Doing Business In India

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DOING BUSINESS IN INDIA

I. Introduction

Since the Economic liberalization in India in 1991, which led to an increase in foreign investment and high economic growth in the 1990s and 2000s, India has emerged as a top destination for investments globally. India was one of fastest growing major economies until the disruption caused by Covid-19 outbreak as the government enforced one of the strictest lockdowns across the country amid Covid-19. With recovery measures and rebound, India is expected to recover to annual growth of more than 7% per annum in next five years. The Economic Survey 2020-21 has projected the economy to grow 11 per cent in the next fiscal beginning April 1, a shade higher than the RBI's projection of 10.5 per cent. The International Monetary Fund (IMF) expects India to grow at 11.5 per cent in the year 2021.

The Central and State governments have taken various initiatives to improve the attractiveness of India as a business destination globally by introducing new laws and policies and prioritizing their implementation. The objective is to create a business friendly environment and make India a desirable venue for businesses around the world. India has improved on its ranking by 14 places on World Bank's ease of doing business report, 2020, due to such reforms and policy changes by Indian government.

On February 1, 2021, the Indian Finance Minister (FM), Nirmala Sitharaman, presented the Union Budget of India for the financial year 2021-22. This was a critical Budget for the Government, particularly against the background of the contraction of the GDP triggered by the COVID-19 pandemic. Here are key reforms presented in the Budget:

i. Introduce a new Securities Law code to consolidate laws under the Securities and Exchange Board of India Act, 1992, the Depositories Act, 1996, the Securities Contracts Regulation Act, 1956 and the Government Securities Act, 2007.

ii. Establish an Investors' charter to assimilate the rights of all financial investors across all financial products.

iii. Remove the turnover and paid-up capital thresholds for setting up of One Person Companies and dilute the residence requirement for sole members. If the proposal is adopted, a sole member will be required to remain in India for a minimum of 120 days (as opposed to the current requirement of 182 days). NRIs will also be allowed to set up such companies.

iv. Increase the cap on the Foreign Direct Investment ("FDI") in the insurance sector from the current 49 percent to 74 percent.

v. Set up an asset reconstruction company ("Bad Bank") to take over the bad loans of banks. This will enable banks to restructure their balance sheets and increase flexibility in the sector.

vi. Start a statutorily-backed and professionally-managed Development Finance Institution ("DFI") to support financing of long-term projects. It is expected to have a lending portfolio of over US$7 billion within three years.

vii. Push for further divestments in government-owned units, including in banking and insurance sectors.

II. Glance at India's key sectors

- **Aerospace and Defence**

  India is already a large commercial and defence aircraft market. With growing passenger traffic and swelling military and defence expenditures, the demand for aircrafts is anticipated to surge further. The Indian aerospace industry is one of the fastest growing sectors. The Aerospace and Defence (A&D) market in India is estimated to reach around $70 billion by 2030 as the momentum is expected to further pick up with improving infrastructure and government thrust. Its defence budget announced in February 2021 budget is ₹4,78,196 crore (US $$63.75 billion) hiked marginally by around 1.4% which is around 2.2% of its GDP. Out of ₹4,78,196 crore, a total of ₹1,35,060 crore has been set aside for capital expenditure that includes purchasing new weapons, aircraft, warships and other military hardware.

- **Automobile**
  - Automotive industry in India is one of the prime drivers of the economy and is the fourth largest in the world. India is expected to be the world's third-largest automotive market in terms of volume by 2021.
  - Indian automotive industry (including component manufacturing) is expected to reach US$251.4 - 282.8 billion by 2026.
  - The industry has attracted Foreign Direct Investment (FDI) worth US$ 24.53 billion between April 2000 and June 2020.
  - Automobile export reached 4.77 million vehicles in FY20, growing at a CAGR of 6.94% during FY16-FY20.

- **Banking**

  The Reserve Bank of India (RBI) regulates the sector. RBI regularly reviews and refines the regulatory and supervisory policies to enable a strong capital base, effective risk management and best corporate governance standards in the banking sector.
  - Asset of public sector banks stood at Rs. 107.83 lakh crore (US$ 1.52 trillion) in FY20.
  - During FY16-FY20, bank credit grew at a CAGR of 3.57%. As of FY20, total credit extended surged to US$ 1,698.97 billion.
  - During FY16-FY20, deposits grew at a CAGR of 13.93% and reached US$ 1.93 trillion by FY20. Credit to non-food industries stood at Rs. 103.46 trillion (US$ 1.40 trillion) as of November 20, 2020.
  - India's digital lending stood at US$ 75 billion in FY18 and is estimated to reach US$ 1 trillion by FY23 driven by the five-fold increase in the digital disbursements.

- **Capital Market**

  The Securities and Exchange Board of India (SEBI), the capital market regulator, is established to protect the interests of the investors in securities as well as to promote development of the capital market. It regulates all intermediaries of the capital market (such as stockbrokers, merchant bankers, underwriters, etc.), as well as prohibits unfair trade practices in the securities market.

  The Indian capital markets have made significant progress which span into development in terms of accessibility, regulatory framework, market infrastructure, transparency, liquidity and the types of instruments available. India recorded 10 IPOs in first quarter of 2020 with Indian stock exchanges (BSE and NSE including SMEs) ranking eighth globally in terms of number of IPOs.

