3">15 February / 30 January</td></tr>
<tr><td>Issue of Form 16A / 27D for quarter ended March</td><td colspan="3">15 June / 30 May</td></tr>
<tr><td>Issue of Form 16B</td><td colspan="3">15 days from the due date of depositing tax</td></tr>
<tr><td colspan="4">VII. Due dates for payment of DDT</td></tr>
<tr><td>Applicable to all companies declaring/paying or distributing dividend</td><td>Within 14 days from the date of declaration or payment or distribution or dividend, whichever is earlier</td><td colspan="2">Not Applicable</td></tr>
<tr><td colspan="4">VIII. Due Date of submission in Form 61 by Persons Specified in Rule 114D (Details of Transactions in which PAN to be quoted.)</td></tr>
<tr><td>For declarations received in Form 60 by September 2018</td><td colspan="3">September 2018</td></tr>
<tr><td>For declarations received in Form 60 by March 2019</td><td colspan="3">March 2019</td></tr>
<tr><td colspan="4">IX. Due dates for submission of payment under section 285 of the IT Act (Note 6)</td></tr>
<tr><td>Non-resident having liaison office in India to file statement in Form 49C</td><td colspan="3">Within 60 days from the end of the financial year</td></tr>
<tr><td colspan="4">X. Due date for filing Annual Information Return under section 285BA of the IT Act</td></tr>
<tr><td>Specified persons to furnish Annual Information Return in Form 61A in respect of specified financial transactions</td><td colspan="3">31 May</td></tr>
<tr><td colspan="4">XI. Due dates for filing Appeals before the Income-Tax Appellate authorities</td></tr>
<tr><td>Objections before the Dispute Resolution Panel</td><td colspan="3">Within 30 days from the receipt of the draft assessment order</td></tr>
<tr><td>Appeal to the Commissioner of Income-tax (Appeals)</td><td colspan="3">Within 30 days from the date of service notice of demand or the relevant order sought to be appealed against</td></tr>
<tr><td>Appeal to the Income-tax Appellate Tribunal (Note 7)</td><td colspan="3">Within 60 days from the date on which order sought to be appealed against is communicated</td></tr>
<tr><td colspan="4">XII. Due dates for deduction and deposit of Equalization Levy</td></tr>
<tr><td colspan="4">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 8)</td></tr>
<tr><td>Time of deduction</td><td colspan="3">When amount is paid or payable</td></tr>
<tr><td>Rate of Tax</td><td colspan="3">6% on Gross amount paid</td></tr>
<tr><td>Date of Deposit</td><td colspan="3">7th of the next month</td></tr>
<tr><td>Date of Annual Statement of Specified Services in Form no.1</td><td colspan="3">30th June of next year</td></tr>
</table>

Due dates for various Forms for CbC Report and Master File Compliances

Form Name	Description	In relation to	Who needs to file	Due date
Form No. 3CEAA	Report to be furnished under Section 92D(4) of the IT Act			
PART A	Every person, being a constituent entity of an international group	All constituent entities of international group resident in India		30 November
Form No. 3CEAA PART B	Constituent entity of an international group, in those cases where the conditions as provided in Rule 10DA(1) are satisfied	Master File	Designated Constituent entity resident in India	
Form No. 3CEAB	Where there are more than one constituent entity resident in India of an international group, then the constituent entity which has been designated to furnish the master file	Master File	Designated Constituent entity irrespective of whether the parent entity is resident in India or not	31 October
Form No. 3CEAC	Intimation by a constituent entity, resident in India, for the purpose of section 286(2) of the IT Act	CbC Report	Constituent entity resident in India but parent entity is non-resident in India	31 January
Form No. 3CEAD	Report by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the purposes of sub-section (2) or sub-section (4) of section 286 of the IT Act	CbC Report	Parent or Alternative reporting entity resident in India	31 March
Form No. 3CEAE	Intimation on behalf of the international group for the purposes of the proviso to sub-section (4) of section 286 of the IT Act	CbC Report	Designated Constituent entity irrespective of whether the parent entity is resident in India or not	Yet to be notified

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 INR 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. 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.

