

# Doing Business in India



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# Foreword

Established in 1978, PKF Sridhar & Santhanam LLP, Chartered Accountants (PKF S&S) is a firm with extensive experience in a wide variety of industry sectors. Since its inception in Chennai, the firm's reach has been extended, both functionally and geographically, with branch offices spread across the country and representative units in the Middle East. The firm's excellent reputation, combined with the latest practice tools and broad expertise, enables it to deliver value-added services of the highest quality.

The firm's service offering covers a broad spectrum of professional services, including assurance, taxation, management audits, advisory, M&A, SOX, information technology, ISO and other quality initiatives. Consulting services include information technology, enterprise resource management, risk management and data warehousing.

This publication aims to help international entrepreneurs seeking to make a positive impact on economic growth in India. The guide provides a clear understanding of the demographic and environmental situation in India and of the regulatory framework, including accounting, taxation and business law.

Foreign institutional investors looking to invest in the Indian stock market will find this publication extremely useful in understanding the accounting, tax and reporting environment in which businesses operate in India.



# Demographic and Environmental Overview

## Geography and Population

The Indian subcontinent is separated from mainland Asia by the Himalayas. It is surrounded by the Bay of Bengal to the east, the Arabian Sea to the west and the Indian Ocean to the south. The Union of India is the seventh largest country in the world, covering an area of 3,287,590 square kilometres.

The geography of India can be divided into three main regions. The first is the rugged, mountainous Himalayan region in the northern part of the country. The second is the Indo-Gangetic Plain where most of India's large-scale agriculture takes place. The third geographic region in India is the plateau region in the southern and central portions of the country. India also has three major river systems which have large deltas that occupy large areas of land. These are the Indus, Ganges and Brahmaputra rivers.

The current estimated population of India is 1.4–1.5 billion people.

## Political System

India, also known as 'Bharat', is a union of 28 states and eight union territories. It is a sovereign, socialist, secular democratic republic which is governed by the Constitution of India which came into force on 26 January 1950.

The Constitution provides for a parliamentary form of government which is federal in structure with certain unique features. The constitutional head of the union is the president. The Parliament consists of the president and two houses known as the Council of States (**Rajya Sabha** or the Upper House) and the House of the People (**Lok Sabha** or the Lower House). The Constitution also provides for a Council of Ministers with the prime minister as its head, to aid and advise the president. The



president exercises his or her functions in accordance with this advice. The real executive power is thus vested in the Council of Ministers with the prime minister as its head.

The Council of Ministers is collectively responsible to the House of the People (**Lok Sabha**). Every state has a legislative assembly. Certain states have an Upper House also called State Legislative Council. There is a governor for each state who is appointed by the president. The governor is the head of the state and the executive power of the state is vested in them. The Council of Ministers with the chief minister as its head advises the governor in the discharge of the executive functions. The Council of Ministers of a state is collectively responsible to the legislative assembly of the state.

At the three levels of the government (central, state and local), the three different roles (legislature, executive and judiciary) are mapped as follows:

Levels/Roles	Legislature	Executive	Judiciary
Central government	Parliament consisting of MPs	Prime minister and his/her council	Supreme Court
State government	Legislative assembly consisting of MLAs	Chief minister and his/her council	High Court
Local government	Municipal council consisting of councillors	Municipal commissioner and his/her team	District courts and <b>Lok adalats</b>

## Economics

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The Indian economy is the fifth largest in the world by nominal GDP and third largest by purchasing power parity. India is a mixed economy, with increasing participation by the private sector following the opening up of the Indian economy in 1991. The country's robust GDP growth rate of 8.2%, alongside an expanding services sector contributing 55.6% to the economy, reflects a structural transformation that is laying the groundwork for sustained development.

To improve the manufacturing sector's share of GDP, which currently stands at 14.27%, the government has initiated the 'Make in India' scheme to encourage manufacturers to manufacture in India. The government has also introduced an online system for environmental impact approvals and a web portal for the submission and monitoring of forest clearance proposals, among others, to fast-track clearances of green projects.

The Reserve Bank of India (RBI) is the central bank of India and controls monetary policy. It is also tasked with the mandate of reducing inflation which is currently at about 4.5%.