- **Oil and Gas**
  The oil and gas industry is among India's eight core industries. India is the third largest consumer of crude oil and petroleum products in the world and second largest refiner in Asia. The industry is under the administrative ambit of the Ministry of Petroleum and Natural Gas.

- **Ports**
  India is the 16th largest maritime country in the world with coastline of about 7,517 km, which encompasses 12 major and 205 notified non-major ports. The total traffic handled at major ports from April to March 2020 was 704.63 million tonnes as against 699.10 million tonnes handled during the corresponding period of the previous year.

- **Healthcare**
  The Indian healthcare industry is one of the biggest and fastest growing industry in the world. Healthcare consists mainly of pharmaceutical, biotech, hospitals and medical equipment. While the government was always attentive on healthcare, COVID-19 has given a much greater emphasis to this sector.
  ➢ *Pharmaceuticals*
  India is the largest provider of generic medicines globally, having a 20% share in global supply by volume. It also fulfils 50% of global demand for vaccines. India ranks 3rd in the world for production of pharmaceuticals by volume and 13th by value, thereby accounting for around 10% of world's production by volume and 1.5% by Value.
  ➢ *Biotechnology*
  India is among the top 12 destinations for biotechnology in the world, with approximately 3% share in the global biotechnology industry. India also spearheads the global supply of DPT, BCG and measles vaccines. By 2025, the Indian biotechnology industry is anticipated to reach US$150 billion.
  ➢ *Hospitals*
  The hospital industry in India accounts for 80% of the total healthcare market. It is witnessing a huge investor demand from both global as well as domestic investors. The hospital industry is expected to reach US$132 billion by 2023 from US$61.8 billion in 2017; growing at a CAGR of 16%-17%.

- **Information Technology**
  The IT industry in India consists of two major components, namely, IT services and business process outsourcing (BPO). India's IT and ITeS companies have set up over 1,000 global delivery centres in over 80 countries around the world. India's talent pool of technical graduates is one of the largest in the world.
  The IT-BPM industry stood at US$177 billion in 2019 and is expected to grow to US$350 billion by 2025. Total revenue from IT services and BPM for FY2019-20 accounts for US$135 billion.

- **Insurance**
  The sector is regulated by the Insurance Regulatory and Development Authority of India (IRDA). It consists of 57 companies of which 24 are in life insurance business and 33 are in non-life insurance. Life insurance industry in the country is expected grow by 14%-15% annually for the next three to five years.

- **Media and Entertainment**
  The Indian media and entertainment (M&E) industry is one of the fastest growing sectors in India. The industry has been mainly driven by increasing digitization and higher internet usage over the

last decade. It reached US$25.7 billion in 2019, a growth of almost 9% over 2018. With its current trajectory, it is set to expand at a CAGR of 13.5% over 2019-24 and is projected to reach around US$43.93 million by 2024. The FDI inflows in the information and broadcasting sector in the period April 2000–December 2019 stood at US$8.71 billion as per publicly available information.

- **Power and utilities**
  India's installed capacity for power generation as on 31 March 2020 is estimated at around 370.11 Giga Watt (GW), with private sector's contribution of around 46.8% of the installed capacity. Fuel based thermal power plants form a major portion (i.e., 62.8%) of the installed capacity, accounting for nearly 230.60 GW of the total installed capacity in the country.

- **Real estate**
  The contribution of real estate sector to India's GDP is estimated to be about 13% by 2025. The market size of Indian real estate sector is likely to reach US$1 trillion by 2030. FDI is prohibited in real estate business except development of townships, construction of residential/commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.

- **Retail Industry and Consumer Products**
  The Indian retail sector is estimated to be around US$700 billion in 2019-2020 and employs about 10% of India's working population. It is one of the fastest growing major market in the world and is fifth-largest global destination in the retail space.
  Indian market is estimated to cross US$1 trillion by 2025, growing at a CAGR of 9%-11%, driven by socio-demographic and economic factors such as urbanization, income growth and rise in nuclear families.

- **Roads and Highways**
  India has one of the largest road networks in the world, covering a total of 5.89 million kms. More than 64.5% of all goods in the country are transported through roads and 90% of passenger traffic in the country is handled by roads. The Government of India aims to construct 65,000 kms of national highways at the cost of US$741.51 billion by 2022.

- **Telecommunications**
  India is currently the world's second-largest telecommunications market with a subscriber base of 1.18 billion. The country's growing mobile economy now constitutes about 98% of all telephone subscriptions. The mobile industry supports about 6.5% of India's GDP.

- **Digital and E-commerce**
  E-commerce sector of India is expected to surpass the US to become the second largest e-commerce market in the world by 2034. The Indian e-commerce market is expected to grow to US$200 billion by 2027. The Government of India under the *Digital India campaign* is aiming to generate a trillion dollar online economy by 2025.

III. Entry Options in India

A foreign investor needs to decide on the type of entity to run its operations in India, amongst several options available in India. The entities that foreign investors may set up in India may either be unincorporated or incorporated.

