



Doing business in India

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In this cloudy global horizon, India is a bright spot. Recent policy reforms and improved business confidence have provided a booster shot to economic activity. Using India's new GDP series, the IMF expects growth to pick up to 7.2 percent this fiscal year and accelerate further to 7.5 percent next year—making India the fastest growing large economy in the world.

- MD Speech: Seizing India's Moment, International Monetary Fund, 16 March 2015

After a decisive election victory in May 2014, the government has set ambitious development goals, seeking to transform India into a “prosperous” nation. The government has started implementing reforms spanning a number of areas to achieve these goals.

- World Bank, India development update, April 2015

We assess India's economic strength as High (+) relative to all other sovereigns we rate. The size of its economy, its growth rate and our expectation of continued strong economic growth support this assessment.

- “Now, Moody's says India's economic potential high,” Business Today website, 25 August 2015

The long-term impact of various reforms announced by the Modi government over the past year will reap rich dividends for the country and for its ability to achieve and sustain high rates of growth...

the decisive mandate in the general elections was a very positive development for the economy. The immediate impact was felt in the form of a strong improvement in sentiment.

- K V Kamath, the chief of the New Development Bank set up by the BRICS, Economic Times, 31 May 2015

Foreword

History was made when Mr. Narendra Modi took oath as the Prime Minister of India after the 2014 election. With a promise and vision for reforms, good governance and “aache din” (good days), government was formed by a single political party with a clear mandate in the last 30 years.

In the past year, the Government has taken steps toward creating non-adversarial, business-friendly and more governance-oriented financial and economic environment in India. Measures have also been taken to attract foreign investment, which include easing foreign direct investment (FDI) policy and extended cooperation with many countries (e.g., Japan, the US, etc.). Several schemes have been announced and implemented to address diverse social-economic needs and gaps. The flagship schemes, which have already gained popularity, include “Make in India”. This scheme promotes manufacturing in India to boost job creation and skill enhancement, facilitate investment, foster innovation, protect intellectual property, and build best-in-class manufacturing infrastructure. Other schemes include smart cities, digital India and Swachh Bharat Abhiyaan (Clean India leading cap). These schemes have opened up multifaceted opportunities for multinational corporations (MNCs) such as financial institutions, private equity firms, equipment suppliers, contractors and consultants.

On the tax front, the stated intent of the Government is to have a non-adversarial and conducive tax environment. To support this, the Government has introduced many reforms, including rollback scheme in Advance Pricing Agreement, the strengthening of the Authority for Advance Ruling by the introduction of additional benches, a conducive tax regime for infrastructure investment trusts and real estate investment trusts, the setting-up of a high-level committee to scrutinize fresh cases of indirect transfers arising from retrospective amendments of 2012, conclusive steps to introduce a goods and service tax law which will subsume at least 14 federal and state levies from 1 April 2016. The new Government has recently introduced black money law to tackle undisclosed overseas income and assets.

With policies being liberalized and reformulated for ease of doing business in India, tangible steps have been taken to tackle treaty shopping, retrospective taxation, etc. Recently India has signed an inter-government agreement with US authorities to implement the Foreign Account Tax Compliance Act toward increased transparency between the two countries on tax matters.

The World Bank has projected India's GDP to expand to 7.5% for FY 2015-16 on account of increased economic activity and stability as a result of introduction of new reforms and re-formulation of old policies by the new Government. GDP growth shall further accelerate to 7.9% in 2016-17 and 8% in 2017-18, as per the World Bank.

Among the changing landscape of doing business in India, we have developed this guide to assist business executives to have a quick overview of the finance and demographic profile of India, models under which a company could set an establishment in India and the tax and regulatory framework in India. The book also provides an overview of key sectors in India including recent developments in the respective sectors. The information provided in the book has been validated up to 15 January 2016.

While this book is a guide to understand businesses to operate in India, we strongly recommend consulting our team of experienced professionals to guide you further in your journey before undertaking or planning Indian operations.

We hope you find this publication useful. We will be happy to hear your comments and suggestions at tax.update@in.ey.com.

Rahul Patni

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Ease of doing business



Ease of doing business

Ease of Doing Business is one of the important initiatives run by the Government and is crucial to the success of various initiatives such as Make in India, Start-up India, Digital India, etc.

In the current global environment, where capital is scarce and there are countries competing for attracting the same capital, it is important to make India an investor-friendly destination. The first step toward this objective is to do away with multiple procedures, rules, regulations and red tape and bring more transparency and clarity in policies.

Key initiatives undertaken by the Central Government for ease of doing business in India are highlighted hereunder:

Central Government Initiatives¹:

1. Facilitating investments

- ▶ Investor Facilitation Cell established to provide primary support for all investment queries and for providing handholding and liasioning services to investors
- ▶ Dedicated Japan Plus Cell established to facilitate and speed up investment proposals and augment economic ties between India and Japan
- ▶ Dedicated desk established to facilitate and speed up investment proposals and augment economic ties between India and Korea, China, Canada, the US
- ▶ E-Biz: A single-window online portal, where any investor looking to start a new business or establishing a new industrial unit, can avail core services needed to obtain necessary clearances, licenses, complete mandatory tax registrations and regulatory filing that are required to operate the business/industrial unit
- ▶ Checklist with specific time-lines has been developed for processing all application filed by foreign investors in cases relating to Retail/NRI/Export oriented units
- ▶ Investments in LLP opened up to foreign investors in specific sectors.

¹Source: Government of India - Make in India website (<http://www.makeinindia.com/eodb/central-government-initiatives>)

2. Simplification in administration of labor laws

- ▶ Shram Suvidha – Multiplicity of labor laws and the difficulty in their compliance had always been cited as an impediment to industrial development. In order to redress the same, Government launched an online portal Shram Suvidha, which is expected to facilitate:
 - ▶ Ease of reporting at one place for various labor laws
 - ▶ Consolidated information of labor inspection and its enforcement
 - ▶ Allotment of Labour Identification Number (LIN) to units to facilitate online registration and filing of returns
 - ▶ Real time registration with Employee State Insurance Corporation (ESIC) and Employee Provident Fund Organisation (EPFO)

3. Simplifying operation of business in India

- ▶ Curbing the need of Consent to Establish/No Objection Certificate (NOC) letter for new electricity connections.
- ▶ Online application and monitoring for environmental and forest clearances.
- ▶ Simplification in obtaining industrial licenses:
 - ▶ Simplified forms for obtaining industrial licence and Industrial Entrepreneurs Memorandum (IEM)²
 - ▶ Granting security clearance on Industrial License applications within 12 weeks by Ministry of Home Affairs
 - ▶ Dual use items (defence and civilian items) unless classified as defence items, will not require industrial licenses
 - ▶ Initial validity period of industrial licenses has been increased to three years from two years to enable procurement of land and obtain necessary clearances/approvals from authorities
 - ▶ Frequently asked questions (FAQs) have been developed and uploaded on Department of Industrial Policy & Promotion (DIPP) website
- ▶ Reduction in the mandatory documents required for import and export of goods from eleven to three

²The large scale industry having investment more than INR 10 crore in manufacturing sector and more than INR 5 crore in service sector are primarily which are outside the purview of the licensing provisions and for the items (s) not exclusively reserved for manufacture by Small Scale Industry sector have to file an application for IEM

4. Simplification of various compliance under the Companies Act

- ▶ The Ministry of corporate affairs constituted the Companies Law Committee in June 2015 to examine and make recommendations on the issues arising out of implementation of the Companies Act, 2013.
- ▶ The committee suggested nearly 100 amendments to the new Companies Act to make it easier to do business in India. This includes for simpler laws to incorporate a company and to raise funds, as well as for insider trading and dealings with top executives
- ▶ The Companies Amendment Act, 2015 has been passed to remove requirements of minimum paid-up capital and common seal for companies and certificate of commencement of business for private companies.
- ▶ Introduction of integrated process of incorporation wherein the name of the company can be simultaneously obtained with application for Directors Identification Number (DIN)
- ▶ Single process for incorporation of company, allotment of Permanent Account Number (PAN) and Tax deduction Account Number (TAN)

Moving in line with the Central Government and to attract investment in the states, the State Government took various steps to ease the governance. State government initiatives taken are highlighted hereunder:

State Government initiatives³:

1. Gujarat:

- ▶ Online consent system for environment clearances
- ▶ Geographic Information System (GIS)-based land identification system

2. Maharashtra:

- ▶ Unified process with single identification for Value Added Tax and Professional Tax registration
- ▶ Time required for getting an electricity connection has been reduced to 21 days from 67 days and procedures involved has been cut down to 3 from existing 7
- ▶ Commercial benches established in Bombay High Court to settle high value commercial disputes

³Source: Government of India - *Make in India* website (<http://www.makeinindia.com/eodb/state-government-initiatives>)

3. Punjab:
 - Creation of “Invest Punjab”, as a one-stop clearance system for investment projects
 - Exemption to 131 industries from consent requirement by Pollution Control Board
4. Delhi:
 - Real time allotment of Tax Identification Number (TIN)
 - Commercial benches established in Delhi High Court to settle high value commercial disputes
 - Procedure and time required for new electric connection reduced.
 - Online portal for construction permits for residential, industrial, institutional and commercial buildings
5. Chhattisgarh:
 - Online consent and monitoring system to obtain environmental clearances
 - Validity of consent obtained also extended
6. Puducherry:
 - Green industries exempted from inspection by Pollution Control Committee
7. Karnataka:
 - Checklist for 86 government services and delivery timelines across 23 departments/organizations made available on Karnataka Udyog Mitra, an online portal to facilitate investment in the state
8. Uttarakhand:
 - Replacement of static check posts established by the commercial tax department for checking of the goods at the point of their import into the state with mobile squads



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Chapter A

A large flock of birds, possibly cranes or herons, is captured in flight against a clear blue sky. The birds are scattered across the upper two-thirds of the frame, with some in sharp focus and others blurred due to motion. Below them, a vast, dry, and dusty landscape stretches out, dotted with low-lying green shrubs and a few trees. In the foreground, a dense, tightly packed group of birds is gathered on the ground, their light-colored feathers creating a textured, almost white surface. The overall scene conveys a sense of natural beauty and the scale of wildlife in India.

India: at a glance

India: at a glance

India's fact sheet		
Geographical profile	Capital	New Delhi
	Administration	29 States and 7 union territories
	Neighbouring countries	Afghanistan, Bangladesh, Bhutan, China, Myanmar, Nepal, Pakistan and Sri Lanka
	Total area	<ul style="list-style-type: none"> 3.29m sq km (90% land, 10% water) 53% land arable
	Climate	Temperate in the north and tropical monsoon in the south
	Natural resources	Coal (fourth-largest reserves in the world), iron ore, manganese, mica, bauxite and others
	Railways	68,525 km
	Roadways	4.69m km
	Waterways	14,500 km
	Airports	346
Demographic profile	Population (2015 estimates)	<ul style="list-style-type: none"> 1.2b (urban: 32.7%, rural: 67.3%) Population growth: 1.22% (y-o-y)
	Birth rate	19.55 births per 1,000 population
	Life expectancy	Overall: 68.13 years (Males: 66.97 years, Females: 69.42 years)
	Death rate	7.32 deaths per 1,000 population
	Sex ratio	1.12 males per female
	Age structure	0-14 years (28.1%), 15-64 years (66%), 65 years+ (5.9%)
	Median age	Median age: 27.3 years (male: 26.7 years, female: 28 years)
Cultural diversity	Religions	Hinduism, Islam, Christianity and Sikhism are the four main religions in India
	Language	Hindi is the country's official language. There are 21 officially recognized languages in total. English is widely used in national, political and commercial communication

India's fact sheet		
Education and labor force	Literacy rate	<ul style="list-style-type: none"> ▶ 71.2% (male: 81.3%, female: 60.6%) ▶ India has one of the world's largest school-age population and a well- developed education system
	Labor force	492.4m in 2014
Political profile	President	Pranab Mukherjee (tenure: 5 years)
	Prime Minister	Narendra Modi (tenure: 5 years)
Economic profile	GDP	US\$2.2t (current prices, 2015), GDP growth: 7.3% in FY16
	Private consumption	US\$1.3t in 2015 and expected to reach US\$3.1t in 2030
	Saving rate (as % of GDP)	31% in 2014, world average (~22%)
	FDI (2014)	<ul style="list-style-type: none"> ▶ FDI inflows stood at US\$25b ▶ India most favored nation for foreign investors ▶ Top investors: US, UAE, Japan, New Zealand and Germany ▶ Top sectors: Financial services, logistics, consumer products, TMT* and automotive
	Trade (FY15)	<ul style="list-style-type: none"> ▶ Imports: US\$447b, Exports: US\$310b, Trade deficit: US\$137b ▶ Target of US\$900b exports by 2020 as per new Foreign Trade Policy
Financial market	Central bank	Reserve Bank of India, established in 1935
	Capital markets regulator	Securities and Exchange Board of India, established in 1992
	Major stock exchanges	<ul style="list-style-type: none"> ▶ Bombay Stock Exchange established in 1875 ▶ National Stock Exchange established in 1992



Chapter **B**



India: resetting the ambition

B.1 Renewed optimism

B.2 Macroeconomic outlook

India: resetting the ambition

B.1 Renewed optimism

Several initiatives have been launched to ease doing of business in India. This has renewed investor confidence and set a track record for strong growth in coming years.

B.1.1 Boost to manufacturing through “Make in India”⁴

Launched in September 2014, the “Make in India initiative” aims to achieve long-term sustainable growth of 10% in manufacturing. The overall aim is to build best-in-class manufacturing infrastructure by enabling investments, boosting innovation, encouraging skill development and strengthening intellectual property protection. This initiative focuses on 25 sectors.

Key highlights:

- ▶ The Government is pushing for import substitution by encouraging local manufacturing of up to 181 imported products
- ▶ New reforms have been introduced for the labor market, including a single-window labor compliance process for industries, more user-friendly provident fund facilities, and a new inspection scheme
- ▶ The Department of Industrial Policy and Promotion (DIPP) is encouraging advanced manufacturing by deregulating a large number of products such as defense items, from the purview of industrial licensing
- ▶ The Government has eased FDI limits in several high value-added sectors such as telecom, retail, defense, construction and railways

Achievements till now:

- ▶ In first half of 2015 (1H15), FDI inflows to the manufacturing sector were more than three times those recorded in 1H14
- ▶ Investment commitments from many major countries:⁵

Countries	Investment commitment
US	US\$42b over the next two to three years
Canada	US\$1.4b in defense, energy, mining and infrastructure
China	Over US\$20b in India's infrastructure over the next five years
Japan	US\$35b in Indian infrastructure projects
South Korea	Plans to invest US\$10b in India for infrastructure related projects

⁴“Home,” Make in India website, <http://www.makeinindia.com/>, accessed 15 May 2015.

⁵EY's attractiveness survey: India, EY, 2015.

B.1.2 Focus on urbanization through creation of “smart cities”⁶

In September 2014, the GoI launched a “Smart Cities” campaign with the objective to develop 100 smart cities by 2022. As a first step, the Government has cleared a sum of INR500b (US\$8.4b) for the development of smart cities in five years.

Key highlights:

- ▶ This initiative is expected to boost the real estate, technology, media and telecom (TMT) and construction sectors. In the construction sector, the Government has allowed 100% FDI under the automatic route and reduced the minimum capital requirement to US\$5m from US\$10m
- ▶ According to market research firm IDC, more than INR20b (US\$330m) will be invested in the technology sector, driven by the smart cities initiative

Achievements till now:

- ▶ France has committed €2b (US\$2.2b) to help India build Chandigarh, Puducherry and Nagpur as smart cities⁷
- ▶ The US has also shown commitment in developing three smart cities including Allahabad, Ajmer and Vishakhapatnam⁸
- ▶ China Small and Medium Enterprise Investment Ltd is investing US\$3b in developing smart cities in Gujarat⁹

⁶“Smart cities - Transforming Life - Transforming India,” <http://indiansmartcities.in/site/index.aspx> accessed 12 April 2015; India’s urban explosion: “India on brink of urban revolution: Unbacked report,” 17 September 2014, The Economic Times, http://articles.economictimes.indiatimes.com/2014-09-17/news/54025181_1_urban-population-climate-summit-urban-revolution; “India’s urban challenge,” 20 January 2013, Mint <http://www.livemint.com/Home-Page/DQwAhxYdc7BJn53pVs2OeP/Indias-urban-challenge.html>

⁷France to invest 2 bn euros in India; help in development of three smart cities,” Economic Times, http://articles.economictimes.indiatimes.com/2015-04-10/news/61017649_1_three-smart-cities-pm-modi-uncsc, accessed 15 May 2015

⁸US, India sign pact for developing 3 smart cities in country,” Times of India website, <http://timesofindia.indiatimes.com/India/US-India-sign-pact-for-developing-3-smart-cities-in-country/articleshow/46014513.cms>, accessed 14 May 2015

⁹EY’s attractiveness survey: India, EY, 2015.

B.1.3 “Digital India” initiative to drive technology sector in India

Digital India is a US\$17.7b (INR1.13t) government initiative, which aims to create an electronically connected economy, attract investment in electronics manufacturing, create millions of jobs and support trade¹⁰.

Key highlights:

- ▶ Under the “Digital India” initiative, also known as “e-Kranti,” the Government aims to provide digital access to all citizens in both urban and rural areas. The initiative is expected to add US\$1t to the economy by 2025¹¹
- ▶ It seeks to expand rural internet coverage from 130,000 villages to 250,000 villages by 2017
- ▶ The Government has allocated US\$0.4b (INR25.1b) for the project in the FY16 budget. It also plans to invest US\$75-84m to provide basic computer education with the assistance of private companies¹²
- ▶ As a result of this initiative, there exist several opportunities in the fields of IT services (hardware and software), shared service centers, knowledge services, data analytics, mobile and wireless services, business process management and IT consulting

Achievements till now:

- ▶ Technology giant, CISCO, has announced plans to invest US\$1.7b in 2015 in areas such as R&D and innovation with a keen focus on collaborating with the leading cap in its “Digital India” initiative¹³
- ▶ US based technology company, EMC, also plans to invest heavily in India, as it eyes new opportunities arising due to the initiative in areas such as software development¹⁴

¹⁰Smart Cities find no mention in Budget 2015,” *The Economic Times*, http://articles.economictimes.indiatimes.com/2015-02-28/news/59613011_1_smart-cities-digital-india-programme-union-budget, accessed 14 May 2015

¹¹New tech may add a trillion dollars to GDP by 2025,” *Business Standard*, http://www.business-standard.com/article/companies/new-tech-may-add-a-trillion-dollars-to-gdp-by-2025-study-114121700024_1.html, accessed 14 May 2015

¹²Smart Cities find no mention in Budget 2015,” *The Economic Times*, http://articles.economictimes.indiatimes.com/2015-02-28/news/59613011_1_smart-cities-digital-india-programme-union-budget, accessed 14 May 2015

¹³Cisco to invest \$1.7 bn in India this year; to partner Centre’s digital drive,” *The Economic Times*, http://articles.economictimes.indiatimes.com/2014-11-17/news/56174574_1_digital-india-cisco-india-dinesh-malkani, accessed 14 May 2015

¹⁴EMC to invest heavily in India,” *The Economic Times*, http://articles.economictimes.indiatimes.com/2015-05-08/news/61947594_1_digital-india-emc-india-infrastructure, accessed 14 May 2015.

B.1.4 Pradhan Mantri Jan Dhan Yojana (PMJDY): financial access for every citizen

PMJDY is a national mission, which was launched with the objective to provide banking and financial services to all sections of the society in an affordable manner. These services include banking/savings and deposit accounts, remittance, credit, insurance and pension.

Key highlights:

- ▶ PMJDY aims to ensure that at least one member in every Indian household has a bank account and an insurance cover of INR100,000
- ▶ The campaign aims to cover 75m households and provide a wide range of financial services to all citizens by tapping the unbanked population in the country¹⁵

Achievements till now:

- ▶ According to the Guinness Book of World Records, this campaign is the world's largest financial inclusion mission¹⁶
- ▶ Within a period of 15 months, as of December 2015, the Government has opened more than 195m bank accounts¹⁷

B.1.5 Emphasis on improving the health and environment through "Swachh Bharat Abhiyan"

This program is focused on building and improving sanitation facilities, clean and adequate water supply and waste disposal facilities in India.

Key highlights:

- ▶ The objective is to create a clean India by 2 October 2019
- ▶ The programs could add between US\$26b to US\$35b to the economy by 2019 through involvement of many private players¹⁸

¹⁵Pradhan Mantri Jan-Dhan Yojana, http://www.pmjdy.gov.in/scheme_detail.aspx, accessed 12 May 2015

¹⁶Jan Dhan Yojana makes it to Guinness World Records, 11.5 cr Jan Dhan accounts opened," *The Economic Times website*, http://articles.economictimes.indiatimes.com/2015-01-21/news/58305891_1_pmjdy-bank-accounts-jan-dhan-yojna, accessed 14 May 2015

¹⁷Jan-Dhan Yojana: 19.5 crore accounts in 15 months," *Indian Express*, <http://indianexpress.com/article/india/india-news-india/jan-dhan-yojana-19-5-crore-accounts-in-15-months/>, accessed 29 January 2016.

¹⁸Swachh Bharat' drive may give economy Rs.1.65-lakh cr boost," *The Hindustan Times*, <http://www.hindustantimes.com/india-news/swachh-bharat-drive-may-give-economy-rs-1-65-lakh-cr-boost/article1-1253941.aspx>, accessed 15 May 2015

B.1.6 “Startup India, Standup India” initiative to help boost entrepreneurship¹⁹

Launched in January 2016, this initiative aims to boost start-up ventures as a means to promote entrepreneurship and job creation in India.

Key highlights:

- ▶ It provides incentives such as three-year income tax exemption and concessions on capital gains tax to start-up ventures
- ▶ Under the initiative, the GOI will create a fund worth INR100b (US\$1.5b) to back startups
- ▶ The GOI has announced the establishment of a Startup India Hub, which act as a single point of contact for interactions with the government
- ▶ The initiative entails the establishment of the Atal Innovation Mission (AIM) for promotion of R&D including 500 tinkering labs, 35 public-private sector incubators, 31 innovation centers at national institutes, 7 new research parks and 5 new bio-clusters

B.1.7 Other recent programs:

- ▶ In April 2015, the GOI unveiled a new **Foreign Trade Policy (FTP)**, which targets to nearly double India's exports to US\$900b by 2020. Five existing schemes to promote merchandise exports have been brought under a single Merchandise Exports from India Scheme (MEIS). The Served From India Scheme (SFIS) has been replaced by the Service Exports from India Scheme (SEIS)²⁰
- ▶ **Jan Dhan Yojana, Aadhaar and Mobile number (JAM)** trinity has been launched to deliver direct benefits to India's poor and keep inefficient distribution of subsidies under control²¹
- ▶ In May 2015, the Lok Sabha approved the Constitutional Amendment Bill to introduce the Goods & Services Tax, which aims to bring multiple taxes, such as octroi, CENVAT, central sales tax, state sales tax, under a single regime and thereby, eliminate their complexity²²

¹⁹Start Up India, Stand Up India: 19 exciting plans for start-ups,” India Today website, <http://indiatoday.intoday.in/education/story/start-up-india-stand-up-india/1/573128.html>, accessed 29 January 2016.

²⁰New foreign trade policy: \$900 bn exports by FY20,” Indian Express website, <http://indianexpress.com/article/business/business-others/new-foreign-trade-policy-900-bn-exports-by-fy20/>, accessed 15 May 2015.

²¹All you wanted to know about: JAM Trinity,” The Hindu BusinessLine website, <http://www.thehindubusinessline.com/opinion/columns/all-you-wanted-to-know-about-jam-trinity/article6952071.ece>, accessed 15 May 2015.

²²GST Bill passes Lok Sabha test,” The Financial Express website, <http://www.financialexpress.com/article/economy/gst-bill-is-not-a-dancing-instrument-says-fm-arun-jaitley/69830/>, accessed 15 May 2015.

- ▶ In May 2015, the GoI also launched a **single form called INC-29**, which will replace the eight forms that had to be filed earlier to start a business²³
- ▶ **Skill India** aims to provide high-quality education and training to 500m Indian youngsters by 2020²⁴
- ▶ Other initiatives include the **Payments and Settlement Systems (Amendment) Bill 2014**, which aims to address the insolvency issue in the payment and settlement system as well as the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Second Bill 2015**, which would help in expediting infrastructure projects²⁵
- ▶ The Government launched an “e-biz” portal in February 2015 that integrates 14 regulatory permissions in one place to facilitate easy approvals. Over time, all state and central government-to-business (G2B) services will be integrated to the portal in a bid to further ease doing business in India

B.2 Macroeconomic outlook

NDA's has been at the helm of Indian economic policy for more than one and a half years now. The Central Government had the opportunity to present two budgets, one for FY15 and another for FY16. The FY17 budget is due to be presented in February 2016. The Report of the Fourteenth Finance Commission was tabled ushering in a new era of center-state financial relations. The Niti Aayog was set up to replace the erstwhile Planning Commission. International crude oil prices fell although currently these are rising again. India's GDP data were revised with 2011-12 as the new base along with significant methodological changes.

Economic growth

The new National Accounts Series has uplifted GDP growth. The real GDP growth of 4.7% and 5% for FY13 and FY14, respectively (using 2004-05 series) were revised upward to 5.6% and 6.6% (using 2011-12 series). According to the first revised estimates, in FY15, India's growth was 7.2%. In the central budget for FY16, growth was seen to be in the range of 8.1% to 8.5%. However, major international agencies including the IMF, World Bank and the Asia Development Bank have projected India's growth in the range of 7.5% to 7.8%.

²³Modi govt launches single-form registration for new businesses,” Business Standard website, http://www.business-standard.com/article/economy-policy/modi-govt-launches-single-form-registration-for-new-businesses-115050100326_1.html, accessed 15 May 2015.

²⁴Prospects for Indo-German Collaboration in High-Technology Manufacturing, EY, April 2015.

²⁵Parliament Passes Payments and Settlement Bill,” NDTV website, <http://www.ndtv.com/india-news/parliament-passes-payments-and-settlement-bill-758644>, accessed 15 May 2015; “Lok Sabha passes Land Acquisition Bill with nine amendments, Congress stages walk out,” Indian Express website, <http://indianexpress.com/article/india/india-others/parliament-live-voting-underway-in-lok-sabha-on-land-acquisition-bill/>, accessed 15 May 2015.

While the new GDP growth numbers continue to be disputed, alternative indicators of economic activity give conflicting signals. As Table 1 indicates, the general index of industrial production shows an annual growth of only 2.8% for FY15, and a year-on-year contraction of (-) 3.2% in November 2015.

Table 1: Growth of Index of Industrial Production (2004-05=100)

	General	Mining	Manufacturing	Electricity
FY13	1.1	-2.3	1.3	4.0
FY14	-0.1	-0.6	-0.8	6.1
FY15	2.8	1.5	2.3	8.4
3QFY15	2.0	2.1	1.1	9.4
4QFY15	3.3	0.3	3.7	3.7
1QFY16	3.3	0.4	3.7	2.3
2QFY16	4.8	2.9	4.7	6.8
Aug-15	6.3	4.5	6.6	5.6
Sep-15	3.8	3.0	2.9	11.4
Oct-15	9.9	5.2	10.6	9.0
Nov-15	-3.2	2.3	-4.4	0.7

Source (Basic Data): Office of Economic Advisor, Government of India

Budget 2016 and Fiscal Policy²⁶

The first full-year budget of the BJP Government was eagerly awaited by both domestic as well as international community. The main highlights of the Union Budget 2016 were as follows:

- ▶ Government maintained the fiscal deficit target of 4.1% of GDP for FY15 and budgeted for a fiscal deficit to GDP ratio of 3.9% for FY16 compared with the previous target of 3.6%, asking for one more year to reach the Fiscal Responsibility and Budget Management Act, 2003 (FRBMA) target of 3% by FY18. Recently released provisional estimates by the Ministry of Finance indicate the fiscal deficit to GDP ratio to be 4% for FY15²⁷
- ▶ Against a budgeted tax-revenue growth target of 17.7% growth in FY15, the Government could achieve a tax revenue growth of more than 10%

²⁶Key features of Budget 2015-2016," India Budget website, <http://indiabudget.nic.in/ub2015-16/bh/bh1.pdf>, accessed 14 May 2015

²⁷Monthly Accounts, March 2015, Controller General of Accounts, Ministry of Finance, Government of India, CGA website, <http://www.cga.nic.in/>, accessed 28 May 2015

- ▶ As recommended by the 14th Finance Commission²⁸, 42% of the central taxes will be transferred to the states reducing the fiscal space for the Central Government while increasing the autonomy of states
- ▶ Overall the Government's fiscal stance is contractionary, since budget growth of total expenditure is limited to 5.7% (Table 2) and plan expenditure actually declined

Table 2: Major heads of central government expenditure (INR billion)

Expenditure Heads	2014-15 Actual	2015-16 BE	Actuals FY16 (Apr-Nov)	% Change in FY16 BE over FY15 RE	Actuals FY16 (Apr-Nov) as % of FY16 BE
Non-plan expenditure	121,322	131,220	84,429	8.2%	64.3%
Plan expenditure	46,793	46,528	29,802	-0.6%	64.1%
Total expenditure	168,116	177,748	114,231	5.7%	64.3%
Major subsidies	25,391	22,739	16,844	-10.4%	74.1%

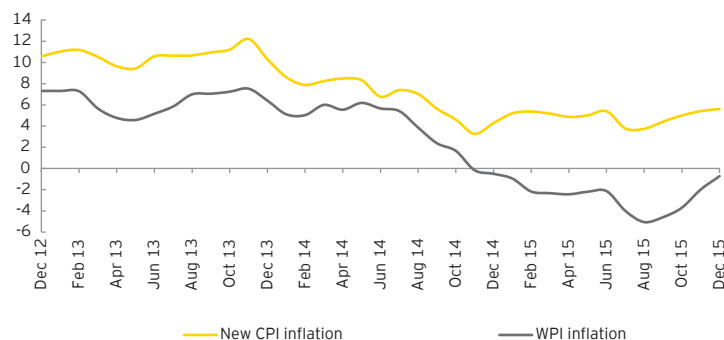
Source (Basic Data): Union Budget - FY2016

Inflation

On the inflation front, there has been some success although this is partly attributable to the fall in international crude oil prices. The CPI-based inflation²⁹ has stayed below 6% since October 2014 and is 4.9% in April 2015 while the WPI-based inflation has remained below zero since November 2014. Annual CPI inflation accelerated to 5.6% (y-o-y) in December 2015, led by higher inflation in selected food items. Meanwhile, WPI inflation declined by (-) -0.7% during the month. Rising trend in food inflation is worrisome given that it has the largest weight in the overall CPI.

²⁸Report of the Fourteenth Finance Commission, February 2015, Finance Commission India website, <http://finmin.nic.in/14fincomm/14thFinanceCommission.htm>, accessed on 8 May 2015

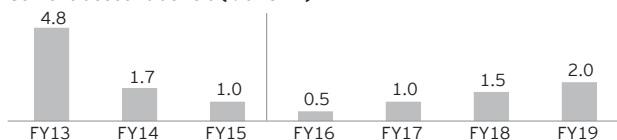
²⁹RBI Handbook of Statistics on Indian Economy - Real Sector Indicators (Monthly), Database on Indian Economy, RBI Website <http://dbie.rbi.org.in/DBIE/dbie.rbi?site=home>, accessed 28 May 2015

Chart 1: Monthly CPI and WPI inflation (year-on-year)

Source (Basic data): Central Statistical Office (CSO), Government of India

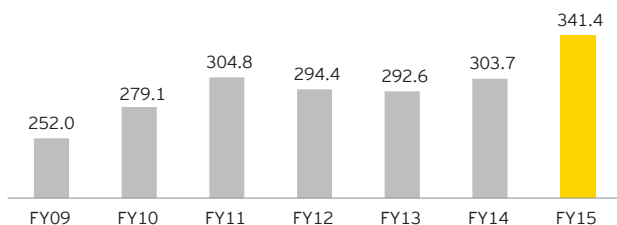
Targeted action to counter the current account deficit: Confronted with a large current account deficit, the Government has taken actions to ease it. While low oil prices have provided a respite, the Government has deregulated diesel prices in India, which is expected to reduce the fuel subsidy bill to 0.4% from 0.8% of GDP in FY15.³⁰ The RBI has also imposed restrictions on gold imports to keep the current account deficit in check.

Current account deficit (% of GDP)



Source: Centre for Monitoring Indian Economy (CMIE), accessed 15 May 2015

Foreign exchange reserves (US\$b)



Source: Centre for Monitoring Indian Economy (CMIE), accessed 15 May 2015

³⁰"Diesel Deregulation Frees Up Bns for Wiser Spending," The Wall Street Journal, <http://blogs.wsj.com/indiarealtime/2014/10/22/diesel-deregulation-frees-up-bns-for-india-to-spend-more-wisely/>, accessed 14 May 2015

Insulation from external shocks: The Government has also accumulated ample foreign reserves to tackle any major external shocks.

Summing up

Exports contracted by 2.0% in FY15 compared with a strong growth of 4.7% in FY14. Reflecting weak external demand, exports witnessed a contraction for the 13th straight month till December 2015³¹. Although the NDA Government has taken several new initiatives, including “Make in India” and “Jan Dhan Yojana” as well as several bilateral agreements with some of the major economic powers across the globe, tangible benefits in terms of increased saving and investment have not become visible. However, the decline in the inflation rate lays the foundation for reduced interest rates supported by the tight leash on fiscal deficit. The RBI reduced the repo rate four times from 8.0% to 6.75%, by a total of 125 basis points, since January 2015³². Eventually, a virtuous cycle of reduced interest rate, improved credit, increased investment, and increased domestic demand for goods and services may get initiated resulting in sustained increase in India's growth rate to close to 8%.

³¹RBI Handbook of Statistics on Indian Economy - External Sector (Monthly), Database on Indian Economy, RBI website, <http://dbie.rbi.org.in/DBIE/dbie.rbi?site=home>, accessed 01 February 2016

³²RBI Weekly Statistical Supplement, Ratio and Rates, Database on Indian Economy, RBI Website <http://dbie.rbi.org.in/DBIE/dbie.rbi?site=home>, accessed 01 February 2016



Chapter C

Key sectors: an overview

- C.1 Aerospace and defense**
- C.2 Automotive**
- C.3 Banking**
- C.4 Capital markets**
- C.5 Health sciences**
- C.6 Information technology**
- C.8 Media and entertainment**
- C.9 Oil and gas**
- C.10 Ports**
- C.11 Power and utilities (including cleantech)**
- C.12 Real estate**
- C.13 Retail and consumer products**
- C.14 Roads and highways**
- C.15 Telecommunications**
- C.16 Digital and e-commerce**

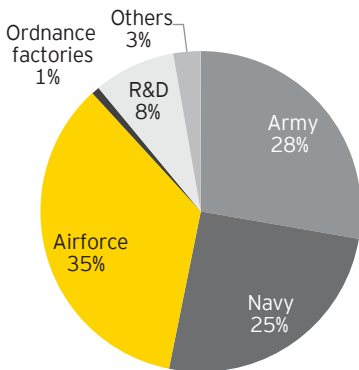
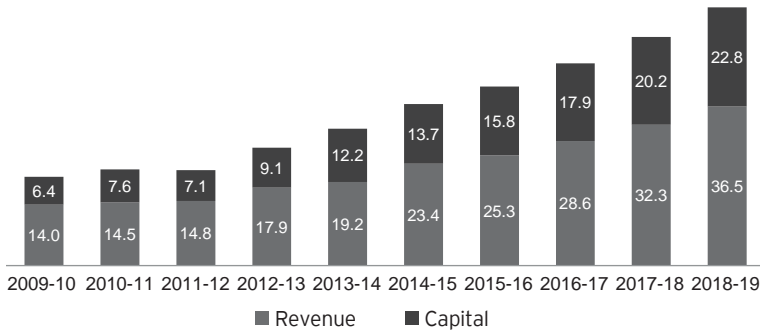
Key sectors: an overview

C.1 Aerospace and defense

The aerospace and defence industry is expected to be approximately US\$130b over the next five to seven years³³. The defence spending has been increasing over time in the light of volatile neighboring countries, internal security issues and the need to upgrade or replace legacy equipment.

Components of the capital budget 2015

India Defence Budget(a) (US\$b)



³³http://planningcommission.gov.in/aboutus/committee/wrkgrp12/Wg_defence_equipment.pdf

For FY16, the defence budget has been pegged at US\$41.12b. Out of this, capital expenditure, which caters primarily to the acquisition of defence hardware and modernization requirements of defence services, accounts for US\$15.76b. The revenue expenditure, which mainly accounts for the “operating expenditure,” is pegged at US\$25.3b.

The Ministry of Defence (MoD) has made it amply clear that in the upcoming Defence Procurement Procedures (DPP 2016) it will give preference to those categories of procurement that mandate the indigenous design; development and manufacture of defence equipment.