Key reforms in taxation, digital infrastructure and ease of doing business have further enhanced investor confidence. India attracted \$81.04 billion in foreign direct investment during FY 2024-25, a testament to its favourable business environment and policy stability. The fiscal year 2023-24 marked a significant acceleration in India's economic fundamentals, driven by progressive policies and a strong mandate for growth. Key policy initiatives and reforms during the year ensured stability and resilience, even amidst global challenges.

The Digital India initiative reached new milestones in FY 2023-24, with over ₹16,000 billion in transactions recorded through the Unified Payments Interface (UPI). This highlighted the country's rapid shift towards a digital-first economy, enhancing financial inclusion and business ease.

On the price front, measures by the RBI kept inflation within a manageable range, averaging 4.5% during FY 2024-25. Key interventions in fuel pricing and targeted subsidies helped mitigate global price shocks, ensuring affordability and economic stability. India's improving economic fundamentals signal a bright future, with projected growth rates between 6.5% and 7% for FY 2025-26. The focus remains on harnessing technology, fostering entrepreneurship and implementing structural reforms to sustain this accelerated growth trajectory.

## Communications and Transportation

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India has very well-developed communication systems, which help connectivity in such a large country. Telephone, internet services, fax, telegraph and postal services are on a par with the best in the world. The country also has well-developed infrastructure facilities comprising land, air and water transport systems. The government has initiated the Digital India programme to ensure high-speed connectivity across the country. Telephone and internet charges are amongst the cheapest across the globe.

## Services and Exchange Controls

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The RBI administers the Foreign Exchange Management Act 1999 (FEMA) which regulates the transfer or issue of any security by a person resident outside India and raising of external borrowings. The objectives of FEMA are to facilitate external trade and payments, and to promote the orderly development and maintenance of the foreign exchange market. The Act applies to all branches, offices and agencies outside India, owned or controlled by a person resident in India.

Under FEMA, foreign direct investment (FDI) into India is allowed either under the automatic route or with prior government approval, depending on the sector.

Once foreign investment is made into an Indian entity, any further investment by that entity into other Indian companies – known as downstream or step-down investment – must comply with sectoral caps and conditions applicable to foreign investment.

Additionally, RBI regulations aim to prevent structures that could amount to round-tripping, wherein Indian funds are routed through overseas entities and reinvested back into India, potentially defeating the intent of genuine foreign investment norms.

Entities are therefore required to ensure that downstream investments and ownership structures are compliant with applicable FEMA regulations and reporting requirements.

## Finance

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India has a financial system that is regulated by independent regulators in the sectors of banking, insurance, capital markets and various other financial service sectors.

- **Banking sector:** The banking sector forms the core of India's financial system. It includes public sector banks, private banks and regional rural banks that provide essential services like savings, loans and financial transactions. These institutions facilitate economic development by channelling funds from savers to borrowers, supporting industries, agriculture and personal finance.
- **Non-banking financial companies (NBFCs):** NBFCs are financial institutions that provide banking-like services but do not hold a banking licence. They cater for sectors and customers underserved by traditional banks, offering loans, asset financing and investment options. NBFCs play a critical role in promoting credit access in rural and semi-urban areas.

- **Insurance sector:** The insurance sector in India covers life, health and general insurance products, offering individuals and businesses protection against risks. Life insurance provides financial security to families, while health insurance addresses medical expenses. General insurance covers areas like motor, property and liability insurance, ensuring risk mitigation across various domains.
- **Capital markets:** India's capital markets are platforms where individuals and institutions invest in equities, bonds and other securities. They include stock exchanges like the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). Capital markets enable companies to raise funds for expansion and provide investors with opportunities to grow wealth.
- **Venture capital (VC) funds:** VC funds are investment vehicles that provide funding to start-ups and early-stage companies with high growth potential. In India, VC funds play a crucial role in supporting innovation and entrepreneurship, particularly in technology, healthcare and fintech sectors. These funds not only provide capital but also bring strategic guidance to help start-ups scale rapidly, contributing significantly to the country's emerging start-up ecosystem.
- **Alternative investment funds (AIFs):** AIFs are investment funds that pool capital from investors to invest in areas other than traditional investments like stocks and bonds. These include private equity, hedge funds and real estate investments. In India, AIFs are regulated by the Securities and Exchange Board of India (SEBI) and offer high net worth individuals and institutional investors opportunities to diversify their portfolios through non-traditional investment options. AIFs are becoming an increasingly important part of the financial landscape, providing both growth capital for businesses and a way for investors to maximise returns through alternative means.
- **Microfinance:** Microfinance institutions offer small loans and financial services to low-income groups, particularly in rural areas. These institutions aim to empower economically disadvantaged individuals by facilitating entrepreneurship and self-sufficiency.
- **Pension funds:** Pension funds focus on retirement savings, helping individuals build a financial corpus for their post-retirement years. Initiatives like the National Pension System (NPS) and Employee Provident Fund (EPF) are integral to India's pension framework.
- **Fintech and digital payments:** India's fintech ecosystem has revolutionised the financial landscape by integrating technology into banking, payments and lending. Digital platforms like UPI, mobile wallets and online banking have made financial services accessible, fast and secure for millions of users.
- **Mutual funds and asset management:** Mutual funds pool money from investors to invest in stocks, bonds and other securities. Asset management companies (AMCs) manage these funds, providing professional expertise to optimise returns and diversify risks.
- **Regulatory bodies:** The financial sector is regulated by institutions like the RBI, SEBI, Insurance Regulatory and Development Authority of India (IRDAI) and Pension Fund Regulatory and Development Authority (PFRDA). These bodies ensure stability, transparency and fairness in financial operations.