- Incorporated entities
- Unincorporated entities

- **Establishment of Incorporated Entities**

Incorporated entities in India are governed by the provisions of the Companies Act**,** 2013 / Limited Liability Partnership Act, 2008.

A. Companies under the Companies Act

The Companies Act, 2013 sets out, inter alia, provisions related to incorporation of a company, issuance of shares, roles and responsibilities of directors, dissolution of a company (winding up), etc. The Ministry of Corporate Affairs (MCA) oversees companies and their compliances is. Companies may either be 'private limited companies' or 'public limited companies'.

i. Private Limited Company

- A private limited company restricts the right to transfer shares and prohibit any invitation to the public to subscribe to the securities of the company.
- The number of members in a private limited company is minimum of 2 and a maximum of 200 members.
- A private limited company is required to have at least 2 directors at all times, of which at least 1 should be a person who resides in India for 182 days or more in a year. Considering many organizations are particularly sensitive to control over the subsidiary, a local non-executive director service is a potential solution. An Indian resident independent director is appointed onto the board of the Indian subsidiary primarily to oversee the compliance aspect of the business.
- Under the Companies Act, 2013, a natural person who is an Indian citizen whether resident in India or otherwise can incorporate a one person company. Foreign Direct Investment into a one person company in India is restricted.
- A private limited company gives more flexibility than public companies in conducting operations, including the management of the company and the payment of managerial remuneration.

ii. Public Limited Company

- A public limited company is defined as a company which is not a private company (but includes a private company that is the subsidiary of a public company).
- A public limited company shall have a minimum of 7 members but may have more than 200 members and may invite public to subscribe to its securities.
- A public limited company may also list its shares on a recognized stock exchange by way of an IPO. Every listed company shall maintain public shareholding of at least 25% (with a maximum period of 12 months to restore the same from the date of a fall).

Entry Structure as An Indian Entity for Foreign Investor

1. **Wholly Owned Subsidiary (WOS):** A 100% ownership company by the foreign entity in India.
2. **Subsidiary:** A majority stake owned by the foreign investor.
3. **Joint Venture (JV):** Collaboration with an Indian corporate entity in the minimum ratio 51:49 with the Indian entity having the majority share. The JV should be preferably a company although LLP/partnership is possible.
4. **Associate company:** A minority stake owned by the foreign investor. Thus, a JV incorporated as a company will be an associate company.
5. **Investment into LLP:** Investment as a LLP partner by a foreign investor.

B. Limited Liability Partnership (LLP)

- A LLP is a form of business entity which permits individual partners to be shielded from the liabilities created by another partner's business decision or misconduct.
- In India, LLPs are governed by the Limited Liability Partnership Act, 2008.
- LLP is a body corporate and exists as a legal person separate from its partners.
- LLP is subject to corporate tax at 30% (exclusive of surcharge and cess). Profit distributions by the LLP to its partners are not taxable in the hands of LLP or the partners.
- Exit can be through sale of interest or dissolution.

- **Setting Up Unincorporated Entities**

A. Liaison Office

- Represents the parent company and acts only as a communication channel of the foreign parent company.
- A liaison office cannot undertake any commercial activities and must maintain itself from the remittances received from its parent foreign company.
- Setting up a liaison office in a sector in which 100% FDI is allowed under the automatic route requires the prior consent of the AD. For the remaining sectors, RBI grants its approval after consultation with the Ministry of Finance.
- The approval for setting up a liaison office is generally valid for 3 years and can be extended by making an application to Authorized Dealer Bank (AD) before the date of expiry of validity.
- It is an option usually preferred by foreign companies that wish to explore business opportunities in India.
- An Liaison Office is not subject to tax in India, since it is not permitted to undertake any business activity.
- Before winding up, prior approval of AD Bank and ROC authorities is required.

B. Branch Office

- Similar to a liaison office, the branch office of a foreign company in India must be set up with the prior consent of the AD for sectors under which 100% FDI is permissible under automatic route, with approval under other sectors accorded after consultation with Ministry of Finance.

- It can represent the foreign parent company in India and act as its buying or selling agent in India. However, a branch office cannot carry out any retail, manufacturing or processing activities.
- The branch office is permitted to remit surplus revenues to its foreign parent company subject to the taxes applicable.
- Operations of a branch office are restricted due to limitation on the activities that it can undertake.
- The tax on branch offices is 40% plus applicable surcharges and the education cess.
- It is an option that is useful for companies that intend to undertake research and development activities in India.
- Activities listed by RBI are only allowed to be undertaken.
- Before winding up, prior approval of AD Bank and ROC authorities is required.

C. Project Office

- A project office is generally set-up for specific project.
- A foreign company, subject to obtaining approval from the AD, may set up a project office in India under the automatic route subject to certain conditions being fulfilled including existence of a contract with an Indian company to execute a project in India.
- A project office is permitted to operate a bank account in India and may remit surplus revenue from the project to the foreign parent company.
- The tax on project offices is 40% plus applicable surcharges and the education cess.
- Activities listed by RBI are only allowed to be undertaken.
- Before winding up, prior approval of AD Bank and ROC authorities is required.
- Project offices are generally preferred by companies engaged in one-time turnkey or installation projects.