Regulatory scenario

a. FDI

Under the “Make in India” campaign, the foreign investment cap in defence has been increased up to 49% through the automatic route for companies manufacturing products that appear in the newly announced Defence Products List. Up to 100% overseas ownership may be allowed for “state-of-the-art-technology”, based on government approval route.

b. Defence procurement procedures (DPP)

DPP 2013 essentially lays down the procurement procedure of all capital acquisitions (except medical equipment) undertaken by the MoD, the Defence Services and Indian Coast Guard – both from indigenous sources and imports. The latest version of DPP, i.e., DPP 2013 is applicable to projects announced on or after 1 June 2013. A revised version of the DPP is currently in the draft stage and is expected to be released within the current quarter.³⁴

c. Offset policy

GoI introduced “Offset policy” in its efforts to indigenize the production of defence equipment.

The Indian offset policy requires a foreign company to invest a minimum of 30% of the indicative cost of the project in the designated sector of the Indian economy if the contract is valued at more than INR3b (US\$50m). The designated sectors include defence, civil aerospace and internal security sectors. The revised offset policy under DPP 2016 is expected to enhance the threshold value to INR20b (US\$330m).

³⁴(http://www.business-standard.com/article/economy-policy/dpp-2016-to-be-released-next-month-parrikar-116012200066_1.html)

d. Industrial licensing

The defence sector is also subject to an industrial license (IL) regime, which is provided by the DIPP and Ministry of Commerce, in consultation with the MoD. The DIPP announced a list of licensable defence items on its website in June 2014 through the Press Note 3 of 2014. For other products an IL is not required.

In the wake of “Make in India” initiative, the Government has recently extended the validity of defence IL from 3 years to 15 years³⁵.

Recent developments and industry outlook

In the Eleventh Plan, India's Defence Budget grew at a CAGR of approximately 13%³⁶, and India emerged as one of the most promising markets for global aerospace and defence companies. There has been an increasing focus on moving on from a buyer-seller to a collaborator, joint developer, etc.

As part of the enhanced reform process, the Government announced relaxations in the defence export policy in September 2014. These included announcing a strategy for defence exports, announcement of a standard operating procedure for the issue of no objection certificate and a framework for governmental assistance to promote Indian defence exports globally.

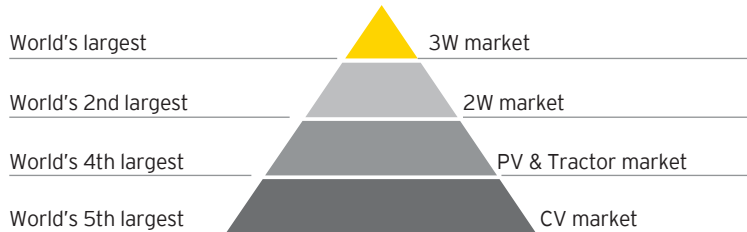
The Indian MoD has recently announced a slew of programs under procurement categories that involve indigenous manufacture of defence equipment and this trend is expected to continue for all major capital procurements.

³⁵(http://www.business-standard.com/article/pti-stories/govt-enhances-defence-industrial-licence-validity-to-15-years-115092201157_1.html)

³⁶EY analysis from past budgetary provisions

C.2 Automotive

Introduction



Source: SIAM (<http://indianauto.com>)

- ▶ The Indian automotive market is one of the major auto markets in the world with an estimated market size reaching US\$145b by FY16³⁷
- ▶ All global car majors have invested in India to leverage on the potential market opportunity as also given its logistical and locational advantage
- ▶ Well-connected ports and proximity to South Asian and African markets make India an ideal location to develop as a regional manufacturing and export hub

Regulatory scenario

- ▶ FDI of up to 100% is allowed under the automatic route
- ▶ With the "Make in India" campaign, the GoI aims to develop India as a global manufacturing and export hub with strong focus on R&D and infrastructure development
- ▶ NATRiP (R&D centers) and Automotive Mission Plan (2006-2016) with special focus on exports, electric cars³⁸ (which is expected to be a sizeable market) are some of the prestigious initiatives of the GoI
- ▶ Other "Make in India" initiatives include Government assurance to process clearances to be progressively web-enabled³⁹, single window clearance for units in NIMZ, etc
- ▶ The impending GST is expected to simplify the indirect tax structure, improve credit chain, and eliminate cascading effect of taxation.
- ▶ Much awaited GST is expected to simplify the indirect tax structure, improve credit chain, eliminate cascading effect of taxation announced (to be introduced in 2016)

³⁷India Brand Equity Foundation (ibef) report on automobile sector - March 2015 (Page 5)

³⁸ibef report on automobile sector - March 2015 (Page 30)

³⁹Make in India (<http://www.makeinindia.com/policy/national-manufacturing>)

Incentives

- ▶ A 200% weighted deduction on R&D expenditure investment allowances and certain area-based incentives under the IT Act
- ▶ Majority of state governments offer additional incentives for vehicle manufacturers
- ▶ Reduction in tax rate on royalty and technical service payments of 10% to encourage import of technology
- ▶ Liberalization of alternatives for funding Indian businesses
- ▶ New FTP 2015–2020 to enhance export competitiveness of India for goods produced in India⁴⁰

Recent developments and industry outlook

- ▶ With capacity utilization remains low at 55%⁴¹, there is a scope to explore the existing facilities
- ▶ YoY sales growth shifted to developed markets (5%) from emerging markets (1%) in 2014⁴²; the trend is likely to reverse again in favor of emerging markets in next few years
- ▶ With ever increasing population of HNI individuals, luxury cars gain traction with luxury SUV segment growing at around 50%⁴³
- ▶ Furthermore, growth in the CV segment for FY16 is estimated to be driven by medium and heavy vehicles⁴⁴
- ▶ With deregulation of diesel, its cost advantage over petrol is eroding, resulting in shift of customer preference toward petrol models⁴⁵
- ▶ Rate cuts and deflationary dynamics will reduce car loan rates, lending support to new vehicle sales

⁴⁰EY India's FTP Alert dated 2 April 2015 (Background and highlights)

⁴¹News Article on Hyundai India tops manufacturing capacity utilisation dated 27 May 2014 published in Indian Autos Blog (also referred in article in the Economic times dated 27 May 2014 - <http://auto.economictimes.indiatimes.com/news/industry/auto-companies-await-new-government-to-crank-up-idle-capacities/35625712>)

⁴²Changing lanes 2015-16 - The automotive C-suite's agenda: EY's publication on Auto sector's priorities for the next 18 months (Facts and Background: Demand from BRICS and other emerging markets - Page 4)

⁴³Ibef report on automobile sector - March 2015 (Notable trends - Page 18)

⁴⁴News Article on India Ratings revises outlook on domestic auto sector dated 20 January 2015 published in Livemint (<http://origin-www.livemint.com/Industry/PsTWizoOF0mggcifGBkHRM/India-Ratings-revises-outlook-on-domestic-auto-sector.html?>)

⁴⁵Business Monitor International - India Autos Report Q2 2015 as a part of Part of BMI's Industry Report & Forecasts Series (Industry Forecast: Passenger Vehicles - Page 24)

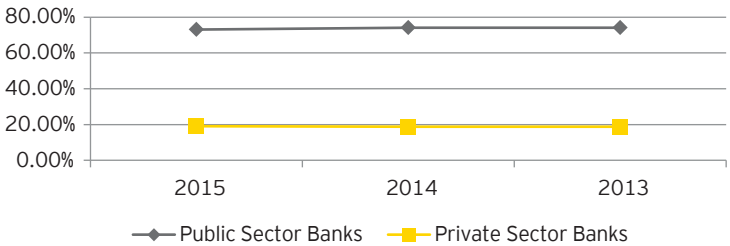
With all major global OEMs already in the market, the Indian automobile market is estimated to grow significantly and should account for more than 5% of the global vehicle sales. According to industry forecasts, India is expected to become the fourth-largest automobile producer globally by 2020 after China, the US and Japan⁴⁶.

In totality, riding on the new Government's pro-business stance, automakers and suppliers retain their long-term confidence in the market and continue to invest in India.

C.3 Banking

Financial markets in India have acquired increased depth and liquidity over the years with banks dominating this space. Banking is a highly regulated and administered sector given their ability to withstand stress is critical for overall financial stability.

Banking sector reforms have encouraged new market entry of private players and foreign banks, making the banking sector a more market-driven one with increased efficiency and productivity. We have provided below a table depicting the deposit market share of the public sector banks and the private sector banks as at 31 March of every year:⁴⁷



Commercial banks have adopted prescribed Basel III capital and liquidity standards as well as new prudential compensation practices. In addition to this, various institutional mechanisms and tools to monitor systemic risks have been put in place.

Regulatory scenario

Regulator: The sector is regulated by the Reserve Bank of India (RBI). Key enactments governing this sector include the Banking Regulation Act, 1949; the RBI Act, 1934; and the Companies Act. The RBI conducts regularly reviews

⁴⁶Ibef report on auto components - March 2015 (Growing automobile components - Page 3)

⁴⁷Public Sector Banks: At Cross Road - Speech delivered by Shri R. Gandhi, Deputy Governor at the "Indian PSU Banking Industry: Road Ahead" Summit organized by Bengal Chamber of Commerce and Industry on January 10, 2015 at Kolkata)

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.

FDI policy in banking

Description	Limits
Total aggregate foreign investment in private banks from all sources (FDI, FII and NRI)	Cap of 74%
Individual FIIs	Cap of 10%
Aggregate limit for all FIIs	Cap of 24% which can be raised to 49% (if more than 49% is invested, then Govt's approval will be required)
Paid-up capital of private banks will be held by Indian residents except in the case of wholly owned subsidiaries of foreign banks	At least 26%

The FDI norms are not applicable to public sector banks, where the FDI ceiling is still capped at 20%.

Voting rights in private sector banks are capped at 10%, which can be raised to 26% in a phased manner by the RBI.

Capital requirements: Basel III stipulates that all banks should attain Capital to Risk (weighted) - Assets Ratio (CRAR), inclusive of Capital Conservation Buffer (CCB) of 11.50% and common equity Tier I CRAR, inclusive of CCB, of 8% by 31 March 2019. Domestic and foreign banks have been allowed by the RBI to augment their capital funds by issuing certain hybrid instruments.

Recent developments

New banking licenses and differentiated banks: With the objective to allow entry of new banks in the private sector, after significant consultation, the RBI released the guidelines on 22 February 2013 to grant additional banking licenses.

The process led to grant of banking licenses to two new private sector players that have since operationalized commercial and retail banking operations in India.

⁶⁰Public Sector Banks: At Cross Road - Speech delivered by Shri R. Gandhi, Deputy Governor at the "Indian PSU Banking Industry: Road Ahead" Summit organized by Bengal Chamber of Commerce and Industry on January 10, 2015 at Kolkata)

In November 2014, the RBI released guidelines for licensing of Payments Banks (PBs) and small finance banks (SFB) as differentiated or restricted banks for meeting credit and remittance needs of small businesses, unorganized sector, low income households, farmers and migrant work force and further financial inclusion.

The RBI has granted its in-principle approval to 11 applicants to set up PBs (in August 2015) and 10 applicants to set up SFBs (in September 2015) under their respective guidelines.

Over the years, foreign banks have been undertaking banking in India through a branch mode of presence.

With the objective of the RBI to move to a wholly owned subsidiary (WOS) form of presence for foreign banks in India, in November 2013, the RBI has released the final guidelines⁴⁸ for foreign banks to set up a WOS in India. The key features of the guidelines are listed below:

- ▶ Banks with complex structures, banks that do not provide adequate disclosure in their home jurisdiction, banks that are not widely held, banks from jurisdictions with legislation giving a preferential claim to depositors of home country in winding-up proceedings, etc., will be mandated entry into India only through the WOS mode
- ▶ Foreign banks to whom these conditions do not apply can opt for a branch or WOS form of presence
- ▶ A foreign bank opting for branch form of presence will convert into a WOS as and when these conditions become applicable to it or it becomes systemically important due to its balance sheet size in India
- ▶ WOS may, at their option, dilute their stake to 74% or less in accordance with the existing FDI policy. In the event of dilution, they will have to list themselves

Industry outlook

Over the past few years, the banking sector in India has displayed a high level of resilience in the face of high domestic inflation, depreciation of the Indian rupee and fiscal uncertainty in the US and Europe. Amid this economic scenario, the key challenge for the Indian banking system continues to improve their operational efficiency and implement prudent risk management practices. In recent times, the focus of the RBI has also been on improving credit delivery, increased vigilance, monitoring salaries of key personnel, customer service, promoting financial inclusion and administering recovery of non performing/bad loans.

⁴⁸<https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/IEPR936SC1113.pdf>

C.4 Capital markets

The Indian capital markets have made significant progress which spans several dimensions of development such as accessibility, regulatory framework, market infrastructure, transparency, liquidity and the types of instruments available.

All these factors have culminated in the emergence of much deeper and resilient primary, as well as secondary capital market in India.

SEBI, the capital markets regulator, is established to protect the interests of the investors in securities, as well as promote the development of the capital market. It regulates all intermediaries of the capital market (such as stock brokers, merchant bankers, underwriters, etc.), as well as prohibiting unfair trade practices in the securities market.

Mutual funds

The entry of private sector mutual funds in 1993 has given the Indian retail and corporate investors a wide choice of fund houses. The number of SEBI-registered asset management companies in India stood at 47 (as of August 2015)⁴⁹. The quantum of asset under management was approximately INR12,750b as on 31 December 2015.⁵⁰

FPIs (Securities and Exchange Board of India (Foreign Portfolio Investors) Regulation, 2014⁵¹)

With an aim to rationalize foreign portfolio investment routes into India, the SEBI notified FPI Regulations effective from 1 June 2014.⁵²

According to FPI regulations, the investment in equity shares of a company by a single FPI or investor group should be below 10% of the issued capital of the company. The debt limits for investments by FPIs have been rationalized. FPIs are permitted to invest in listed convertible/redeemable preference shares or debentures issued by Indian companies, subject to the overall corporate debt investment limit of US\$51b.

The number of SEBI registered FPIs as on 30 January 2016 stand at 3,658, and erstwhile FIIs and erstwhile sub-accounts which are deemed to be FPIs stand at 1,055 and 3,948 respectively.⁵³ Net FII investment in 2014-15 amounted to approximately US\$44.75b compared with US\$8.33b in 2013-14.⁵⁴

⁴⁹http://www.sebi.gov.in/cms/sebi_data/attachdocs/1438840565182.pdf

⁵⁰<http://www.sebi.gov.in/sebiweb/investment/statistics.jsp?s=mf>

⁵¹http://www.sebi.gov.in/cms/sebi_data/attachdocs/

⁵²With the notification of the SEBI (FPI) Regulations 2014, the SEBI (FII) Regulations, 1995 stand repealed.

⁵³<https://www.fpi.nsdl.co.in/web/Reports/RegisteredFIISAFPI.aspx>

⁵⁴<https://www.fpi.nsdl.co.in/web/Reports/Yearwise.aspx?RptType=5>

Alternative Investment Funds (AIFs)

The SEBI regulates investments made by Alternative Investment Funds (AIFs) in India under the SEBI (Alternative Investment Funds) Regulations, 2012, notified in May 2012 (AIF Regulations).⁵⁵ AIFs are segregated into categories based on the nature of their investment mandate including trading in derivatives. 189 AIFs have been registered with the SEBI as of 31 December 2015.⁵⁶ Foreign investment in AIFs is permitted under the FDI policy and the enabling guidelines in this regard have been issued by the RBI in November 2015.

Commodities markets

The commodities market is another rapidly growing market in India. Indian commodity derivative markets are regulated under the Forward Contracts (Regulation) Act, 1952 (FCRA)⁵⁷.

SEBI is the chief regulator of the commodity markets in India since the merger of the Forward Markets Commission and SEBI with effect from 28 September 2015.

Foreign investment is permitted in commodity exchanges, stock exchanges, depositories and clearing corporations, and is subject to a composite ceiling of 49%, under the automatic route.

Derivative markets

The market for exchange-traded derivatives has evolved rapidly in India over the last decade, and the country today boasts of one of the most active derivatives markets across the globe. In fact, the turnover of derivatives trading on the NSE, increased from US\$ 0.38b crore in 2000-01 to US\$ 8,968.78b in 2014-15⁵⁸.

Debt markets

In order to encourage foreign investments in India, bonds are issued by Indian companies in the form of corporate bonds. Companies issue corporate bonds to raise money for several purposes, such as building a new plant, or growing the business etc. Furthermore, the GoI, from time-to-time, raises funds by issuing debt securities through the RBI, i.e., government securities (G-secs).

Real Estate and Infrastructure

Real Estate and Infrastructure development have been considered as the drivers/facilitators for economic growth in the country. To assuage the need for funds to such important sectors and also to provide an opportunity to investors to

⁵⁵http://www.sebi.gov.in/cms/sebi_data/attachdocs/1337601524196.pdf

⁵⁶http://www.sebi.gov.in/cms/sebi_data/attachdocs/1453970494994.pdf

⁵⁷http://www.sebi.gov.in/cms/sebi_data/attachdocs/1343192414611.pdf

⁵⁸http://www.nseindia.com/products/content/derivatives/equities/historical_fo_bussinessgrowth.htm

participate in the growing story in these sectors, the SEBI has issued, Real Estate Investment Trusts Regulations, 2014 (REITs) and Infrastructure Investment Trusts Regulations, 2014 (InvITs), which provides the framework and structure for investments in the sector. The GoI has permitted registered REITs to access foreign investment. To facilitate this, the RBI has issued a notification dated 16 November 2015 allowing foreign investments in investment vehicles regulated, inter alia, by SEBI including REITs, InvITs and AIF.

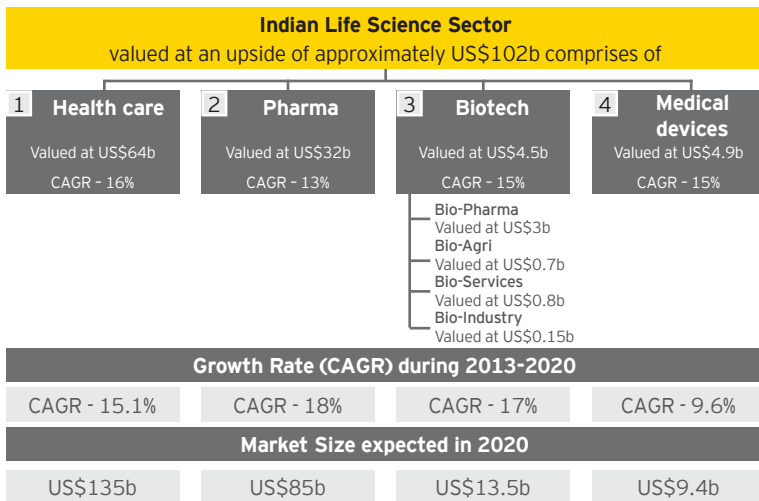
Industry outlook

In the last decade, there has been a paradigm shift in the Indian capital market. The application of many reforms and developments has made it comparable with international capital markets. Now, the market features a developed regulatory mechanism and a modern market infrastructure, with growing market capitalization, market liquidity and mobilization of resources. The emergence of a private corporate debt market is also a good innovation, replacing the banking mode of corporate finance.

C.5 Health sciences

Introduction

The Indian Life Sciences industry is one of the largest and rapidly growing markets in the Asia-Pacific region.



Indian Life Science sector and its key sub-sectors (2013, in US\$b)

Pharmaceutical formulations and bulk drugs

India is the second-largest market in Asia and is expected to become one of the top five global markets by 2020. The Indian pharmaceutical industry is highly fragmented, with top-10 players accounting for nearly 40% of total sector revenues, which was estimated at ~US\$32b⁵⁹ in 2014-15. Accounting for nearly 8% of global pharmaceutical production, India is the third-largest pharmaceutical manufacturer worldwide⁶⁰. Furthermore, it accounts for more than 45% of the world's requirement of bulk drugs⁶¹.

The presence of a large generic market makes the Indian pharma market price sensitive. Despite this, nearly 18 of the top 20 global pharmaceutical companies have set up their subsidiaries in India.

The API segment is expected to grow at a CAGR of 17% over 2011-17⁶². The domestic pharma market, growing at a CAGR of 11% during 2012-15 reached US\$15.2b and is expected to surpass ~US\$41b by 2020⁶³, whereas the total pharma exports for the current year stood at US\$16.4b and expected to grow at a CAGR of 20% to reach US\$44.3b by 2020.⁶⁴

Key facts⁶⁵

- ▶ The Indian pharma market comprises more than 10,500 manufacturing units and more than 3,000 pharma companies
- ▶ India has around 1,400 WHO GMP approved manufacturing units, with approximately 1,105 accredited CEPs, more than 950 TGA approvals and 584 sites approved by the USFDA
- ▶ Globally more than 90% of formulations approvals for anti-retroviral (ARVs), anti-tubercular and anti-malarial (WHO pre-qualified) have been granted to India

⁵⁹Source: (Indian Pharma Market = Domestic Pharma + Pharma Exports) 2014-15 domestic pharma market = US\$15.2 bn (~INR89,244 Cr) as mentioned by IMS Health - Financial Express March 13, 2015; whereas Pharma exports stood at ~US\$16.4 bn (~INR96,000 Cr) - as stated by Pharmexcil Director General PV Appaji - Economic Times - May 11, 2015

Domestic - <http://www.financialexpress.com/article/pharma/latest-updates/ims-health-posts-market-refl-report-for-february-2015/53442/>

Exports - http://articles.economictimes.indiatimes.com/2015-05-11/news/62039723_1_pharmaceuticals-export-promotion-council-director-general-pv-appaji-indian-pharma-exports

⁶⁰Source: India- World Pharmaceuticals Market- Q1 2013, Epsicom, 16 July 2012, via ISI Emerging Markets

⁶¹Source: History, Bulk Drug Manufacturers Association (India) website, <http://www.bdmai.org/history.php>, accessed 9 June 2013

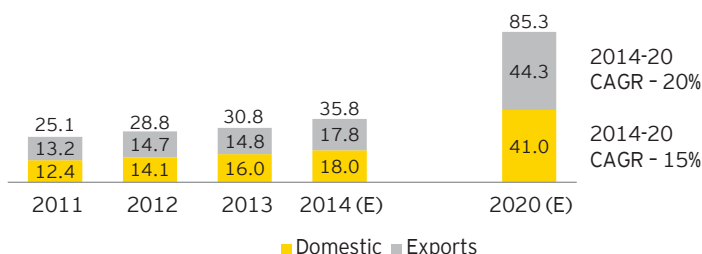
⁶²Source: IDMA presentation by Secretary - General - Nov'13

⁶³Forecast/Prediction by McKinsey India/<http://www.biospectrumasia.com/biospectrum/analysis/190822/mckinsey-india-pharma-touch-usd45-bn-2020>

⁶⁴EY research & Analysis

⁶⁵<http://www.brandindiapharma.in/infographic-on-pharma-sector-business/>

India pharma market size (including exports)



Biotechnology

The Indian biotech sector, primarily dominated by domestic players is the third-biggest market in the Asia-Pacific region.⁶⁶ The sector is expected to grow from the current US\$ 5-6b to surpass US\$13.5b by 2020.

India's biotech sector, with only four foreign players featuring in the list of top 20 biotech companies, offers significant untapped potential and off late has garnered attention from both international players and Indian players.

Key facts⁶⁷

- ▶ Top 12 biotech destinations in the world (Ranking)
- ▶ Exports contributed 51% of revenues
- ▶ Biopharma is the largest and fastest-growing segment, which accounts for 64% share of biotech sector market
- ▶ World's largest producer of vaccines: 60% of the world's vaccines are manufactured in India
- ▶ Commitment by the Government to augment the bio-tech sector in India through policy intervention
- ▶ Various funding programs by the Government to support the biotech industry at all stages of development have been introduced

⁶⁶Source: <http://www.makeinindia.com/sector/biotechnology/>

⁶⁷Source: <http://www.makeinindia.com/sector/biotechnology>

The Indian Government has stepped in to support the biotech sector with public funding through a five year plan⁶⁸ and has ambitiously allocated more than US\$3.7b over the next five years.⁶⁹ In order to augment growth of the biotech industry the government has taken constructive steps:

- ▶ Approved the setting up of Biotechnology Industry Research Assistance Council (BIRAC) to support innovation and provide infrastructure and services across chains in the biotechnology sector
- ▶ A National Biotechnology Council is proposed to be formulated to elevate the biotechnology skillset
- ▶ Establish biotech clusters for innovation and biotech special economic zones (SEZ)

Clinical trials and Contract Research Manufacturing Services

- ▶ The Indian Contract Research and Manufacturing Services (CRAMS) market is projected to become US\$18b⁷⁰ by 2018, posting a strong growth rate of 18% to 20% during the period of 2014-18; the market is estimated to be valued at US\$7.6-7.8b in 2013. The clinical trials market, which is estimated at US\$663m in 2012⁷¹ and accounts for a 2.1% of the global clinical trial market share is expected to bounce back over mid to long term.

Key highlights⁷¹

- ▶ The CRAMS market in India is driven by strong fundamentals of low cost and high quality with adequate scientific talent as required for the develop market standards
- ▶ Indian regulatory body has been actively playing its part to introduce necessary policy interventions focused on improving quality standard to help the Indian CRAMS markets rise to global standards
- ▶ Indian houses the maximum number of FDA-approved sites outside the US (200 plants) and there are currently 10,500 manufacturing facilities, including 1,400 GMP approved production plants

⁶⁸Source: http://www.lifescienceworld.in/biotech/biotechnology_industry_in_india.html

⁶⁹Source: DBT Annual Reports

⁷⁰Source: <http://www.dnaindia.com/money/report-crams-players-set-for-85-bn-us-drug-bounty-2057348>

⁷¹Source: Indian Clinical trial market, Future Medicine website, http://www.futuremedicineonline.com/detail_news.php?id=76

⁷²Source: Industry Reports on Indian contract research market and Global contract research & manufacturing -Global Business Insights

Medical devices and equipment

The Indian medical devices sector ranks among the world's top 20, with significantly untapped market potential, given the per capita spend on medical devices is still less than US\$3⁷³ a year when compared with other emerging markets such as China, which stands at nearly US\$7. The medical devices market in the past five years has rapidly grown at a CAGR of 15% to become the fourth-largest medical device market in Asia after Japan, China and South Korea⁷⁴ and it is expected to surpass US\$9.4b by 2020.

The Indian medical devices export market, which was valued at US\$1b in 2012⁷⁵, is expected to surpass US\$2b growing at a CAGR of 12% by 2020.

Medical devices industry highlights

- ▶ The Government plans to set up medical devices industry parks to boost domestic production of high-end medical technology products. Two parks have been already identified
- ▶ Currently, the industry is very fragmented with more than 65% of Indian manufacturers falling in the Small Medium Enterprise (SME) category
- ▶ Majority of domestic manufacturers focus on low margin, low technology products such as disposables and medical equipment

Key facts

- ▶ Sales of medical device account nearly 4.7% of total health care expenditure in the country
- ▶ Nearly 70% of the medical devices are imported
- ▶ Indian medical devices export market is expected to surpass US\$2b by 2020
- ▶ Key devices export markets are the US, Singapore, Germany, Japan, China and the EU countries
- ▶ Strong focus by the Government to promote domestic manufacturing, extend support to spur domestic research and innovation for the medical devices sector

⁷³Source: <http://health.economictimes.indiatimes.com/health-files/Future-growth-of-medical-device-market-in-India-as-compared-to-the-global-market/628>

⁷⁴Source: India's Medical Device Regulation Bill Not Dead Yet, Medtech insider website, <http://medtechinsider.com/archives/22988>

⁷⁵Source: The Medical Device Market: India, Espicon, BMI industry view report - March 2015

Regulatory developments and outlook

FDI regulations

According to existing FDI regulation, investment in a pharmaceutical company is categorized as:

- FDI, 100% and under the automatic route, permitted for greenfield investments
- FDI, 100%, permitted for brownfield investments (i.e., investments in existing companies) in the pharmaceuticals sector, with prior approval of FIPB (Government)

Other regulations

- Central Drugs Standard Control Organization (CDSCO) acts as the main regulatory body for the pharmaceutical industry and it falls under the ambit of the Ministry of Health and Family Welfare
- The Drug Controller General of India (DCGI) is the controlling body for CDSCO and is responsible for the approval of new drugs and clinical trials, as well as establishment of quality standards. It also monitors State Drug Authorities, which are responsible for granting drug manufacturing and retailing licenses
- Prices for essential drugs are defined under the Drug Price Control Order (DPCO) and are regulated by the GoI through the National Pharmaceutical Pricing Authority (NPPA). The GoI is proposing to bring certain medical devices within the ambit of the DPCO and plans to extend cancer drugs under the price control going forward, along with essentials drugs
- Draft policy promoting domestic manufacturing of medical devices released in 2015 (June). The policy indicated formation of separate laws for medical device and regulatory body alongside financial incentives for domestic manufacturing
- There is a possibility to have a dedicated and a separate ministry for pharma to further unlock the growth potential from the domestic pharma industry

Some of the sector-specific policy updates are outlined below:

Drugs

- Uniform Code of Pharmaceuticals Marketing Practices (UCPMP) has been introduced by the GoI to check marketing practices of pharmaceutical companies
- The Union Ministry of Health in India has proposed to set up a National Medical Devices Authority (NMDA) under Dept. of Pharmaceutical, which will assist in a formal and transparent market authorization process for medical device manufacturers⁷⁶

- ▶ National Pharmaceuticals Pricing Policy draft has been issued by the GoI to ensure availability of essential medicines at reasonable prices; according to the revised draft, the National List of Essential Medicines (NLEM) now includes a total of 348 medicines that will be under price control
- ▶ The Directorate General of Foreign Trade has implemented bar coding on export consignment of pharmaceuticals and drugs for tracing and tracking purposes
- ▶ CDSCO has issued draft guidance on the requirement of submission of chemical and pharmaceutical, information including stability study data for approval of clinical trials and bio-equivalent studies
- ▶ The GoI has also outlined new guidelines for clinical trial adverse event reporting and compensation

Industry outlook

- ▶ The Indian market is expected to rank among the top five global pharma market by 2020⁷⁶
- ▶ Growing at a CAGR of 17%, the total turnover of the pharma industry is expected to surpass US\$85b by 2020⁷⁸
- ▶ Pharma exports are expected to surpass US\$44b by 2020 driven by strong global demand and expansion of Indian companies where as domestic market is expected cross US\$41b by 2020
- ▶ Government efforts toward providing universal health care is expected to create significant boost to the health care sector and push the market to more than US\$170b by 2020
- ▶ GoI's proposals to boost health insurance cover from 25% to 75% by 2017 will also be key for overall market growth⁷⁹; the medical device industry is forecasted to reach US\$11b by 2023, growing at a CAGR of 11% (2012-23) and expected to surpass US\$9.4b by 2020

⁷⁶Source: Meddevice online article 7th Jan'15 (<http://www.meddeviceonline.com/doc/india-s-medical-deviceregulations-may-change-in-0001>)

⁷⁷Source: IMS health global market projection through 2016 and 2020

⁷⁸Source: (Indian Pharma Market = Domestic Pharma + Pharma Exports) 2014-15 domestic pharma market = US\$15.2 bn (~INR89,244 Cr) as men-tioned by IMS Health - Financial Express March 13, 2015; whereas Pharma exports stood at ~US\$16.4 bn (~INR96,000 Cr) - as stated by Pharmexcil Director General PV Appaji - Economic Times - May 11, 2015

Domestic - <http://www.financialexpress.com/article/pharma/latest-updates/ims-health-posts-market-reflectionreport-for-february-2015/53442/>

Exports - http://articles.economicstimes.indiatimes.com/2015-05-11/news/62039723_1_pharmaceuticalsexport-promotion-council-director-general-pv-appaji-indian-pharma-exports

⁷⁹Source: <http://www.ibef.org/blogs/india-pharma-outlook-and-brand-india>

Despite the industry setback due to price control and compulsory licensing and stringent policy interventions the outlook of the Indian life sciences industry looks positive due to its high growth rate in almost all its segments. This has resulted in large established MNCs focusing in this market through custom business model adapting to the Indian market needs.

C.6 Information technology

In the backdrop of an uncertain global economic environment, the Indian Information Technology (IT) industry has continued to exhibit resilience and achieve sustainable growth. This has been due to its adaptability and ability to continuously reinvent itself; its continued focus on moving up the value chain; rising technology spends, particularly by the GoI; differential investments in areas such as cloud computing, etc. It has evolved as a major contributor to India's GDP and plays a vital role in driving growth of the economy in terms of employment, export promotion, revenue generation and standard of living.

According to the IT Annual Report 2013-14 issued by the Department of Information Technology, it is estimated that the IT industry's contribution to India's GDP in 2013-14 is around 8.1%. Other statistics are as under:

Key statistics⁸⁰

IT outsourcing continues to have a strong growth rate, in line with the global trend, driven by increased spends in the remote infrastructure management activities, application management, testing and service-oriented architecture segments.

Regulatory scenario

- ▶ 100% FDI is permitted in India under the automatic route
- ▶ The GoI had introduced the SEZ scheme, and provided fiscal and tax incentives to IT units operating out of such SEZs

Particulars	2013-14	2012-13	Growth
Estimate IT industry's revenues for (excluding hardware)	US\$118b	US\$105b	
Indian software and services export (excluding hardware)	US\$86b	US\$75.8b	13.10%
IT revenue from domestic market	INR1147.84b	INR1,047b	9.63%

⁸⁰Electronic and Information Technology Annual Report 2013-14

- ▶ After reducing the minimum area requirement to set up SEZs in 2014, it has now permitted dual use of non-processing areas, allowing developers to setup social infrastructure such as schools, hospitals and hotels, subject to certain conditions
- ▶ Deployed an online submission process for setting-up unit, approval for job-work and submission of certain returns for SEZ developers and units, from 1 November 2014 for various transactions

Recent developments and industry outlook

The Information Technology Enabled Service (ITES) has become one of the key sectors for the Indian economy because of its economic impact. Convergence of technologies is also creating opportunities. Cloud, mobility, social media and data analytics present opportunities for the industry to build new solutions, re-architect existing platforms and target new customer segments. Nevertheless, the industry will need to cope with factors such as increasing competition from other low-cost countries, slowdown in the US and Europe, economic uncertainties and changing or restrictive policies in some of the major markets such as the US.

Some of the key initiatives are briefly outlined below⁸¹:

- ▶ Department of Electronics & Information Technology (DEITY) has come out with a draft Internet of Things (IoT) Policy document, which focuses on following objectives:
 - ▶ To create an IOT industry in India worth US\$ 15b by 2020;
 - ▶ To undertake capacity development (human and technology) for IT-specific skill sets for domestic and international markets;
 - ▶ To undertake R&D for all the assisting technologies;
 - ▶ To develop IT products specific to Indian needs in all possible domains;
- ▶ The framework of the IT Policy has been proposed to be implemented via a multi-pillar approach. The approach comprises five vertical pillars (demonstration centers, capacity building and incubation, R&D and innovation, incentives and engagements, human resource development) and two horizontal supports (standards and governance structure)

⁸¹<http://deity.gov.in/>

- ▶ Under the aegis of “Digital India” program, the department has approved a Scheme for “Skill Development in ESDM for Digital India” for facilitating skill development for 328,000 persons in ESDM sector at an outlay of INR411 crore (approx.) for a period of four years. This is in continuation of the “Scheme for Financial Assistance to select States/UTs for Skill Development in Electronics System Design and Manufacturing (ESDM) sector” approved earlier which is being implemented in 8 states
- ▶ Department of Electronics and Information Technology (DeitY), Government of India has taken a bold initiative to prepare North East for Digital India. Given the need for trained e-Governance Professionals, the project intends to fill the skill gaps and build overall capabilities in North East States

The Indian IT-ITES industry is transitioning to the next level with focus on operational efficiencies. The industry is focusing more on non-linear growth, i.e., securing increased revenue with reduced number of employees.

C.7 Insurance

Insurance and pension are important sectors in the Indian economy. The measure of insurance penetration and density reflects the level of development of the insurance sector. Insurance penetration is measured as a percentage of insurance premium to GDP and insurance density is calculated as ratio of insurance premium to population.

The statistics indicate that life insurance penetration had consistently gone up from 2.71% in 2001 to 5.20% in 2009, however, it has since then been declining and has reached 3.3% in 2014⁸². However, the penetration of the non-life insurance sector in the country has remained near constant in the range of 0.5% to 0.8% over the last 10 years.

India has witnessed a consistent increase in insurance density every year since the sector was opened up for private competition in 2000. However, in 2011, for the first time, there was a decline in insurance density and since then it has consistently declined till 2013. The life insurance density in India has gone up from US\$ 9.1 in 2001 to US\$ 44 in 2014, though it reached the peak of US\$ 55.7 in 2010. The insurance density of the non-life insurance sector reached the peak of US\$ 11 in 2014 from its level of US\$ 2.4 in 2001.

For its size and potential, India has a very low level of insurance penetration and density. The levels of insurance penetration (ratio of premium to GDP in US\$) for India is only around 3.9%, while it ranges between 5.2% and 13.2% in some emerging and mature economies.