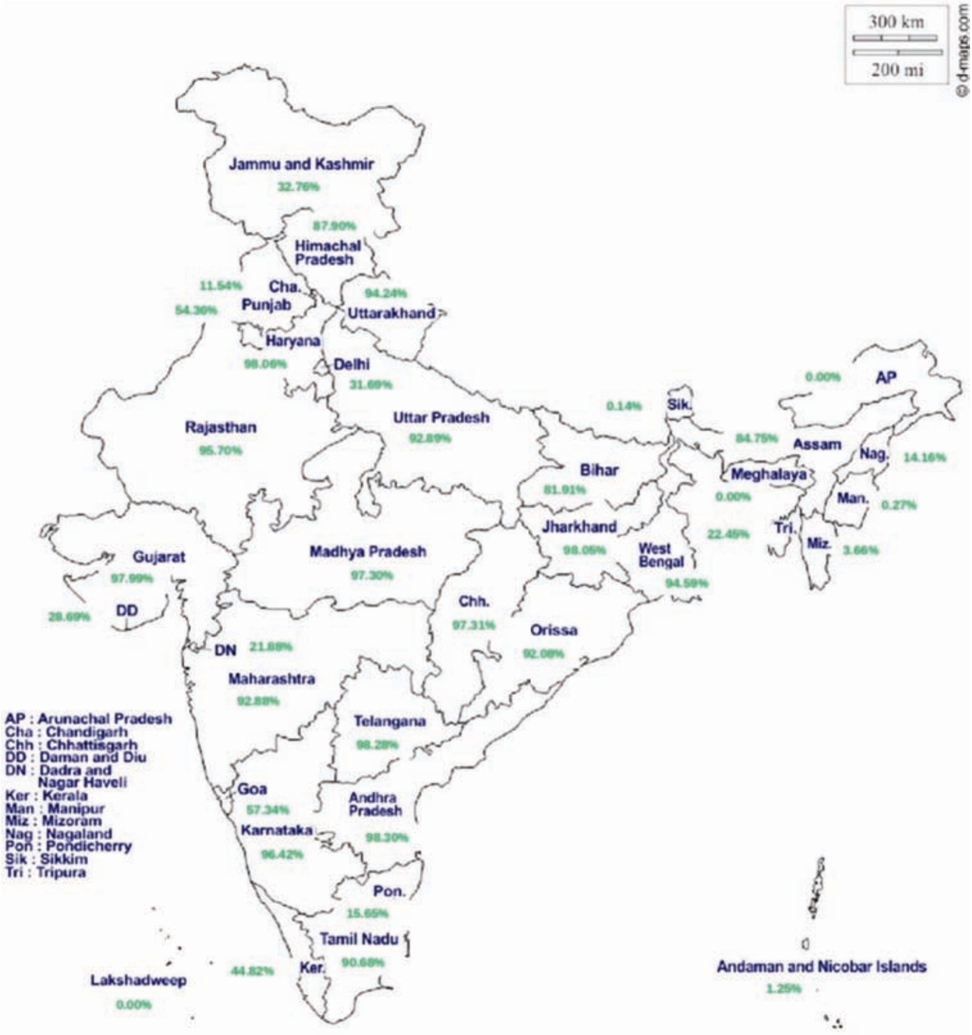
7. Memorandum of cross objection is to be filed within 30 days from the receipt of notice intimating that the appeal has been preferred before the Tribunal, against any part of the order under appeal, if required.