D. Partnership

- A partnership is a relationship created between persons who have agreed to share the profits of a business carried on by all of them, or any of them acting for all of them.
- A partnership is not a legal entity independent of its partners.
- The partners own the business assets together and are personally liable for business debts and taxes.
- In the absence of a partnership agreement, each partner has an equal right to participate in the management and control of the business and the profits / losses are shared equally amongst the partners.
- Any partner can bind the firm and the firm is liable for all the liabilities incurred by any partner on behalf of the firm.
- Investment by foreign entities is permitted in Indian partnership firms subject to RBI approval.

E. Trust

- A trust arises when one person (the “trustee”) holds legal title to property but is under an equitable duty to deal with the property for the benefit of some other person or class of persons called beneficiaries.
- Like a partnership, a business trust is not regarded as a legal entity.
- The trust, as such, does not incur rights or liabilities.

- The beneficiaries do not generally obtain rights against or incur liabilities to third parties because of the transactions or actions undertaken by the trustee in exercising its powers and carrying out its duties as a trustee.
- If the trustee of a business trust is a corporation, the participants may effectively limit their liability to the assets of the corporate trustee and the assets held by the corporation on trust for the beneficiaries.
- A foreign resident may only be the beneficiary of a trust, which is set up as a venture capital fund and only after receiving the prior consent of the concerned department of Government of India.

IV. Foreign Investment in India – Regulations

Foreign Direct Investment *(FDI)* is the investment through capital instruments by a person resident outside India (a) in an unlisted Indian company; or (b) in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.

Setting up India operations or investing in India by non-residents requires conformity with India's foreign exchange regulations, specifically, the regulations governing FDI. Most aspects of foreign currency transactions with India are governed by FEMA and the delegated legislations thereunder.

Investments in, and acquisitions (complete and partial) of, Indian companies by non-resident entities and individuals, are governed by the terms of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 *("Non-Debt Instruments Rules")*, issued in supersession of erstwhile Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 *("TISPRO Regulations")*, and the provisions of the annual Consolidated Foreign Direct Investment Policy Circular *("FDI Policy")* issued by the Department for Promotion of Industry and Internal Trade *("DPIIT")* in the Ministry of Commerce and Industry, Government of India.

The power to regulate equity investments in India has now been transferred to the Ministry of Finance from the central bank i.e., Reserve Bank of India *("RBI")*. However, the power to regulate the modes of payment and monitor the reporting for these transactions continues to be with RBI.

FDI limits with respect to the shareholding of non-residents in an Indian company are divided into prohibited and permitted sectors.

1. Prohibited Sectors

The following is the list of sectors where FDI is prohibited:

- Atomic Energy
- Railway operations
- Gambling and betting including casinos/ Lottery business including government/lottery, online lotteries etc.*
- Chit funds
- Nidhi company
- Real estate business** or construction of farm houses
- Trading in Transferable Development Rights (TDRs)
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes

Notes:

* 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

** '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 the SEBI (REITs) Regulations 2014

2. Permitted Sectors

FDI up to 100%, is permitted in most sectors under the 'automatic route'. Under this route, prior approval of RBI or the approval of the Central Government (through the concerned administrative ministry / department) is not required.

Certain countries require prior approval

To curb the opportunistic takeovers / acquisitions of Indian companies due to the current Covid-19 pandemic, the Government of India through Press Note 3 (2020 Series) dated April 17, 2020 and notification dated April 22, 2020 amended its foreign direct investment policy. Accordingly, any investment being made from Bangladesh, China, Pakistan, Nepal, Myanmar, Bhutan and Afghanistan or where the *beneficial owner* (which term has not been defined) of an investment into India is situated in or is a citizen of any of the aforementioned countries, shall require prior approval of the Government regardless of the sector/activities in which investment is being made.

FDI up to 100%, is permitted in most sectors under the 'automatic route'. Listed below are the sectors where 100% FDI allowed; with threshold for FDI; sectors which are partially under automatic route and partially under government approval route; sectors where there are conditions for FDI etc.

Sectors	Automatic Route	Government Route	FDI Permitted
Air Transport Services (non-scheduled and other services under civil aviation sector)	100%	-	100%
Air Transport Services (Scheduled air transport services, regional air transport services)	49%	Above 49%	100%
Airports (Greenfield & Brownfield)	100%	-	100%
Auto components	100%	-	100%
Automobiles	100%	-	100%
Biotechnology (Brownfield)	74%	Above 74%	100%
Biotechnology (Greenfield)	100%	-	100%
Broadcast Content Services (Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels)	100%	-	100%
Broadcasting Carriage Services	100%	-	100%
Broadcasting Content Services	-	49%	49%
Capital Goods	100%	-	100%
Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)	100%	-	100%
Chemicals	100%	-	100%
Coal & Lignite	100%	-	100%
Construction Development: Townships, Housing, Built-up Infrastructure	100%	-	100%
Construction of Hospitals	100%	-	100%
Defence	74%	Above 74%	100%
Digital Media	-	26%	26%
Duty Free Shops	100%	-	100%
E-commerce activities	100%	-	100%