⁸²Source: IRDA Annual Report 2014-15

Recent developments and industry outlook

There have been some key policy initiatives impacting the insurance and pension funds sector. Some of the key amendments instituted by the Insurance Laws (Amendment) Act, 2015 (Act) include the following:

- ▶ Increasing FDI limits in the insurance sector from 26% to a composite cap of 49% (consisting of FDI and FPI investment) - Indian insurance companies have been permitted to list on a recognized stock exchange in India:
 - ▶ Defining "Control" to include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements
 - ▶ Introducing "health insurance business" as a separate category
 - ▶ Allowing foreign reinsurance companies to set up their branches in India; minimum net owned funds of INR50b (approximately US\$833m)
- ▶ Issuance of 'Indian Owned and Controlled' Guidelines prescribing criteria for evaluating that the ownership and control of the Indian insurance company is with Indian residents
- ▶ Issuance of the IRDA (Other Forms of Capital) Regulations, 2015 prescribing the other forms of capital viz preference share capital or subordinated debt which can be raised by insurance companies
- ▶ Exposure draft on entry of Lloyd's of London into the Indian reinsurance market issued for consultation
- ▶ Final regulations for Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's issued after consultation with stakeholders
- ▶ Guidelines have been prescribed for establishing an IFSC Insurance Office in an SEZ for carrying on reinsurance business within the SEZ and from outside India
- ▶ Also, several key regulations impacting the operations of insurance companies in India have been notified by the IRDA

The Indian Insurance sector has witnessed significant change in the past one year.

The amendment to the Insurance Act, 1938 has endeavored to bring in more foreign investment in India but keep the control in Indian hands.

Recent times have witnessed an increase in the consultative approach of the IRDA in terms of involving stakeholders while formulating policies, which impact them directly. This is evident in the number of exposure drafts issued by the IRDA covering a number of issues inter alia including management expenses of insurers; preparation of financial statements and auditor's report; assets, liabilities and solvency margin of insurers; compensation of whole time director and chief executive officer, etc.

C.8 Media and entertainment

Introduction

- ▶ The Indian Media and Entertainment (M&E) industry is one of the fastest growing and best performing sectors in India valued at INR1,155b and growing at a CAGR of 10%⁸³.
- ▶ India has 172m TV households, 99,000 registered publications, 973m mobile phone users, 2,050 multiplex screens and 351m internet connections (including 105m broadband subscribers).

Key statistics ⁸⁴		
Segment	2015	2020 (P)
TV	600	1,070 - 1,280
Print	270	395
Film	130	220 - 240
Radio	23	50 - 60
Music	9	Nov-13

Amount in INR billions

⁸³CII Big Picture Summit's Knowledge Report 2015

⁸⁴CII Big Picture Summit's Knowledge Report 2015

Regulatory scenario

Key government authorities and legal framework regulating the M&E industry:

Statutory authorities	
Ministry of Information & Broadcasting (MIB)	Approving authority for broadcasting, carriage, publishing, etc., and responsible for laws, rules and regulations governing information and broadcasting
Telecom Regulatory Authority of India (TRAI)	Independent regulator for telecommunications services regularly providing recommendations/ consultations to MIB on various evolving issues
Legal framework	
► The Cinematograph Act, 1952	Regulates the functioning of films as well as national
► Prasar Bharati (Broadcasting Corporation of India) Act, 1990	TV and radio
► Policy guidelines issued by MIB	Regulates broadcasting and information services by issuing various policy guidelines

FDI and FII investment by sectors

Sectors	Sub-sectors	FDI cap ⁸⁵	Approval route	
			Automatic	Government
Carriage services	Teleports	74%	Up to 49%	Beyond 49% and up to 74%
	Direct to Home	74%	Up to 49%	Beyond 49% and up to 74%
	Cable networks (only Multi-System Operators undertaking upgrade of networks toward digitalization and addressability)	74%	Up to 49%	Beyond 49% and up to 74%
	Other cable networks	49%	49%	-
	Headend-in-the Sky Broadcasting Services	74%	Up to 49%	Beyond 49% and up to 74%
	Mobile TV	74%	Up to 49%	Beyond 49% and up to 74%
Content services	Uplinking of "non-news and current affairs" TV channels	100%	-	100%
	Downlinking of TV Channels	100%	-	100%
	Uplinking of "news and current affairs" TV channels	26%	-	26%
	Terrestrial broadcasting FM	26%	-	26%

⁸⁵Subject to compliance with applicable guidelines/policies issued by MIB.

Sectors	Sub-sectors	FDI cap ⁸⁵	Approval route	
			Automatic	Government
Print	Newspapers and periodicals including Indian editions of foreign magazines dealing with news and current affairs	26%	-	26%
	Facsimile edition of foreign newspapers	100%	-	100%
	Scientific and technical magazines/ specialty journals/ periodicals	100%	-	100%
Film/ music	Production and distribution	100%	100%	-
Lottery, betting and gambling	Lottery business including online lottery, etc.	FDI prohibited	-	-
	Gambling and betting	FDI prohibited	-	-

Recent developments and industry outlook

TV

- ▶ Implementation of Digital Addressable System (DAS) to activate pan-India digitization is under way:
 - ▶ While the rollout of Phase III DAS was completed on 31 December 2015 with over 75 per cent seeding of digital set-top-boxes, the deadline for Phase IV implementation is 31 December 2016⁸⁶
- ▶ MIB has issued policy guidelines requiring all Television Rating Agencies to fulfil eligibility norms and obtain registration from the MIB⁸⁷

⁸⁶<http://businessworld.in/article/Govt-Terms-DAS-Rollout-A-Success-Despite-Teething-Troubles/04-01-2016-89886/>

⁸⁷Ministry of Information and Broadcasting (www.mib.nic.in)

- ▶ The TRAI has released the draft Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Amendment) Order, 2015 amending the “Twin conditions” prescribed at retail level pricing of TV channels, linking the a-la-carte rates with bouquet rates⁸⁸
- ▶ For TV and digital content producers, original programming for video-on-demand and OTT platforms is emerging as the next big growth driver:
 - ▶ Several foreign OTT players (such as Netflix and HOOQ) have entered the Indian market

Sports

- ▶ The Indian sports industry has grown by 10% - up from INR43,725m in 2013 to INR48,069m in 2015⁸⁹
- ▶ Increase in sporting leagues such as Indian Super League, Pro Kabaddi League, Indian Premier Tennis League and Hockey India League has seen a shift of interest from cricket to other sports
- ▶ India has won the bid to host 2017 FIFA Under-17 World Cup and 2018 Men's Hockey World Cup⁹⁰

Print

- ▶ Print players are evolving towards the “Integrated Newsroom” concept where digital and print will grow together as an integrated solution over a multimedia platform⁹¹

Films

- ▶ Finance Act 2015 has provided exemption from service tax to the exhibitors of the movies in respect of the services provided by way of exhibition of movies to the distributors or association of persons
- ▶ The Central Board of Film Certification has proposed to make certification process of cinematograph films fully online to ensure effective and transparent certification process⁹²
- ▶ India and China have signed a co-production agreement bringing the total number of countries with which India has signed co-production agreements to nine including the UK, France and Canada⁹³

⁸⁸Telecom Regulatory Authority of India (www.trai.gov.in)

⁸⁹<http://www.bestmediainfo.com/2015/04/sports-industry-has-grown-by-10-in-2014-groupm-esp-report/>

⁹⁰<http://sports.ndtv.com/football/news/217906-india-to-host-under-17-fi-a-world-cup-in-2017>

⁹¹FICCI KPMG Report 2015

⁹²http://articles.economictimes.indiatimes.com/2015-05-08/news/61947445_1_cbfc-process-film-certification

⁹³<http://variety.com/2014/film/asia/india-china-sign-co-production-agreement-1201308343/>

Radio

- ▶ E-auction of first batch of private FM radio Phase-III channels saw 14 successful bidders for 91 channels in 54 cities⁹⁴
- ▶ With the auction, the industry will see FM radio increase its reach to 75% of the Indian territory⁹⁵

Advertising

- ▶ Metros continue to dominate and enjoy more than 50% of the Out of Home market share⁹⁶
- ▶ Digital advertising is projected to grow at 23%-28% by 2018 with a significant increase in internet penetration and smart phone users⁹⁷

General

- ▶ Government's "Digital India" program aims to provide broadband access to 250,000 villages and universal phone connectivity⁹⁸
- ▶ Ministry of Home Affairs has issued an official memorandum to MIB specifying applicability of security clearance of any media venture for 10 years (instead of 3 years) and doing away with additional security clearance for a second channel or a newspaper or a subsequent venture of the same group⁹⁹
- ▶ Communications Convergence Bill proposed by the Department of Telecommunications seeks to establish a super regulator "Communications Commission" for communications sector and aims to repeal multiple acts¹⁰⁰

⁹⁴<http://economictimes.indiatimes.com/industry/media/entertainment/media/govt-gets-rs-263-cr-in-bid-deposits-of-fm-radio-phase-iii-e-auctions/articleshow/49065943.cms>

⁹⁵CII Big Picture Summit's Knowledge Report 2015

⁹⁶FICCI KPMG Report 2015

⁹⁷EY report on Future of Digital Content Consumption in India - January 2016

⁹⁸EY's India Attractiveness Survey 2015

⁹⁹Official Memorandum issued by MIB No. 1403/20/2013-TV (I)/20 dated 25 June 2014

¹⁰⁰http://articles.economictimes.indiatimes.com/2014-09-07/news/53653044_1_super-regulator-communications-convergence-bill-telecom-ministry

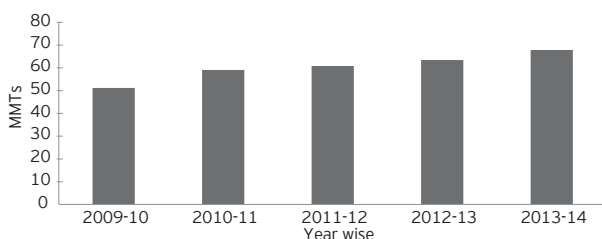
C.9 Oil and gas

The oil and gas industry is among India's six core industries. India is the world's fourth-largest consumer of crude oil and petroleum products after the US, China and Japan¹⁰¹.

Oil and gas currently accounts for 35.5% of India's primary energy consumption¹⁰². The estimated consumption of crude oil has steadily increased from FY05-06 to 2013-14 (approx. 222.50 MMTs) at a CAGR of 6.14%¹⁰³. Crude oil production, on the other hand, was merely 38 Million Metric Tonnes (MMTs) in 2013-14¹⁰⁴.

However, India has developed surplus refining capacity over the years to produce different petroleum products and has increasingly exported petroleum products (refer graph below) during FY 2009-10 to 2013-14¹⁰⁵.

Export of petroleum products



Regulatory scenario

The industry is under the administrative ambit of the Ministry of Petroleum and Natural Gas (MoPNG). FDI under the automatic route is permitted up to 100% in all activities and up to 49% in case of refining by public sector undertakings (PSUs).

While the Petroleum and Natural Gas Regulatory Board is an independent regulator for the midstream and downstream segments of the industry, the upstream segment continues to function under Directorate General of Hydrocarbons being quasi-regulator under the aegis of the MoPNG.

¹⁰¹Energy Statistics 2015, Central Statistics Office, National Statistical Organisation, Ministry of Statistics and Programme Implementation, Government of India

¹⁰²Statistics section on <http://makeinindia.com/sector/oil-and-gas/> accessed on 14 May 2015

¹⁰³Energy Statistics 2015, Central Statistics Office, National Statistical Organisation, Ministry of Statistics and Programme Implementation, Government of India

¹⁰⁴Energy Statistics 2015, Central Statistics Office, National Statistical Organisation, Ministry of Statistics and Programme Implementation, Government of India

¹⁰⁵Energy Statistics 2015, Central Statistics Office, National Statistical Organisation, Ministry of Statistics and Programme Implementation, Government of India

Recent developments and industry outlook¹⁰⁶

The GoI is preparing to issue the tenth round of bidding for the New Exploration Licensing Policy (NELP), introduced in 1998¹⁰⁷, in the next 6-12 months, where 52 blocks are proposed to be offered.

The GoI has expressed the need to explore unconventional sources such as coal bed methane (CBM), shale gas and gas hydrates. It has issued a Policy on Shale Gas & Oil, 2013 allowing companies to apply for shale gas and oil rights in their petroleum licenses. Moreover, the Government has issued a Coal Bed Methane Policy, 1997 to encourage coal bed methane as a new eco-friendly source of energy.

As a part of International Energy Outlook 2013, Energy Information Administration projects that demand for primary energy in India is expected to increase threefold by 2035.

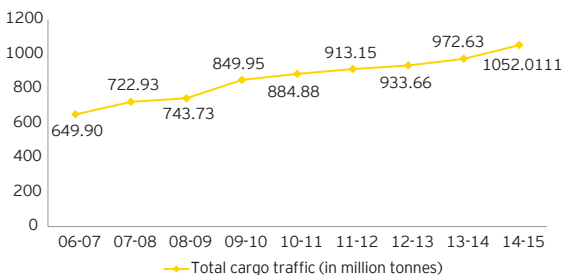
The GoI has unveiled plans to add another 91m barrels to its crude oil capacity to protect India from supply disruptions by 2017. Furthermore, the GoI projects an increase in the country's refining capacity to 307.366m metric tonne per annum (MMTPA) by 2017, based on its current Five Year Plan (2012-17) to meet the rising domestic demands and export markets.

C.10 Ports

Overview

- ▶ India has a coastline of about 7,517 km, which encompasses 12 major and 200 non-major ports
- ▶ During FY14-15, major and non-major ports in India accomplished a total cargo throughput of 1052.01 Million Tonnes (MT)
- ▶ The major ports accounted for approximately 55.26%¹⁰⁸ of total cargo traffic, while the remaining traffic was handled by non-major ports

Total cargo traffic (in million tonnes)



— Total cargo traffic (in million tonnes)

Source: Indian Ports Association Magazine, November 2015

¹⁰⁶<http://makeinindia.com/sector/oil-and-gas/>, accessed on 14 May 2015

¹⁰⁷Chronology of E&P events <http://dghindia.org/EandPGovernanceInIndia.aspx>, accessed on 14 May 2015

¹⁰⁸Source: E-Magazine - Indian Ports Association - November 2015

Regulatory scenario

- ▶ In India, ports are under the administration of the concurrent list of the Indian constitution. The major ports are governed by the Government of India (GOI), while non-major ports are administered by state governments. Some of the key legislations formulated to govern Indian ports include the Major Port Trusts Act, 1963, the Tariff Authority for Major Ports and the Major Ports Regulatory Authority Act, 2009
- ▶ FDI of up to 100% is permissible in Indian ports under the automatic route

Recent developments and industry outlook

- ▶ The GOI has initiated a slew of measures for development of the maritime sector which includes capacity augmentation plans and release of policy guidelines like the Tariff Authority for Major Ports (TAMP), 2013 and Land Policy Guidelines for Major Ports, 2014. The Role of TAMP is to regulate vessel and cargo related tariffs and rates for lease of properties in respect of Major Port Trusts and private operators located therein
- ▶ The GOI is planning to corporatize major ports and set up a body, 3P India, to fast-track the execution of public private partnership projects. This shall incentivize the participation of private players and pave way for revitalizing major ports
- ▶ The Planning Commission of India in its Twelfth Five Year Plan¹⁰⁹ projects a total investment of INR1,806.26b (US\$28.57b). While through its Maritime Agenda 2010-2020, the Ministry of Shipping has set a target capacity of over 3,130MT by 2020, which is likely to be driven by private sector participation
- ▶ The Sagarmala initiative¹¹⁰ through which GOI plans to invest INR70b¹¹¹ (US\$ 10.5b) in 12 major ports will address challenges by focusing on three pillars of development namely
 - i. Supporting and enabling port-led development through appropriate policy and institutional interventions and providing for an institutional framework for ensuring inter-agency and ministries/departments/states' collaboration for integrated development;
 - ii. Port infrastructure enhancement, including modernization and setting up of new ports; and
 - iii. Efficient evacuation to and from hinterland

¹⁰⁹Source: India Brand Equity Foundation - April 2015

¹¹⁰Source: Press Information Bureau - Release dated 25 March 2015

¹¹¹Source: Indian Brand Equity Foundation - December 2015

- ▶ India and Bangladesh have signed the standard operating procedure to launch the “Agreement on Coastal Shipping”¹¹², which is expected to bring down the logistic costs of export-import cargo between the two countries
- ▶ The Ministry of Shipping has initiated “Project Green Ports”¹¹³ which would facilitate in making the major ports across India clean and green and will be undertaken through two verticals – “Green Ports Initiatives” and “Swachh Bharat Abhiyaan”
- ▶ While the GOI¹¹⁴ has set a target to convert 101 rivers across the country into waterways to promote water transport and propel economic growth, it also plans to establish two new major ports, one at Sagar in West Bengal and the other at Dugarajapatnam in the Nellore district of Andhra Pradesh

C.11 Power and utilities (including cleantech)

India's installed capacity for power generation as on 30 November 2015 is estimated at around 281.42¹¹⁵ Giga Watt (GW), with private sector's contribution around 39% of the installed capacity. Fuel based thermal power plants form a major portion (i.e., 69.50%) of the installed capacity, accounting for nearly 195.60 GW of the total installed capacity in the country. The share of renewable energy in installed capacity stands at around 13.29% in November 2015.

Sector		Central	State	Private	All India
Thermal	Coal	49,380.00	59,450.50	61,307.38	1,70,137.88
	Gas	7,519.73	6,975.30	9,978.00	24,473.03
	Diesel	0	438.57	554.96	993.53
	Total	56,899.73	66,864.37	71,840.34	1,95,604.44
Nuclear		5,780.00	0	0	5,780.00
Hydro		11,491.42	28,012.00	3,120.00	42,623.42
RES		0	1,948.23	35,467.30	37,415.53
Grand Total		74,171.15	96,824.60	1,10,427.64	2,81,423.39

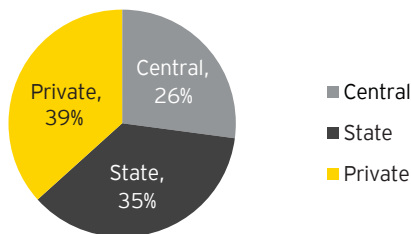
¹¹²Source: E-Magazine - Indian Ports Association - November 2015

¹¹³Source: Press Information Bureau - Release dated 17 December 2015

¹¹⁴Source: India Brand Equity Foundation - December 2015

¹¹⁵Monthly Review of Power Sector Reports (Executive Summary), November 2015, CEA website, http://www.cea.nic.in/reports/monthly/executivesummary/2015/exe_summary-11.pdf

All India installed capacity (MW) as on 30-11-2015 (sector wise)



The total quantum of power generated in the country for the period April - November 2015 is 739.915 BU growing at the rate of 4.55 % on a year-on-year basis. At the end of November 2015, the peak electricity demand met was 138.267 GW, resulting in a "peak deficit" of 1.4%, while the electric energy availability was at 84.602 BU, which has resulted in an energy deficit of 1.4%.

Regulatory scenario

For developing an economy like India, power continues to be a valuable and an essential commodity. The country is experiencing continuous surge in demand for power. Government is aiming at providing 24x7 affordable power to all by 2019.

FDI of up to 100% is permissible in the power segments (excluding atomic energy). Foreign investment of up to 49% is permissible under the automatic route in power exchanges, with composite limits of 26% for FDI and 23% for FII/FPI.

Regulatory reforms

- ▶ The Rajya Sabha, the upper house of the Parliament, has passed the Coal Mines (Special provisions) Bill, 2015, for allocation of coal mines through competitive bidding, vesting of the right over the land and mine infrastructure together with mining leases to the successful bidders
- ▶ The Ministry of Environment and Forests and Climate change has proposed new emission and water consumption standards for Coal based power plants. As per the same, new thermal power plants set up after 1 January 2017 are expected to reduce:

Particulate emissions	By 25%
Sulphur dioxide	By 90%
Nitrogen dioxide	By 70%
Mercury emissions	By 75%
Restrict specific water consumption	To 2.5 cubic meter per MWh

- ▶ The Cabinet has approved the National Offshore Wind energy policy that lays down the framework for electricity generation from offshore wind mills. The Policy stipulates development of offshore windfarms of up to seaward distances of 200 nautical miles
- ▶ The Government has formulated an Integrated Energy Policy covering all sources of energy including renewable energy sources. This policy provides roadmap to develop energy supply options and increased exploitation of renewable energy sources

Recent developments and industry outlook

In order to accelerate capacity addition and meet persistent supply shortages, five new Ultra Mega Power Projects each of 4000 MWs are to be set up in the plug and play mode where all clearances as well as linkages will be in place before the project is awarded by a transparent auction system.

After the apex court cancelled the allocation of 204 coal blocks, the Ministry of Coal has reallocated 76 coal blocks through three rounds of auction.

The Central Government seems committed to promoting renewable energy. It has recently announced its ambitious targets of renewable energy capacity by 2022 as under:

Solar energy	100 GW
Wind energy	60 GW
Biomass	10 GW
Small Hydro capacity	5 GW
Total	175 GW

The revised Solar power capacity target of 100GW by 2022 would comprise of 40GW rooftop and 60GW utility scale grid connected solar power projects. The total investment for said capacity is estimated to be INR6,000b.

Over 79m households remain off the grid in India and the country's current per capita consumption (about 957 KWh in 2013-14) is just about 1/4th of the world average. The demand for power is therefore expected to increase by almost 4 times to 900GW by 2032. This would require not only ramping up of generation facility, but also maintaining sturdy distribution network and also ensure last mile connectivity.

The past year has seen the government taking several positive steps to address concerns such as the lack of adequate fuel supply through quick re-allotment of coal blocks, a new scheme for liquefied natural gas supply to power plants and coal linkage rationalization.

C.12 Real estate

The contribution of real estate sector to India's GDP is estimated to increase to about 13% by 2028. The sector consisting of housing, retail, hospitality and commercial continues to play a critical role in building the requisite infrastructure for India to match its growth ambitions. The market size of Indian real estate sector is expected to increase at a CAGR of 15.2% during FY2008 - 2028E and is estimated to be worth USD853 billion by 2028¹¹⁶.

Market size of real estate in India (US\$B)



Source: India Brand Equity Foundation, August 2015

The macro outlook for the sector continues to be positive. Emergence of nuclear families, rapid urbanization and rising household income are likely to remain the key drivers for growth in all spheres of real estate, including residential, commercial and retail.

Regulatory Scenario

FDI Regulations

100% FDI is allowed in the construction and development projects¹¹⁷ under the automatic route, subject to prescribed conditions which inter alia include:

- ▶ FDI in construction development projects (which include development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational facilities, recreational facilities, city and regional level infrastructure, townships) is allowed 100% under the automatic route subject to prescribed conditions which inter alia include:
 - ▶ Each tranche of investment shall be locked in for a period of three years. However, an investor is permitted to exit on development of trunk infrastructure or completion of the project, whichever is earlier

¹¹⁶India Brand Equity Foundation, August 2015

¹¹⁷Construction and development projects include townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational facilities, recreational facilities, city and regional level infrastructure, townships)

- ▶ Exit by way of transfer to another non-resident is neither subject to three year lock-in nor any approval
- ▶ Each phase of the construction and development project will be regarded as a separate project for FDI purposes
- ▶ Condition of lock in does not apply to construction/development of hotels and tourist resorts, hospitals, SEZs, educational institutions, old age homes and investment by NRIs
- ▶ 100% FDI is allowed in completed projects such as townships, malls, shopping complexes and business centers with a lock-in period of three years for each tranche of investment. During this period, the immovable property cannot be transferred
- ▶ FDI is not permitted in real estate business that includes, trading in immovable property, transferable development rights/construction of farm houses). However, it has been clarified that renting/leasing of immovable property will not be regarded as real estate business
- ▶ Construction development of hotels, SEZs, educational institutions and old age homes is allowed without any conditions. Furthermore, any construction development by utilizing investment by NRIs is allowed without any conditions

ECB Regulations

ECB is not permissible in the real estate sector. However, it can be accessed for hotels, hospitals, low-cost housing and industrial parks and by developers of SEZs to provide infrastructural facilities within the SEZ, and REITs subject to prescribed conditions.

Recent developments and industry outlook

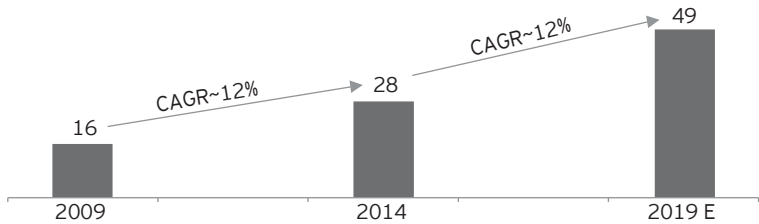
- ▶ The Real Estate (Regulation and Development) Bill, 2013, has been recently approved by the Union Cabinet and is to be tabled before the Parliament. This Bill aims at regulating transactions between buyers and promoters of residential real estate projects and at establishing state-level Real Estate Regulatory Authorities
- ▶ The SEBI has notified the Real Estate Investment Trusts (REITs) guidelines in September 2014, in harmony with global REITs regimes. The introduction of REITs coupled with the GOI's move to permit foreign investment in REITs and offering tax concessions to REIT/Sponsors will enable the sector to raise additional funds and assist in lessening pressure on the banking system to fund the real estate sector
- ▶ The Smart Cities initiative promulgated by the GOI is also expected to give a fillip to the sector

C.13 Retail and consumer products

Retail industry

Indian retail industry accounts for more than 22% of country's GDP and employs around 8% of working population.

Size of the overall India retail market (INR trillion)



Source: EY Research, Euromonitor

- ▶ Overall retail market in India grew at CAGR of 12% during FY09-FY14
- ▶ Food and grocery is the largest segment, followed by apparel
- ▶ Organized retail market grew at a CAGR of 21% during FY09-FY14

Consumer products (CP) industry

CP market consists of various subsectors - alcoholic drinks, beauty and personal care, consumer health, home care, hot drinks, packaged foods, soft drinks, tissue and hygiene, and tobacco products.

Indian CP sector was sized at ~INR8.1 trillion in 2014 growing at a CAGR of 13%-14% during FY09-FY14. Consumer durables sector was sized at ~INR 600 billion growing at CAGR of 9%-10% during FY09-FY14¹¹⁸.

¹¹⁸Euromonitor

Regulatory scenario

Particulars	Permissible FDI limit
Manufacturing	100% - Automatic route
Multi-brand retail trading (subject to conditions)	Upto 51% - Government approval route
Single-brand retail trading (SBRT) (subject to conditions)	<ul style="list-style-type: none"> Upto 49% - Automatic route Beyond 49% - Government approval route Beyond 51% - Mandatory 30% sourcing from India, preferably from micro, small and medium enterprises (with certain exceptions)
Wholesale trading (subject to conditions)	100% - Automatic route
E-commerce	100% - Automatic route for wholesale trading (retail trading not allowed)
Franchise	No permission required

Recent developments and industry outlook

Recent developments

- ▶ GST for integrating multiple indirect taxes under a unified tax system is likely to be implemented
- ▶ Wholesale cash and carry trader with FDI can undertake SBRT subject to conditions
- ▶ SBRT entity with FDI operating through brick and mortar stores permitted to trade through e-commerce subject to conditions
- ▶ In case of 'state-of-art' and 'cutting-edge technology' in SBRT entity with FDI beyond 51%, sourcing norms can be relaxed subject to Government approval
- ▶ Indian manufacturers with FDI allowed to sell its own branded products in any manner i.e., wholesale, retail, including through e-commerce provided at least 70% of products are manufactured in-house and at most 30% sourced from Indian manufacturers
- ▶ 100% FDI permitted in Duty free shops under automatic route subject to conditions
- ▶ Gol has proposed to introduce several measures to incentivize credit/debit card transactions and dis-incentivize cash transactions

Industry outlook

- ▶ Overall retail market is expected to grow at a CAGR of 12% to reach INR49t by FY19. Organised retail is expected to grow at a CAGR of 18-20% to reach INR5t¹¹⁹
- ▶ CP market is expected to grow at a CAGR of 13-14% to reach close to INR15t by FY19¹²⁰
- ▶ Consumer durables market is expected to expand at a CAGR of 13-14% by FY19¹²¹
- ▶ India is set to become fifth largest consumer durables market in world

Growth drivers

- 1 Higher disposable income
- 2 Changing lifestyle and tastes
- 3 Growing need for convenience
- 4 Increasing number of working women
- 5 Favorable demographics

Online shopping is expected to grow at a CAGR of 30%-35% during FY14-FY19¹²². This growth is driven by increase in internet penetration, discounts provided by e-commerce players, new payment mechanisms and convenience to shop from home.

Positive economic environment, low inflation and development initiatives by Govt are expected to further boost this industry. Besides, significant untapped potential in both rural and urban areas present significant scope for growth. Overall, the outlook remains positive as economic environment is conducive for long term growth of the industry.

¹¹⁹Crisil Research, Business Monitor Portal and EY analysis

¹²⁰Euromonitor portal

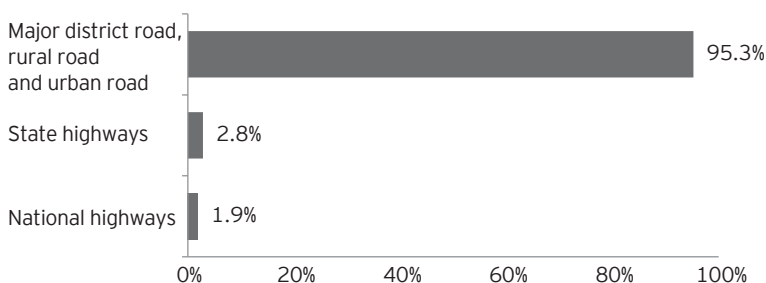
¹²¹Sector outlook by Livemint website: money.livemint.com/news/sector/outlook/consumer-durables-industry-to-witness-firm-growth-in-coming-future--350124.aspx

¹²²AMAI, Crisil analysis, EY Analysis

C.14 Roads and highways

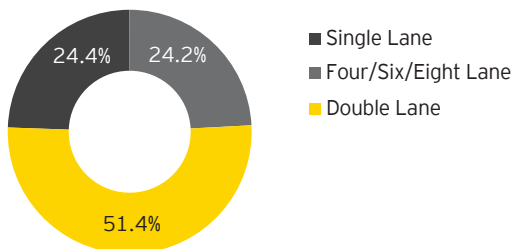
India has the second-largest road network in the world, spanning a total of 4.86m km¹²³. More than 60% of freight and 90% of passenger traffic in the country is handled by roads. The National Highway is expected to grow to 100,000 km by the end of 2017¹²⁴. Among public private partnership projects more than 100 are completed, and more than 165 projects are under execution¹²⁵.

Road network in India



Source: Ministry of Roads Transport and Highways - online database: website: morth.nic.in

Lane composition of national highways



Source: India Brand Equity Foundation (website: ibef.org)

Regulatory scenario

- ▶ The Ministry of Road Transport and Highways is entrusted by the GoI with the task of formulating and administering policies for road transport, national highways and transport research
- ▶ National Highways Authority of India is responsible for the development, maintenance and management of national highways

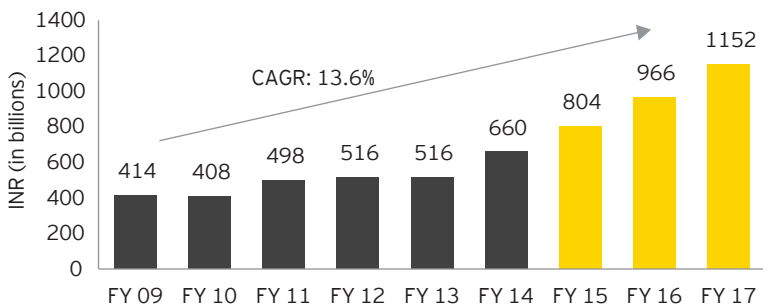
¹²³Ministry of Road Transport and Highways - website: morth.nic.in

¹²⁴Make in India - powered by GoI - website: makeinindia.com

¹²⁵Make in India - powered by GoI - website: makeinindia.com

- ▶ State highways and major district roads are governed by respective state public works departments and road development corporations of various states
- ▶ Rural roads are monitored and maintained by the Ministry of Rural Development
- ▶ The National Highways and Infrastructure Development Corporation Limited has been created to expedite development of highways in the North-Eastern region and border areas¹²⁶
- ▶ 100% FDI is allowed under the automatic route in the roads and highways sector
- ▶ The value of roadways and bridge infrastructure in India is expected to reach INR1,152b by 2017¹²⁷

Roads infrastructure value in India



Source: India Brand Equity Foundation (website: www.ibef.org)

Recent developments and industry outlook

- ▶ The GoI is upgrading a total of 54,478 km of national highways under the National Highways Development Program at an investment of INR4,719.75b¹²⁸
- ▶ Till December 2014, work on a total of 22,609 km road has been completed¹²⁹
- ▶ The GoI has approved a scheme for development of 1,126km of national highways and 4,351km of state roads with estimated cost INR73b¹³⁰

¹²⁶Economic survey 2014-15, Union Budget and Economic Survey website, indiabudget.nic.in/

¹²⁷India Brand Equity Foundation (knowledge center) - website, ibef.org/

¹²⁸Economic survey 2014-15, Union Budget and Economic Survey website, indiabudget.nic.in/

¹²⁹Economic survey 2014-15, Union Budget and Economic Survey website, indiabudget.nic.in/

¹³⁰Economic survey 2014-15, Union Budget and Economic Survey website, indiabudget.nic.in/

- ▶ Existing excise duty on petrol and diesel to the extent of INR4 per liter, is converted into road cess to fund investment in roads; this means an additional amount of INR400b will be made available under this route¹³¹
- ▶ Total planned outlay by the GoI for the road sector in FY16 is INR429.12b¹³²
- ▶ The Government has introduced Infrastructure Investment Trusts to enable listing of infrastructure assets including roads and highways and help mobilization of funds in the sector¹³³
- ▶ The GoI has also made provision for tax-free infrastructure bonds for pooling of funds in the road sectors
- ▶ To revive Public Private Partnership model, Hybrid Annuity Model has been mooted by the Government in which 40% of the project cost shall be provided to the developer to ease financial burden

C.15 Telecommunications

India has a fastest growing telecom market. Mobile connections are now available even in remote and rural areas. The country has about 980 m active mobile phone users as of June 2015 and 168 m smart phone users by the end 2015. At the same time, internet users were expected to be 402 m by the end of Dec 2015, which is +49% growth over previous year¹³⁴. India is set to enter a new growth phase marked by the proliferation of data services.