8. 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 – ASSESSMENT OF STATE IMPLEMENTATION OF BUSINESS REFORMS



Source: Assessment of State Implementation of Business Reforms, September 2018 published by DIPP

ABBREVIATIONS

AAR	Authority for Advance Rulings
AD	Authorised Dealer
AG	Australia Group
AGM	Annual General Meeting
AIF	Alternative Investment Fund
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOA	Articles of Association
AOP	Association of Persons
APA	Advance Pricing Agreement
AY	Assessment Year
AFI	All India Financial Institutions
ARF	Advance Remittance Form
BEPS	Base Erosion and Profit Shifting
BO	Branch Office
BOI	Body of Individuals
BPO	Business Process Outsourcing
BRICS	Brazil, Russia, India, China and South Africa
BSE	Bombay Stock Exchange
BTP	Business Technology Park
CAG	Comptroller and Auditor General
CAGR	Compounded Average Growth Rate
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Custom
CENVAT	Central Value Added Tax
CEO	Chief Executive Officer
CESTAT	Customs Excise & Service Tax Appellate Tribunal
CGST	Central Goods and Service Tax
CRISIL	Credit Rating Information Services of India Limited
CSO	Central Statistics Organisation
CTT	Commodities Transaction Tax
CVD	Additional Duty of Customs levied under
CCI	Competition Commission of India
CSDL	Central Depository Services Ltd
CARE	Credit Analysis and Research Ltd
CIC	core investment companies
Cat-I AIF	Category I Alternative Investment Fund
CRS	Common Reporting Standard
CDSCO	Central Drugs Standard Control Organization
CbCR	Country by country report
DDT	Dividend Distribution Tax
DGFT	Director general of Foreign trade
DIN	Director's Identification Number
DIPP	Department of Industrial Policy and Promotion
DPIIT	Department for promotion of industry and international trade
DSIR	Department of Scientific & Industrial Research
DTAA	Double Taxation Avoidance Agreement
DPP	Defence Procurement Procedure
DSC	Digital Signature Certificate
DRP	Dispute Resolution Panel
ECB	External Commercial Borrowing
EGM	Extraordinary General Meeting
EOU	Export Oriented Unit
EPFO	Employee Provident Fund Organisation
EPFS	Employees Provident Fund Scheme
ESIC	Employees State Insurance Corporation
ESOP	Employee Stock Option/Ownership Plan
ETA	Electronic Travel Authorisation
eTV	e- tourist visa
EPCG	§ Export Promotion Capital Goods Scheme
EHTP	Electronic Hardware Technology Park
ECR	
EDLI	Employees Deposit Linked Insurance Scheme
FCCB	Foreign Currency Convertible bonds
FCEB	Foreign Currency Exchangeable Bonds
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investors
FIPB	Foreign Investment Promotion Board
FPI	Foreign Portfolio Investors
FTC	Foreign Tax Credit
FTS	Fees for Technical Services
FVCI	Foreign Venture Capital Investors
FY	Financial Year