Electronic Systems	100%	-	100%
Food Processing	100%	-	100%
Food Products Retail Trading	-	100%	100%
Gems & Jewellery (Manufacturing)	100%	-	100%
Healthcare (Brownfield)	74%	Above 74%	100%
Healthcare (Greenfield)	100%	-	100%
IT and BPM	100%	-	100%
Leather	100%	-	100%
Medical Devices	100%	-	100%
Mining and Exploration of metal and non-metal ores	100%	-	100%
Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities	-	100%	100%
Multi Brand Retail Trading	-	51%	51%
Other services under Civil Aviation sector (Maintenance and Repair organizations; flying training institutes; and technical training institutions.)	100%	-	100%
Other services under Civil Aviation sector (Ground Handling Services subject to sectoral regulations and security clearance)	100%	-	100%
Petroleum & Natural Gas	100%	-	100%
Petroleum Refining (by PSUs)	49%	-	49%
Pharmaceuticals (Brownfield)	74%	Above 74%	100%
Pharmaceuticals (Greenfield)	100%	-	100%
Ports and Shipping	100%	-	100%
Print Media (Publication/ printing of scientific and technical magazines/specialty journals/ periodicals and facsimile edition of foreign newspapers)	-	100%	100%
Print Media (Publishing of newspaper, periodicals and Indian editions of foreign magazines dealing with news and current affairs)	-	26%	26%
Railway Infrastructure	100%	-	100%
Renewable Energy	100%	-	100%
Roads & Highways	100%	-	100%
Single Brand Product Retail Trading	100%	-	100%
Telecom Services	49%	Above 49%	100%
Textiles & Garments	100%	-	100%
Thermal Power	100%	-	100%
Tourism & Hospitality	100%	-	100%

V. Regulatory Bodies in India

In India, there are different regulating bodies to regulate each and every arm of the government service. Like the RBI regulates the inflation in the market, FSSAI is responsible for the food safety. A regulatory body is a government agency or an organization that is to exercise a regulatory function. The regulatory body is to protect the public, by providing and enforcing adequate standards for health and safety in a society. A regulatory body is created on the basis of a legal mandate or legislation. Below is the list of most important regulating bodies in India.

Sl No	Regulating Agency	Regulating Sector	Headquarters
1	RBI - Reserve Bank of India	Banking & Finance and Monetary Policy	Mumbai
2	SEBI – Securities and Exchange Board of India	Securities (Stock) & Capital Market	Mumbai
3	IRDAI - Insurance Regulatory and Development Authority	Insurance	Hyderabad
4	TRAI – Telecom Regulatory Authority of India	Telecommunication & Tariffs and Cyber-Security	New Delhi
5	CBFC – Central Board of Film Certification	Motion picture content rating system	Mumbai
6	FSSAI – Food Safety and Standards Authority of India	Food	New Delhi
7	BIS – Bureau of Indian Standards	Standards and Certification	New Delhi
8	ASCI – Advertising Standards Council of India	Advertising	Mumbai
9	AMFI – Association of Mutual Funds	Stock Exchange	Mumbai
10	EEPC – Engineering Export Promotional Council of India	Trade and Investment	New Delhi
11	FIEO – Federation of Indian Export Organisation	Export	New Delhi
12	INSA – Indian National Shipowners' Association	Shipping	Mumbai
13	ICC – India Chemical Council	Manufacturing	New Delhi
14	ISSDA – Indian Stainless Steel Development Association	Growth and Development	Haryana
15	MAIT – Manufacturers' Association for Information Technology	IT	New Delhi
16	NASSCOM – National Association of Software and Service Companies	IT	New Delhi
17	OPPI – Organisation Of Plastic Processors of India	Manufacturing	Mumbai
18	CDSCO – Central Drugs Standard Control Organisation	Medical Devices and Drugs	New Delhi
19	PEPC – Project Exports Promotion Council of India	Trade	New Delhi
20	IBBI – Insolvency and Bankruptcy Board of India	Finance	New Delhi

VI. Taxation in India

The tax structure in India is divided into direct and indirect taxes.

Direct tax is levied on taxable income earned by persons including inter alia individuals, firms, Association of persons, LLP, and corporate entities. Other than withholding taxes, the onus of depositing the direct tax is on the taxpayer. On the other hand, indirect taxes are levied on the supply of goods and services respectively, which are collected and deposited by the suppliers.

The taxation system in India is such that the taxes are levied by the Central Government and the State Governments. Some minor taxes are also levied by the local authorities such as the Municipality and the Local Governments.

Major Central Taxes

- Income Tax
- Central Goods & Services Tax (CGST)
- Integrated Goods & Services Tax (IGST)
- Customs Duty

Major State Taxes

- State Goods & Services Tax (SGST)
- Stamp Duty & Registration

GST is one of the biggest indirect tax reforms in the Country.
In the recent years, the Government has made certain policy reforms and process simplification towards great predictability, fairness and automation. The Goods & Services Tax (GST) reform is one such reform to ease the complex multiple indirect tax regime in India.

GST is a comprehensive indirect tax levied on supply of goods as well as services at the national level. It has replaced all indirect taxes levied on goods and services by the Central and State Governments. GST regime was implemented from 1st July 2017, and India has adopted the dual GST model in which both the Centre and States levy taxes. The GST is applicable on all goods other than following:

- Alcoholic liquor for human consumption
- Five petroleum products (Petroleum crude, high-speed diesel, motor spirit, natural gas and aviation turbine fuel). GST on these to be levied post notification about the effective date.