Regulatory scenario

Department of Telecommunications (DoT)	Telecom Regulatory Authority of India (TRAI)	Telecom Disputes Settlement and Appellate Tribunal (TDSAT)
<ul style="list-style-type: none"> ▶ Central governing body ▶ Formulates policies ▶ Awards telecom licenses ▶ Responsible for frequency management 	<ul style="list-style-type: none"> ▶ Regulates tariffs ▶ Advises the government on new technologies ▶ Tracks the service providers to ensure adherence to guidelines and quality service benchmarks 	<ul style="list-style-type: none"> ▶ Resolves disputes between licensor/ service provider/ consumer

¹³¹Union budget 2015-16 - website, indiabudget.nic.in/

¹³²Economic survey 2014-15, Union Budget and Economic Survey website, indiabudget.nic.in/

¹³³Union budget 2015-16 - website, indiabudget.nic.in/

¹³⁴Internet and Mobile Association of India (IAMAI) and IMRB International

FDI limits:

Services	FDI limit	Approval condition
<ul style="list-style-type: none"> Basic and Cellular Services Infrastructure providers 	100%	FDI up to 49% - automatic route FDI beyond 49% and up to 100% - approval route, i.e., requiring prior approval from FIPB
<ul style="list-style-type: none"> Telecom equipment manufacturers 	100%	Automatic route

Recent developments and industry outlook

Spectrum sharing and trading

In 2015, the GOI approved spectrum sharing and trading. Key features are:

- ▶ Spectrum sharing allowed only for access service providers in a Licensed Service Area. Leasing not permitted
- ▶ Sharing permitted if both licensees have spectrum in same band
- ▶ Sharing and trading allowed between two licensees only
- ▶ Trading revenue included in AGR

Telecom M&A guidelines

Key features of the telecom sector M&A guidelines introduced on 20 February 2014 are:

- ▶ Market share of a merged entity not to exceed 50% in each circle. If it does, firms will have to bring it down to below 50% in a year
- ▶ Total spectrum held by the resultant entity not to exceed 25% of the total spectrum assigned for access services and 50% of the spectrum assigned in a given band in a service area
- ▶ If an acquired company has got spectrum at an administrative price, its acquirer will pay the price gap between market and administrative prices to DoT
- ▶ The three-year period for which transfer of equity is barred is to continue

Definition of AGR

In January 2015, TRAI finalised its recommendations on AGR base. Key recommendations are:

- ▶ Exclude revenue from non-core sources (such as rent, profit on sale of fixed assets, dividend, interest and miscellaneous income) to arrive at the AGR

- ▶ ISPs with annual AGR of less than INR50m to pay license fee of INR1m or actual license fee based on the applicable rate, whichever is less
- ▶ Any netting of amounts paid to other entities not to be permitted for the computation of AGR
- ▶ Reduce Universal Service Obligation (USO) levy from 5% to 3% of AGR
- ▶ Levy Spectrum usage charges on AGR for telecom services which use access

National Telecom Policy - 2012 (NTP-2012)

In May 2012, the GoI approved NTP-2012, which lays out the broad framework for India's progression to the next level of development in the telecommunications space. Some of the key objectives of NTP-2012 include:

- ▶ Adopt one nation-one license across services and service areas, delink spectrum in respect of all future licenses
- ▶ Implement one nation-full mobile number portability (MNP) and nationwide free roaming; full MNP implemented in July 2015
- ▶ Promote domestic production of telecom equipment to meet 80% of demand
- ▶ Adopt green policy and incentivize use of renewable energy sources
- ▶ Provide benefits to telecom sector including rationalizing relevant taxes, duties and levies
- ▶ Promote an ecosystem for Value Added Services (VAS) industry value chain to make India a global hub for VAS

Unified Licensing regime (UL)

Guidelines for UL regime were notified by DoT on 2 August 2013. Key features are:

- ▶ Spectrum de-linked from licenses
- ▶ No telecom operator to hold any stake in a rival operator in the same circle.
- ▶ Licensees allowed to migrate to UL
- ▶ Minimum paid up equity capital and net worth to be maintained, depending upon the service and service area, limited to a maximum of US\$5m
- ▶ Annual License Fee to be levied as a percentage of AGR @ 8%, subject to a minimum of 10% of entry fee from second year
- ▶ New UL valid for 20 years; can be renewed for another 10 years

Standards of quality of service

- ▶ The Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service (Fourth Amendment) Regulations introduced in 2015 provide for penalty on the TSP, if it fails to meet the specified quality of service standards

Net neutrality

- Worldwide, there is a debate going on among governments, industry and consumers regarding net neutrality. In this background, TRAI has released a consultation paper on regulatory framework for OTT services. Separately, a DoT panel has been set up to prepare a report on net neutrality to help the Gol make a comprehensive decision on this issue

Virtual Network Operator (VNO) recommendations by TRAI

- The TRAI has recommended that VNO should be permitted for all services notified in UL and should be introduced through a proper licensing framework. This should enable TSPs to optimally utilize their networks and spectrum by sharing active and passive infrastructure. It will also help facilitate resale at service level, promote robust competition, ensure compliance with security and other license related obligations and achieve increased rural tele density

From an industry perspective, there is good potential to increase tele density in remote villages. As part of the INR1,130b Digital India project, the National Optic Fibre Network project aims to provide high-speed broadband connectivity to 0.25m gram panchayats by March 2017.

Furthermore, with the advent of the Make in India campaign, telecom equipment and handset manufacturers have started exploring the option of setting up telecom manufacturing facilities in India. This has further been made attractive by extending the Modified Special Incentive Package Scheme (M-SIPS) which offers subsidy on electronic manufacturing. The Gol has also set up a joint task force with the industry to rejuvenate the country's mobile phone manufacturing ecosystem, with a view to achieve production of 500m mobile handsets by 2019.

C.16 Digital and e-commerce

India has an active internet user base of 375m in Oct 2015, out of which the mobile internet user base is approximately 52%. India is expected to have become the second largest internet user base shortly behind China in December 2015¹³⁵.

The growing internet base has given a fillip to the internet and e-commerce sector in India. The Indian e-commerce market is expected to reach the USD 100 billion mark by 2020¹³⁶.

¹³⁵'Internet in India 2015', jointly published by the Internet and Mobile Association of India (IAMAI) and IMRB International

¹³⁶<http://economictimes.indiatimes.com/industry/services/retail/indias-ecommerce-market-to-breach-100-billion-mark-by-fy20-goldman-sachs/articleshow/49532128.cms>

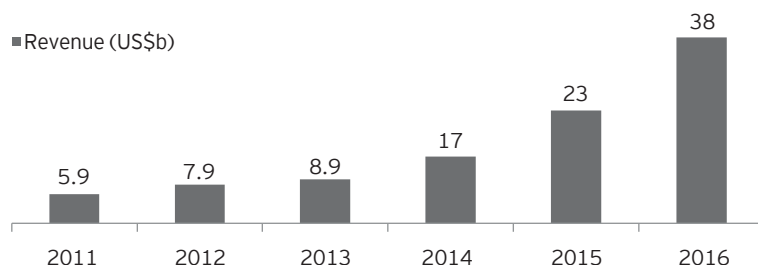
The online travel sector constitutes nearly 50% of the overall e-commerce market in India¹³⁷. E-retailing, which comprises online retail and online marketplaces, has become the fastest-growing segment in the larger market having grown at a CAGR of around 56% during 2009-14. The e-retail market was around US\$6b in 2015¹³⁸.

Large homegrown players in both horizontal and vertical markets are competing against global behemoths such as Amazon. Sectors such as taxi aggregators, hyperlocal delivery and food delivery have gained momentum in the recent past.

The e-commerce and technology sector has seen significant interest from Venture Capital and Private Equity firms with investments in the sector exceeding US\$2.9b in 2015¹³⁹.

Growth of E-Commerce sector in India

■ Revenue (US\$b)



Regulatory scenario¹⁴⁰

a. E-commerce

Sector	FDI restrictions
Wholesale cash and carry	FDI upto 100% under the automatic route
B2C by manufacturers	FDI upto 100% under the automatic route
Single brand retail trading - operating through brick and mortar stores	FDI upto 49% under the automatic route Approval route beyond 49% (subject to conditions)

¹³⁷<http://techstory.in/online-travel-e-commerce/>

¹³⁸<http://yourstory.com/2015/10/e-commerce-sbi/>

¹³⁹http://www.business-standard.com/article/specials/vc-investments-in-non-tech-firms-surge-in-2015-116012700826_1.html

¹⁴⁰ ASSOCHAM Report and <http://retail.economictimes.indiatimes.com/news/e-commerce/e-tailing/e-commerce-industry-likely-to-be-worth-38-bn-by-2016-assochem/50406491>

FDI in multi brand retail trading through e-commerce is not permitted.

b. Other internet/digital ventures

Sector	FDI restrictions
Software	FDI upto 100% under the automatic route
Online travel	FDI upto 100% under the automatic route
Classifieds	FDI upto 100% under the automatic route
Taxi aggregator	FDI upto 100% under the automatic route

The Information Technology Act, 2000 provides the legal framework for maintenance and authentication of electronic records, as well as legal mechanisms for dealing with cyber-crime.

Electronic financial transactions are regulated by the Reserve Bank of India¹⁴¹ which has *inter alia* promulgated regulations for payment systems and e-wallet systems.

Recent developments and industry outlook

Key initiatives

The Government of India on 16 January 2016 unveiled the 'Start-up India Action Plan', which outlines India's start-up policy. The policy proposes a series of measures to promote, boost and incentivize start-ups in India. Key measures include:

- ▶ 3 year tax holiday for eligible startups
- ▶ Option for self-certification under 9 central labour and environment laws
- ▶ A scheme for fast-track closure/exit for startups is proposed to be introduced
- ▶ A portal and a mobile app to ease statutory registrations and compliances to be introduced
- ▶ A fund with an initial corpus of INR2,500c and a total corpus of INR10,000c over a period 4 years to be set up by the Government. This fund would invest in SEBI registered venture funds, prime focus of which would be to invest in start-ups

These initiatives will be a great support for start-ups, many of which are in the e-commerce and digital space.

¹⁴¹Through the Payments and Settlements Systems Act, 2007 and the regulations framed thereunder



The tremendous growth of e-tailing has also led to a development of associated ancillary services such as logistics, delivery services, payment solutions and online advertising.

The Indian e-commerce market is expected to grow at a robust pace with growing internet user base and improving internet supporting infrastructure.

While the sector is poised for strong growth, fierce competition amid further consolidation is likely to continue.

Chapter D

Investment climate and foreign trade

D.1 Foreign investment framework

D.2 Regional and international trade agreements

D.3 Major trading partners and leading imports and exports

Investment climate and foreign trade

D.1 Foreign investment framework

Any transaction involving foreign exchange or one that is taking place between a resident and a non-resident is subject to the provisions of FEMA. The RBI is the governing authority under FEMA and is empowered, along-with the government, to issue directions thereunder to govern various cross border transactions including foreign investment. These directions are compiled in the form of Master circulars/directions and are a one point reference for all procedural requirements to be adhered to while undertaking cross border transactions. These directions cater, *inter alia*, to transactions like export and import from/to India, remittances outside India and remittances into India. Remittances into and outside India can be on account of current account transactions or on account of capital account transactions.

Foreign investment into an Indian entity on a strategic basis is subject to FDI policy. The GOI through DIPP formulates a consolidated FDI Policy on a yearly basis which is a defined framework for FDI and is a compendium of all the press notes issued till date of its release. Currently, the FDI policy dated 12 May 2015 is in effect as updated from time to time by press notes released thereafter.

Foreign investors can invest directly in India, either on their own or through joint ventures in virtually all the sectors except in a very small list of activities where foreign investment is prohibited (refer Appendix 4). FDI in majority of the sectors is under automatic route, i.e., allowed without any requirement of seeking regulatory approval prior to such investment.

The GOI has during the past few months introduced significant reforms in the FDI policy in sectors/areas such as Defence, Rail Infrastructure, Construction Development, Insurance, Pension Sector, Medical Devices, White Label ATM Operations, investments by NRIs on non-repatriation basis and introduction of composite cap for foreign investment. This in turn has resulted in increased FDI into the country. However, given that the country has potential to attract far more foreign investment which can be achieved by further liberalizing and simplifying the FDI regime, it further came up with path breaking amendments vide Press Note 12 of 2015 issued by DIPP. Some of the key amendments introduced by the said press note are as under:

- a. Liberalization of various conditions in construction development sector like removal of conditions of minimum area requirement, minimum capitalization and introduction of flexible exit norms; it is also clarified that earning of rent/income on lease of property not to be construed as real estate business.

- b. Whole sale cash and carry traders with FDI are now permitted to carry single brand retail activities as well, in a single entity.
- c. Single brand retail entity operating through brick and mortar store is now permitted to undertake retail trading through e-commerce; mandatory sourcing condition may be withdrawn where products have “state of art” and “cutting edge technology”
- d. Term “manufacture” has been defined in line with the Income tax Act
- e. 100% FDI in duty free shops permitted under automatic route.
- f. FDI in LLPs operating in sectors in which FDI is permitted under automatic route are allowed under automatic route;
- g. ‘Internal accrual’ for downstream investment purposes has been defined as profits transferred to reserve account after payment of taxes
- h. FIPB approval not required for foreign investment made by way of swap of shares if the Indian investee company is operating under the automatic route sectors;
- i. Investments by entities incorporated outside India, which are owned and controlled by NRIs, will be deemed to be treated as domestic investments subject to the condition that investment is under non-repatriation route

Other significant changes introduced in the FDI policy during the past year are also highlighted hereunder:

- a. Up to 49% FDI allowed in the pension sector (automatic up to 26%, and approval beyond 26% and up to 49%) subject to conditions
- b. Increase in the pecuniary limit for consideration of FDI proposals by CCEA from US\$190m (INR12b) to US\$312.5m (equivalent of INR20b) which later was increased to US\$468.7m (equivalent of INR30b). The GOI has recently vide Press note 12 of 2015 increased this limit further to US\$781.2 m (equivalent of INR50b). FDI proposals below this limit will be considered by FIPB only and proposals above this threshold will be placed for consideration of CCEA post FIPB approval/recommendations
- c. Foreign investment in Real Estate Investment Trust and Infrastructure Investment Trust permitted during the year. In addition to the same, the RBI has also permitted FDI in AIF under the automatic route
- d. Clarification on the requirement of obtaining FIPB approval in cases of transfer of shares from one non-resident to another non-resident where the Indian investee company is under Government (approval) route
- e. FIPB approval will not be required in respect of the additional foreign investment if the approved foreign equity percentage is maintained

- f. It is clarified that the sectoral cap, i.e., the maximum amount, which can be invested by foreign investors in an entity, unless provided otherwise, is composite and includes all types of foreign investments (direct and indirect) regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 8 (QFI), 9 (LLPs) and 10 (DRs) of FEMA (Transfer or Issue of Security by Person Resident Outside India) Regulations

While most of these changes demonstrate Governments' commitment towards making India an investor-friendly destination, it also reflects a progressive movement towards "Make in India" initiative of the GOI. "Make in India" recognizes "Ease of doing business" as a key factor to promote entrepreneurship. The initiative is mainly to encourage companies to manufacture their products in India.

In order to strengthen the regulatory environment especially in respect of foreign investment, the GOI has rationalized the existing rules and leveraged upon information technology to make governance more efficient and user friendly. One of such initiatives is the launch of eBiz portal, which is a one-stop shop offering various G2B services to investors and in relation to compliances required for foreign investment, the portal has, inter-alia, operationalized online filing of advance intimation of foreign receipts and also reporting of issue/transfer of shares of an Indian company to non-resident.

The Government has also set up investment promotion and facilitation help desks for select countries such as the US, Japan, Korea, China and Canada. These designated desks act as primary support for all investment queries and for providing handholding and liaising services to investors primarily from these countries.

Make in India campaign was formed in September 2014 with an objective to assist investors in seeking regulatory approvals and providing G2B interactions required throughout the life-cycle of a business. This has in turn crystalized the FDI framework and has become a first point reference for foreign investors.

D.1.1 Components of foreign investment in India

Foreign investment in India can broadly be categorized as follows:

- ▶ Foreign Direct Investment (FDI)
- ▶ Foreign Investment under Portfolio Investment Scheme
- ▶ Investments on a non-repatriation basis by NRIs and PIOs

Normally, controlling shareholding/strategic investment is expected in FDI. FDI, as distinguished from portfolio investment, has the connotation of establishing a "lasting interest" in an enterprise that is resident in an economy other than that

of the investor. On the other hand, portfolio investments are only made with the intention of investing in securities to earn profits through appreciation of capital and dividends. There is no intention to control the company in which investment has been made.

D.1.1.1 FDI

The GOI permits FDI on an automatic basis in majority of the sectors today. Please see Appendix 4 for the complete list of sectors in which FDI is prohibited or permitted under approval or automatic route.

D.1.1.2 Foreign portfolio investments

In addition to direct investment in India, eligible non-residents can also make portfolio investments. The Reserve Bank simplified the foreign portfolio norms last year by putting in place an easier registration process and operational framework. With this simplification, the existing portfolio investor class, namely, Foreign Institutional Investors (FII) and Qualified Foreign Investors (QFI) registered with SEBI were subsumed under RFPI. RFPI registered with SEBI are allowed to invest in the primary and secondary capital markets in India under the foreign portfolio investment scheme. It was also notified that a QFI/FII (including SEBI approved sub-accounts of FII) after registering as a RFPI will not be eligible to invest as QFI/FII.

RFPIs are allowed to purchase on repatriation basis following securities subject to terms and conditions specified by the SEBI and the RBI:

- ▶ Dated government securities/treasury bills;
- ▶ Listed non-convertible debentures/bonds issued by Indian company;
- ▶ Listed and unlisted non-convertible debentures/bonds issued by an Indian company in the infrastructure sector;
- ▶ Non-convertible debentures/bonds issued by NBFC categorized as “Infrastructure Finance Companies”;
- ▶ Primary issues of non-convertible debentures/bonds provided such non-convertible debentures/bonds are committed to be listed within 15 days of such investment etc

D.1.1.3 Foreign Venture Capital Investment Route

NRIs can invest in the shares or convertible debentures of Indian companies on a non-repatriable basis, apart from investing in the form of FDI. These investments are treated at par with domestic investment and are not construed as FDI. However, even under this scheme NRIs cannot invest in companies that are engaged in chit fund business or is a Nidhi company or is engaged in agricultural/plantation activities or real estate business or construction of farm house or dealing in TDRs.

As highlighted in sections above, investments by companies, trusts and partnership firms, incorporated outside India which are owned and controlled by NRIs, will be deemed to be treated as domestic investments at par with the investments made by residents subject to the condition that investment is under non-repatriation route.

D.1.2 Foreign Investment Promotion Board

FIPB takes decisions on the FDI proposals on the basis of the FDI Policy, Press Notes and other related notified guidelines formulated by DIPP. Proposals are submitted online, followed with the filing of hard copies in prescribed manner. The proposals subject to FIPB approval and involving equity inflow of US\$781.2m (equivalent of INR50b) and below are considered and approved in the meeting of the FIPB by the Finance Minister. Projects with a higher investment than US\$781.2m are submitted by the FIPB to the Cabinet Committee on Economic Affairs for its consideration.

D.1.3 Foreign exchange controls

FEMA as it stands today encompasses of provisions relating to all such transactions which have international financial implications. The provisions are read in light of an understanding that transactions which are of capital account nature are restricted unless specifically permitted under the provisions of FEMA. While the understanding is entirely reverse in respect of current account transactions. This categorization can be understood in detail as under:

1. **Current account transactions:** Current account transactions are all such transactions which arise on account of foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business. INR is fully convertible (except for certain specified restrictions) for trade and for current account purposes viz., one can freely purchase foreign currency in exchange of INR for the purposes of settlement of trade and current account transactions
2. **Capital account transactions:** Capital account transactions are those which results in alteration of the overseas assets or overseas liabilities (including contingent liabilities) of an Indian resident or Indian assets or liabilities of a person resident outside India, e.g., FDI or ODI or ECB by an Indian entity. These transactions are not permitted unless they are specifically allowed and prescribed conditions are satisfied. Hence, INR is not yet fully convertible on account of capital account transactions

FEMA envisages that the RBI will have a controlling role in the management of foreign exchange. Since it cannot handle all the foreign exchange matters directly, the RBI is empowered to issue directions to “authorized persons”, e.g., Indian banks. These are issued through Authorised Person (Directions) circulars. Currently, the RBI has delegated majority of its powers to AD bankers who are required to exercise their jurisprudence and discretion to adhere to the given Regulatory framework. In addition to this operational framework, FEMA also makes provisions for enforcement, compounding procedures, penalties, adjudication and appeals

D.2 Regional and international trade agreements¹⁴¹

Overview

Over the years, India has entered several bilateral and regional trade agreements with its key trading partners. Apart from offering preferential tariff rates on the trading of goods among member countries, these agreements also enable increased economic cooperation in the fields of trade and services, as well as in investment and intellectual property. This has resulted in the liberalization of trade.

D.2.1 Existing trade agreements and regulatory scenario¹⁴²

Some existing free trade agreements entered by India:

- ▶ Comprehensive Economic Partnership Agreement (CEPA) with Japan
- ▶ Comprehensive Economic Co-operation Agreement (CECA) with Malaysia
- ▶ CEPA with Korea
- ▶ India-ASEAN Trade in Goods Agreement
- ▶ India-ASEAN (Services and Investment) Agreement
- ▶ CECA with Singapore
- ▶ Free Trade Agreement with Sri Lanka (trade in goods)
- ▶ Agreement on South Asia Free Trade Area executed by India, Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka
- ▶ Framework Agreement with Thailand
- ▶ Preferential Trade Agreement with MERCOSUR countries
- ▶ SAARC Agreement on trade in services
- ▶ Preferential Trade Agreement with Chile
- ▶ Asia Pacific Trade Agreement with Bangladesh, Republic of Korea, China and Sri Lanka
- ▶ Preferential Trade Agreement with Afghanistan
- ▶ Global System of Trade Preference with 47 countries
- ▶ Preferential Trade Agreement with Afghanistan
- ▶ Global System of Trade Preference with 47 countries

¹⁴²Source: <http://commerce.nic.in/MOC/index.asp> (Ministry of Commerce and Industry website)

D.2.2 Recent developments and outlook

India is attempting to fast track its trade agreement related negotiations with the EU and Australia.

D.2.2.1 Trade agreements under negotiation

- ▶ India-European Union FTA
- ▶ India-Indonesia CECA
- ▶ India-Thailand CECA
- ▶ India-New Zealand FTA
- ▶ India-Canada CECA
- ▶ India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement
- ▶ India-South African Customs Union PTA
- ▶ India-Sri Lanka FTA (Services and investment)
- ▶ Bay of Bengal Initiative for Multi-sectoral Technical and Economic Cooperation
- ▶ India-Gulf Cooperation Council FTA
- ▶ India-Australia CECA
- ▶ India-Israel FTA
- ▶ India-MERCOSUR PTA (scope to be expanded)
- ▶ India-Chile PTA (scope to be expanded)

D.2.2.2 Free-trade agreements under feasibility study

A feasibility study for prospective FTAs between two countries is being undertaken to gauge bilateral trade potential. The key objectives of conducting a "feasibility study" for a FTA include:

- ▶ Identifying the benefits countries entering FTAs are likely to derive under the FTA
- ▶ Assessing the feasibility of a comprehensive FTA covering goods, services, investment and intellectual property rights
- ▶ Assessing the prospect for expansion of trade in goods and services through liberalization of tariffs and non-tariff measures
- ▶ Creating a favorable environment for investment

Listed below are the Free Trade Agreements under the feasibility study:

- India-Peru
- India-Russia
- India-Egypt
- India-Turkey

D.3 Major trading partners and leading imports and exports

Foreign trade in India

India accounts for 2.07%¹⁴³ of global trade in goods and services. In 2013, India's share of trade in commercial services reached 3.3% of global business, compared with 2.8% eight years ago. The country's exports grew by 4.66% in 2013.¹⁴⁴ Moreover, they accounted for 1.7% of the world's merchandise exports. India's imports accounted for 2.5% of the world's merchandise imports in 2013. Foreign trade in the country is regulated by the Foreign Trade (Development and Regulation) Act, 1992. The Ministry of Commerce and Industry is the foremost body responsible for promoting and regulating foreign trade in India.

D.3.1 Foreign Trade Policy

India's Foreign Trade Policy (FTP) covers policies related to fiscal incentives, rationalized procedures, institutional changes, increased access to global markets and diversification of its export market.

The FTP places special emphasis on key sectors, including agriculture, handicrafts, leather, gems and jewelry, marine products, handlooms, chemicals, electronics, IT hardware, pharmaceuticals, automobiles, machineries, sports goods and toys, to generate employment opportunities and increase India's share in global trade.

This policy focuses on expansion of the market and diversification to new markets in Africa, Oceania, Latin America and some parts of Asia.

¹⁴³<http://pib.nic.in/newsite/PrintRelease.aspx?relid=106730>, Press Information Bureau website Ministry of Commerce's press release

¹⁴⁴Annual Report 2013-14, Ministry of Commerce website, <http://commerce.nic.in>.

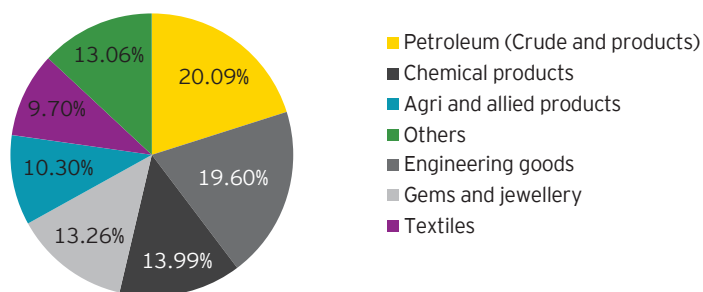
D.3.2 Exports

Most goods can be freely exported from India, except for a small number of prohibited items. India's key exports include gems and jewelry, petroleum, engineering goods, textiles and drugs and pharmaceuticals. The country also accounts for around 3.3% of global export of commercial services (amounting to US\$151.5b in FY14).

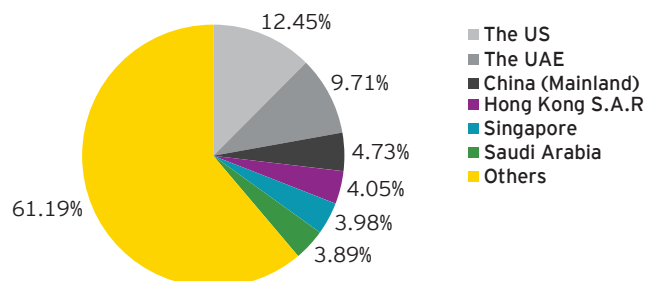
Principal export destinations: the US turned out to be the top-most export destination for India's products in FY14, ahead of the UAE, which has been the top-most export destination for India's products consecutively in FY13, FY12, FY11 and FY10. Other countries/jurisdiction to which India exports products include the UAE, China (Mainland), Hong Kong S.A.R, Singapore, Saudi Arabia, the Netherlands, the UK and Germany.

The cumulative value of India's exports in FY14 was US\$314.40b compared with US\$300.40b in FY13 – an increase of 4.66%.¹⁴⁵

Top commodities among India's exports (FY14)



Top destinations for India's exports (FY14)



Source: <http://commerce.nic.in/eidb/default.asp> (Website of Ministry of Commerce & Industry)

¹⁴⁵<http://commerce.nic.in/eidb/default.asp>

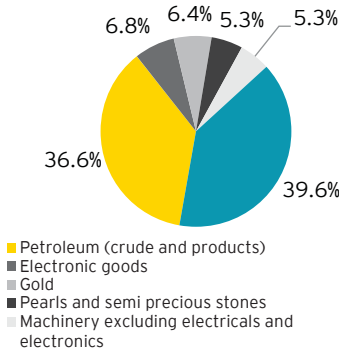
D.3.3 Imports

Import of all commodities is free in India, except for items regulated by any law or policy in force. Some items in the prohibited list, such as fat or oils of animals, beef, hazardous dyes and ivory, cannot be imported into India. The country's key imports include petroleum, electronic goods, machinery, gold, pearls and semiprecious stones, and amounted to US\$450.19b in FY14.

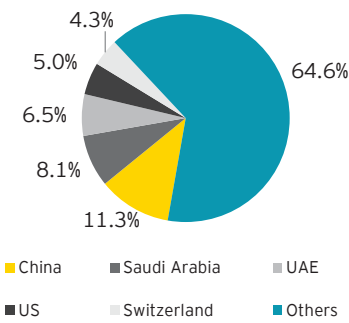
Principal countries from which India imports– China accounts for the largest share of India's imports. Other countries from which it imports include the UAE, Saudi Arabia, the US and Switzerland.

The cumulative value of India's imports for FY14 was US\$450.19b compared with US\$490.73b in FY13 – a decline of 8.26% in dollar terms. The country's oil imports in FY14 were valued at US\$167.62b (2.2% higher than US\$164.04b in FY13). India's non-oil imports in FY14 were valued at US\$283.32b – 13.3% lower than US\$326.7b in FY13.

Top commodities among India's imports (FY14)



Top countries for India's imports (FY14)



[Data source: <http://commerce.nic.in/eidb/default.asp> - Ministry of Commerce & Industry]

D.3.4 Balance of trade

India's trade deficit for FY14 is at US\$135.79b compared with US\$190.34b in FY13.

Imports to India are increasing rapidly, recording a CAGR of 20.66% between FY05 and FY14, due to brisk industrialization. Similarly, exports from India are also rising exponentially, recording a CAGR of 15.79% during the same period. The country's export-to-GDP ratio stood at 17.9% in FY14.

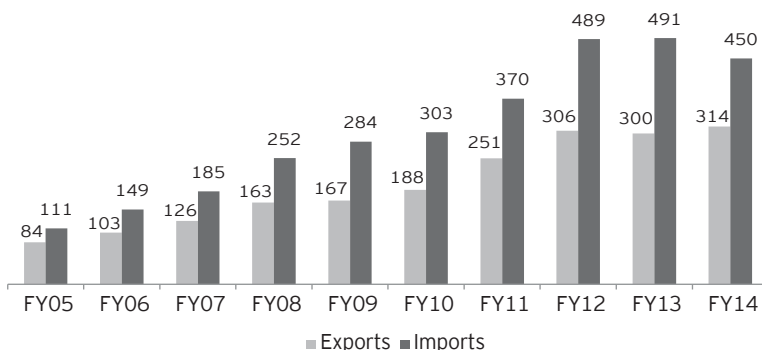
D.3.5 Liberalization of tariffs

India's tariff regime has witnessed a significant reduction in rates over a period of time. Tariffs declined from their peak rate of 350% in 1991 to 10% in 2014. All machinery and parts imported for industrial, mining, power or irrigation purposes attract tariff duty of 7.5%-10%.

Targets of FTP 2015-20:

- ▶ Increase exports of merchandise and services from US\$465.9b in 2013-14 to US\$900b by 2019-20
- ▶ Enhance India's share in world exports from 2% to 3.5%
- ▶ Provide a stable and sustainable policy environment for foreign trade in merchandise and services
- ▶ Diversification of India's exports

Balance of trade (US\$b)



Source: <http://commerce.nic.in/MOC/index.asp> Website Ministry of Commerce & Industry

Chapter E



Entry options in India

Entry options in India

Various forms of business in India

Particulars	Liaison Office (LO)	Project Office (PO) ¹⁴⁶ /Branch Office (BO) ¹⁴⁷	Subsidiary company	Limited Liability Partnership (LLP)
1. Legal status	Represents the parent company	Extended arm of the parent; PO is generally set-up for specific projects, whereas a BO is set-up for carrying activities in the course of business	Independent status	Independent status
2. Approval for commencement	Requires specific approval from the RBI	Requires specific approval from the RBI	Company can be set-up subject to FDI guidelines	LLP can be set up subject to FDI guidelines
3. Permitted activities	Liaison activities No commercial/business activities are permitted	Restricted scope Activities listed by the RBI are only allowed to be undertaken	Activities specified in memorandum of association of the company, subject to FDI guidelines	LLP has to be engaged in sectors for which 100% FDI is allowed through automatic route and no FDI-linked conditions are applicable

¹⁴⁶General permissions are available to set-up POs by foreign companies for specific projects where a contract is secured from Indian companies and which meet the prescribed conditions.

¹⁴⁷BOs are permitted to represent the parent and undertake activities in India such as Export/Import of goods, rendering professional services, carrying out research work, foreign airline, shipping companies etc.

Particulars	Liaison Office (LO)	Project Office (PO) ¹⁴⁶ /Branch Office (BO) ¹⁴⁷	Subsidiary company	Limited Liability Partnership (LLP)
4. Key compliance requirements under FEMA	Required to file Annual Activity Certificate (by auditors in India) with RBI	Required to file Annual Activity Certificate (by auditors in India) with RBI	Required to file periodic and annual filings relating to foreign liabilities and assets, receipt of capital and issuance/ transfer of shares to foreign investors	LLP is required to report the details of receipt of amount of consideration for capital contribution LLP is required to report disinvestment/ transfer of capital contribution to the RBI.
5. Income tax rate ¹⁴⁸	LO is not subject to tax in India, since not permitted to undertake any business activity	Liable to be taxed on income earned @ 43.26% (rate applicable to foreign corporations)	Liable to be taxed on global income @ 34.61% on net basis Company is liable to Minimum Alternate Tax @ 21.34% on its book profits	Liable to be taxed on global income at 34.61% on net basis LLP is liable to Alternate Minimum Tax @ 21.34% of its adjusted total income.

¹⁴⁸ All income tax rates are inclusive of surcharge and education cess for FY16 assuming income exceeds INR100m. Surcharge for FY16 is 7% if the income exceeds INR10m but less than INR100m. Where the income exceeds INR100m for FY16 the surcharge is to be calculated at 12%. Education cess @ 3% is applicable over and above the surcharge.

Particulars	Liaison Office (LO)	Project Office (PO) ¹⁴⁶ /Branch Office (BO) ¹⁴⁷	Subsidiary company	Limited Liability Partnership (LLP)
6. Repatriation	LO is not permitted to undertake any business activity; as such, may not be any repatriations from LO.	Approval not required for remittance of post-tax profits to HO outside India, subject to filing of requisite documents with RBI	Does not require any approval for remittance of post-tax profits; dividends declared will be subject to distribution tax	It does not require any approval for remittance of post-tax profits. Unlike a company, an LLP is not required to pay tax on withdrawal of profits from partner's capital.
7. Ease of exit	Prior approval of RBI, ROC and income tax authorities	Prior approval of RBI, ROC and income tax authorities	Complex depending upon the strategy adopted. Exit can be through sale of shares or liquidation.	It is complex depending upon the strategy adopted Exit can be through sale of interest or dissolution.

Chapter F

Funding of Indian businesses

F.1 Equity capital

F.2 Preference share capital

F.3 Debentures and borrowings

F.4 ADRs, GDRs and FCCBs

F.5 Funding of LLP

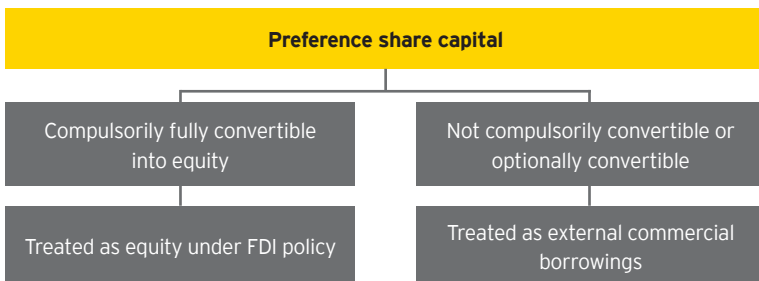
Funding of Indian businesses

F.1 Equity capital



- ▶ Additional capital can be raised by any of the following modes¹⁴⁹ subject to regulatory conditions:
 - ▶ Rights issue
 - ▶ Partly paid equity shares/warrants
 - ▶ Against import of capital goods and pre-incorporation expense
 - ▶ Against legitimate dues of the investee company
- ▶ Issue price and transfer price of equity shares is subject to pricing guidelines based on internationally accepted methodologies.

F.2 Preference share capital



- ▶ The rate of dividend paid to non-residents should not exceed 300 basis points over the Prime Lending Rate of State Bank of India as on the prescribed date.

¹⁴⁹Bonus issue of shares is a mode of capitalization of reserves

F.3 Debentures and borrowings

Companies can raise funds by issuing debentures, bonds and other debt securities or by accepting deposits from the public. Debentures can be redeemable, perpetual, bearer or registered, and convertible or non-convertible.

- ▶ Compulsorily Fully Convertible Debentures are treated as equity under the FDI policy. Non-convertible/optionally convertible debentures are construed as ECB and should conform to ECB guidelines (para F.3.1)
- ▶ Conversion ratio on Compulsorily Convertible Debentures should be determined upfront
- ▶ Rate of interest is subject to transfer price under tax and company law

F.3.1 External Commercial Borrowings

Commercial loans availed in foreign currency are termed as ECBs. The RBI has announced a new policy regime (yet to be notified) for ECBs under which funds can be raised under the following three tracks:

Track I	Track II	Track III
<ul style="list-style-type: none"> ▶ Medium-term foreign currency denominated ECB with Minimum Average Maturity (MAM) of 3/5 years. 	<ul style="list-style-type: none"> ▶ Long-term foreign currency denominated ECB with MAM of 10 years. 	<ul style="list-style-type: none"> ▶ Indian Rupee denominated ECB with MAM of 3/5 years.

- ▶ The ECBs under the three tracks have differing conditions with respect to eligible borrowers, eligible lenders, all-in-cost ceiling, end-use restrictions, etc
- ▶ ECBs can be availed under two routes – automatic route and approval route. An empowered committee set up by the RBI decides all the cases outside the purview of the automatic route
- ▶ Overseas lenders, who have provided ECBs to Indian entities, are allowed concessional tax rates on the interest income earned subject to satisfaction of certain conditions

F.3.2 Listed debentures/bonds

- ▶ SEBI-registered FIIs/QFI/FPIs are allowed to invest in listed debt securities, subject to regulatory conditions



F.4 ADRs, GDRs and FCCBs

- ▶ Qualifying Indian companies can raise equity capital overseas by issuing American Depositary Receipts (ADRs), Global Depositary Receipts (GDRs) or Foreign Currency Convertible Bonds (FCCBs) (INR denominated equity shares/bonds). The company must seek the approval of the FIPB in specific cases
- ▶ There is no monetary limit on the amount for which ADRs, GDRs can be issued
- ▶ There are end-use restrictions only for utilization of such funds in real estate/stock market
- ▶ FCCBs to conform to ECB guidelines (refer para F.3.1)

F.5 Funding of LLP

- ▶ Investment in LLP is through capital contribution and is subject to conditions under the FDI policy
- ▶ LLPs are not permitted to avail ECB

Chapter G

Repatriation of funds

G.1 Repatriation of capital by a company

G.2 Repatriation of profits

G.3 Repatriation of funds by an LLP

G.4 Royalties and fee for technical services

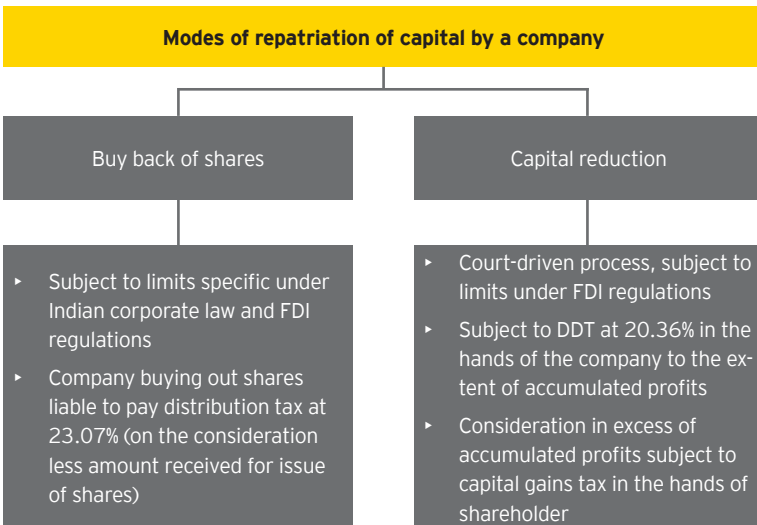
G.5 Pre-incorporation expenses

G.6 Other remittances

Repatriation of funds

G.1 Repatriation of capital by a company

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



G.2 Repatriation of profits

Profits earned by an Indian company can be repatriated as dividends after payment of DDT at 20.36% without the RBI's permission, subject to compliance with certain specified conditions.