# Grants and Incentives

The government offers many incentives to investors in India with a view to stimulating industrial growth and development. The incentives offered are normally in line with the government's economic philosophy and are revised regularly to accommodate new areas of focus.

As part of this drive, the **Make in India** initiative was launched to encourage companies to manufacture their products in India and incentivise dedicated investments into manufacturing. It aims to create a conducive environment for investments, modern and efficient infrastructure and open up new sectors for foreign investment.

In addition, the **Production Linked Incentive (PLI)** scheme has been introduced across key sectors such as electronics, pharmaceuticals, textiles, automotive and more, to boost domestic manufacturing and attract global players. The scheme provides financial incentives to companies based on incremental sales of goods manufactured in India, thereby encouraging large-scale production and job creation.

## Incentives for Research and Development

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Many tax incentives are also available to industries for manufacturing products based on indigenous research and development (R&D), which in turn act as incentives for scientific and academic institutions to develop marketable technologies. For example, a tax deduction of 100% is allowed for expenses for sponsoring research programmes at national laboratories functioning under approved institutions like ICAR, CSIR, ICMR, DRDO, Department of Biotechnology, Department of Atomic Energy, Department of Electronics, IITs, etc. Similarly, bulk drugs produced based on indigenous R&D are exempt from drug price control for a period of five years from the date of commencement of commercial production. Depreciation at a higher rate is available in respect of plant and machinery installed for manufacturing goods based on indigenous technology developed in recognised in-house R&D units.

## Export Market Development Grants

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A Market Development Assistance (MDA) scheme is currently operated by the Ministry of Commerce with a view to encouraging exporters (including small-scale industries (SSI) exporters) to access and expand to overseas markets. The scheme offers funding for participation in international fairs, study tours abroad, trade delegations, publicity, etc. Direct assistance under the MDA scheme is available to small-scale units in the form of individual sales-cum-study tours, participation in fairs/exhibitions and publicity. The Small Industries Development Organisation (SIDO) operates a similar scheme called SSI Exporters Market Development Assistance (SSI-MDA) scheme, under which financial assistance is provided for the commissioning of market study reports and for initiating/contesting anti-dumping cases.

## Export Finance and Insurance

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Exporters are provided export credits (pre-shipment and post-shipment credits) by the banks, either in Indian rupees or in foreign currency. The credits can be given for a short or long term according to the eligibility of the products and projects.

To promote exports, the government established the Export Credit Guarantee Corporation of India Limited (ECGC) in 1957 to cover the risk of exporting on credit. This organisation helps exporters by providing the following services:

- credit risk insurance cover to exporters against losses arising from the export of goods and services (insurance is provided against the payment risks due to political and economic changes or due to the outbreak of war or civil war);
- guarantees to banks and financial institutions in order to enable exporters to obtain improved facilities from them; and
- overseas investment insurance to Indian companies investing in joint ventures abroad as equity or loans.

## State Government Incentives

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The state governments have undertaken several policy measures and incentives to provide good governance that ensures transparency, reduction in transaction costs, efficiency and citizen-centric delivery of public services. These policies seek to create a much-needed investment-friendly environment and to encourage the major FDI sectors in the state. For example, industrial policy has been formulated with a view to accelerating the industrialisation process of the states. Similarly, information technology (IT) policy has been framed to bring private investments into the IT sector and develop a roadmap for e-governance. Such developmental policies also aim to adopt strategies to enable the residents of states to take full advantage of employment opportunities. Accordingly, several opportunities and incentives are offered to investors, from time to time, so as to attract their investment.