GST has subsumed and broadly replaced the following taxes:

- Central Excise Duty Value Added Tax (CENVAT)
- Additional Excise Duty
- Additional Customs Duty (CVD)
- Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- Special Additional Duty of Customs
- Service Tax
- Central Surcharges and Cesses so far as they relate to supply of goods and services
- State VAT / Sales Tax
- Entertainment and Amusement Tax (except when levied by local bodies)
- Central Sales Tax (levied by Centre and collected by State)
- Luxury Tax

- Octroi and Entry Tax
- Purchase Tax
- Taxes on lottery, betting and gambling
- Taxes on advertisement
- State surcharges and Cesses so far as they relate to supply of goods and services

The GST regime comprises of:

- Central Goods and Services Tax Act, 2017 ("CGST Act") which provides for the taxing powers of the Central Government,
- individual State / Union Territory Goods and Services Tax Acts ("SGST Act" and "UTGST Act" respectively) which provide for the taxing powers of each State / Union Territory, and
- the Integrated Goods and Services Tax Act, 2017 ("IGST Act"), which grants exclusive rights to the Centre to tax inter-state commerce.

Under the GST regime the "supply" of goods, or services, or both, is treated as the taxable event, with different taxes applying to inter-state supply and intra-state supply. Every inter-state supply of goods or services is liable to IGST under the IGST Act, while every intra-state supply of goods or services is liable to both CGST under the CGST Act, and SGST / UTGST under the applicable SGST Act / UTGST Act. Supply is treated as either inter-state, or intra-state, depending on the location of the supplier, and the "place of supply" determined in accordance with the provisions of the IGST Act.

GST is generally levied at **nil, 5%, 12%, 18% and 28%** depending on the rate schedule applicable to the supply in question. Most goods and services are taxed at 18%. To prevent cascading of taxes, a uniform input tax credit system is available in respect of input supplies of goods or services used or intended to be used in the provision of output supplies of goods or services or both.

GST is a consumption tax and is typically passed on to the consumer of the good / service as part of the price. As a general rule, the import of goods or services or both into India qualifies as a taxable inter-state supply chargeable to IGST, while the export of goods or services or both from India is treated as a zero-rated supply not chargeable to tax under the GST regime.

Income Tax

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

Category	Due date for filing return of income
A company/an LLP that is required to submit a transfer pricing certificate in Form 3CEB with respect to international transactions	30 November
Other companies/ LLPs	31 October

Non-resident corporations are also required to file a return of income in India if they earn income in India or have a physical presence or economic nexus with India. However, return of income is not required to be filed in India in case the income earned from India consists of only interest or dividend or royalty or fee for technical services subject to fulfillment of certain conditions. Income tax is levied on taxable income earned by individuals and corporate entities. The burden of depositing the income tax is on the assessee themselves. Corporate tax liability needs to be estimated and discharged by way of advance tax on a quarterly basis. Late filing of an return of income and delay in payment or shortfall in taxes attract penalty/interest.

For Indian income tax purposes, income comprises of the following heads of income:

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

Corporations residents in India are taxed on their worldwide income arising from all sources.

Non-resident corporations are taxed on the income earned through a business connection in India or any source in India or transfer of a capital asset situated in India. The term business connection is used in Indian Income Tax Act instead of a Permanent Establishment (PE), as in tax treaties, to tax profits from business. The term business connection is considered wider in its scope than PE.

Withholding taxes

The Indian income tax law provides for deduction of tax at source on different sources of income including salaries, interest on securities, other interest, rental income etc. The withholding tax is applicable on the basis of various thresholds and rates applicable to each type of income as prescribed under the applicable provisions of Act. Credit of withholding taxes is given against gross tax liability, which is determined on the aggregate of all sources of income after reducing allowable deductions as per Income tax Act. Relief under the Double Taxation Avoidance Agreement is available.

Capital Gains

As per the provisions of Income tax Act, tax is levied on capital gains arising from the transfer of a capital asset. On the basis of period of holding, a capital asset is classified as either Long Term or Short Term capital assets. Based on this period of holding, capitals gains are classified as Long term or Short term.

Short term capital gains on listed share & securities are taxable at 15% whereas, short term capital gains on other assets are taxable at normal tax rates. Long term capital gain in case of listed share & securities are taxable @ 10%. In the case of long-term capital gains, the benefit of inflation indexation of the cost of the asset is available. Relief under the Double Taxation Avoidance Agreement is available.

Taxation of dividends

From April 1st 2020, dividend received from domestic companies is taxable in the hands of shareholders. Dividend distributing companies are required to withhold taxes at the rate of 10% for Indian recipient and at the rate of 20% for foreign recipient w.e.f. April 1st, 2020. Relief under the Double Taxation Avoidance Agreement is available.

General Anti Avoidance Rules (GAAR)

The Indian Income Tax Act contains anti-avoidance provisions in the form of GAAR, which provides extensive powers to the tax authority to declare an arrangement entered by a taxpayer to be an Impermissible Avoidance Arrangement (IAA). The consequences include denial of tax benefit either under the provisions of the Income tax Act or the applicable DTAA / MLI.