G.3 Repatriation of funds by an LLP

Partners of an LLP can freely draw a share of profits without any tax outflow.

Interest on capital can be paid according to LLP laws. Taxes, if applicable, will have to be withheld on the amount sought to be paid.

G.4 Royalties and fee for technical services

Particulars	Repatriation outside India
Royalties and technical know-how	Indian companies entering technology transfer agreements with foreign companies are permitted to freely remit payment for know-how and royalties under the terms of the foreign collaboration agreement.
Fee for technical and management services	Companies can hire the services of foreign technicians and make remittances for technical service fees, subject to certain conditions, regardless of the duration of the engagement of a foreign national in any calendar year.
Consultancy services	Remittance of up to US\$ 10m for consultancy services procured from outside India in respect of infrastructure projects such as power, telecommunications, etc., and up to US\$1m per project for other sectors can be made without obtaining the RBI's approval.

The remittances to foreign companies in the nature of royalties and fees for technical services are subject to tax withholding at applicable rates. Effective 1 April 2015, taxes on royalties and technical services have been substantially reduced from 25% to 10% under the IT Act.

Transfer pricing

Cross-border transactions between Indian entities and their associated enterprises situated abroad are subject to transfer pricing regulation. Accordingly, transactions between associated enterprises should be at arm's length and documentation needs to be maintained in compliance with Indian transfer pricing regulations (Refer chapter O for detailed discussion).

G.5 Pre-incorporation expenses

Remittance on reimbursement of pre-incorporation expenses incurred in India, amounting to up to 5% of investment brought into the country or US\$0.1m, whichever is higher, is permitted without RBI's approval.

G.6 Other remittances

Profits earned by the Indian branches of companies (other than banks) incorporated outside India can be repatriated to their head offices subject to payment of applicable taxes. Proceeds from the winding-up of a branch of a foreign company in India can be repatriated, subject to the RBI's approval.



Chapter **H**

Forms of business enterprises

H.1 Sole proprietorship

H.2 Partnership firms

H.3 Limited Liability Partnership

Forms of business enterprise

H.1 Sole proprietorship

Sole proprietorships are businesses owned and managed by individuals. Its features are:

- ▶ Profits or losses borne by the owner solely
- ▶ No separate legal existence
- ▶ Unlimited liability of the proprietor
- ▶ NRI/PIO residing outside India eligible to carry business in India as sole proprietor
- ▶ Investments made on a non-repatriation basis, subject to conditions; repatriation possible with prior RBI approval
- ▶ NRI/PIO cannot invest in proprietary concern engaged specified sectors
- ▶ Investments can be made through inward remittance or out specified accounts held by NRI or PIO

H.2 Partnership firms

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

Main features are:

- ▶ No registration requirement. However, an unregistered firm does not get certain legal benefits
- ▶ Partner's liability is unlimited
- ▶ Minimum two partners and maximum 10 for banking sector and 20 for other businesses
- ▶ Firm and its partners are legally a single entity
- ▶ Partnership interest is non-transferable (except to existing partners)
- ▶ NRI/PIO residing outside India is allowed to invest in an Indian partnership firm on non-repatriable basis. Repatriation benefits available with prior RBI approval
- ▶ NRI or a PIO cannot invest in a partnership firm engaged specified sectors
- ▶ A person resident outside India (other than NRIs or PIOs) can make investments in partnership firm after obtaining approval of the RBI or FIPB

H.3 Limited Liability Partnership

- ▶ Hybrid entity with the combined features of a company and a partnership firm.
- ▶ Perpetual succession
- ▶ Legal identity separate from its partners
- ▶ Partner's liability limited to their contribution
- ▶ FDI into LLP – permitted under the automatic route subject to investment condition¹⁵⁰
- ▶ LLP not permitted to avail ECB
- ▶ LLPs with FDI eligible to make downstream investments into company/LLP – such downstream company/LLP to satisfy investment condition¹⁵¹
- ▶ Conversion of a company with FDI into LLP permitted under automatic route – such company to comply with investment condition¹⁵²
- ▶ Minimum two designated partners who are individuals, at least one being resident of India
- ▶ Designated partners responsible for the LLP complying with the provisions of LLP laws in India
- ▶ When body corporate (BC) is partner, the BC nominates an individual to act as a designated partner (DP); however, a foreign BC cannot directly appoint an individual to act as DP in an LLP
- ▶ An LLP incorporated in India permitted to make outbound investments, subject to applicable Indian exchange management conditions

¹⁵⁰LLP to be engaged in sectors where 100% FDI is allowed under automatic route and no FDI-linked performance conditions exist

¹⁵¹LLP to be engaged in sectors where 100% FDI is allowed under automatic route and no FDI-linked performance conditions exist

¹⁵²LLP to be engaged in sectors where 100% FDI is allowed under automatic route and no FDI-linked performance conditions exist



Chapter I

An aerial photograph of a sprawling urban landscape, likely in India, showing a dense collection of high-rise buildings and a major multi-lane highway filled with heavy traffic. The perspective is from a high vantage point, looking down on the city. The sky is hazy, and the overall scene conveys a sense of a busy, modern metropolis.

Companies

I.1 Types of companies

I.2 Corporate Social Responsibility (CSR)

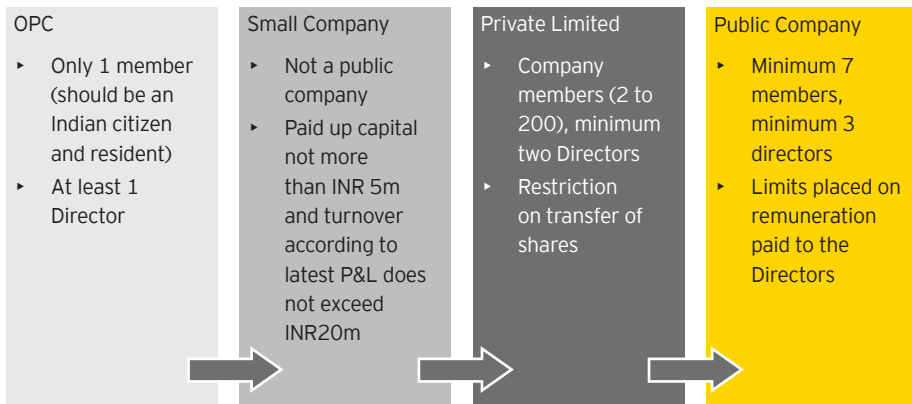
Companies

Overview

- ▶ The companies Act, 2013 (New Cos Act) is an act of the Parliament of India, which regulates incorporation of a company, manner of conducting the affairs of a company, responsibilities of its directors and dissolution of a company
- ▶ The New Cos Act provide for enhanced corporate governance norms, enhance accountability on the part of corporates and auditors, increased levels of transparency and protection of interests of investors, particularly small investors
- ▶ Only 282 sections among 470 sections of the New Cos Act have been notified till date; the provisions of the Cos Act will continue to apply for the remaining sections until the remaining corresponding provisions in the New Cos Act are notified
- ▶ A substantial part of the New Cos Act is governed by various sets of rules promulgated by the Ministry of Corporate Affairs (MCA)
- ▶ The MCA is responsible for ensuring compliance with the provisions of the Cos Act and New Cos Act through the offices of Registrar of Companies (RoC) and the Regional Directors (RD)
- ▶ The Company Law Board has been delegated powers from the MCA to grant approvals until the National Company Law Tribunal (NCLT) is constituted and the relevant provisions of New Cos Act are notified
- ▶ Listed companies are also regulated by the SEBI, a regulatory body, which ensures compliances under listing agreement

I.1 Types of companies

Companies in India can be broadly classified as public and private companies. A company can be registered with its liability as limited or unlimited. In the case of the former, the personal liability of the members is limited to the amount unpaid on their shares, while in the latter, their liability extends to the entire amount of the company's debts and liabilities. A company can also be registered as a guarantee company.



* The requirement of minimum paid-up capital has been omitted by the Companies (Amendments) Bill, 2014. The Bill is yet to receive the President's ascent as the date of this publication

A company that is established for a charitable purpose will be formed under the provisions of Section 8 of the New Cos Act. The profit generated from the activities of such a company is not allowed to be distributed to its members, but must be used for the purpose for which it was established.

The following are key comparisons between a private company and a public company:

Sl. No.	Particulars	Private company	Public company
1	Minimum number of members	2	7
2	Maximum number of members	200	Unlimited
3	Minimum number of Directors	2	3
4	Maximum number of Directors *	15	15
5	Limits on Managerial Remuneration	No limit on remuneration payable to managerial personnel	Approval of the Central Govt is required if the remuneration payable is beyond the limits specified under the New Cos Act

* The number of directors can be increased beyond 15 by way of passing special resolution at a General Meeting

I.1.1 Share capital

- ▶ The New Cos Act permits companies to issue two kinds of shares to its members:
 - ▶ Equity shares (common stock); and
 - ▶ Preference shares (preferred stock)
- ▶ Equity share capital with differential rights as to dividend, voting or otherwise can be issued, subject to prescribed conditions and rules
- ▶ Capital issued by public listed companies need to comply with the guidelines of the SEBI and the Listing Agreement entered into with stock exchange(s)

I.1.2 Board of Directors

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

Committees of the Board of Directors:

Audit Committee

- ▶ Mandatory for listed company and every other public company with a paid-up capital of INR100m or more or turnover of INR1000m or more or aggregate outstanding loan or deposits exceeding INR500m
- ▶ The Committee will examine financial statements and Auditor's Report thereon; to recommend appointment, remuneration of auditor

Stakeholders' Relationship Committee

- ▶ Mandatory for a company, which consists of more than 1,000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year
- ▶ To consider and resolve the grievances of security holders of the company

Committees of the Board of Directors

Corporate Social Responsibility Committee*

- ▶ Mandatory for every company with a paid-up capital of INR5000m or more or turnover of INR10,000m or more or net profits INR50m or more
- ▶ To institute a transparent monitoring mechanism for implementation of CSR projects or programs or activities undertaken by the company

Nomination and Remuneration Committee

- ▶ Mandatory for listed company and every other public company with a paid-up capital of INR100m or more or turnover of INR1,000m or more or aggregate outstanding loan or deposits exceeding INR500m
- ▶ To recommend the appointment of directors or senior management and their remuneration based on the merits and qualification

* Note - the CSR/Committee and related matters are provided in the latter half on the section.

Director identification number (DIN):

Every individual, intending to be appointed as Director of a company, is required to obtain a DIN, a unique number, by applying to the Central Government.

Directors and key managerial personnel:

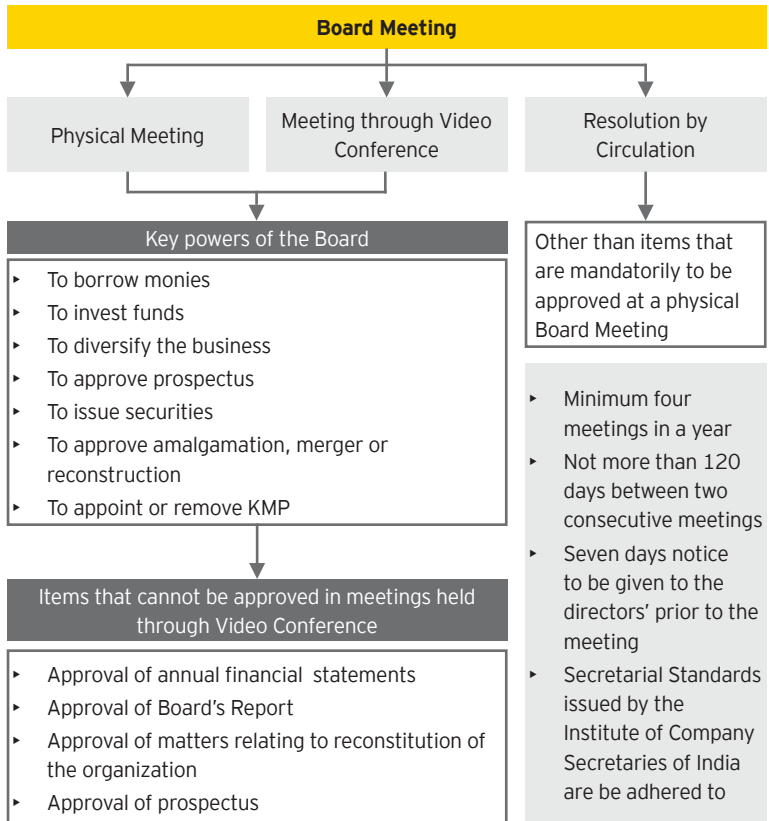
Key managerial personnel	<ul style="list-style-type: none"> ▶ Listed company and every other public company with a paid up capital of INR100m or more will mandatorily have the following whole-time key managerial personnel: <ul style="list-style-type: none"> ▶ Managing Director or CEO or Manager and in their absence a Whole-time Director ▶ Company Secretary ▶ Chief Financial Officer
Resident director	<ul style="list-style-type: none"> ▶ Mandatory requirement to have at least one resident director on Board ▶ Resident director means a person who has stayed in India for a total period of not less than 182 days in the previous calendar year
Managing director/ Whole-time director	<ul style="list-style-type: none"> ▶ Certain specific condition to be adhered – key being the appointee is required to stay in India for a continuous period of not less than twelve months immediately preceding the date of appointment ▶ Central Government approval required in the case of non-compliance with the conditions specified
Independent director	<ul style="list-style-type: none"> ▶ Listed company – at least one-third of the Board will consist of Independent Directors ▶ Every public company with a paid-up capital of INR100m or more or turnover of INR1000m or more or aggregate outstanding loan or deposits exceeding INR500m – at least two Independent Directors on Board ▶ Besides other conditions, the Director should not have a material or pecuniary relationship with the company or related persons, except sitting fees
Woman director	Every listed company and every other public company with a paid-up capital of INR1,000m or more or turnover of INR3,000m or more – at least one female director on board
Company secretary	Every company with a paid up capital of INR500m or more will mandatorily have a whole-time Company Secretary who is a member of the Institute of Company Secretaries of India

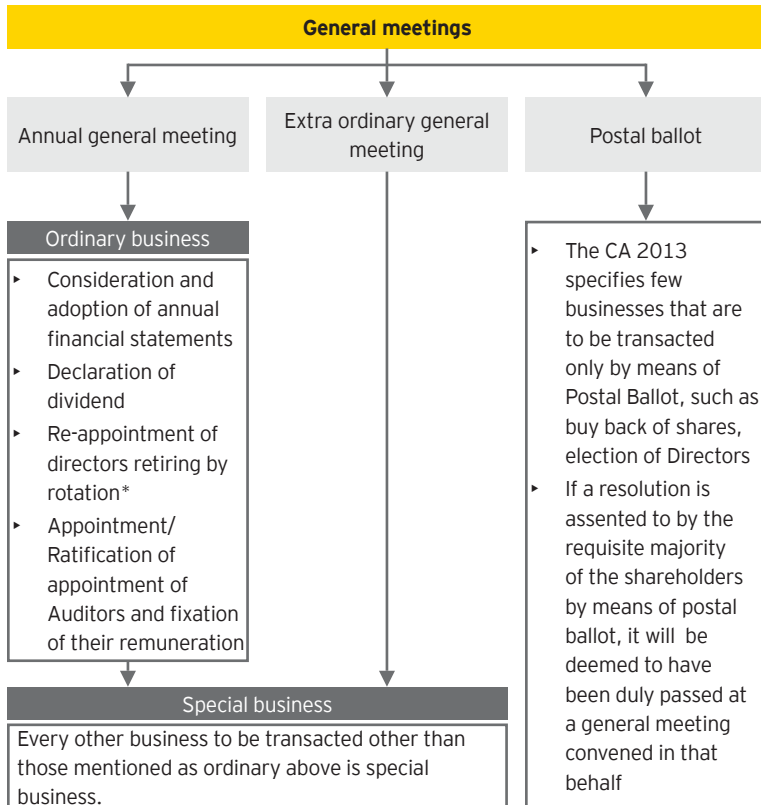
Vacation from office of director:

A Director will automatically vacate from the office in case of the following:

- ▶ Absents himself from all the board meetings held during a 12-month period with or without seeking leave of absence
- ▶ Contravention in related party transactions and failure to disclose interest in the same
- ▶ Resigns from the office by virtue of which he was appointed as a Director
- ▶ Incurs any of the disqualifications specified such as:
 - ▶ Having been convicted by a court of any offense
 - ▶ Having been convicted of the offence dealing with related party transactions
 - ▶ Failure to file financial statements and annual return for a continuous period of three years by any company in which he/she is a Director

I.1.3 Meetings and e-filings





*Applicable in cases of Public Companies only

E-filing:

All statutory filings, intimations to Registrar of Companies and Central Government and other service requests are required to be made online by submitting the eForms available on the MCA website using Digital Signature.

I.2 Corporate Social Responsibility (CSR)

With effect from 1 April 2014 CSR has become mandatory for Indian and foreign companies working in India. Key provisions are as under:

- ▶ Every company with net worth of INR5,000m (US\$81m) or more, or a turnover of INR10,000m (US\$161.97m) or more or a net profit of INR50m (US\$810,000) or more, during any of the three preceding FYs is required to constitute a CSR Committee
- ▶ A CSR Committee will consist of at least three directors, including an independent director (ID). However, CSR Rules exempts unlisted public and private companies that are not required to appoint an ID from having an ID as a part of their CSR Committee and stipulates that the Committee for a private and a foreign company need to have a minimum of only two members
- ▶ CSR committee will:
 1. Formulate and recommend to the Board a CSR Policy indicating activities to be undertaken as specified in Schedule VII
 2. Recommend the amount of expenditure to be incurred on the activities stated in the CSR policy
 3. Monitor CSR activities
- ▶ The board of the companies is required to ensure that the company spends, in every FY, at least 2% of average net profits of the company, as calculated in accordance with the Cos Act, made during the three immediately preceding FYs. The board is required in its report to specify the reasons for not spending the amount, if a company fails to spend such an amount
- ▶ The board is required to approve the CSR policy, disclose its contents in the board report and place it on the company's website

- ▶ Schedule VII of the Co Act and General Circular sets out the activities that may be included by companies in their CSR policies. These activities relate to:
 - a. Eradicating extreme hunger and poverty
 - b. Promoting education
 - c. Promoting gender equality and empowering women
 - d. Reducing child mortality and improving maternal health
 - e. Combating HIV, AIDs, malaria and other diseases
 - f. Ensuring environmental sustainability
 - g. Introducing employment-enhancing vocational skills
 - h. Social business projects
 - i. Contribution to certain funds, such as the Prime Minister's National Relief Fund, and others that may be prescribed
- ▶ General Circular has laid thrust on the liberal interpretation of the Schedule VII of the New Cos Act. FAQ issued by MCA vide its General Circular No. 01 dated 12 January 2016 has clarified that in the scheme of the liberal interpretation of Schedule VII of the New Cos Act, it will be the responsibility of the Board of Company to adjudge whether a particular activity will be covered under CSR or not
- ▶ This recent clarification provides more flexibility to the company to undertake charitable activities, which are indirectly connected to the activities mentioned in Schedule VII of the New Cos Act



Chapter J

Financial reporting and audit requirements

J.1 Financial reporting and auditing

J.2 Tax reporting

Financial reporting and audit requirements

J.1 Financial reporting and auditing

The Institute of Chartered Accountants of India (ICAI) issues accounting standards that are to be followed by all entities engaged in commercial, industrial or business activities. The Central Government, in consultation with National Advisory Committee on Accounting Standards (NACAS), communicates the accounting standards issued by the ICAI under the Companies Act, with a view to provide it a legal status. ICAI also issues guidance notes to provide further guidance on accounting matters not covered by accounting standards.

The enactment of the New Cos Act is a milestone event replacing the six decade old Cos Act. New Cos Act replaces NACAS with National Financial Reporting Authority (NFRA). NFRA will be quasi-judicial body and will have responsibility to ensure overall quality of financial reporting. New Cos Act introduced additional reporting responsibilities for directors' and auditors' in general and with regard to internal financial controls and related party transactions, specifically.

Securities Exchange Board of India (SEBI), vide circular dated 17 April 2014, amended Clause 35B and Clause 49 (RC49) of the Listing Agreement. The RC49, among other matters, deals with aspects such as related party transactions, independent directors, Audit Committee and vigil mechanism. Although the purpose of RC49 is to align the requirements of the listing agreement with the New Cos Act, there are significant differences, which either impose new requirements or materially alter those contained in the New Cos Act.

In addition, certain statutes and regulatory bodies also prescribe accounting and presentation requirements, which need to be complied. For example, the Reserve Bank of India (RBI) has issued various circulars that deal with the specific aspects of accounting by banking companies, non- banking finance companies, etc.

J.1.1 Sources of accounting standards and convergence with IFRS

In exercise of power conferred upon Central Government under Section 210A(1) of the Cos Act, 28, accounting standards are notified under Companies (Accounting Standards) Rules, 2006. Furthermore, in exercise of power conferred upon Central Government under Section 133 read with Section 469 of the New Cos Act, the Central Government, in consultation with the NACAS notified Companies (Indian Accounting Standards) Rules, 2015 which has become effective 1 April 2015.

Accounting Standards notified under Companies (Indian Accounting Standards) Rules, 2015 are to be called Indian Accounting Standards (Ind-AS) and are duly converged with International Financial Reporting Standards (IFRS) with limited, but important carve-outs. According to these rules, any company may comply with Ind-AS for financial statements for an accounting period beginning on or after 1 April 2015 with the comparatives for the period ending on 31 March 2015 or thereafter. This will be applicable to both stand-alone and consolidated financial statements of the company.

Furthermore, it mandates the following companies to comply with Ind-AS for the accounting period beginning on or after 1 April 2016 with the comparatives for the period ending on 31 March 2016 or thereafter:

- a. Companies having net worth of INR5000m or more (irrespective whether equity or debt securities of such companies are listed or in the process of being listed on any stock exchange in India or outside India)
- b. Holding, subsidiary, joint venture or associate companies of such companies

For this purpose, the net worth of companies will be calculated in accordance with standalone financial statements of the company as on 31 March 2014 or the first audited financial statements for accounting period, which ends after that date. For companies that were not in existence on 31 March 2014 or an existing company falling under any of the thresholds mentioned above post 31 March 2014, the net worth shall be calculated on the basis of first audited financial statements ending after that date in respect of which it meets the thresholds.

Accounting standards as notified under companies (Accounting Standards) Rules, 2006 shall continue to be applied to companies that do not meet the thresholds and that do not opt to apply Ind-AS voluntarily. However, for any company which opts to apply Ind-AS voluntarily for its financial statement for accounting period beginning on or after 1 April 2015, Ind-AS will be irrevocable. Furthermore, once the company starts following Ind-AS, either voluntarily or mandatorily, on the basis of the thresholds specified above, it will be required to follow Ind-AS for all subsequent financial statements even if any of the criteria specified do not subsequently apply to it.

Currently, insurance companies, banking companies and non-banking finance companies will not be required to apply Ind-AS for preparation of their financial statements either voluntarily or mandatorily. The Central Government is in the process of finalizing the roadmap for Ind-AS adoption by such companies.

Ind-AS are intended to be in conformity with the provisions of the applicable laws. However, if due to subsequent amendments in the law, a particular Ind-AS is found not to be in conformity with such law, the provisions of said law will prevail and the financial statements will be prepared in conformity with such law.

J.1.2 Significant fundamental concepts

The underlying assumptions as described in the framework for the preparation and presentation of financial statements by ICAI are:

- ▶ Accrual – under accrual basis, the effects of transactions and other events are recognized when they occur and they are recorded and reported in the financial statements of the periods to which they relate
- ▶ Going concern – the financial statements are normally prepared on the assumption that an enterprise is a going concern and will continue to operate for the foreseeable future
- ▶ Consistency – in order to achieve comparability, the accounting policies are followed consistently from one period to another

Uniform financial year

Under the New Cos Act, companies need to adopt uniform financial year ending 31 March. Companies, which currently follows different financial year need to align with the new requirement within two years.

Audit rotation

All companies need to get their accounts audited by an auditor who is practicing member of the ICAI. Under the New Cos Act, an auditor is appointed for a term of five years. However, the appointment needs to be ratified each year at the annual general meeting (AGM). Furthermore, all listed companies and those belonging to the prescribed class cannot appoint or reappoint the auditor for more than two terms of five consecutive years, if the auditor is an audit firm or for more than one term of five consecutive years, if the auditor is an individual. An auditor who has completed their term will not be eligible for reappointment as auditor for five years from the completion of the term.

J.1.3 Disclosure requirements, reporting and filing requirements

Financial statement

Every company needs to prepare financial statements every financial year, which give true and fair view of the state of affairs of the company. Financial statement in relation to company includes:

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

New Cos Act also requires companies with one or more subsidiaries (including associates or joint ventures) to prepare consolidated financial statements (CFS) in addition to standalone financial statements. Furthermore, where a company needs to prepare CFS under New Cos Act, it will also apply all requirements with respect to preparation, audit and adoption of standalone financial statements to CFS.

The financial statements, including CFS, need to be approved by board of directors before they are signed by the Chairperson of the company where he is authorized by the board or by two directors out of which one will be managing director and CEO (if he is director of the company), CFO and CS, wherever they are appointed.

Financial statements should be laid before shareholders in a general meeting along with a board report. The board report needs to include several disclosures about performance, risks, etc., such as a statement indicating the development and implementation of the risk management policy of the company. Listed companies need to disclose in the board report the ratio of remuneration of each director to the median employee's remuneration, and such other details as may be prescribed. Furthermore, listed companies need to attach Directors' Responsibility Statement (DRS) to board report which, among other matters, states that directors have laid down internal financial controls and such controls are adequate and were operating effectively. For this purpose, internal financial controls mean policies and procedures adopted by the company for ensuring the orderly and efficient conduct of the business, including adherence to company policies, the safeguarding of its assets, the prevention and detection of fraud and errors, the accuracy and completeness of accounting records and the timely preparation of reliable financial information.

The audit report will be attached to each financial statement. Audit report, among other matters, needs to state whether the company has adequate internal financial control system in place along with operating effectiveness of such controls. Moreover, if the auditor, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company, he needs to immediately report the matter to the Central Government within prescribed time and manner.

The SEBI listing agreement requires all listed companies to maintain functional website containing basic information about the company, including financial information. The New Cos Act does not mandate unlisted companies to have website. However, if the company has a website, it needs to place financial statements, including of its subsidiaries, on its website.

SEBI provides listed company an option to submit audited or unaudited quarterly and year to date financial results to the stock exchange within forty-five days of end of each quarter in the prescribed format. If the company opts to submit unaudited financial results, they will be subjected to limited review by the statutory auditors of the company. The company also needs to submit audited financial results for the entire financial year, within sixty days of the end of the financial year. If the company has subsidiaries, consolidated results are optional for quarterly results but mandatory for annual results. Currently, the SEBI also provides option to submit consolidated quarterly results under IFRS.

Under New Cos Act, every company needs to file financial statements with the Registrar of Companies within the pre-scribed time limit. For prescribed class of companies, such filing should be in XBRL format.

J.2 Tax reporting

On 31 March 2015, the Central Board of Direct Taxes (CBDT) notified the Income Computation and Disclosure Standards (ICDSs) which need to be followed by all assesses, following the mercantile system of accounting, for the purpose of computation of income chargeable to income-tax under the head “Profit and gains of business or profession” or “Income from other sources”. ICDS are applicable to all taxpayers, including non-resident taxpayers (corporate or non-corporate), irrespective of turnover or quantum of income. Currently, 10 ICDSs are notified by Central Government.

ICDS became effective from 1 April 2015 and will accordingly apply for assessment year 2016-17 onward. All contract or transaction existing on 1 April 2015 or entered into on or after 1 April 2015 will be dealt with in accordance to the provisions of this standard after taking into account the income, expense or loss, if any, recognized in respect of the said contract or transaction for the previous year ending on or before 31 March 2015.

ICDS deals with significant accounting policies and also acknowledges Going Concern, Consistency and Accrual as three fundamental accounting assumptions for the purpose. It is also clarified that in the case of any conflict between the provisions of Income Tax Act, 1961 and ICDS, the provisions of Income Tax Act, 1961 shall prevail to that extent.

As clarified in Preamble to ICDS, separate maintenance of books shall not be required however it may necessitate maintenance of memorandum records. Disclosures required under ICDS may be included in Tax Audit Report or Return of Income. Furthermore, ICDS will not impact Minimum Alternate Tax (MAT) for corporate taxpayers, which will continue to be based on “book profit” determined on basis of applicable accounting standards.

Non-compliance of ICDS gives power to the tax authority to assess income on “best judgment” basis. Any addition to returned income also has potential penalty implications. While the object of ICDS was to standardize one or more accounting alternatives so that taxable income can be computed precisely and objectively, the deviations/carve-outs in ICDS, compared with accounting standards, appear to go beyond this objective and may significantly increase the compliance burden for taxpayers. Furthermore, on Ind-AS becoming effective from financial year 2016-17 onward, the separate evaluation of the impact of ICDS compared with Ind-AS will be imperative with respect to the determination of tax liability.



Chapter **K**

Economic laws and regulations

K.1 Indian Contract Act, 1872 (ICA)

K.2 Protection of intellectual property rights

K.3 Labor laws

K.4 Anti-trust regulation

K.5 Negotiable Instruments Act, 1881(NI Act)

K.6 Sale of Goods Act, 1930 (SG Act)

**K.7 Arbitration and Conciliation Act, 1996
(A&C Act)**

Economic laws and regulations

K.1 Indian Contract Act, 1872 (ICA)

The ICA governs the formation, implementation and conclusion of a contract. The ICA also provides remedies for breach of contract. Subsequent amendments have removed provisions relating to certain contracts, including contract of partnership, contract of carriage and contract for sale of goods, and enacted the same in separate independent legislations.

K.2 Protection of intellectual property rights

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

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

K.2.1 Copyright Act, 1957 (Copyright Act) and Copyright Rules, 1958 (Copyright Rules)

The Copyright Act read with the Copyright Rules governs the field of copyright protection in India. As per the said law, copyright subsists with the author of the original literary, dramatic, musical and artistic work, a cinematographic film or a sound recording.

In India, copyright is an inherent right of the author in his creation and therefore, the registration of copyright is not *sine qua non*.

India being a signatory to Berne Convention and Universal Copyright Convention, any work published in any country signatory to the said conventions is granted same treatment as if the work was first published in India.

The term of copyright is, in most cases, the lifetime of the author plus 60 years hereafter.

The Copyright Act provides for both civil and criminal remedies for an infringement of a copyright. When an infringement is proved, the copyright owner is entitled to remedies by way of injunction, damages and order for seizure and destruction of infringing articles. An application before the Commissioner of Customs can also be made to seize infringing copies of copyright work, which is being imported in India.

K.2.2 Trade Marks Act, 1999 (TM Act)

The TM Act and the Trade Marks Rules, 2002 provides for the protection of trademarks for services and goods, including collective marks, and for the assignment and transmission of trademarks. The registration of the trademark is *sine qua non* for a person claiming to be the proprietor of a trademark. Wherein, the prior use of the trademark is not a pre-requisite for its registration.

In India, a trademark is given for 10 years and is subsequently renewable after another 10 years. Any aggrieved person, can file an application seeking revocation/rectification of a registered trademark on limited grounds, as mentioned in the TM Act.

In India, the concepts of “passing off” as well as infringement of the trademark are well accepted by the courts and a Civil Suit for the purpose can be brought before the Civil Court.

K2.3 Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) and Geographical Indication of Goods (Regulation and Protection) Rules, 2002 (GI Rules)

In compliance with the obligations in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and the Paris Convention for the Protection of Industrial Property, India enacted the GI Act along with the GI Rules that governs the present geographical indications regime in India. According to the GI Act “Geographical Indication”, means an indication which identifies particular goods as agricultural, natural or manufactured goods that are originating, or are manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin.

The GI Act provides for the registration and protection of geographical indications from infringement by others and to protect consumers from deception. The GI Act has established the geographical indications registry, with all-India jurisdiction, at Chennai in Tamil Nadu, to register the geographical indications.

K.2.4 Indian Patents Act, 1970 (Patents Act)

The Patents Act provides for the grant, revocation, registration, license, assignment and infringement of patents in India. Any infringement of a patent is punishable under the Patents Act. The term of a patent is 20 years which is calculated from the date of application for registration of a patent.

India also recognizes the concept of “compulsory licensing” of patents that provides a facility of using protected material in certain circumstances envisaged by the Patent Act, without seeking the prior permission of the right owner. In India, the Controller of Patents can permit an interested party to commercially exploit a patent for a period of three years after being granted under compulsory licensing.

K.2.5 Designs Act, 2000 (Designs Act)

The Designs Act and the Design Rules, 2000 were enacted to fulfill India's obligations under WTO agreements. The Designs Act protects novel designs formulated by the owner with the object of applying them to specific articles, to be manufactured and marketed commercially for a specific period of time.

The Designs Act protects essentially two legal rights:

- a. Registered designs and
- b. Artistic copyright. Design registration under the Designs Act gives the owner a monopoly on their product, i.e. the right to stop others from making, using or selling the product without the owner's permission, for a limited period

K.3 Labor laws

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

K.3.1 Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 (IDA) provides for the investigation and settlement of industrial disputes, between employers and employees, or inter-se amongst employers or employees, which relate to employment or non-employment, the terms of employment, or conditions of labor, of any person.

The IDA *inter alia* deals with procedure and rules relating to retrenchment, lay-off, lock-out, strike, etc. Additionally, the IDA lays down grievance redressal machinery for industrial disputes and prescribes penalties for any person who indulges in unfair labor practices.

K.3.2 Trade Unions Act, 1926

The Trade Unions Act, 1926 (TUA) provides for the registration of trade unions of workers, and is administered by state governments. It confers legal and corporate status on registered trade unions.

A trade union can be registered by a minimum of 7 workmen provided that at least 10% or 100 workmen, whichever is lower, are employed in the relevant establishment/industry and are members of such trade union on the date of making of the application for registration. Additionally, to promote the civil and political interest of its members, unions are authorized to set up separate political funds.

K.3.3 Plantation Labor Act, 1951

The Plantation Labor Act, 1951 (PLA) provides for the welfare and safety of plantation labor and is applied to any land used as plantations, that measures 5 hectares or more and in which 15 or more persons are working. However, the state governments are free to declare any plantation to be covered by the PLA.

K.3.4 Payment of Bonus Act, 1965

The Payment of Bonus Act, 1965 (PBA) provides for payment of bonuses to persons employed in certain establishments on the basis of profits or on production or productivity, as well as for matters connected therewith. The PBA is applicable to every factory and establishments in which 20 or more persons are employed on any day during an accounting year, excluding some categories of employees enumerated therein. The PBA mandates the payment of bonuses to every employee (earning a wage/salary of upto INR21,000) in an accounting year in accordance with the provisions of the PBA, provided that they have worked in the establishment for not less than 30 days. Currently, the ceiling for computation of bonus is INR7,000.

K.3.5 Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 (PGA) provides a scheme for the payment of gratuity to all employees (whether or not employed in a managerial or administrative capacity) engaged in factories, shops and other establishments where 10 or more persons are or were employed on any day during the preceding 12 months.

Gratuity, at the rate of 15 days' wages for every completed year of service, or part thereof, in excess of 6 months, is payable to an employee on their retirement or resignation after rendering continuous service for 5 years, or on termination of service on account of death or disablement. Currently a maximum of INR10,00,000 can be paid as gratuity to an eligible employee.

K.3.6 Employees Compensation Act, 1923

The objective of the Employees Compensation Act, 1923 (ECA) is to compensate an employee or their survivors in the event of industrial accidents or occupational diseases resulting in disablement or death during the course of the person's employment. The ECA also prescribes conditions under which compensation can be denied to an employee.