In addition, specific **Rural Area Development** and **Special Area Development schemes** have been designed to boost investments in underdeveloped regions. These schemes include various incentives such as GST-linked business loans offering working capital up to ₹30 million, electricity tariff subsidies to reduce operational costs and EPF reimbursements to support employers in these areas. These incentives are aimed at encouraging businesses to set up in rural and less-developed areas, promoting both industrial growth and employment opportunities in these regions.

## Special Economic Zones (SEZs)

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SEZs, governed by the SEZ Act, 2005, are designated areas that offer a regulated ecosystem for export-led industrial activity. These zones operate under a distinct regulatory and fiscal framework to promote foreign investment, increase exports and support job creation. The framework aims to simplify procedures and provide infrastructure conducive to business operations.

### Legal and Policy Framework

- The SEZ policy was introduced in 2000; the SEZ Act and SEZ rules came into effect in 2006.
- SEZs are notified, demarcated zones treated as deemed foreign territory for trade operations, duties and tariffs.
- The Ministry of Commerce and Industry oversees SEZ regulation through the Department of Commerce.
- Each SEZ has a development commissioner and a unit approval committee (UAC) to facilitate clearances and ease administration.

### Infrastructure and Operational Features

- SEZs are set up with developed industrial infrastructure including power, roads, ports and utilities.
- Sector-specific zones (e.g., IT/ITeS, pharmaceuticals, textiles, engineering) allow for industry clustering.
- Many SEZs are co-located with logistics hubs and international ports or airports.

## Tax and Duty Framework

Provision	Details
Income tax	Available only to SEZ units operational before 30 June 2020: 100% exemption for first five years, 50% for next five years and 50% of reinvested profit for the following five years (subject to conditions).
GST	Supplies to SEZ units/developers are treated as zero-rated under the IGST Act.
Customs and excise duties	Exemptions available on import/procurement of goods and services for authorised operations.

**Note:** No new direct tax exemptions are available for units set up after 30 June 2020, but indirect tax benefits continue.

## Regulatory Processes and Approvals

- Operations within SEZs benefit from a single-window clearance system at the zone level.
- Units are required to achieve positive net foreign exchange (NFE) earnings over a five-year block.
- Separate compliance requirements for environmental, labour and company law matters apply, subject to central and local regulations.

India's SEZs offer a structured environment for companies engaged in export-oriented manufacturing and services. While some fiscal incentives have been phased out, operational benefits such as simplified compliance, customs exemptions and access to infrastructure continue to support business efficiency and international competitiveness.

## GIFT City: A Dedicated International Financial Services Hub

Gujarat International Finance Tec-City (GIFT City) in Gandhinagar is India's first operational smart city and only international financial services centre (IFSC). It provides a unique opportunity for foreign companies to establish a presence within a globally benchmarked financial ecosystem.

GIFT City offers the following advantages for foreign entities:

- IFSC status:** It operates under the International Financial Services Centres Authority (IFSCA), with regulations tailored for global financial service firms.
- 100% foreign ownership** is permitted across a range of financial sectors including banking, insurance, fintech, fund management and capital markets.
- Tax incentives:** Entities operating in GIFT City enjoy a 100% income tax exemption for any 10 years out of a block of 15 years, along with exemptions from GST (on certain services), securities transaction tax and dividend distribution tax.
- Ease of entry:** Streamlined registration, regulatory clarity and single-window clearances make set-up faster and more efficient than in other jurisdictions.
- Operational efficiency:** World-class infrastructure, low-cost operations and access to international capital make it a highly competitive base for global operations.

# Regulatory Environment

The various regulatory bodies regulating business in India, and their key features, are as follows:

## Ministry of Company Affairs

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The Ministry is primarily concerned with the administration of the Companies Act 2013, the Limited Liability Partnership Act, 2008 and other associated Acts and rules and regulations framed therein for regulating the functioning of the corporate sector in accordance with the law.

The Ministry is also responsible for administering the Competition Act, 2002 to prevent practices having an adverse effect on competition, to promote and sustain competition in markets and to protect the interests of consumers through the commission set up under the Act.