Double Taxation Avoidance Agreement (DTAA) and Multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting (MLI)

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

***Article 1* – Scope of the Convention** reads as under:

"This Convention modifies all Covered Tax Agreements as defined in subparagraph a) of paragraph 1 of Article 2 (Interpretation of terms)."

***Article 2* -Interpretation of terms**, defines a 'Covered tax agreement' as below:

"a) The term "Covered Tax Agreement" means an agreement for the avoidance of double taxation with respect to taxes on income (whether or not other taxes are also covered):
i) that is in force between two or more:
A) Parties; and/or
B) jurisdictions or territories which are parties to an agreement described above and for whose international relations a Party is responsible; and
ii) with respect to which each such Party has made a notification to the Depositary listing the agreement as well as any amending or accompanying instruments thereto (identified by title, names of the parties, date of signature, and, if applicable at the time of the notification, date of entry into force) as an agreement which it wishes to be covered by this Convention."

Therefore, for the ascertaining the impact of MLI and/or any modification to the respective Parties tax treaties, it is imperative that each such Party has made a notification to the Depository listing the agreement as in Article 2 (a)(i)(Bii) above.

As per the MLI, the DTAA of India becomes a *"Covered Tax Agreement"* as it has made a notification to the depository listing the agreement.

Rate of corporate tax

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

Base tax rates for tax year 2021-2022

(1crore = 10 million)

Particulars	**Base tax rate**
Domestic Companies having turnover ≤ Rs.400 crore in FY 2018-19	25%
Domestic Companies having turnover > Rs.400 crore in FY 2018-19	30%
New manufacturing companies established and registered on or after 1 October 2019 and commencing manufacturing up to 31 March 2023 without availing specified deductions or incentives (optional regime)	15%
Domestic companies may opt for concessional tax rate provided they do not avail specified deductions or incentives	22%
Foreign company	40%
LLP	30%

Surcharge rates for tax year 2020-2021

Status	Income Rs. 1 crore upto 10 crore	Income above 10 crore
Domestic company opting for concessional tax rate at 15% and 22%	10%	10%
Domestic company (other than above)	7%	12%
Foreign company	2%	5%
LLP	12%	12%

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

Tax rates depends on type of entity and broad tax implications entity wise is as under:

Company:

- Tax incidence in the case of a company depends on the residential status of the company, i.e., whether the company has been incorporated in India or its place of effective management lies in India.
- A company incorporated in India is treated as a tax resident of India and is taxed @ 30% on its global income. However, if its turnover is up to INR 400 crore in FY 2019-20, then the applicable rate of tax is 25%.
- It is required to obtain a PAN and TAN, and file an annual return of income.
- Profit repatriation by way of dividend is subject to Dividend Distribution Tax (DDT) in the hands of the shareholder @ 15%.

Limited Liability Partnership (LLP)

- Tax incidence of a LLP depends on the residential status of the LLP, i.e., whether the control and management of its affairs are situated wholly or partially in India.
- An LLP incorporated in India is treated as a tax resident of India and is taxed @ 30% of its global income.
- It is required to obtain a PAN and TAN, and file an annual return of income.
- When LLP distributes its profits to partners, they are not taxed in the hands of the LLP or its partners.

Liaison Office

- A Liaison Office is generally not subject to Income Tax in India, as it cannot conduct business activities and earn profits on account of Indian exchange control regulations.
- It is required to obtain PAN and TAN.
- It is required to file an annual statement of its financial affairs.
- As a Liaison Office cannot generally earn any profits, no repatriation taxes are applicable. Even if there are any unutilized funds available at the time of its closure, they can be repatriated without any exit taxes.

Project Office / Branch Office

- A Project Office / Branch Office is treated as an Indian Permanent Establishment (PE) of its Foreign headquarter. Therefore, it is taxable in respect of its Indian profits @ 40%.
- It is required to obtain a PAN and TAN, file an annual return of income.
- Repatriation of surplus or at the time of closure, Project Office / Branch Office is not subject to any additional taxes.

Individual tax rates

A new and simplified personal income tax regime has been introduced which is optional. Under this scheme, a taxpayer has an option to pay taxes at the new reduced slab rates which are applicable without certain exemptions and deductions. This option can be exercised every year by furnishing the return of income. Taxpayers earning business or professional income, can opt into the regime only once on irrevocable basis.

The two options for slab rates are as below:

Income slab (Rs.)	Old Rate (%)	New Rate (%)
0- 2,50,000	Nil	Nil
2,50,001-5,00,000	5	5
5,00,001-7,50,000	20	10
7,50,001-10,00,000	20	15
10,00,001-12,50,000	30	20
12,50,001-15,00,000	30	25
15,00,001-above	30	30

Rebate of Rs. 12,500 or actual tax payable, whichever is less, is available for resident individuals with total income up to Rs. 5,00,000.