K.3.7 Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946 (IEA) requires employers in industrial establishments to clearly define the conditions of employment to their workers by issuing standing orders or implementing service rules related to matters set out in the schedule of the IEA. The standing orders are certified by the certifying officer appointed under the IEA. The rules under the IEA provide model standing orders with respect to classification of workmen, holidays, payment of wages, termination of service, etc.

K.3.8 Minimum Wages Act, 1948

The Minimum Wages Act, 1948 (MWA) seeks to determine the minimum rates of wages in certain employments specified in the schedule to the MWA. The MWA applies to any person who is employed for hire or reward to do any work in a scheduled employment, and includes an outdoor worker to whom any articles or material are given for doing work either at home or at any other premises.

K.3.9 Payment of Wages Act, 1936

The Payment of Wages Act, 1936 (PWA) seeks to regulate the payment of wages to certain classes of employees in an industry such that wages are disbursed within the prescribed time limit and without any unauthorized deductions.

The PWA lays down that a wage period exceeding one month should not be fixed and payment of wages must be made on a specific day after the last day of the wage period. All wages must be paid in current legal tender, but it can also be paid by cheque or credited to the bank account of the employed persons.

K.3.10 Factories Act, 1948

The Factories Act, 1948 (FA) is the principal legislation that governs the health, safety and welfare of factory workers.

The FA also comprises regulation for the functioning of factories and detailed procedures related to the inspection, registration and licensing of factories.

K.3.11 Employees' Provident Fund and Miscellaneous Provisions Act, 1952

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPFMPA) seeks to ensure the financial security of employees in an establishment by providing a system of compulsory savings by creation of a contributory fund to secure the future of employees after their retirement. Employees are also allowed to withdraw a part of their provident fund before retirement for certain specific purposes. The applicability of the EPFMPA and the schemes therein extends to international workers subject to exemptions given in EPFMPA. Currently, the wage ceiling under the EPFMPA is INR15,000 per month.

K.3.12 Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961 (MBA) regulates the employment of women in certain establishments for a prescribed period before and after childbirth/abortion/surrogacy, etc. and provides certain other benefits, including leave, to a woman who has undergone miscarriage, illness arising from pregnancy, or delivery or premature birth of a child.

K.3.13 Employees' State Insurance Act, 1948

The Employees' State Insurance Act, 1948 (ESI) provides health care and cash benefits to employees (whether employed directly or through a contractor) in the event of sickness, maternity or injury suffered during employment and for other matters relating thereto. The ESI scheme is applicable to factories using power and employing 10 or more persons, as well as factories not using power and certain other establishments employing 20 or more persons.

K.3.14 Contract Labor (Regulation and Abolition) Act, 1970

The Contract Labor (Regulation and Abolition) Act, 1970 (CLRA) was promulgated to regulate the employment of contract labor and applies to every

- a. Establishment which employs or had employed, and
- b. Contractor who employs or had employed, 20 or more workmen on any day of the preceding 12 months as contract labor

The establishments covered under the CLRA are required to be registered as principal employers with appropriate authorities. Every contractor is required to obtain a license and is not to undertake or execute any work through contract labor, except in accordance with the license issued by the licensing officer.

In addition to the legislation mentioned above, several states have enacted Shops and Establishment Acts, which regulate working hours, prescribe minimum standards of working conditions and overtime leave-salary payments to workers in certain categories of shops and other establishments.

K.4 Anti-trust regulation

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

- ▶ The Competition Act, 2002
- ▶ Certain provisions under the Companies Act, 2013
- ▶ The Consumer Protection Act, 1986

K.4.1 The Competition Act, 2002 (Competition Act)

The Competition Act was enacted, seeking to achieve the following objectives:

- ▶ Promote and sustain competition in markets
- ▶ Protect the interest of consumers
- ▶ Ensure freedom of trade carried on by participants
- ▶ Prevent practices having an appreciable adverse effect on competition

The GoI has established the Competition Commission of India (CCI), in terms of the Competition Act, for adjudication on any anticompetitive practice, along with giving scrutinizing combinations which have an effect on relevant markets in India. The Competition Appellate Tribunal is the appellate authority which hears and decides appeals from those orders passed by the CCI, which are appealable under the Competition Act. The Competition Act seeks to:

- ▶ Prohibit anticompetitive agreements
- ▶ Prohibit abuse of dominant position
- ▶ Regulate combinations (acquisitions, mergers and amalgamations, etc.) that cause or are likely to cause an appreciable adverse effect on competition in the relevant market in India
- ▶ Undertake competition advocacy and education

The CCI had issued the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulation, 2011 (Combination Regulation), which regulates acquisitions that exceed specified thresholds.

Transactions which meet or exceed the specified thresholds, as per the Competition Act now require to make mandatory pre-notification to the CCI, a failure by an enterprise to notify the CCI about such combination can attract a penalty, which can extend up to 1% of the total turnover or the assets of the combination, whichever is higher.

K.4.2 Consumer Protection Act, 1986 (CP Act)

The CP Act is a legislation that has been enacted for the protection of consumer interest against manufacturers or service providers providing defective goods or deficient services or undertaking any trade practice that is likely to be classified as “unfair” or “restrictive” under the CP Act.

The CP Act provides for the establishment of district, state and national level consumer disputes redressal forums to adjudicate over claims and to settle consumer disputes.

K.5 Negotiable Instruments Act, 1881(NI Act)

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

The Negotiable Instruments (Amendment) Act, 2015 was brought in force on 29 December, 2015 which, *inter alia*, facilitates filing of cases only in a court within whose local jurisdiction the bank branch of the payee is situated, except in case of bearer cheques, which are presented to the branch of the drawee bank and in that case the local court of that branch would have jurisdiction.

K.6 Sale of Goods Act, 1930 (SG Act)

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

It is to be mentioned that the SG Act embodies the legal maxim “Caveat Emptor” and therefore, there is no implied warranty or condition to quality of goods for any particular purpose, except those specified in the SG Act.

The SG Act makes elaborate provisions regarding delivery of goods to buyers.

K.7 Arbitration and Conciliation Act, 1996 (A&C Act)

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

The A&C Act provides for the enforcement of the Foreign Awards in India; however, only such foreign awards can be enforced, which are signatory to the New York or Geneva Convention and has been notified so by the Government of India. The Arbitration and Conciliation (Amendment) Ordinance, 2015 was notified on 1 January, 2016 which extends the applicability of certain provisions of the A&C Act to international commercial arbitration, fixes timelines for passing of the arbitral award and disposal of arbitrations cases before the courts, guidelines for the appointment of arbitrators, enacts a fast track procedure, narrows down the scope for challenge of arbitral awards on the ground of public policy, extends the jurisdiction of the high courts to international arbitrations etc.

Chapter L

Mergers and acquisitions

- L.1 Reorganization, mergers and demergers**
- L.2 Acquisitions**
- L.3 Slump sale**
- L.4 Buyback of securities**
- L.5 Capital reduction**

Mergers and acquisitions

M&A activities being the main source of inorganic growth, it will be important to look at the New Cos Act introduced in 2013 in India, which significantly impacts the M&A landscape. The New Cos Act is built on the foundation of flexibility in the regime and minority shareholder protection. While most provisions of New Cos Act affecting M&A are not yet enforced, intermittently old provisions apply.

L.1 Reorganization, mergers and demergers

Reorganization of a company is through compromise or by an arrangement between the company and its shareholders and creditors. Furthermore, it requires the sanction of the Jurisdictional High Court (HC) and includes mergers and demergers. New Cos Act¹⁵³ introduces the National Company Law Tribunal (NCLT) as the approving authority (instead of HC) and additionally requires approvals from various regulatory authorities (such as the RBI, the SEBI, the CCI, stock exchanges and ITA) for reorganization.

Merger indicates consolidation of two or more companies. It requires the sanction of HC (/NCLT) along with the approval of shareholders, creditors, specific regulatory authorities and ITA. Furthermore, New Cos Act¹⁵⁴ introduces provisions for contractual/fast-track mergers, merger of listed and unlisted companies, etc., which may provide impetus to M&A. The Cos Act permitted only inbound mergers. The New Cos Act¹⁵⁵ opens avenues for outbound mergers as well. However, it seeks to prescribe notified jurisdictions permitting inbound and outbound mergers subject to RBI approval.

Demerger as a reorganization tool is increasingly being used to segregate core and non-core businesses. Demergers also require approvals of HC (/NCLT), shareholders, creditors, regulatory authorities, ITA, etc.

L.2 Acquisitions

Acquisition entails gaining direct/indirect control over another company, typically through acquiring shares with voting rights under a contractual agreement. The acquisition of listed company shares needs compliance with the SEBI Takeover Code guidelines. Furthermore, an acquirer pursuant to acquisition of listed company shares may also opt to delist the company under Delisting Regulations.

¹⁵³New Cos Act provision not notified

¹⁵⁴New Cos Act provision not notified

¹⁵⁵New Cos Act provisions notified

The New Cos Act¹⁵⁶ recognizes arrangements or contracts between two or more persons as regards share transfers of a public company as enforceable contracts (right of first refusal, liquidation preference, tag/drag along, etc.). It provides that restrictive provisions can be introduced in AOA. This provides additional layer of protection to investors and acquirers for voting rights, other specific matters such as veto rights and affirmative rights.

L.3 Slump sale

It involves transfer of identified “undertaking” for lump-sum consideration without assigning values to individual assets/liabilities under a contractual agreement. New Cos Act¹⁵⁷ prescribes threshold for determining what constitutes “undertaking”, which is subject matter of transfer. Special Resolution of shareholders required for transfer of such undertaking. Slump sale may also be affected under a HC/NCLT approval route.

L.4 Buyback of securities

Buyback enables the company to purchase its own securities from its shareholders with an objective to return excess cash to shareholders, enhancement of promoter stake, capital restructuring, etc. The company is permitted¹⁵⁸ to buyback upto 10% of paid-up equity capital and free reserves and upto 25% if approved by Special Resolution from shareholders. A cooling period of one year after the closure of preceding buyback and restriction on issue of further shares (of same class as bought back) for a period of six months is prescribed. Listed companies will also adhere to SEBI guidelines prescribed. A buyback may also be undertaken through a HC (/NCLT) process.

L.5 Capital reduction

Capital reduction is a process whereby, a company can pay-off its shareholders by canceling, or reducing their capital, or canceling their shares against accumulated losses. It requires approval of HC (/NCLT), shareholders, creditors, regulatory authorities, etc.

¹⁵⁶New Cos Act provisions notified

¹⁵⁷New Cos Act provisions notified

¹⁵⁸Subject to fulfillment of conditions.

A comparative analysis of implications affecting M&A:

Regulation	Merger	Demerger	Slump sale	Share acquisition	Buyback	Capital reduction
Taxability of:						
► Shareholder	Tax neutral ¹⁵⁹		-	Taxable ¹⁶⁰	Tax neutral <small>161/162</small>	Taxable
► Company			Taxable ¹⁶³	-	Taxable <small>164/165</small>	Tax neutral ¹⁶⁶
Carry forward of losses	Available ¹⁶⁷		Not available	Available <small>168</small>	Available ¹⁶⁹	Not available
Takeover code (SEBI) ¹⁷⁰	Exemption <small>171</small>		May be triggered ^{172/173}		Exemption <small>174</small>	
FEMA	Intimation/approval of RBI ^{175/176}					
Competition Commission approval	May be required ¹⁷⁷				-	
Time limit (months)	6-7 ¹⁷⁸	5-6 ¹⁷⁹	1-2 ¹⁸⁰	1-2	1-2 ¹⁸¹	4-5 ¹⁸²

¹⁵⁹Subject to fulfilment of certain prescribed conditions. Currently, there is no clarity on tax neutrality in the case of demergers, fast-track mergers, as well as cross-border mergers, under New Cos Act.

¹⁶⁰Where shares of the Indian company is acquired through indirect acquisition of the shares of the foreign parent company, indirect transfer tax implications are required to be evaluated basis separate mechanism and computation.

¹⁶¹Subject to fulfilment of certain prescribed conditions.

¹⁶²In case of buyback under HC/NCLT process the tax implications on company and shareholders may need to be evaluated.

¹⁶³Specific computation mechanism prescribed.

¹⁶⁴In case of buyback under HC/NCLT process the tax implications on company and shareholders may need to be evaluated.

¹⁶⁵Specific computation mechanism prescribed. It has been assumed that the company will pay buyback tax as prescribed under the Indian income-tax law.

¹⁶⁶Subject to fulfilment of conditions.

¹⁶⁷Subject to fulfilment of conditions.

¹⁶⁸Subject to fulfilment of conditions.

¹⁶⁹Subject to fulfilment of conditions.

¹⁷⁰Only applicable for listed companies.

¹⁷¹In a scenario where the listed company is a party to the scheme. In a scenario where listed company is not a party to the scheme, certain conditions need to be satisfied to avail the exemption.

¹⁷²Applicable to slump sale only if shares are issued as a consideration for slump sale (i.e. Slump exchange).

¹⁷³In case the prescribed limits are breached.

¹⁷⁴Subject to fulfilment of conditions.

¹⁷⁵Subject to sectorial caps and declarations as may be required. Prior RBI approval required in case of cross border mergers.

¹⁷⁶Applicable to slump sale only if shares are issued as a consideration for slump sale (i.e. Slump exchange).

¹⁷⁷In case the prescribed limits are breached.

¹⁷⁸Subject to HC/NCLT vacation and protracted litigation. In a scenario where a listed company is involved the time limit will be 7 - 8 months.

¹⁷⁹Subject to HC/NCLT vacation and protracted litigation. In a scenario where a listed company is involved the time limit will be 6 - 7 months.

¹⁸⁰Time limit under contractual arrangement. The time limit under HC/NCLT process is 5 - 6 months

¹⁸¹Time limit under contractual arrangement. The time limit under HC/NCLT process is 5 - 6 months

¹⁸²Subject to HC/NCLT vacation and protracted litigation. In a scenario where a listed company is involved the time limit will be 5 - 6 months.



Chapter M



Individuals

M.1 Visa and registration requirements

M.2 Residential permit

M.3 Family and personal considerations

M.4 Other immigration matters

M.5 Foreign exchange regulation

Individuals

M.1 Visa and registration requirements

A foreign national visiting India needs to obtain appropriate visa before entering India. Type of visa to be obtained depends upon the purpose of the visit to India. The visa may be issued only by the Indian Missions from the country of origin or from the country of domicile of the foreign national, provided that the period of permanent residence of the foreign national in the country of domicile is at least two years.

M.1.1 Business visa and employment visa

The guidelines provide that a business visa may be issued to a foreign national visiting India for a short duration and restrict the nature of activities for which it can be issued.

The activities that fall under the business visa include establishing or exploring the possibility of set-up of businesses, attending meetings, liaising with potential business partners or function as partner/director, negotiate supplies, conduct trade of goods and provide high-level technical guidance on ongoing projects, including monitoring the progress of such projects, etc.

Similar guidelines are provided for employment visa. Illustratively, an employment visa may be issued to a foreign national visiting India for the purpose of taking employment in India, executing projects or contracts, including instalation and commissioning of machinery under a contract for supply, providing technical support or services, transfer of know-how for which royalty is paid and consulting on contract basis in the areas of highly skilled services.

An employment visa may be granted only to the following individuals:

- ▶ Skilled or qualified professionals
- ▶ Visiting India for employment in companies in India or in foreign companies executing projects in India
- ▶ Salary exceeding US\$ 25,000¹⁸³ per annum (this threshold is not applicable to certain categories of individuals)

¹⁸³The limit includes all cash payments and perquisites that are taxed in India.

An employment visa may not be issued if a considerable number of qualified Indians are already available to fill the position.

No change of employer will be permitted during the duration of the employment visa within India, except under specified circumstances and on satisfaction of specified conditions.

An employment visa can be extended in India on an annual basis for a period of five years starting from the date of initial issue of the visa.

Project visa

The GoI has introduced project visas for foreign nationals coming to India for “execution of projects in the power and steel sectors”. A specific endorsement will be made on the visa sticker indicating the name of the project, the location of the project and the employment/working of foreign national will be restricted to the location of the project.

The period of visa will be determined by the Indian Missions in each case and will have a validity of one year or the actual duration of the project whichever is less with multiple entry facility. The visa can be extended only with the approval of the Ministry of Home Affairs.

M.1.2 Tourist visa

A tourist visa can only be granted to a foreigner who does not have a residence or occupation in India and whose sole objective of visiting India is recreation, sightseeing, casual visit to meet friends and relatives etc. The tourist visa is non-extendable and non-convertible.

e-Tourist Visa (earlier known as visa on arrival): A e-Tourist Visa (eTV) facility is available for citizens of 114 countries. It is granted for a maximum validity of 30 days with a single-entry facility and will be provided only at designated international airports in India.

Others: Other types of visas issued in India include student, conference, journalist, research, yoga and missionary visa.

M.2 Residential permit

All foreign nationals holding employment visa must register with the police authorities (FRRO and/or FRO) at the local registration office within two weeks after their date of arrival if their visas are valid for longer than 180 days or if the visa stamp specifically requires this registration.

In case of foreign nationals holding a business visa with a stipulation specifically requiring a registration, they must register with FRRO and/or FRO at the local registration office within two weeks after their arrival in India.

Prescribed documentation must be presented to register and the same may vary based on the location of the registration office. The foreign nationals are issued with a residential permit upon completion of the registration process.

The original passport and visa are also required at the time of verification by the authorities. Furthermore, the foreign national is required to be present in person for the registration.

Registration is generally valid for the term of the visa or for one year, whichever is lower, and may be extended upon application.

M.3 Family and personal considerations

Entry visas (X visa) are issued to accompanying family members of individuals visiting India on business or for employment. However, this visa is issued to legal spouses and dependents only. India does not recognize “common law” partners. Under the guidelines, the visa of the spouse of an employee on an intracompany transfer may be converted from an X visa to an employment visa, subject to specified conditions.

Spouses or dependents of working expatriates must obtain separate work permits to be employed in India.

Family members intending to reside with a working expatriate must register separately at the local registration office. X visa can also be extended up to the validity of the employment visa of the expatriate.

M.4 Other immigration matters

M.4.1 Restricted areas

Advance permission is required from Indian diplomatic missions abroad or from the Ministry of Home Affairs (MHA) in New Delhi to visit certain states or areas within these states. The areas, which require prior approval, are the states of north east India, parts of Himachal Pradesh, Jammu and Kashmir, Uttarakhand, Rajasthan and the Andaman and Nicobar Islands.

M.4.2 Overseas citizen of India card

An Overseas citizen of India (OCI) card is a multiple-entry, lifelong visa to visit India. Furthermore, there is no FRRO registration required for OCI cardholders.

A foreign national of Indian origin (except citizens of Pakistan and Bangladesh) is eligible to apply for an OCI card if:

- ▶ The individual was eligible to become a citizen of India on 26 January 1950
- ▶ The individual was a citizen of India at any time on or after 26 January 1950 or belonged to a territory that became part of India after 15 August 1947
- ▶ Children, grandchildren and great grandchildren of these individuals
- ▶ Minor children where either or both of the parents are citizens of India
- ▶ Spouse of foreign origin of an Indian citizen or of an OCI cardholder whose marriage has been registered and subsisted for a minimum period of two years, subject to prior security clearance. The OCI card will be canceled if the marriage is dissolved or the spouse who obtained the OCI card marries another person.

Effective 9 January 2015 existing PIO cardholders are now deemed to be OCI cardholders and eligible for the same benefits as OCI cardholders. A PIO cardholder can make an online application and submit physical copy along with specified documents to the Indian mission/after having jurisdiction over the country of which the applicant is a citizen or if he/she is not living in the country of his/her citizenship, to the India Mission/post having jurisdiction over the country of which the applicant is ordinarily resident.

If the applicant is living in India, the physical copy of application is required to be submitted along with specified documents to the FRRO/FRO according to their jurisdictional control. The application to convert PIO to OCI card is required to be filed by 31 March 2016.

M.5 Foreign exchange regulation

A foreign national who is an employee of a company incorporated in India can open an Indian bank account, receive salary in the Indian bank account and remit the whole salary received in India to a foreign bank account maintained by them overseas, provided income tax is paid on the entire salary in India.

A special rule applies to an expatriate (whether a foreign national or an Indian citizen) who is employed by a foreign company outside India who is deputed to the office, branch, subsidiary or JV or group company in India and of such a foreign company. Such expatriates can receive their entire salary in their foreign bank account outside India, provided income tax is paid on the entire salary accrued in India.

There are separate rules and regulations for foreign nationals and Indian residents regarding the acquisition, holding, transferring, borrowing or lending of foreign exchange, and the acquisition of foreign security or immovable property located in or outside India. The definition of residential status of individuals under the exchange control law differs from the definition under the IT Act.

Under a liberalized remittance scheme for resident individuals that has been notified total remittances of up to US\$250,000 in each FY for each individual are allowed for permissible current accounts and permissible capital account transactions, subject to certain exceptions.

The background of the page is a photograph of a small, green, leafy plant growing out of a patch of dry, cracked, light-brown soil. The cracks in the soil are deep and irregular, forming a network around the plant. The lighting is bright, casting shadows from the plant and the cracks in the soil.

Chapter N

Direct taxes

N.1 Administration

N.2 Corporate income tax

N.3 Other direct taxes (corporate)

N.4 Industry-specific tax schemes

N.5 Foreign tax relief

N.6 Appeal mechanism for non-residents

N.7 Income tax (individuals)

N.8 Income tax filing and payment process

N.9 Other direct taxes (individuals)

Direct taxes

Direct tax by way of Income tax is levied by the Central Government.

Administration, supervision and control in the area of direct taxes lie with the CBDT.

N.1 Administration

The Indian tax year extends from 1 April of a year to 31 March of the subsequent year. The due date for filing ROI for corporations is as follows:

Type of company	Date of filing of return
Company required to submit a transfer pricing certificate in Form 3CEB (with respect to international transactions or specified domestic transactions)	30 November
Other companies	30 September

Non-resident corporations are also required to file an ROI in India if they earn income in India or have a physical presence or economic nexus with India.

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

Late filing of a ROI and delays in payment or shortfalls in taxes are liable to attract penal interest at prescribed rates.

N.2 Corporate income tax

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

- ▶ Income from house property
- ▶ Income from business
- ▶ Capital gains on disposition of capital assets
- ▶ Residual income arising from non-business activities

Corporations resident in India are taxed on their worldwide income arising from all sources. Non-resident corporations are taxed on the income earned through a business connection in India or any source in India or transfer of a capital asset, being any share or interest in a company incorporated outside India, deriving its value substantially from assets located in India (discussed separately in N.2.2.iii, page number 173).

Place of Effective Management (POEM)

A corporation is regarded as a resident in India if it is incorporated in India or if its place of effective management (POEM) is in India. The concept of POEM has been introduced from 1 April 2015 for determining the tax residence of foreign companies in India. POEM has been defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of the entity as a whole are in substance made. Draft guidelines have been issued by CBDT for determination of POEM in December 2015 for public consultation.

Specific exception has been carved out from the general rules to determine the residential status and business connection for eligible overseas investment funds carrying on fund management activities through an eligible fund manager.

Double Taxation Avoidance Agreement (DTAA)

If there is a Double Taxation Avoidance Agreement (DTAA) between India and the country of non-resident, the provisions of the IT Act or the DTAA, whichever is more beneficial will apply and, accordingly, the taxability is likely to be restricted or modified.

However, in order to be eligible for DTAA benefits, a non-resident is required to obtain valid TRC containing prescribed details and also file a self-declaration in Form 10F, where required.

General Anti-Avoidance Rule (GAAR)

Implementation of GAAR is now deferred to 1 April 2017 and will be aligned with OECD BEPS recommendations. Rules are expected to be amended to provide that investments made up to 31 March 2017 will be protected from GAAR.

N.2.1 Rates of corporate tax

Normal rate

Domestic and foreign corporations are subject to tax at a specified basic tax rate and, depending upon the total income, the basic rate is increased with a surcharge. Furthermore, the tax payable by all corporations is enhanced by an education cess at the rate of 3% of the tax payable, inclusive of surcharge.

The effective tax rate for domestic and foreign corporations (including surcharge and education cess) is summarized below:

Sl. No	Description	Tax rate%	Surcharge%	Education Cess%	Effective rate %
A. Where the total income is up to INR10m					
	Domestic Corporation	30*	Nil	3	30.9
	Foreign Corporation	40	Nil	3	41.2
B. Where the total income is more than INR10m and up to INR100m					
	Domestic Corporation	30*	7	3	33.06
	Foreign Corporation	40	2	3	42.02
C. Where the total income is more than INR100m					
	Domestic Corporation	30*	12	3	34.61
	Foreign Corporation	40	5	3	43.26

***In the Budget speech, 2015, the FM indicated that the corporate tax rate will be reduced from 30% to 25% over the next 4 years, along with corresponding phasing out of exemptions and deductions**

An LLP is liable to pay tax at the base rate of 30%, which is to be further increased by surcharge at the rate of 12% and education cess at the rate 3%.

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

Withholding tax rates under the IT Act are as follows:

Withholding tax rates	Tax rates % (corresponding note)	
	Paid to domestic company	Paid to foreign company #
Dividends	Nil (d)	Nil (d)
Interest	10(e)	20/5(a) (b) (e)
Royalty from patents, know-how, etc.	10(e)	10(a)(c)(e)
FTS	10(e)	10(a)(c)(e)

With effect from 1 June 2015, any taxpayer is required to report any sum paid to non-resident in prescribed manner, irrespective of taxability of non-resident in India.

- a. For the tax year ending 31 March 2016, the rates listed above for withholding tax have to be increased by a surcharge and education cess with reference to the income slabs as indicated in the table (shown on page no.149)
- b. This rate only applies to interest on foreign currency loans. Any other interest is subject to tax at normal rates applicable to foreign corporations. However, payment by way of interest made by a domestic corporation to a nonresident or a foreign corporation in respect of monies borrowed in foreign currency under a loan agreement or by the issue of a long-term bond (including long-term infrastructure bond) before 1 July 2017, as approved by the Gol, subject to compliance with certain conditions, attracts withholding tax of only 5% (plus applicable surcharge and cess). Furthermore, interest paid to an FPI¹⁸⁴ on or after 1 June 2013 and before 1 July 2017 in respect of investments made in a security being an INR-denominated bond of an Indian company (provided the rate of interest shall not exceed the rate notified in this regard by the Central Government) or a government security, shall attract withholding tax at a concessional rate of 5% (plus applicable surcharge and cess). Recently, CBDT clarified vide press release¹⁸⁵ that interest paid to anonresident in respect of investment made in an INR-denominated bond of an specified Indian company will also attract concessional withholding tax rate of 5%, but legislative amendment would be brought in Finance Bill, 2016
- c. Royalty or FTS: Foreign corporations are taxed with respect to royalties or FTS at the rate of 10% on gross basis (plus applicable surcharge and education cess), received from the Gol or Indian concern under agreement, that is approved by the Gol or under arrangements which are in accordance with the country's industrial policy. With reference to the same, please note the following:
 - i. Royalties and FTS that are effectively connected with the foreign corporation's PE in India are taxed on a net income basis at the normal rates applicable to foreign corporations
 - ii. Royalties and FTS that are not received from the Gol or Indian concerns are taxed on a net income basis at normal rates applicable to foreign corporations. So are the Royalties and FTS payable under agreements that are not approved by the Gol or under arrangements that are not in accordance with India's industrial policy
 - iii. If there is a DTAA between India and the country of non-resident, the rates provided under such DTAA will apply if they are more beneficial to the nonresident

¹⁸⁴SEBI has introduced the SEBI (Foreign Portfolio Investors) Regulations, 2014 (FPI Regulations) and merged FIIs, sub accounts and QFIs into a single category, referred to as FPIs

¹⁸⁵Source: Press release, Dated: 29 October 2015. Taxation of income from off-shore Rupee Denominated Bonds-reg.

- d. Dividend income : Dividend income distributed by domestic corporations (on which DDT has been paid by the company distributing the dividend) is exempt from tax in the hands of the recipients (including foreign corporation)
- e. If the PAN of the payee is not available, tax will be withheld at an applicable rate or at a penal rate of 20%, whichever is higher
- f. Income earned by overseas financial organizations: Overseas financial organizations¹⁸⁶ (pursuant to a specific approval from SEBI) earning income from units of specified mutual funds, purchased in foreign currency and income by way of long term capital gains arising from transfer of such units purchased in foreign currency, are taxed at the rate of 10% on the gross amount of such income

N.2.2 Determination of taxable income (corporate)

i. Income from house property

Income earned by renting out house property is taxable in the hands of the owner. Valuation of income from house property is prescribed under various scenarios of occupancy, ranging from rented, vacant to self-occupied. The owner is entitled to a deduction on account of municipal taxes actually paid.

Furthermore, a standard deduction for repairs from such income at 30% of the prescribed value is permitted. Interest on borrowed capital, up to specified limits and on fulfilment of prescribed conditions, is also allowed as a deduction when computing the net income from house property liable to tax.

ii. Income from business

With effect from 1 April 2015 taxable profits are required to be computed in accordance with the notified ICDS and statutory tax provisions. Aspects not covered by ICDS are to be considered with reference to common business or accounting principles.

ICDS are applicable to the computation of taxable income and a taxpayer need to not maintain separate sets of books of accounts on the basis of ICDS. (Refer section J.2 for detailed discussion).

Business deductions

Taxpayers can deduct all business-related expenses against its business income. Personal expenses and capital expenditure, other than expenditure on scientific research and other specified expenses, are not deductible.

Income tax, employees personal tax on non-monetary perquisites borne by the employer and expenditure incurred in relation to exempt income, CSR activities under the New Cos Act are also not deductible.

¹⁸⁶Overseas financial organisations means any fund, institution, association or body, whether incorporated or not, established under the laws of a country outside India, which has entered into an arrangement for investment in India with any public sector bank or public financial institution or a registered mutual fund and such arrangement is approved by the SEBI.

Inventories

Inventories (goods or services) should be valued at cost or net realizable value (NRV), whichever is lower. ICDS mandates a “bucket” approach for valuation of security at lower of cost or NRV.

Provisions

In general, ad hoc provisions for expenses or losses are not tax deductible. Provisions for duties, taxes, bonuses, employer’s contributions to social security funds, leave salary and interest on specified loans are deductible on an accrual basis, provided corresponding payments are discharged before the due date for filing the ROI. Otherwise, the deduction is allowed in the year of actual payment.

Depreciation and amortization allowances

Depreciation or amortization included in financial statements is not deductible. Depreciation for tax purposes is calculated on a block of assets according to the declining balance method at prescribed rates, except in the case of undertakings engaged in the generation or the generation and distribution of power. A block of assets is a group of assets falling within a class of assets, comprising tangible and intangible assets, in respect of which specific tax depreciation rates are prescribed. Allowance for depreciation is only available after the asset is ready for use for its business purpose. In the event assets are acquired during the year and put to use for a period of less than 180 days, half of the admissible depreciation is allowed during that year.

Incentives

Refer Chapter Q.

Restrictions on interest deductions

India does not currently have mandatory thin capitalization rules. However, banks and financial corporations are required to comply with prescribed capital adequacy norms. Interest is allowed as a deduction, provided with respect to capital borrowed for the purpose of business.

Disallowance of payments to non-residents on non-deduction of taxes

To enforce tax-withholding provisions, certain payments to non-residents on which tax has not been withheld or withheld taxes are not deposited (within a prescribed time or before the due date of filing of the ROI) are not allowed as tax-deductible expenditure. These are, however, allowed as deductions in the subsequent tax year in which the appropriate taxes withheld are deposited.

Relief for losses

Business losses, other than unabsorbed depreciation, can be carried forward to be set off against taxable business income derived during the next eight years, provided the ROI for the year of loss is filed by the due date. However, closely held corporations are required to satisfy a 51% continuity of voting power test to carry forward business losses.

Unabsorbed depreciation can be carried forward indefinitely and can be set off against the taxable income of subsequent years.

iii. Capital gains and losses

Capital gain rates under domestic tax laws are as follows:

Capital gains arising on transfer of	Tax rates*	
	Resident (%)	Non- resident (%)
a. Short-term capital assets, being listed equity shares, units of equity oriented funds or units of a business trust, where STT is charged on the transaction #	15	15
b. Short-term capital assets (other than (a) above)	Normal corporate tax rates	Normal corporate tax rates
c. Long-term capital assets, being listed equity shares in a company or units of an equity-oriented fund or units of a business trust where STT is charged on the transaction	Exempt	Exempt
d. Long-term capital assets, being listed securities or units or zero coupon bonds (other than (c) above)	10 (with indexation benefit)/20 (without indexation benefit)**	10 (with indexation benefit)/20 (without indexation benefit)**
e. Long-term capital gains arising to a non-resident from transfer of unlisted securities	NA	10 (no indexation benefit)
f. Other long-term capital assets	20	20

* Rate needs to be increased by applicable surcharge and education cess

** Whichever method is more beneficial can be applied by the resident/non-resident

The STT rate varies from 0.001% to 0.20% of the transaction value.

Computation of capital gain

Proceeds in excess of cost from the disposition of capital assets are generally taxed as capital gains, subject to certain adjustment as prescribed. However, if such proceeds are not ascertainable or cannot be determined, then the fair market value is considered as proceeds of these assets.

General provisions

The profits earned from the transfer of long-term/short term capital assets are referred to as long-term capital gains or short-term capital gains. Benefit of indexation of cost of acquisition and cost of improvement of a long-term capital asset of any nature (other than certain bonds or debentures) is generally available. Long-term capital gains are exempted from tax if an onward investment is made in prescribed securities.

Classification of long term capital asset on the basis of period of holding:

Type of Securities	Period of holding
a. Listed shares/securities, units of Unit Trust of India (UTI), Units of equity oriented mutual funds and specified zero-coupon bonds	More than 12 months
b. Others assets including unlisted shares and unit of mutual funds (other than equity oriented fund)	More than 36 months

Long-term/short-term capital losses are allowed to be carried forward for eight consecutive years (subject to ROI filed on or before the due date). Long-term capital losses can only be offset against taxable long-term capital gains, while, short-term capital losses can be offset against taxable capital gains (both long term and short term).

Indirect transfer of shares of domestic corporations

Non-residents are also taxed on capital gains arising on any share or interest in a company or entity registered or incorporated outside India, deriving its value substantially from assets located in India, where the FMV of Indian asset on a specified date exceeds INR100m and represents at least 50% of the value of all assets owned by the foreign corporation. Tax liability is required to be computed in proportion to the value of Indian assets per method to be separately notified.

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

Income earned by FPIs¹⁸⁷:

FPIs are taxed on the income earned at the following rates under the Act:

Nature of income	Rate of tax ¹⁸⁸ (%)
Dividends	Nil
Interest	20
Interest earned between 1 June 2013 and 30 June 2017 on investment made in INR denominated bonds of an Indian Company (subject to certain conditions) or a government security	5
Short term capital gains from transfer of equity shares and units of equity oriented mutual fund [subject to levy of Securities Transaction Tax (STT)]	15
Long term capital gains from transfer of equity shares and units of equity oriented mutual fund (subject to levy of STT)	Nil
Short term capital gains from transfer of equity shares and units of equity oriented mutual fund (where STT is not levied)	30
Long term capital gains from transfer of equity shares and units of equity oriented mutual fund (where STT is not levied)	10

Applicability of MAT provisions to foreign corporation is discussed separately in N.3.1, on page number 177.

The rates applicable to an FPI are subject to beneficial provisions of the DTAA between India and the country in which the FPI is resident.. The DTAA's signed by India with countries such as Mauritius, Singapore, France, Denmark, the Netherlands, the Philippines, etc., provide an exemption from capital gains tax in India. Some treaties provide complete exemption from capital gains tax and others exempt gains from either sale of equity or debt securities or both.

¹⁸⁷Overseas financial organisations means any fund, institution, association or body, whether incorporated or not, established under the laws of a country outside India, which has entered into an arrangement for investment in India with any public sector bank or public financial institution or a registered mutual fund and such arrangement is approved by the SEBI.

¹⁸⁸As increased by applicable surcharge, if any and education cess.

Amalgamations, demergers and slump sales

(Refer chapter L)

iv. Income from other sources

Income that does not specifically fall under any of the types mentioned above is liable to tax as “income from other sources”, including investment income and winnings from lotteries. While computing taxable income under this head, expenditure incurred for earning such income is also to be deducted.

Issue of shares for inadequate consideration

Where a closely held company receives from a resident consideration for issue of shares that exceeds the FMV of such shares, such excess can be considered as income of the recipient. The FMV of shares may be required to be substantiated by the company to the satisfaction of revenue authorities.

Receipt of shares for nil or inadequate consideration

Where a closely held company receives from any person (resident or non-resident) shares of another closely held company either without consideration or for consideration less than FMV, by an amount exceeding INR50,000.

The difference in value is considered as income of the recipient corporation. The FMV of a share is required to be determined according to the prescribed method. However, receipt of shares in a scheme of amalgamation or demerger is excluded.