It also exercises supervision over the three professional bodies, namely, the Institute of Chartered Accountants of India (ICAI), the Institute of Company Secretaries of India (ICSI) and the Institute of Cost Accountants of India (ICMAI) which are constituted under three separate Acts of Parliament for the proper and orderly growth of the professions concerned.

The Ministry also has the responsibility of carrying out the functions of the central government relating to the administration of the Partnership Act, 1932, the Companies (Donations to National Funds) Act, 1951 and the Societies Registration Act, 1980.

The Ministry of Company Affairs:

- administers corporate law, including the Companies Act, overseeing the incorporation, regulation and dissolution of companies;
- manages the Insolvency and Bankruptcy Code (IBC), ensuring efficient resolution of insolvency cases (this is largely handled through the Insolvency and Bankruptcy Board of India);
- maintains and enforces corporate governance standards, with the authority to investigate violations; and
- regulates auditors and professional service providers to uphold accountability.

## Registrar of Companies

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The Registrar of Companies (ROC) is responsible for registering companies incorporated in the respective state or union territory.

The powers vested with the ROC are:

- registration of memorandum and articles, prospectus and reduction of capital;
- calling for information or explanations;
- seizure of documents;
- investigation into the affairs of a company;
- inspection of books of accounts, etc. of companies;

- striking off defunct companies from the register; and
- winding up petitions.

## Reserve Bank of India

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The Reserve Bank of India (RBI), established in 1935, is the central bank of the country. The RBI is the regulator for the financial and banking system. It formulates national monetary policy and prescribes exchange control policies. The Banking Regulation Act 1949 and the Reserve Bank of India Act 1934 authorise the RBI to regulate the banking sector in India.

Some of its functions are:

- acting as the monetary authority, formulating and implementing monetary policy to control inflation and maintain economic stability;
- regulating and supervising the banking system, including the licensing of banks and oversight of their operations;
- overseeing foreign exchange management under the Foreign Exchange Management Act, 1999; and
- administering payment and settlement systems, ensuring secure and efficient operations.

## Securities and Exchange Board of India

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The Securities and Exchange Board of India (SEBI) is the regulatory authority established under the SEBI Act 1992, in order to protect the interests of investors in securities as well as to promote the development of the capital markets.

Some of its functions are:

- registering and regulating the activities of stockbrokers and other intermediaries;
- regulating and supervising stock exchanges, depositories and other securities market intermediaries;
- approving and monitoring public issues, ensuring transparency and protecting investors;
- exercising quasi-judicial powers to resolve disputes and impose penalties;
- promoting investor education; and
- prohibiting unfair trade practices relating to securities.

## Secretariat for Industrial Assistance

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The Secretariat for Industrial Assistance (SIA) was established by the Ministry of Commerce and Industry to provide a single location for entrepreneurial assistance and investor facilitation. It processes all applications which require government approval, conveys government decisions on applications filed and assists entrepreneurs and investors in setting up projects (including liaison with other organisations and state governments) and in monitoring the implementation of projects.

## Insurance Regulatory and Development Authority of India

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The Insurance Regulatory and Development Authority of India (IRDAI) is the apex regulatory body responsible for overseeing and regulating the insurance sector in India. Established under the Insurance Regulatory and

Development Authority Act, 1999, IRDAI's primary role is to protect the interests of policyholders, ensure the stability and growth of the insurance industry and promote the development of the sector in a transparent and efficient manner.

Some of its functions are:

- regulating the insurance industry, including licensing of insurers and intermediaries;
- approving insurance products and enforcing compliance with statutory norms;
- monitoring solvency margins to ensure the financial soundness of insurers; and
- acting to protect policyholders' interests, addressing grievances and enforcing fair practices.

## **Department for Promotion of Industry and Internal Trade**

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The Department for Promotion of Industry and Internal Trade (DPIIT), under the Ministry of Commerce and Industry, is responsible for facilitating foreign direct investment (FDI) in India. It aims to create a streamlined and transparent environment for FDI proposals through the Foreign Investment Facilitation Portal (FIPP). Its key functions include:

- facilitating and expediting the approval of foreign investment proposals across various sectors;
- reviewing and formulating FDI policies in collaboration with other government agencies, ensuring transparency and alignment with national economic goals;
- monitoring the progress and implementation of FDI projects after approval, ensuring compliance with regulations;
- promoting FDI by engaging with international companies, highlighting India's investment potential and encouraging foreign investments;
- coordinating with various government, non-government and industry stakeholders to enhance FDI inflows; and
- supporting a transparent and efficient process for FDI approvals, contributing to India's global competitiveness.