Surcharge applicable is as under:

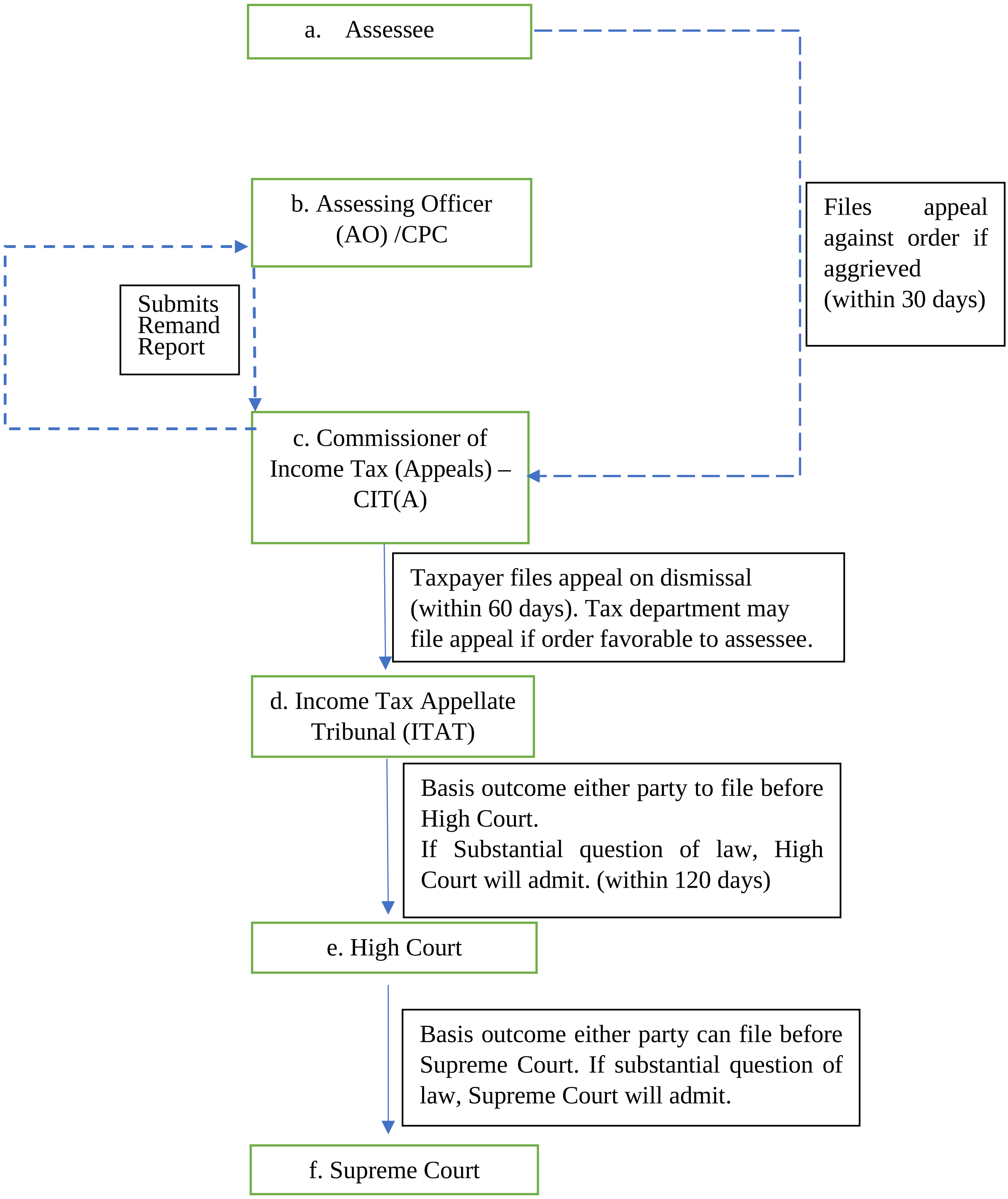
Income slab (Rs.)	Surcharge rate
0–50,00,000	Nil
50,00,001–1,00,00,000	10% of total income tax liability
1,00,00,001–2,00,00,000	15% of total income tax liability
2,00,00,001–5,00,00,000	25% of total income tax liability
5,00,00,001–above	37% of total income tax liability

In cases where surcharge is applicable, marginal relief is allowed to borderline cases.

VII. Tax Litigation Process in India

I. Flowchart showing process

The flowchart below depicts the process, after receipt of assessment order if not to the satisfaction of the taxpayer (assessee) .



Accounting and audit under Indian regulations

In general, all entities conducting business and in India are required to keep books of accounts based on the Indian Generally Accepted Accounting Principles (IGAAP) and annual audited accounts must be filed with concerned Indian authorities.

Useful Websites / Links:

1. *www.mca.gov.in*
2. *www.incometaxindia.gov.in*
3. *www.gst.gov.in*
4. *www.rbi.org.in*
5. *www.sebi.gov.in*
6. *www.investindia.gov.in*
7. *www.ibef.org*
8. *https://dipp.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_0.pdf*
9. *https://fifp.gov.in/Forms/SOP.pdf*

Sources:

1. *www.ibef.org*
2. *www.pib,gov.in*
3. *www.censusofindia2021.com*
4. *en.wikipedia.org*
5. *www.tradingeconomics.com*
6. *www.investindia.gov.in*

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