Investment income (dividends)

The amounts declared, distributed or paid as dividends by Domestic Corporations are not taxable in the hands of the shareholders as the same are subject to DDT. (Refer Section N.7.2)

See Appendix 5 on page number 233 for a sample corporate tax calculation.

N.3 Other direct taxes (corporate)

N.3.1 Minimum Alternate Tax (MAT)

Indian tax law requires MAT to be paid by corporations on the basis of profits disclosed in their financial statements. In cases where the tax payable according to regular tax provisions is less than 18.5% of their book profits, corporations must pay 18.5% (plus surcharges and cess as applicable) of their book profits as tax. Book profits (for this purpose) are computed by making the prescribed adjustments to the net profit disclosed by corporations in their financial statements.

The tax credit is allowed to be carried forward for 10 years and set off against income tax payable under the normal provisions of the IT Act to the extent of the difference between tax according to normal provisions and tax according to MAT. A report from a chartered accountant, certifying the quantum of book profits, must be filed along with the ROI.

The CBDT has clarified that with retrospective from 1 April 2001, the specified source of income of foreign companies (including FIs/FPIs) not having PE in India under relevant DTAA, will be excluded from the purview of MAT where the income tax payable on such income under normal provisions of the IT Act is less than the tax payable under MAT provision. Such source of income includes capital gains (whether long term or short term) arising on transfer in securities, interest, royalty or fees for technical services chargeable to tax in India. Consequently, corresponding expenses are also excluded while computing MAT.

N.3.2 Dividend Distribution Tax (DDT)

Other domestic corporations must pay DDT at the rate of 20.36%¹⁸⁹ on dividends declared, distributed or paid by them. Such tax is a non-deductible expense.

Where the recipient domestic corporation declares dividend, credit for dividend received from the domestic subsidiary and foreign subsidiary is available for computation of dividend on which DDT is to be paid by the recipient domestic corporation, subject to prescribed conditions.

N.3.3 Tax on buyback of shares of an unlisted Indian company

An Indian unlisted company has to pay 23.072% (including surcharge and cess) tax on “distributed income” (differential between consideration paid by the unlisted Indian company for buy-back of the shares and the amount that was received by the unlisted Indian company) on buyback of shares. On the other hand, the shareholder is exempt from tax on proceeds received from the buyback of shares. No deduction is allowed to the unlisted Indian company in respect of such tax.

N.4 Industry-specific tax schemes

An optional tonnage tax scheme is available for the Indian shipping industry, which taxes income on a deemed profit basis. Oil and insurance corporations have a separate code of taxation. Foreign shipping and air transport companies also have a deemed profit basis of taxation.

¹⁸⁹After grossing up DDT and 12% surcharge and a 3% education cess.

N.5 Foreign tax relief

Tax treaties entered into by India with several other countries govern foreign tax relief to avoid double taxation. If there is no such agreement, resident corporations can claim a foreign tax credit for the tax paid by them in other countries subject to meeting certain requirements. The credit amount is the lower of Indian rate of tax or the tax rate of the said country on the doubly taxed income. The CBDT is expected to notify Foreign Tax Credit Rules laying down the procedure for granting of FTC.

For a list of indicative tax rates prescribed under the various treaties, see Appendix 6.

N.6 Appeal mechanism for non-residents

N.6.1 Conventional route

The following is the conventional appellate route that a taxpayer can adopt:

► **Appeal to Commissioner of Income Tax (Appeals) [CIT(A)]**

An aggrieved taxpayer can file an appeal within 30 days, and on payment of prescribed fees with the CIT(A) against any order in tax assessment by a lower authority

► **Filing of objection before the Dispute Resolution Panel (DRP)**

As an alternative to this appeal process, an eligible taxpayer (foreign company or a resident taxpayer suffering a transfer pricing adjustment) can file objections within the prescribed time, i.e., 30 days, with the DRP against the draft order passed by the lower authority in a tax assessment. The DRP issues directions within a specified time and the tax authority is duty bound to pass the final order in confirmation with the directions of the DRP within a specified time. The final order can be appealed before the Income Tax Appellate Tribunal

► **Appeal to Income Tax Appellate Tribunal (ITAT)**

If a taxpayer or the revenue department feels aggrieved about an order passed by the CIT(A) or DRP, an appeal can be preferred by the aggrieved taxpayer within 60 days, and on payment of prescribed fees with the ITAT on any question of fact or law, or both. ITAT is the final fact-finding authority

► **Appeal to the High Court (HC)**

The IT Act provides for appeals to the HC from every order of the ITAT wherever the taxpayer or revenue department feels aggrieved, provided the appeal involves a substantial question of law. The appeal needs to be filed within 120 days, along with the payment of necessary fees

► **Appeal to the Supreme Court (SC)**

This is the final appellate authority under the IT Act. Where either the taxpayer or the revenue department is aggrieved by the order of the HC, an appeal can be preferred to the SC. The time limit and fee payment rule applies to this appeal as well

N.6.2. Authority for advance ruling (AAR)

In order to provide the facility of achieving certainty on the income tax liability of eligible tax payers (including non-residents), to plan their income tax affairs well in advance and to avoid lengthy and expensive litigation, a scheme of advance rulings was introduced under the IT Act.

- Under the scheme, the power to issue advance rulings, which are binding on tax authorities as well as the applicant, has been entrusted to an independent adjudicatory body
- Advance ruling relates to written opinion by an authority, which is empowered to render it with regard to the tax consequences of a transaction or proposed transaction
- The question raised in the application should not be already pending before any income tax authority or ITAT, or involve determination of FMV of any property or relate to a transaction that is prima facie designed for avoidance of income tax

A ruling can be obtained by an applicant (resident or non-resident) with respect to any question of law or fact in relation to the tax liability of the non-resident arising out of a transaction undertaken or proposed to be undertaken. Additionally, a resident applicant can also approach AAR for determining his tax liability arising out of a transaction undertaken or proposed to be undertaken valuing INR1b or more in aggregate.

Measures to curb black money

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was introduced by GoI with an objective to tax undisclosed foreign income and assets with effective from 1 July 2015. It applies to all assesseees who qualify to be "Resident and Ordinarily Resident" (ROR) as per Section 6 of the IT Act. The Black Money Act levies a tax of 30 per cent on the total undisclosed foreign income and assets of a person in a year, a penalty of up to three times of tax and prosecution of up to 10 years.

There are no specific exclusions under this law for expatriates or families of expatriates in India. Taxable value is fair market value, which needs to be determined based on the prescribed rules. The Government has issued several clarifications by way of FAQs.

N.7. Income tax (individuals)

N.7.1 Liability for income tax

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

Period of stay in India	Residential status		
Basic	NR	Resident	
≥ 182 days in the tax year (1 April to 31 March)	Satisfies none	Satisfies any one	
≥ 60* days in the tax year and 365 days in 4 years immediately preceding the tax year			
Additional conditions		NOR	OR
NR as per basic conditions in at least 9 out of 10 immediately preceding tax years		Satisfies one or both	does not satisfy both
<729 days in India in 7 immediately preceding tax years			

*60 days is substituted by 182 days in case of Indian citizens in certain situations.

N.7.2 Income tax rates (individuals)

The following tax rates will apply to resident and non-resident individual taxpayers for the year ending 31 March 2016.

Income levels (INR)	Income tax
0-250,000*	Nil
250,001-500,000	10% of income in excess of INR250,000
500,001-1,000,000	INR25,000 plus 20% of income in excess of INR500,000
1,000,001 upward	INR125,000 plus 30% of income in excess of INR1,000,000

A surcharge of 12% of the total tax liability will be applicable where the total income exceeds INR10m. The tax (inclusive of surcharge) is further increased by education cess at 3%. Long-term capital gains are not taxed according to the above slab rates, but at a base rate of 20%.

* Individuals with an income of up to INR250,000 do not need to pay income tax and education cess. The exemption limit is INR300,000 for resident individuals over 60 years and under 80 years of age. In the case of very senior citizens (defined as individuals over the age of 80 years), the exemption limit is INR500,000.

A rebate of INR2,000 or actual tax payable, whichever is less, is available for resident individuals with total income up to INR500,000.

For a sample tax calculation, see Appendix 7.2.

N.7.3 Types of incomes subject to tax in India

In general, all income received or accrued or deemed to be accrued in India is subject to tax. Taxation of various types of income is detailed below. See the table in Appendix 7.1, which indicates individual income tax calculation.

i. Employment income

Salary income related to services rendered in India is deemed to accrue or arise in India, regardless of where it is received, the residential status of the recipient or period of service in India. There are safe harbors under the domestic tax laws and the tax treaties. Under the domestic tax laws (known as 90 day rule) employees of foreign enterprises who are citizens of foreign jurisdictions are not subject to tax, if all of the following conditions are satisfied:

- ▶ The foreign enterprise is not engaged in trade or business in India
- ▶ The employee does not stay in India for an aggregate period of more than 90 days in the tax year
- ▶ The compensation paid is not liable to be deducted from the income of the foreign employer in India

Safe harbor is available under tax treaties, but conditions vary and should be examined on a case-to-case basis, including, whether the individual is a Resident of the home country, availability of a Tax Residency Certificate, physical presence in India not exceeding 183 days (in aggregate) in the year (which could be fiscal year or as defined under the treaty) and specific conditions regarding the permanent establishment status of the entity.

Nonresident foreign citizens employed on foreign ships, who do not stay in India for longer than 90 days in a tax year, are also exempt from tax on their earnings.

The tax treatment of salary, allowances and generally provided employer

Compensation	Taxable	Non-taxable	Notes
Base salary	X	-	(a)
Bonus	X	-	(a)
Transport allowance	-	X	(b)
Cost-of-living allowance	X	-	(a)
Tax perquisite (employee's obligation of tax born by employer)	X	-	(c)
Rent-free housing	X	-	(d)
Utilities	X	-	(a)
Children's education reimbursement	X	-	(a)
Hardship allowance	X	-	(a)
Entertainment allowance	X	-	(a)

Compensation	Taxable	Non-taxable	Notes
Other allowance	X	-	(a)
Moving expenses	-	X	(e)
Medical reimbursement	-	X	(f)
Value of meals provided during working hours	-	X	(g)
Other items			
Foreign-source personal ordinary income (interest and dividends)	-	X	(h)
Capital gains from sale of personal residence in home country	-	X	(h)
Capital gains from sale of other assets in home country (stocks and shares)	-	X	(h)

Notes

- Compensation (including value of perquisites) paid for services performed in India are taxable in India, regardless of where the compensation is paid. Remuneration includes any salary payable to the employee for a rest or leave period that is preceded and followed by the performance of services in India and is provided for in the employment contract.
- Transport allowance provided to an employee is exempted up to INR1,600 per month from FY16 onwards.
- Tax paid by the employer is subject to multiple gross-up in the hands of the employee. However, tax paid on non-monetary benefits provided to an employee can be claimed as exempt, subject to the satisfaction of certain conditions.
- The taxable value of a perquisite with respect to rent-free housing is calculated using a prescribed formula.
- Moving expenses incurred at the time of transfer are not taxable in the hands of the employee, subject to the satisfaction of certain conditions.
- Medical expenditures or reimbursements are exempt, subject to certain conditions and up to INR15,000 per year.
- This item is not taxable, subject to satisfaction of certain conditions.
- These items are non-taxable in India for individuals who are considered as not ordinarily residents or who are considered as non-residents, provided these are not received in or directly remitted to bank account in India.

ii. Taxation of employer-provided stock incentives (ESOPs)

Allotment of any specified security or sweat equity shares by an employer (including former employer) to employees will be taxable in the hands of employees as employment income. The tax will be payable on the difference between the FMV of securities on the date of exercise and the amount recovered from the employee. Specific rules are prescribed for determination of FMV.

The employer is required to withhold tax at the time of allotment of securities to employees.

iii. Income from house property

Taxability of income from house property in the case of corporations and individuals is the same. For taxability of income from house property, kindly refer to N.2.2.i.

iv. Self-employment and business income

All self-employed individuals or those doing business in India are subject to tax. The general principles of taxation in respect of business income in the case of individuals are similar to those of a corporation, as discussed in N.2.2.ii.

Deemed basis of taxation

Individuals, Hindu undivided family (HUF) and partnership firms (excluding LLPs), who are residents and engaged in any business (except the business of plying, hiring or leasing goods and carriages, persons engaged in specified professions, carrying out agency business or earning income in the nature of commission or brokerage) with a turnover of INR10m or less can opt for presumptive basis of taxation. Under the scheme, the taxpayer has the option to declare total income on a deemed basis at 8% of gross receipts.

v. Capital gains on assets

The provisions in respect of taxability of capital gains in the case of individuals are similar to those in respect of corporations, as discussed in N.2.2.iii.

However, individuals and HUFs are eligible for exemption from capital gains on sale of residential house property, agricultural land and other long term assets, subject to satisfaction of conditions. Moreover, NRIs can exercise an option to be taxed at a flat rate of 20% on their gross investment income and a flat rate of 10% on their long-term capital gains on certain specified assets (without any deductions) arising from their foreign currency assets acquired in India through remittances in convertible foreign exchange.

vi. Income from other sources (investments, and lotteries)

The general principles of taxation in respect of income from other sources in the case of individuals are similar to those of a corporation, as discussed in N.2.2.iv. However, a receipt by an individual or HUF of any sum of money (in excess of INR50,000) or any property (including immovable property) without consideration or inadequate consideration, will be taxable in the hands of the recipient. The taxable value will be determined based on the rules prescribed.

This provision is not applicable where the sum of money or property is received from a relative, on the occasion of the individual's marriage, under a will or inheritance, in contemplation of the death of the payer or donor, or from a local authority, approved fund or trust.

N.7.4 Deductions

Nature of deduction	Amount
General deduction for investment in PPF, PF, Life Insurance, ULIP, Stamp duty on house, fixed deposits with a bank/post office for five years, bonds, housing loan repayment, mutual funds subscription, tuition fees paid for children etc.	INR150,000, an additional deduction of INR50,000 is available for employee's contribution towards such New Pension Scheme.
Contribution by an employee or any other individual towards New Pension Scheme	
Investment made under equity scheme or equity oriented funds if gross total income does not exceed INR1.2m	50% of amount invested in equity shares, restricted to INR25,000.
Medical insurance premium	Deduction for payment of such premium varies from INR25,000 to INR60,000, depending upon whether the payment is for self/parents and whether senior citizen or not.
For interest payment on loan taken for higher studies for self or education of spouse or children	Interest paid is deductible for max of eight years. Deduction for principal repayment is not made.

Nature of deduction	Amount
Donations to charitable institution	100% or 50% of amount of donation made
For rent paid	INR2000/- per month 25% of total income/rent paid- 10% of total income
Interest in savings account	Amount deductible is INR10,000

N.8 Income tax filing and payment process

All income is taxed on the basis of FY from 1 April to 31 March. All taxpayers, including non-residents, must file a ROI if their income exceeds the maximum amount that is not liable to taxation. However, non-residents and NRI nationals (including PIOs) who only have investment income or long-term capital gains (on foreign exchange assets) need not file a ROI if the required tax is withheld at source.

Furthermore, every resident (excluding not ordinary residents) owning any asset (including financial interest in any entity) located outside India, or signing authority in any account located outside India, or income from any source outside India, is required to furnish an ROI even if their income does not exceed the maximum amount that is not liable to taxation. Return forms are notified by the tax authorities on a year-on-year basis.

An electronic filing is mandatory for companies, firms or associations of persons (AOP) liable to tax audits and any other assessee including those who have a total income exceeding INR0.5m or who is claiming a refund. In case of individuals of age 80 years or more, there is an option of filing tax return other than electronically, subject to certain conditions.

ROI for salary income needs to be filed by 31 July. ROIs for self-employment or business income must also be filed by 31 July or, if accounts are subject to a tax audit, by 30 September every year.

India does not have the concept of joint filing. Married couples are therefore taxed separately. The passive income of minor children is aggregated with that of the parent with higher income. However, an exemption upto INR1,500 for each minor child is available for the parent.

Taxpayers with income earned from employment pay tax through tax withheld by their employer from their monthly salaries in each pay period. Taxpayers with tax liability exceeding INR10,000 need to make advance tax payments, after deducting tax withheld, foreign tax credit in three instalments on 15 September, 15 December and 15 March every year. However, a resident senior citizen who

does not have income from business or profession or a person paying tax under presumptive taxation is not liable to pay advance tax.

Non-residents are subject to the same filing requirements as residents.

However, ROR's are required to complete additional disclosure requirements set out in the tax return forms.

Before leaving India, any individual who is not domiciled in the country is required to furnish an undertaking to the prescribed authority and obtain a No Objection Certificate (NOC) if the person has been in India to engage in business, professional or employment activities and has derived income from these activities. The procedure and paper work required for this has been set out in the IT Act.

N.9 Other direct taxes (individuals)

N.9.1 Social Security contribution

Social security in India is governed by the EPF Act. The EPF Act contains the following two principal schemes:

- ▶ Employees' Provident Funds Scheme, 1952
- ▶ Employees' Pension Scheme, 1995
- ▶ Effective 1 Nov 2008, every "International Worker" (other than an "excluded employee") employed in a covered establishment is required to become member of the Provident Fund Scheme and Pension Scheme
- ▶ "International Worker" means:
 - ▶ A foreign passport holder employee working for an establishment in India to which the Provident Fund Act applies
 - ▶ An Indian national who has worked in a country with which India has an effective Social Security Agreement and is eligible to avail the benefits under the social security programme of that country, by virtue of eligibility gained under the said Agreement
- ▶ The EPF Act applies to the following establishments:
 - ▶ An establishment employing 20 or more persons engaged in a specified industry or an establishment or class of establishments notified by the GoI
 - ▶ An establishment employing less than 20 persons that voluntarily opts to be covered by the EPF Act

- ▶ Exception: Excluded employee means:
 - ▶ Under Social Security Agreement - An International Worker who has obtained certificate of coverage from the social security authorities of his/her home country with whom India has entered into a Social Security Agreement
 - ▶ Under Comprehensive Economic Agreement - An International Worker who is contributing to a social security programme of his/her home country with whom India has entered into a bilateral comprehensive economic agreement containing a clause on social security prior to 1 October 2008

India has signed social security agreements with 16 countries which are in force including, Belgium, Germany, Switzerland, Luxembourg, France, the Netherlands, Denmark, Hungary, the Czech Republic, South Korea, Norway, Sweden, Canada, Austria, Finland and Australia. Agreements with Japan, Portugal have been signed but are not yet in force.

Contribution

- ▶ Under the Provident Fund Act, an employer is required to contribute 24% of the monthly pay toward Provident Fund Scheme and Pension Scheme.
- ▶ An “International Worker” who is not an existing member of the pension scheme as on 1 September 2014 (whose monthly pay exceeds INR15,000) will only be required to become a member of the Provident Fund Scheme and will not be required to become a member of the Pension Scheme. In such case the entire employee and employer contribution (24% of the monthly pay) would be allotted towards Provident Fund.
- ▶ “Monthly pay” means:
 - ▶ Basic wages
 - ▶ Dearness allowance
 - ▶ Retaining allowance
 - ▶ Cash value of food concession
- ▶ “Basic wages” is defined to mean all cash emoluments except the following:
 - ▶ Cash value of any food concession; dearness allowance
 - ▶ House-rent allowance
 - ▶ Overtime allowance
 - ▶ Bonus
 - ▶ Commission or any other similar allowance
 - ▶ Gifts
 - ▶ Withdrawal

- ▶ Provident Fund withdrawal is possible under the following circumstances:
 - ▶ On retirement at the age of 58
 - ▶ On permanent and total incapacitation
 - ▶ On completion of assignment (in respect of an employee covered under Social Security Agreement)
- ▶ Pension benefit is received:
 - ▶ If the employee is covered under a Social Security Agreement
 - ▶ If the employee has rendered more than 10 years of service in India
- ▶ The amount due to an employee can be claimed either:
 - ▶ In an employee's Indian bank account
 - ▶ In an employee's home country bank account (in respect of an International Worker covered under Social Security Agreement which allows export of benefits)
 - ▶ Through the employer

Chapter 0

Transfer Pricing (TP)

- 0.1 Definition of ITNs**
- 0.2 Safe harbor rules**
- 0.3 Dispute resolution panel**
- 0.4 Specified domestic transactions**
- 0.5 Advance Pricing Agreements (APA)**
- 0.6 Changes in TPRs**

Transfer pricing

Transfer pricing (TP) provisions in India are generally in line with the TP guidelines for MNCs and tax administrators issued by the Organization for Economic Co-operation and Development (OECD), though with certain noteworthy differences.

Under Transfer Pricing Regulations (TPRs), any international transaction (ITN) between two or more associated enterprises (AEs) (including PEs) must be conducted at an arm's length price (ALP). For the computation of ALP, TPRs require application of the most appropriate of the following methods:

- ▶ Comparable uncontrolled price
- ▶ Resale price
- ▶ Cost-plus
- ▶ Profit-split
- ▶ Transactional net margin
- ▶ Residual/other method that takes into account the price for similar uncontrolled transaction considering all relevant facts

TPRs do not mandate a hierarchy of methods. If more than one ALP is determined, TPRs mandate the determination of the arm's length price as follows:

- ▶ If the most appropriate method applied is a method other than Profit-split or other method and if the data set comprise of 6 or more data points, then the arm's length price shall be arm's length range (beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset). If the price at which the ITN is undertaken is outside the arm's length range, then the arm's length price shall be taken to be the median of the dataset
- ▶ In other cases, arm's length price shall be the arithmetic mean of such prices. If variation between the ALP and the price of ITN does not exceed a prescribed percentage (3% in all cases except wholesale traders, where allowable variation is 1%) of transfer price, the ITN is considered to be at arm's length

TPRs allow use of multiple year data. TPRs provide that if comparable has been identified on the basis of:

- ▶ **Current year:** then data for immediately preceding two years can be considered for the purpose of determination of the arm's length price
- ▶ **Financial year immediately preceding the current year:** then data for immediately preceding two years from the current year can be considered for the purpose of determination of the arm's length price

TPRs require taxpayers to maintain prescribed transfer pricing documentation (TPD) and information, and electronically furnish an accountant's report to the tax authorities containing prescribed details about ITNs. Due date for filing such report is 30 November following the end of the relevant FY.

Failure to maintain the TPD or furnish the accountant's report or incorrect reporting results in the imposition of penalties ranging from a constant penalty of INR100,000 to a variable penalty of 2% of value of transaction:

According to TPRs, enterprises are considered to be "associated" if there is direct or indirect participation in the management, control or capital of an enterprise or by the same persons in both the enterprises. Furthermore, TPRs suggest certain other deeming provisions that trigger an associated enterprise relationship, such as shareholding giving more than 26% voting power, dependence on source of raw materials or customers, influence on price, dependence on borrowing, and authority to appoint Board of Directors or EDs beyond a certain threshold.

O.1 Definition of ITNs

TPRs define ITN as a transaction between two or more AEs, either or both of whom are non-residents and have a bearing on the profits, income, losses or assets of such enterprises. Furthermore, a transaction with a non-AE may also be deemed as an ITN if a prior agreement or arrangement pertaining to such transaction exists between the non-AE and the taxpayer's AE.

The definition of ITN now also includes the following:

- ▶ Transactions of business restructuring or reorganization
- ▶ Financial transactions such as capital financing including any type of long-term or short-term borrowing or lending or provision of guarantee
- ▶ Services related to market research, scientific research, market development and legal or accounting services
- ▶ Purchase, sale, transfer, lease or use of tangible property, including building, plant and machinery, vehicles or any other article, product or thing
- ▶ Purchase, sale, transfer, lease or use of any intangible has been defined to include marketing, technology, artistic activity, goodwill, location, customer lists, customer contracts, methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, technical data, etc.

0.2 Safe harbor rules

According to the amendment of the Finance Act (no. 2) 2009, the determination of ALP with respect to ITN is subject to safe harbor rules, which the CBDT is empowered to draft and issue. Safe harbor indicates circumstances under which tax authorities accept a transfer price declared by a taxpayer. Recently, safe harbor rules have been notified by the CBDT for certain types of transactions.

0.3 Dispute resolution panel

Please refer to N.6.1, page number 158.

0.4 Specified domestic transactions

The Finance Act 2012 brought certain Specified Domestic Transactions (SDTs), where the aggregate of such transactions exceeds (now) INR200m, within the ambit of TPRs, with effect from 1 April 2013. The transactions covered under such provisions include:

- ▶ Any expenditure incurred in favor of any domestic related party
- ▶ Any deductions claimed while computing taxable income that have related party transactions
- ▶ Transactions with related domestic companies or units eligible for tax holiday

0.5 Advance Pricing Agreements (APA)

The Finance Act 2012 introduced an enabling provision, which empowers the CBDT to enter into an APA with a taxpayer to determine ALP or to specify the manner in which an ALP is to be determined in relation to an ITN. Some of the salient features of the provisions are as follows:

- ▶ APAs are applicable for a maximum prospective period of five consecutive years, with a provision for rollback of up to 4 years
- ▶ An APA is binding on income tax authorities and the taxpayer
- ▶ Taxpayers are required to modify returns of income according to the APA within three months from the end of the month of entering the APA
- ▶ The AO will have to assess or reassess taxpayers in accordance with the APA concluded and the modified returns of income

O.6 Changes in TPRs

- ▶ The Finance Act 2015 amended the TPRs, to enhance the threshold of the aggregate value of transactions falling within the meaning of “Specific Domestic Transactions”. The same now stands increased from INR50m to INR200m
- ▶ The CBDT introduced Rollback provisions under the APA program via notification dated 14 March 2015
- ▶ Based on such notification, an APA could be rolled back to a period not exceeding the immediately preceding four years



Chapter P

Indirect taxes

P.1 Customs duty

P.2 Excise duty

P.3 Service tax

P.4 Value added tax and Central sales tax

P.5 Octroi or entry tax

P.6 Research and development cess

P.7 Other significant indirect taxes

Indirect taxes

The Central Government levies indirect taxes comprising customs duty, excise duty, value-added tax, central sales tax and service tax. The states are empowered to levy profession tax and state sales tax apart from various other local taxes, including entry tax and octroi or local body tax.

Tax	Standard Rate	Applicability
P.1 Customs Duty	29.44% (depend on classification under the customs tariff, which is aligned with the International Harmonized System of Nomenclature)	<p>Customs duty is levied on import of goods into India and is typically payable by the importer</p> <p>Components of Customs Duty:</p> <ul style="list-style-type: none"> ▸ Basic customs duty (BCD) ▸ Additional customs duty (CVD) – in lieu of excise duty ▸ Education cess/secondary and higher education cess ▸ Special additional customs duty (SAD) <p>CVD paid on the import of goods is allowed as credit against the output excise/service tax liability, subject to conditions</p> <p>SAD paid on the import of goods is allowed as credit only to a manufacturer against the output excise duty and not to an output service provider or a trader of goods, subject to conditions</p>
P.2 Excise Duty	12.50%	<p>Applicable on the manufacture of goods within India and is payable by the manufacturer.</p> <p>Goods manufactured in India can be exported without the payment of excise duty, subject to specified conditions.</p> <p>Inputs used in the manufacture of goods to be exported can also be procured without payment of excise duty, subject to conditions.</p>
P.3 Service tax	14%	All services provided in exchange of consideration by one person to another attract Service tax excluding services covered under the negative list and those specifically exempt.
Swachh Bharat Cess	0.50%	

Tax	Standard Rate	Applicability
P.4 VAT	4% - 14.5% (varies depending on the product and state)	Levied by the state governments on local sale or purchase of goods within a state
CST	2% or the VAT rate in originating state	Levied by central government on inter-state movement of goods subject to fulfillment of certain conditions
P.5 Entry tax/ Octroi/Local Body Tax	Varies from state to state	<p>Levied on the purchase value of the goods</p> <p>Levied by state/local authorities on goods that enter their jurisdiction and rates vary across state/local authorities</p> <p>In some states, constitutional validity of entry tax is subject to dispute, hence the applicability is determined on a state-to-state basis</p>
P.6 Research & Development cess	5%	<p>Levied by the GoI on the import of technology by an industrial concern into India</p> <p>This cess is to be paid by the importer of technology on payments made for such imports</p>
P.7 Other significant indirect taxes		
P.7.1 Stamp Duty	Varies across states	It is a tax on transactions in the form of stamps on instruments affecting such transactions.
P.7.2 Profession tax	Varies across states	It is a state levy on a person engaged in any professions, trades, a calling or employment in a state
P.7.3 Luxury tax	Varies across states	It is a state levy imposed on the turnover of receipts of the hospitality industry for provision of accommodation and other luxuries provided by them
P.7.4 Property tax	Varies with each municipal authority	<p>It is a municipal tax imposed on the owner of the property (usually real estate) for the maintenance of basic civic services in a city.</p> <p>The amount of tax is calculated on the value of the property that is sought to be taxed (ad valorem basis) as prescribed by each municipal authority.</p>

Tax	Standard Rate	Applicability
P.7.5 Entertainment tax	Varies across states	State and local governments levy entertainment tax on various entertainment and amusement activities like film exhibitions, cable or DTH subscriptions, video games, amusement parks and events have been subject to entertainment tax.

GST legislation (Proposed)

Overview of GST framework in India

The GoI has proposed to replace the indirect tax regime in India by a comprehensive dual GST.

In keeping with the federal structure of India, it is proposed that GST will be levied concurrently by the center (CGST) and the states (SGST). The base and other essential design features would be common between CGST and SGST for the individual states. The GST structure will follow the destination based taxation principle, i.e., imports will be included in the tax base, while exports will be zero rated. All inter-state supplies within India will attract an Integrated GST (IGST), which will be the aggregate of CGST and SGST. The revenue neutral rate proposed by the Chief Economic Advisor of the Empowered Committee is between 15% - 15.5%. The final rate would be decided by the GST council. The full input credit system will operate for CGST, SGST and IGST. To bring in effect the GST framework, a constitutional amendment bill has been proposed which is pending in the Parliament.

Highlights of the GST Constitutional Amendment Bill (Proposed)

- ▶ The bill inserts a new article in the constitution to give the central and state governments the concurrent power to make laws on taxation of goods and services
- ▶ The President of India will constitute a GST council within 60 days of the act coming into force. The GST council aims to develop a harmonized national market for goods and services
- ▶ Alcoholic liquor for human consumption has been kept out of the scope of GST and it will continue to be a state subject
- ▶ Petroleum products namely petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel will be, for the time being, excluded from the ambit of GST and may be brought in later

- ▶ Interstate supply of goods and services will be subject to IGST and all transactions within a state will be subject to CGST and SGST levied by respective state governments
- ▶ Non creditable additional tax not exceeding 1% on supply of goods in the course of interstate trade or commerce will be levied by the state from which the goods originate

The Place of Supply Rules under GST would also be framed to determine the place where GST is liable to be paid on the respective transactions.

GST has been envisaged as a more efficient tax system than the current one, since it will widen the tax base, do away with the multiplicity of taxes and the cascading effects, minimize competitive distortions and encourage better compliance.

The new tax structure will have a significant impact on all businesses, manufacturers, traders and service providers, and on all aspects of their activities, including supply chains and logistics, product pricing, dealer margins, and IT and accounting systems.

Many of the design features of the GST are yet to be finalized. They are being discussed by the GoI and the states.



Chapter Q

Incentives

Q.1 Direct tax incentives

Q.2 Special Economic Zones (SEZs)

Q.3 State-level incentives

Q.4. Investment incentives under FTP

Incentives

Q.1 Direct tax incentives

The GoI provides certain direct tax incentives in the form of tax holiday, deductions, etc., to new industrial undertakings, R&D activities, promotion of specified areas, exports, etc.

We have provided a general overview of incentives currently provided under the IT Act (subject to applicable terms and conditions).

Q.1.1 Profit linked incentives for new undertakings

New undertakings formed, by means other than the division or reconstruction of an existing business or the transfer of used machinery or plant (subject to certain conditions and exceptions) are eligible for following incentives:

Undertakings engaged in	Quantum of deduction
Power generation/distribution/transmission Development/operation of infrastructure facilities (such as roads, rails, highways, etc) Commercial production of mineral oils/natural gas	100% for 10 years (out of the first 15 or 20 years as the case may be)
Specified activities in north-eastern states (i.e., Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura), including: <ul style="list-style-type: none"> ▶ Manufacturing or producing eligible articles/IT-related hardware ▶ Specified hotels/nursing homes ▶ Adventure and leisure sports ▶ Biotechnology, operating vocational training institute for hotel management, entrepreneurship development, nursing and paramedical, etc 	100% for the first 10 years
Processing, preservation and packaging of:	
a. Fruits/vegetables/from the integrated business of handling, storing and transporting food grains	100% for the first 5 years

Undertakings engaged in	Quantum of deduction
b. Meat and meat products or poultry or marine products or dairy products	30% for corporates (25% for others) for the next 5 years
Processing biodegradable waste for generating power, biogas, etc	100% for the first 5 years

In addition to the above, certain profit linked incentives which were available in the past will continue till the time period specified in the IT Act for the eligible existing businesses set up in earlier years.

Q.1.2 Investment-linked incentives

Deduction for specified businesses

To promote rural infrastructure/specified industries (subject to certain conditions) investment-linked incentives in the form of deduction for capital expenditure (other than land, goodwill or financial instrument) incurred prior to the commencement of operations is allowed for following specified businesses:

Nature of expense	Quantum of deduction
Laying and operating cross-country natural gas/crude/petroleum oil pipeline network, etc	100%
Beekeeping/Setting up and operating a notified inland container depot/container freight station	
Setting up and operating a warehousing facility for storage of sugar	
Laying and operating a slurry pipeline for transportation of iron ore	
Setting up and operating a semiconductor wafer fabrication manufacturing unit	
Building and operating a specified hotel/hospital	100%/150%
Developing/building a GoI/state government notified housing project under a scheme for slum redevelopment or rehabilitation/affordable housing project	
Producing fertilizer in a new plant/facility	150%
Setting up and operating a warehouse for agricultural produce/cold chains	

Q.1.3 Incentives for R&D

Nature of expense	Quantum of deduction
Expenditure toward salary/purchase of materials used in scientific research and capital expenditure (other than on acquisition of land) incurred during the three years preceding the commencement of business	100%
Payment to a research association/university/ specified Companies for scientific research/ National Laboratory, etc	125% to 200%
Specified expenditure on approved in-house R&D facility by a company engaged in biotechnology or in the manufacture or production (up to 31 March 2017)	200%

Q.1.4 Accelerated depreciation/Incentives

Incremental depreciation (over and above normal) of 20% of actual cost will be available in respect of any new machinery or plant (other than those specified) used in the business of manufacture or production or in the business of power generation.

Furthermore, if the undertaking is set up in specified geographical areas¹⁹⁰ on or after 1 April 2015, additional depreciation at the rate of 35% (vis-a-vis 20% mentioned above) will be available.

Incentive for acquisition and installation of a new asset

In case of a company engaged in the business of manufacture or production, which acquires any plant and machinery (other than those specified) a one-time incentive of 15% of actual cost of such plant or machinery will be available (if such investment exceeds INR250m).

If such asset is acquired and installed in specified geographical areas during the period 1 April 2015 to 31 March 2020, an additional one-time deduction of 15% of the actual cost of such asset acquired would be provided.

¹⁹⁰States of Andhra Pradesh, Telangana, West Bengal and Bihar

Q.1.5 Additional deduction for wages paid to new workmen

Nature of expense	Quantum of deduction
Wages paid to “new” regular workmen employed by “any undertaking registered under Factories Act, 1948, engaged in manufacture or production	30% of additional wages for three financial years

To facilitate ease of doing business in India, the GoI is contemplating reduction of corporate tax rates to 25% over a period of four years coupled with rationalization of tax incentives. Accordingly, in November 2015, the GoI has outlined following proposals to rationalize tax incentives:

- Phasing out profit/investment linked and area based deductions;
- Existing deductions to lapse on/have sunset date of 31 March 2017;
- Weighted deductions to lapse from 1 April 2017.

Q.2 Special Economic Zones (SEZs)

Q.2.1 Introduction

SEZs are specifically delineated duty-free enclave deemed to be a foreign territory for the limited purpose of trade operations, duties/tariffs. With the SEZ scheme, the GoI aims to create hassle free environment for exports, supported by an integrated simplified infrastructure and a package of incentives to attract foreign and domestic investment.

The GoI has taken many measures to revive the investors' interest in SEZs by liberalizing various norms such as minimum land area requirements, transfer/sale of ownership, etc.

Q.2.2 Direct tax incentives for SEZ

Nature of business	Quantum of deduction
Undertakings/units located in SEZs and engaged in the manufacture or Production/provision of services	<ul style="list-style-type: none"> ▶ 100% deduction in respect of export profits for 5 years ▶ Subsequently, 50% deduction for next 5 years (subject to certain conditions)
SEZ developers	100% deduction of their business profits for 10 years (out of 15 years)
Offshore banking units and international financial services centers located in SEZ	<ul style="list-style-type: none"> ▶ 100% deduction in respect of the specified income for five years ▶ 50% for the next five years

Q.2.3 Indirect tax incentives for SEZ units

SEZ developers and units are eligible to avail exemption of customs/excise duty, central sales tax, service tax, etc (subject certain conditions).