FFS	Fund of Funds for Startups
FERA	Foreign Exchange Regulation Act
FATF	Financial Action Task Force
FATCA	Foreign Account Tax Compliance Act
FTP	Foreign Trade Policy
FOB	Free on Board
FRRO	Foreigner's Regional Registration Office
G-20	Group of twenty
GAAR	General Anti Avoidance Rules
GATT	General Agreement of Trade and Tariff
GDP	Gross Domestic Product
GDR	Global Depository Receipt
GMT	Greenwich Mean Time
GST	Goods and Services Tax
GSTP	Global System of Trade Preferences
GVA	Gross Value Added
HUF	Hindu Undivided Family
IB	International baccalaureate
ICDS	Income Computation and Disclosure Standards
IEM	Industrial Entrepreneur Memorandum
IFRS	International Financial Reporting Standards
IGST	Interstate Goods and Service Tax
IL	Industrial License
IMF	International Monetary Fund
Ind AS	Indian Accounting Standards
INR	Indian Rupee
IPO	Initial Public Offer
IPR	Intellectual Property Rights
IST	Indian Standard Time
IT	Information Technology
IT Act	Income-Tax Act, 1961
IT Rules	Income-Tax Rules, 1962
IDDM	Indigenously Designed, Developed and Manufactured
IDR	Industries (Development and Regulation
IOPs	Indian Offset Partners
iDEX	Innovations for Defence Excellence
IFCI	Industrial Finance Corporation of India
IRBI	Industrial Reconstruction Bank of India
IRDA	Insurance Regulatory & Development Authority
ICRA	Investment Information and Credit Rating Agency of India
ICAI	Institute of Chartered Accountants of India
ICSI	Institute of Company Secretaries of India
IFSC	International Financial Services Centre
IOSCO	The International Organisation of Securities Commission
ITC	Input tax credit
JV	Joint venture
KKC	Krishi Kalyan Cess
KPO	Knowledge Process Outsourcing
LLP	Limited Liability Partnership
LO	Liasion Office
LoC	Letter of Comfort
LoU	Letter of Undertaking
LODR	Listing Obligations and Disclosure Requirements
LIBOR	London inter-bank offered rate
LTCG	Long Term Capital Gains
LUT	Letter of undertaking
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MFN	Most Favoured Nation
MIGA	Multilateral Instruments Guarantee Agency
MLI	Multilateral Instruments
MNE	Multinational Enterprises
MOA	Memorandum Of Association
MRTP	Monopolies and Restrictive Trade Practices Act
MSEI	Metropolitan Stock Exchange of India Limited
MSO	Multi System Operators
MHA	Ministry of Home Affairs
MSME	Micro, Small and Medium Enterprises
MAMP	Minimum Average Maturity Period
MCAA	Multilateral Competent Authority Agreement
MEIS	Merchandise Export from India Scheme
NABARD	National Bank for Agriculture and Rural Development

ABBREVIATIONS

NBFC	Non-Banking Financial Companies
NCLT	National Company Law Tribunal
NHAI	National Highway Authority of India
NRI	Non-resident Indian
NSE	National Stock Exchange
NASSCOM	National Association of software and services companies
NSDL	National Securities Depository Limited
NFRA	National Financial Reporting Authority
NHAI	National Highways Authority of India
OCB	Overseas Corporate Body
OECD	Organization for Economic Co-operation and Development
OEM	Original Equipment Manufacturers
OPC	one person company
ODI	Overseas Direct Investment
PAC	Person Acting in Concert
PAN	Permanent Account Number
PE	Permanent Establishment
PF	Provident Fund
PIO	Person of Indian Origin
PO	Project Office
POEM	Place of Effective Management
PSB	Public Sector Banks
PSU	Public Sector Undertakings
R&D	Research and development
ROC	Registrar of Companies
REIT	Real Estate Investment Trusts
RECL	Rural Electrification Corporation Limited
RCM	Reverse Charge Mechanism
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
SGST	State Goods and Service Tax
SME	Small and Medium Enterprises
SPV	Special Purpose Vehicle
STT	Security Transaction Tax
SP	Strategic Partnership
SIDBI	Small Industries Development Bank of India
SBO	Significant Beneficial Owner
SAST	Substantial Acquisition of Shares and Takeovers
SNRR	Special Non-Resident Rupee Account
STCG	Short Term Capital Gains
SEIS	Service Exports from India Scheme
STP	software technology park
TAN	Tax Deduction and Collection Account Number
TCS	Tax Collected at Source
TDR	Transferable Development Rights
TDS	Tax Deducted at Source
TIEA	Tax Information Exchange Agreements
TP	Transfer Pricing
TRAI	Telecom Regulatory Authority of India
TRC	Tax Residency Certificate
TRIPS	Trade Related Aspects of Intellectual Property Rights
TC	Trade Credits
TIEA	Tax Information Exchange Agreements
UNCTAD	United Nations Conference on Trade and Development
USFDA	United States Food & Drug Administration.
UT	Union Territory
VAT	Value Added Tax
VCF	Venture Capital Fund
VCU	Venture Capital Undertaking
w.e.f.	with effect from
WOS	Wholly Owned Subsidiary
WPI	Wholesale Price Index

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