Similarly, exemption or concessions from local levies such as VAT, entry tax, stamp duty, registration charges and electricity duty are available in states where the state governments have granted such exemption.

Q.3 State-level incentives

Various States offer multiple investment-linked incentives (concessions/exemptions) to attract investments and create employment/promote infrastructure and education.

Incentives typically include capital/interest subsidy, concessional power/stamp levies, etc. Moreover, large/mega projects are provided with incentives based on negotiations, depending on the quantum of investment proposed, strategic importance of the project, proposed employment and other similar criteria.

In light of the overall plan of new GoI to rationalize/remove various tax exemptions, State-level incentives will be the new investment drivers for businesses.

Q.4. Investment incentives under FTP


India's FTP covers policies related to fiscal incentives, rationalized procedures, increased access to global markets and diversification of its export market.

The policy provides for certain export promotion schemes such as:

- ▶ Merchandise Export from India Scheme (MEIS) – to allow duty credit for export of notified goods to notified markets as a percentage of the realized foreign exchange value
- ▶ Service Export from India Scheme (SEIS) – to allow duty credit for export of notified services as a percentage of the realized foreign exchange value
- ▶ Export Promotion Capital Goods – to allow the import of capital goods at a zero-duty rate (i.e., at nil rate of duty) for the production of export output, subject to the fulfilment of export obligation up to six times of the duty saved
- ▶ Advance Authorization and Duty Free Import Authorization to enable duty-free procurement of inputs required for the manufacturing of goods to be exported, subject to fulfilment of the export obligation



Appendix



Appendix 1: List of frequently used abbreviations
Appendix 2: Useful addresses and telephone numbers
Appendix 3: Exchange rates
Appendix 4: FDI Policy
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Appendix 7.1: Individual income tax calculation
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Appendix 7.3: Sample tax calculation (expat)

Appendix 1: List of frequently used abbreviations

AAR	Authority for Advance Ruling	FII	Foreign Institutional Investor
AGR	Adjusted Gross Revenue	FIPB	Foreign Investment Promotion Board
AIF	Alternative Investment Funds	FMV	Fair Market Value
AMT	Alternate Minimum Tax	FPI	Foreign Portfolio Investors
AOA	Articles of Association	FRRO	Foreigner Regional Registration Offices
BEPS	Base Erosion and Profit Shifting	FTA	Free Trade Agreement
BOD	Board of directors	FTC	Foreign Tax credit
BPO	Business Process Outsourcing	FTS	Fees for Technical Services
CBDT	Central Board of Direct Taxes	FVCI	Foreign Venture Capital Investors
CCEA	Cabinet Committee on Economic Affairs	FY	Financial Year
CCI	Competition Commission of India	GAAR	General Anti-Avoidance Rule
CECA	Comprehensive Economic Cooperation Agreement	GoI	Government of India
Cos Act	Companies Act, 1956	GST	Goods and Service Tax
DDT	Dividend Distribution Tax	HC	High Court
DIPP	Department of Industrial Policy and Promotion	ICDS	Income Computation and Disclosure Standards
DoT	Department of Telecommunications	IMF	International Monetary Fund
DTA	Domestic Tariff Area	INR	Indian Rupee
DTAA	Double Taxation Avoidance Agreement	IT Act	Income Tax Act, 1961
DTC	Direct Taxes Code Bill, 2010	ITA	Income Tax Authorities
ECB	External Commercial Borrowing	ITAT	Income Tax Appellate Tribunal
EPF Act	Employees Provident Fund and Miscellaneous Provisions Act, 1952	ITN	International Transaction
FDI	Foreign Direct Investment	IVCU	Indian Venture Capital Undertaking
FEMA	Foreign Exchange Management Act, 1999	MAT	Minimum Alternate Tax
FERA	Foreign Exchange Regulation Act, 1973	MCA	Ministry of Corporate Affairs
		MoC	Ministry of Commerce
		MoD	Ministry of Defence
		MoF	Ministry of Finance
		NA	Not available

NBFC	Non Banking Financial Company
NCLT	National Company Law Tribunal
New Cos Act	Companies Act, 2013
NOR	Not Ordinarily Resident
NR	Non Resident
NRI	Non Resident Indian
ODI	Overseas Direct Investment
OECD	Organization of Economic Cooperation and Development
PAN	Permanent Account Number
PIO	Person of Indian Origin
POEM	Place of Effective Management
PTA	Preferential Trade Agreement
QFI	Qualified Foreign Investors
RBI	Reserve Bank of India
RFPI	Registered Foreign Portfolio Investor
RoC	Registrar of Companies
ROI	Return of Income
ROR	Resident and Ordinarily Resident
SC	Supreme Court
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
SSA	Social Security Agreement
STT	Securities Transaction Tax
TP	Transfer Pricing
TPR	Transfer Pricing Regulations
TRC	Tax Residency Certificate
UT	Union Territory
VCF	Venture Capital Fund
WOS	Wholly owned subsidiary

Appendix 2: Useful addresses and telephone numbers

Securities and Exchange Board of India	Plot No.C4-A,'G' Block, Bandra -Kurla Complex, Bandra (East), Mumbai - 400 051 Telephone: +22 2644 9000/2644 9950/4045 9950 Fax: +22 2644 9019-22 Website: www.sebi.gov.in
Ministry of Corporate Affairs	'A' Wing, Shastri Bhawan Rajendra Prasad Road New Delhi - 110 001 Telephone: +11 23386110 Website: www.mca.gov.in
Telecom Regulatory Authority of India	Mahanagar Doorsanchar Bhawan (next to Zakir Hussain College) Jawaharlal Nehru Marg, (Old Minto Road) New Delhi - 110 002 Telephone: +11 2323 6308 Fax: +11 2321 3294 Website: www.trai.gov.in
Central Revenue Building (Income Tax Office)	IP Estate New Delhi - 110 002 Website: www.incometax.gov.in
Directorate General of Shipping	9th Floor Beta Building, i-Think Techno Campus, Kanjurmarg (East), Mumbai - 400 042 Tel. No. : 91-22 25752040/41/42/43/45 Fax.No. :91-22-25752029/35 Email : www.dgshipping.gov.in
Central Drugs Standard Control Organization	Directorate General of Health Services Ministry of Health and Family Welfare Government of India FDA Bhavan, ITO, Kotla Road, New Delhi -110002 Phone: 91-11-23216367/23236975 Fax: 91-11-23236973 Website: www.cdso.nic.in
National Highways Authority of India	National Highways Authority of India G 5 and 6, Sector-10, Dwarka New Delhi - 110 075 Telephone: +11 2507 4100/2507 4200 Fax : +11 2509 3507/2509 3514 Website: www.nhai.org

Department of Commerce	Department of Commerce Ministry of Commerce and Industry Udyog Bhawan New Delhi - 110 107 Telephone: +11 2306 2261 Fax: +11 2306 3418 Website: www.commerce.gov.in
Ministry of Environment, Forest and Climate Change	Indira Paryavaran Bhavan Jor Bagh Road New Delhi - 110 003 Telephone: +91-11-24362064 Website: www.envfor.nic.in
Ministry Of Mines	3rd Floor, A wing, Shastri Bhawan New Delhi - 110001 Telephone: +11 2307 3233 Website: www.mines.nic.in
Ministry of Steel	Government of India Udyog Bhavan New Delhi - 110107 Telephone : +11 2306 3417 Fax : +11 2306 3236 Website: www.steel.gov.in
Ministry of textiles	Udyog Bhavan New Delhi - 110011 Telephone: +11 2306 1338/18/14 Fax: +11 2306 3711/2306 3681 Website: www.texmin.nic.in
Indian Banks Association	World Trade Centre, 6th Floor Centre 1 Building, World Trade Centre Complex, Cuff Parade, Mumbai - 400 005 Telephone: 91-22- 22174040, Fax: 91-22-22184222 Website: www.iba.org.in
Bulk Drugs Manufacturers Association	C-25, Industrial Estate, Sanath Nagar Hyderabad - 500018 Telephone: +40 2370 3910/6718 Fax: +40 2370 4804 Website: www.bdmai.org

Association of Mutual Funds in India	<p>One Indiabulls Centre Tower 2, Wing B, 701, 7th Floor, 841 Senapati Bapat Marg, Elphinstone Road Mumbai - 400 013 Telephone: +22 2421 0093/2421 0383/4334 6700 Fax: +22 4334 6712/4334 6722 Website: www.amfi.com</p>
Chemicals and Petrochemicals Manufacturers' Association, India	<p>708, 7th floor, Kailash Building, 26 Kasturba Gandhi Marg, New Delhi - 110 001 Telephone : +11 43612198 Fax: 011-23310282 Website: www.cpmaindia.com</p>
All India Plastics Manufacturers' Association	<p>AIPMA House, A-52, Street No. 1 M.I.D.C. Marol, Andheri East Mumbai - 400 093 Telephone: +91 22 6777 8899 Fax: +22 28216390 Website: www.aipma.net</p>
Organization of Pharmaceutical Producers of India	<p>Peninsula Chambers, Ground Floor Ganpatrao Kadam Marg Lower Parel Mumbai - 400 013 Telephone: +22 2491 8123/2491 2486/6662 7007 Fax: +22 2491 5168 Website: www.indiaoppi.com</p>
Association of Biotechnology Led Enterprises	<p>ABLE Secretariat 123/C, 16th Main Road 5th Cross, 4th Block Koramangala Bangalore - 560034 Telefax: +80 4163 6853/2563 3853 Website: www.ableindia.in</p>

India Electronics & Semiconductor Association	<p>Unit G-02, Ground Floor, Prestige Terminus-II, 901 Civil Aviation Road (Old HAL Airport Exit Road), Konena Agrahara Bangalore - 560 017</p> <p>Phone: +91 80 4147 3250 Fax: +91 80 4122 1866 Website: www.iesaonline.org</p>
The Indian Broadcasting Foundation	<p>B-304, Third Floor, Ansal Plaza, Khelgaon Marg, New Delhi, Delhi - 110049</p> <p>Telephone: +91 11 4379 4400 Fax: +91 11 4379 4455 Website: www.ibfindia.com</p>
Federation of Indian Export Organizations	<p>Niryat Bhawan, Rao Tula Ram Marg Opp. Army Hospital Research & Referral New Delhi - 110 057</p> <p>Telephone: +11 4604 2222/2615 0101-04 Fax: +11 2614 8194/2615 0077 Website: www.fieo.org</p>
Invest India	<p>Investor Facilitation Cell, Make in India Federation House, Tansen Marg, New Delhi - 110 001</p> <p>Tel: +91 11 23487411/23487278/23487533/23487534/23487535/23487486 Fax: +91 11 23320714/23721504 Website: www.investindia.gov.in</p>
Reserve Bank of India	<p>Reserve Bank of India Amar Building Shahid Bhagat Singh Marg Mumbai - 400 001</p> <p>Telephone: 022-22661602 Website : www.rbi.org.in</p>

Appendix 3: Exchange rates

The table below provides RBI reference exchange rates for the Indian rupee against the four major currencies as on 15 January 2016:

Currency	Exchange rates
US Dollar	66.85
EURO	72.37
UK Pound	96.10
Japanese Yen Per 100 (JPY)	56.52

Appendix 4: FDI Policy

List of Prohibited Sectors:

1. Lottery Business including Government/Private lottery, online lotteries, etc.
2. Gambling and Betting Including Casinos etc.
3. Chit Funds
4. Nidhi Company
5. Trading in transferable Development Rights(TDRs)
6. Real Estate Business or Construction of Farm Houses
7. Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
8. Activities/sectors not open to private sector investment e.g. (I) Atomic Energy and (II) Railway operations (other than those specifically permitted)

(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.)

Permitted sectors¹⁹¹:

In the following sectors/activities, FDI up to the limit indicated against each sector/activity is allowed, subject to applicable conditions/laws. In sectors/activities not listed below, FDI is permitted up to 100% on the automatic route, subject to applicable laws/regulations; security and other conditionalities.

¹⁹¹Detailed conditions applicable to respective sectors may be referred to in the Consolidated FDI policy of DIPP dated 12th May 2015 read with Press Notes issued by DIPP of 2015 series

The sectoral caps and entry route of various sectors are listed below:

Sector/activity	% of equity/FDI cap	Entry route
1. Tea plantation Tea sector including tea ,coffee, rubber, cardamom, palm oil and olive oil plantations Note: FDI is not allowed in any other plantation sector/activity.	100%	Automatic
2. 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
3. Defence Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951 Note: (i) FDI limit of 49% is composite and includes all kinds of foreign investments i.e. Foreign Direct Investment (FDI), Foreign Institutional Investors (FIIs), Foreign Portfolio Investors (FPIs), Non Resident Indians (NRIs), Foreign Venture Capital Investors (FVCI) and Qualified Foreign Investors (QFIs) regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI) and 8 (QFI) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. (ii) Portfolio investment by FPIs/FIIs/NRIs/ QFIs and investments by FVCIs together will not exceed 49% of the total equity of the investee/joint venture company. Portfolio investments will be under automatic route.	49%	Automatic up to 49% and Government route above 49%, where FIPB considers proposals on a case to case basis, and specifically considers if such a proposal would result in access to modern and 'state of art' technology in the country

Sector/activity	% of equity/FDI cap	Entry route
4. Broadcasting Broadcasting carriage services i. Teleports(setting up of up-linking HUBs/Teleports); ii. Direct to Home (DTH); iii. Cable networks (MSOs operating at National or State or District level and undertaking upgrading of networks towards digitalization and addressability) iv. Mobile TV; v. Headend-in-the Sky Broadcasting Service(HITS)	100%	Automatic up to 49% Government route beyond 49%
5. 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
6. Civil aviation		
Airports - Existing projects	100%	Automatic up to 74% Government route beyond 74%
Non-Scheduled Air Transport Service	100% FDI	Automatic
Other services under Civil Aviation sector Ground Handling Services subject to sectoral regulations and security clearance	100%FDI	Automatic

Sector/activity	% of equity/FDI cap	Entry route
7. 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 (41 of 1999)	49% {FDI+FPI(FII, QFI)+NRI +FVCI+DR}	Automatic up to 26% Government route beyond 26% and up to 49%
8. Telecom Services (including Telecom Infrastructure Providers Category-I) All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, Unified Access Services, Unified License (Access Services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability Services, Infrastructure Provider Category-I (providing dark fiber, right of way, duct space, tower) except Other Service Providers.	100%	Automatic up to 49% Government route beyond 49%
9. Print media		
Publishing of newspaper and periodicals dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII/FPI)	Government
Publication of Indian editions of foreign magazines dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII/FPI)	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
10. Asset Reconstruction Companies Asset Reconstruction Companies(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% of paid-up capital of ARC (FDI+FII/FPI)	Automatic up to 49% Government route beyond 49%
11. Banking- Private Sector (subject to no change of control and management of the investee company)	74% including investment by FIIs/FPIs	Automatic up to 49% Government route beyond 49% and up to 74%
12. Satellites-establishment and operation Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100%	Government
13. Single-Brand product retail trading (FDI beyond 51%, sourcing of 30% will be done from India preferably from MSMEs)	100%	Automatic upto 49% Government route beyond 49%
14. Duty Free Shops (provided the entity shall not engage in any retail trading activity in Domestic Tariff Area of the country)	100%	Automatic
15. Private Security Agencies	49%	Government
16. Multi Brand Retail Trading	51%	Government

Sector/activity	% of equity/FDI cap	Entry route
17. 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% (FDI and Portfolio Investment)	Government
18. Pharmaceuticals- Brownfield	100%	Government

Automatic Route (sectors which are completely under automatic route):

Sector/Activity	% of Equity/FDI Cap	Entry Route
19. Agriculture & Animal Husbandry <ul style="list-style-type: none"> a. Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions; b. Development and Production of seeds and planting material; c. Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, under controlled conditions; and d. Services related to agro and allied sectors <p>Note: FDI is not allowed in any other agricultural sector/activity</p>	100%	Automatic
20. Mining and Petroleum and Natural gas		
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

Sector/Activity	% of Equity/FDI Cap	Entry Route
Coal & Lignite 1. Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and subject to the provisions of Coal Mines (Nationalization) Act, 1973. 2. Setting up coal processing plants such as washeries subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.	100%	Automatic
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
21. Cable networks (Other MSOs not undertaking upgrading of networks towards digitalization and addressability and Local Cable Operators (LCOs))	100%	Automatic upto 49% and Government route beyond 49%
22. Civil aviation		
Airports - greenfield projects	100%	Automatic
Air transport services Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline/ Regional Air Transport Service	49% FDI (100% for NRIs)	Automatic
Helicopter services/seaplane services requiring DGCA approval	100%	Automatic
Maintenance and Repair organizations; flying training institutes; and technical training institutions.	100%	Automatic
23. Courier services Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898 and excluding the activity relating to the distribution of letters.	100%	Automatic
24. 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
25. Industrial parks - new and existing	100%	Automatic

Sector/Activity	% of Equity/FDI Cap	Entry Route
26. Trading		
Cash & Carry Wholesale Trading/ Wholesale Trading/wholesale or retail through e-commerce	100%	Automatic
E-commerce activities	100%	Automatic
27. 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 connectivity to main railway line and x. Mass Rapid Transport Systems.	100%	Automatic
28. Commodity exchange	49% (FDI + FII/ FPI) [Investment by Registered FII/ FPI under Portfolio Investment Scheme (PIS) will be limited to 23% and Investment under FDI Scheme limited to 26%]	Automatic
29. Credit information companies	100%(FII/FPIs permitted subject to conditions)	Automatic

Sector/Activity	% of Equity/FDI Cap	Entry Route
30. Infrastructure companies in securities markets , namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49% (FDI + FII/FPI) [FDI limit of 26% and FII/FPI limit of 23% of the paid-up capital]	Automatic
31. Non-Banking finance companies (NBFC) Foreign investment in NBFC is allowed under the automatic route in only the following activities: <ul style="list-style-type: none"> i. Merchant Banking ii. Under Writing iii. Portfolio Management Services iv. Investment Advisory Services v. Financial Consultancy vi. Stock Broking vii. Asset Management viii. Venture Capital ix. Custodian Services x. Factoring xi. Credit Rating Agencies xii. Leasing & Finance xiii. Housing Finance xiv. Forex Broking xv. Credit Card Business xvi. Money Changing Business xvii. Micro Credit xviii. Rural Credit 	100%	Automatic
32. Pharmaceuticals - Greenfield	100%	Automatic
33. Power Exchanges Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.	49% (FDI+FII/FPI)	Automatic

Appendix 5: Corporate tax calculation

The following example illustrates the computation of taxable income and tax liability of a domestic company for the tax year 1 April 2015 to 31 March 2016:

Net profit as per financial statement		1,45,00,000
Less:		
Net dividends received from domestic company (exempt from tax)	-20,00,000	
Income from sub-leased property (considered separately)	-2,00,000	
		-22,00,000
Add:		1,23,00,000
Provision for tax	90,00,000	
Depreciation as per financial statements	30,00,000	
Disallowed expenses (such expenses are not related to the business)	2,00,000	
		1,22,00,000
		2,45,00,000
Less:		
Investment allowance	-5,00,000	
Tax depreciation	-55,60,000	-60,60,000
Business income		1,84,40,000
Income from other sources:		
Net income from sub-leased property		2,00,000
Gross total income		1,86,40,000
Taxable income		1,86,40,000
Calculation of tax		
Income tax at 30% on INR 18,640,000		55,92,000
Add:		
Surcharge at 7% (since total income more than INR10m)		3,91,440
Education cess at 3%		1,79,503
Tax payable		61,62,943
Less:		
Advance tax paid during the tax year		-57,00,000
Balance tax payable or (refundable) with ROI		4,62,943

Appendix 6: DTAA rates

Under the IT Act, Indian companies must pay DDT at an effective tax rate of nearly 20.36% (a base rate of 15% on gross amount plus a surcharge of 12% and an education cess of 3%) on dividends declared, distributed or paid by them. A higher effective tax rate of 23.07% (a base rate of 20% plus a surcharge of 12% and an education cess of 3%) applies on income distributed by way of buy back of shares by an unlisted Indian company. Since, dividends are exempt from tax in the hands of the recipients, the DTAA rates for dividends are not captured in the table below.

The following table presents the DTAA rates. Generally the rates specified in a DTAA need not be further enhanced by surcharge and cess. See footnote (a), (c) and (dd) below for tax rates under the IT Act on outbound payments of interest and royalties. In India, lower of the DTAA rate or the rate under the IT Act would apply.

Jurisdiction	Interest (%)	Royalty (%)
	Please see note (a), (b) and (dd) for all entries in this	Please see note (c), (d) and (dd) for all entries in this
Albania	10	10
Armenia	10	10
Australia	15	15
Austria	10	10
Bangladesh	10	10
Belarus	10	15
Belgium	15	10 <i>refer note: (e) and (f)</i>
Bhutan	10	10
Botswana	10	10
Brazil	15	15
Bulgaria	15	20
Canada	15	15
China	10	10
Colombia	10	10
Croatia <i>refer note: (i)</i>	10	10
Cyprus <i>refer note: (k)</i>	10/30	15/30
Czech Republic	10	10
Czechoslovakia <i>refer note: (g)</i>	15	30
Denmark	15	20

Jurisdiction	Interest (%)	Royalty (%)
	Please see note (a), (b) and (dd) for all entries in this	Please see note (c), (d) and (dd) for all entries in this
Egypt	20	10
Estonia	10	10
Ethiopia	10	10
Fiji	10	10
Finland	10 <i>refer note: (e)</i>	10 <i>refer note: (e)</i>
France	10 <i>refer note: (e) and (f)</i>	10 <i>refer note: (e) and (f)</i>
Germany	10	10
Georgia	10	10
Greece	20	10
Hungary	10 <i>refer note: (e)</i>	10 <i>refer note: (e)</i>
Iceland	10	10
Indonesia <i>refer note: (l)</i>	10	15
Ireland	10	10
Israel	10 <i>refer note: (e)</i>	10 <i>refer note: (e)</i>
Italy	15	20
Japan	10	10
Jordan	10	20
Kazakhstan	10 <i>refer note: (e)</i>	10 <i>refer note: (e)</i>
Kenya	15	20
Korea <i>refer note: (j)</i>	15	15
Kuwait	10	10
Kyrgyz Republic	10	15
Latvia	10	10
Libya	20	10
Lithuania	10	10
Luxembourg	10	10
Malaysia	10	10
Malta	10	10
Mauritius	20	15

Jurisdiction	Interest (%)	Royalty (%)
	Please see note (a), (b) and (dd) for all entries in this	Please see note (c), (d) and (dd) for all entries in this
Mexico	10	10
Mongolia	15	15
Montenegro	10	10
Morocco	10	10
Mozambique	10	10
Myanmar	10	10
Namibia	10	10
Nepal	10	15 <i>refer note: (e)</i>
Netherlands	10 <i>refer note: (e) and (f)</i>	10 <i>refer note: (e) and (f)</i>
New Zealand	10	10
Norway	10	10
Oman	10	15
Philippines	15	15
Poland	10	15
Portugal	10	10
Qatar	10	10
Romania	10	10
Russian Federation	10	10
Saudi Arabia	10	10
Serbia	10	10
Singapore	15	10
Slovenia	10	10
South Africa	10	10
Spain	15	20 <i>refer note: (e)</i>
Srilanka	10	10
Sudan	10	10
Sweden	10 <i>refer note: (e)</i>	10 <i>refer note: (e)</i>
Switzerland	10 <i>refer note: (e)</i>	10 <i>refer note: (e)</i>

Jurisdiction	Interest (%)	Royalty (%)
	Please see note (a), (b) and (dd) for all entries in this	Please see note (c), (d) and (dd) for all entries in this
Syria	10	10
Taiwan	10	10
Tajikistan	10	10
Tanzania	10	10
Thailand <i>refer note: (h)</i>	10	10
Trinidad and Tobago	10	10
Turkey	15	15
Turkmenistan	10	10
Uganda	10	10
Ukraine	10	10
United Arab Emirates	12.5	10
United Kingdom	15	15
United States	15	15
Uruguay	10	10
Uzbekistan	10	10
Vietnam	10	10
Zambia	10	10
Non-DTAA countries	20/5 <i>refer note: (a)</i>	10 <i>refer note: (c)</i>

- a. Under the IT Act, a rate of 20% is specified for taxation of interest income in India. Under the IT Act, the rate of 20% applies in respect of interest on monies borrowed, or debts incurred, in foreign currency by an Indian concern or government. A special reduced rate of 5% applies under certain specified circumstances. In other cases, depending on whether the recipient is a corporate entity or not, a tax rate of 30% or 40% applies. These tax rates need to be increased with the applicable surcharge and cess.
- b. A reduced rate of 0% to 10% generally applies under a DTAA when interest payments are made to local authorities, political subdivisions, governments, banks, financial institutions or such similar organizations. A reduced rate may also apply where the lender holds a certain threshold of capital stake in the borrower. The text of the relevant DTAA would need to be examined.
- c. With effect from tax year 2015-16, the IT Act provides a rate of 10% for taxation of royalty income in India. This rate provided under the IT Act applies where the payment is made by the Gol or an Indian concern. In other cases, as explained in note (a) above, a tax rate of 30% or 40% applies. Again, these rates need to be further increased by surcharge and cess.

- d. In some of India's DTAA's, such as with Canada, Australia, Spain, the UK, and the United States, a separate rate of 10% is specified for equipment royalty. Similarly, in the case of India's DTAA with Bulgaria, a 15% rate applies to copyright royalties other than cinematograph films, or films or tapes used for radio or television broadcasting. Also, in case of India's DTAA with Brazil, a rate of 25% applies on trademark royalties. Furthermore, many of India's DTAA's provide for withholding tax rates for technical services fees. In most cases, the rates applicable to royalties also apply to technical services fees. The text of the relevant DTAA would need to be examined to determine the relevant scope and rate.
- dd. A Permanent Account Number (PAN) is a unique identity number assigned to a taxpayer in India on registration with the India tax authorities. If an income recipient fails to furnish its PAN, tax must be withheld at the higher of the rate as per the IT Act/DTAA and 20%.
- e. A more restrictive scope of the definition of royalty and interest and/or a reduced rate may be available under the most favored nation clause in the relevant DTAA.
- f. A reduced rate of 10% is mentioned on account of notifications issued by the GoI giving effect to the most favored nation clauses in these DTAA's.
- g. This DTAA also applies to the Slovak Republic.
- h. A revised DTAA with Thailand, which was signed on 29 June 2015, will be effective in India from 1 April 2016.
- i. The DTAA with Croatia, which was signed on 12 February 2014, will be effective in India from 1 April 2016.
- j. A revised DTAA with Korea has been signed on 18 May 2015 but the text of the DTAA is yet to be notified and hence is not yet in force. The rates provided above are as per the existing DTAA.
- k. The IT Act contains an anti-avoidance provision based on which the GoI is empowered to notify any foreign jurisdiction as non-cooperative, which does not exchange effective information. This provision provides for various onerous tax consequences, one of which is higher rate of withholding on payments made to a person located in such jurisdiction. On 1 November 2013, the Central Government notified Cyprus as a "notified jurisdiction area" for the purpose of this provision. Accordingly, the rate of tax withholding for any payment made to a person located in Cyprus is higher of 30% and the rate prescribed under the IT Act.
- l. A revised DTAA with Indonesia has been signed on 27 July 2012. The government of India has not yet issued the notification for making the DTAA effective.

Following is the list of countries with which new DTAA's have been signed by India, but are not yet in force. Where the texts of the DTAA's are still to be issued, and the rates are taken from various press releases

Country	Interest (%)	Royalty (%)
Macedonia (new)	10	10

Appendix 7.1: Individual income tax calculation

The following example illustrates the method of calculating taxable income and income tax liability of an individual for the tax year 1 April 2015 to 31 March 2016.

Calculation of taxable income	Amounts in INR	
Salary and perquisites		630,000
Income from self-occupied property	0	
Less interest paid on home loan (a) (limited to INR 200,000)	2,00,000	-2,00,000
Capital gains (long-term on sale of property)		30,000
Interest income		20,000
Gross total income		4,80,000
Deductions allowable from the gross total income:		
Medical insurance	-10,000	
Investments in: (b)		
▸ Provident fund	-20,000	
▸ Life insurance	-10,000	
▸ Other tax-saving investments	120,000	
Bank interest (c)	-10,000	
		-1,70,000
Total income (d)		3,10,000
Calculation of tax liability		
Ordinary taxable income at rates from the personal income tax rate table (280,000-250,000) x 10% (e)		3,000
Capital gains (long-term of 30,000 x 20%)		6,000
Total tax liability		9,000
Rebate (f)		2,000
Balance tax payable		7,000
Education cess @3%		210
Total tax liability		7,210
Less:		
Taxes withheld on salary	1,030	
Advance tax payment	6,180	
Balance tax payable while filling of ROI		0

- a. The limit of INR 200,000 is applicable in the case of self-occupied house property. In the case of let-out property, the actual interest payable is deductible.
- b. Please note that contributions or investments in the tax-saving plans will be allowed as deduction from the gross total income to the extent of INR150,000. An additional deduction of INR 50,000 has been provided from FY16 for contribution made to New Pension Scheme.
- c. A deduction up to INR10,000 is available to an individual/HUF from the gross total income toward interest on a saving bank account (not being time deposits) maintained with a bank/ cooperative society/post office, and this deduction is applicable from the FY13 onwards.
- d. Taxable income consists of long-term capital gains (INR30,000) on the sale of property.
- e. The minimum taxable income threshold has been increased from INR200,000 to INR250,000 from FY15 and continues to prevail in FY16.
- f. A rebate of INR2,000 or actual tax payable, whichever is less, is available for resident individuals with total income up to INR500,000 from FY 15 and continues to be provided in FY16.

Note: In the case of a resident senior citizen¹⁹¹ and resident very senior citizen¹⁹², the minimum taxable income threshold is INR300,000 and INR500,000 respectively, as against INR250,000 for any other individual.

¹⁹¹Senior citizen is any individual who is of the age of 60 years or more but less than 80 years at any time during a tax year

¹⁹²Very senior citizen is any individual who is of the age of 80 years or more at any time during a tax year

Appendix 7.2: Sample tax calculation (expat)

The following is a tax calculation for an expatriate who was sent to India on 1 April 2015 for a period of two years. The calculation reflects the tax rates for the year ending 31 March 2016.

Computation of taxable income (in US\$)	Amount	Amount
Basic salary	1,20,000	
Bonus	12,000	
Employer pension contribution to home country plan (perquisite) (a)	8,400	
Children education allowance (after exemption)	12,000	
Cost of living allowance	24,000	
Foreign-service premium	30,000	
Housing utilities (perquisite value)	1,200	
Total of salary, bonus and taxable allowances		2,07,600
Perquisite (b):		
Rent paid by employer for unfurnished housing		29,700
(lower of amount paid of US\$36,000 or 15% of salary, bonus and taxable allowances, i.e., US\$198,000, which equals US\$29,700) Taxable perquisite		
Taxable income (US\$)		2,37,300
Taxable income in Indian currency		1,46,50,902
(US\$237,300 X 61.74) (b)		
Calculation of tax payable (INR)		
Income tax		42,20,271
Surcharge at 12% (c)		5,06,432
Tax payable		47,26,703
Education cess at 3% (INR)		1,41,801
Total tax payable (INR) (rounded off)		48,68,500

- Employer contributions to a home-country plan can be claimed as non-taxable based on judicial precedents subject to satisfaction of certain conditions.
If an employee's share of an Indian provident fund contribution is paid by the employer, it will be taxable in the hands of employee.
- For converting US\$ into INR, the foreign exchange rate shall be as prescribed by the Indian tax laws.
- The surcharge has been increased to 12% from FY 16 onwards.

Compliance calendar



1	6	12	13	14
18	19	20	21	28
25	26	27		

Compliance calendar for the period 1 January 2016 to 31 December 2016

Date of compliance	Particulars
January 2016	
6	E-payment of excise and service tax liability for the month of December 2015
7	Payment of taxes withheld in December 2015
10	Filing of excise return for the month of December 2015
15	Electronically file quarterly (Oct to Dec 2015) withholding tax returns in Forms 24Q/26Q/27Q
	Filing of quarterly return by first stage dealer or second stage dealer or registered importer in terms of Rule 9(8) of CENVAT Credit Rules, 2004 (CCR)
30	Due date for issue of quarterly (Oct to Dec 2015) TDS/ TCS certificate in respect of withholding for payments (other than salary) in Form 16A/27D

February 2016	
6	E-payment of excise and service tax liability for the month of January 2016
7	Payment of taxes withheld in January 2016
10	Filing of excise return for the month of January 2016

March 2016	
6	E-payment of excise and service tax liability for the month of February 2016
7	Payment of taxes withheld in February 2016
10	Filing of excise return for the month of February 2016
15	Payment of advance tax [100% of the estimated tax (as reduced by tax already paid, if any) for tax year 2015-16]
31	E-payment of excise and service tax liability for the month of March 2016
	Last day for payment of advance tax for tax year 2015-16

Date of compliance	Particulars
April 2016	
10	Filing of excise return for the month of March 2016
15	Filing of quarterly return by first stage dealer or second stage dealer or registered importer in terms of Rule 9(8) of CENVAT Credit Rules, 2004 (CCR)
25	Filing of service tax return for the period 1 October 2015 to 31 March 2016
30	Payment of taxes withheld in March 2016
	Filing of yearly excise return related to principal input in Form ER-5 for the financial year 2016-17
	Filing of yearly excise return of Installed Capacity Statement in ER-7

May 2016	
6	E-payment of excise and Service tax liability for the month of April 2016
7	Payment of taxes withheld in April 2016
10	Filing of excise return for the month of April 2016
15	Electronically file quarterly (Jan to Mar 2016) withholding tax returns in Form 24Q/26Q/27Q
30	Furnishing annual statement (in Form 49C) for tax year 2015-16 by a NR having Liaison Office in India
	Due date for issue of quarterly (Jan to Mar 2016) TDS/ TCS certificate in respect of withholding for payments (other than salary) in Form 16A/27D
31	Issue annual certificate of withholding to employees in respect of salary paid during tax year 2015-16 in Form 16

Date of compliance	Particulars
June 2016	
6	E-payment of excise and Service tax liability for the month of May 2016
7	Payment of taxes withheld in May 2016
10	Filing of excise return for the month of May 2016
15	Payment of advance tax (Not less than 15% of the estimated tax for tax year 2016-17)
30	Final adjustment of amount paid, if any, on a monthly basis under Rule 6(3)(ii) of CCR

July 2016	
6	E-payment of excise and Service tax liability for the month of June 2016
7	Payment of taxes withheld in June 2016
10	Filing of excise return for the month of June 2016
15	Electronically file quarterly (April to June 2016) withholding tax returns in Form 24Q/26Q/27Q
15	Filing of quarterly return by first stage dealer or second stage dealer or registered importer in terms of Rule 9(8) of CCR
30	Issue of quarterly (Apr to June 2016) TDS/TCS certificate in respect of withholding for payments other than salary in Form 16A/27D
31	File income tax for individual and non-corporates [who are not subject to tax audit and non-transfer pricing (TP) cases], for tax year 2015-16

Date of compliance	Particulars
August 2016	
6	E-payment of excise and Service tax liability for the month of July 2016
7	Payment of taxes withheld in July 2016
10	Filing of excise return for the month of July 2016

September 2016	
6	E-payment of excise and Service tax liability for the month of August 2016
7	Payment of taxes withheld in August 2016
10	Filing of excise return for the month of August 2016
15	Payment of advance tax (Not less than 45% of the estimated tax for tax year 2016-17)
30	File income tax return for non-corporates (who are subject to tax audit and non-TP cases) and corporates (non-TP cases) for tax year 2015-16

October 2016	
6	E-payment of excise and Service tax liability for the month of September 2016
7	Payment of taxes withheld in September 2016
10	Filing of excise return for the month of September 2016
15	Electronically filing of quarterly (July to Sept 2016) withholding tax returns in Forms 24Q/26Q/27Q
	Filing of quarterly return by first stage dealer or second stage dealer or registered importer in terms of Rule 9(8) of CENVAT Credit Rules, 2004 (CCR)
25	Filing of service tax return for the period 1 April 2016 to 30 September 2016
30	Issue of quarterly (July to Sept 2016) TDS/TCS certificate in respect of withholding on payments other than salary in Form 16A/27D

Date of compliance	Particulars
November 2016	
6	E-payment of excise and Service tax liability for the month of October 2016
7	Payment of taxes withheld in October 2016
10	Filing of excise return for the month of October 2016
30	File income tax return and other certifications for taxpayers subject to TP compliance, for the tax year 2015-16
	Filing of excise return in Form ER-4 for the year ending 31 March 2016 (by units paying more than 1 crore of duty)

December 2016	
6	E-payment of excise and Service tax liability for the month of November 2016
7	Payment of taxes withheld in November 2016
10	Filing of excise return for the month of November 2016
15	Payment of advance tax (Not less than 75% of the estimated tax for tax year 2016-17)

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