## **Central Board of Direct Taxes**

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The Central Board of Direct Taxes (CBDT) provides essential input for direct tax policy and planning in India. It is also responsible for administration of direct tax laws through the Income Tax Department. Its main functions are:

- implementing measures for the assessment and collection of taxes;
- preventing and detecting tax evasion and tax avoidance; and
- recruitment, training and all other matters relating to Income Tax Department personnel.

## **Central Board of Indirect Taxes & Customs**

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The Central Board of Indirect Taxes & Customs (CBIC) formulates policy concerning the levy, collection and administration of customs duties, goods and service tax and the prevention of smuggling. Its main functions are:

- levying and collecting revenues in a fair, equitable and efficient manner;

- implementing the government's economic, tariff and trade policies;
- facilitating trade and industry by streamlining customs, goods and service tax processes; and
- combating revenue evasion and commercial fraud in an effective manner.

## Mergers and Acquisitions

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India's mergers and acquisitions (M&A) landscape experienced a significant resurgence in 2024, marking a departure from the subdued activity of previous years. In the first quarter of 2024, the country witnessed 455 deals totalling \$25.6 billion, representing a 24% increase in deal volume and a 60% surge in deal value compared to the previous quarter. This upward trajectory continued, with total M&A deal value reaching \$69.2 billion in the first nine months of 2024, a 13.8% rise from the same period in 2023.

Several sectors contributed to this growth, with technology services leading the charge. In 2024, the tech sector recorded over 850 transactions, amassing deal values exceeding \$30 billion, driven by advancements in cloud computing, enterprise software and IT services. The media and entertainment industry also saw significant activity, highlighted by the \$8.5 billion merger between Reliance's Viacom18 and Disney's Star India, creating a dominant entity in the Indian media landscape.

Regulatory frameworks have evolved to accommodate this dynamic M&A environment. The Companies Act, 2013, has been instrumental in shaping corporate transactions, introducing provisions that address contemporary business needs. Additionally, the Competition Commission of India (CCI) has played a pivotal role in overseeing and approving significant mergers and acquisitions, ensuring fair competition and preventing market monopolies.

As regulatory bodies continue to adapt and streamline processes, India is poised to sustain and potentially accelerate this momentum in the coming years.

## Securities

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India is second only to the United States in terms of the number of listed companies, and has a securities market which is remarkable for the sheer number of market participants, the number of listed securities and the volume of transactions. The National Stock Exchange of India Limited is the third largest exchange in the world in terms of the number of equity transactions, after the New York Stock Exchange and NASDAQ. The securities market has essentially three categories of participants: the issuers of securities, investors in securities and intermediaries. The activities of the Exchange are under the supervision of the regulator – the Securities Exchange Board of India (SEBI). The two major market segments are the primary and secondary markets. The primary market is the channel for the issuance of new securities. The secondary market deals with over the counter (OTC) and exchange traded market.

Securities traded in the markets include:

- equities;
- bonds/debentures;
- mutual funds, ETFs, real estate investment trust (REIT) units, infrastructure investment trust (InvIT) units; and
- derivatives (financial derivatives and commodity derivatives).

# Employment Regulations and Statutory Compliance

India's employment regulatory framework mandates several statutory compliance requirements aimed at safeguarding employee welfare and ensuring social security. Employers, particularly those with a specified number of employees, must adhere to key obligations under central and state laws.

## Employees' Provident Fund (EPF)

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Under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, establishments employing 20 or more people are required to register with the Employees' Provident Fund Organisation (EPFO). Both employer and employee contribute 12% of the employee's basic wages and dearness allowance (cost-of-living adjustment made to the basic pay of government and public sector employees) to the EPF account. Notably, from 1 April 2024, EPFO introduced automatic transfer of provident fund balances upon job changes, eliminating the need for manual transfer requests. Additionally, the Employees' Provident Funds (Amendment) Scheme, 2024, imposes a penalty of 1% per month on employers for defaults in contributions or transfer of accumulations.

## Employees' State Insurance (ESI)

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The Employees' State Insurance Act, 1948, applies to establishments employing 10 or more people and covers employees earning wages up to ₹21,000 per month (₹25,000 for persons with disabilities). Employers contribute 3.25% and employees contribute 0.75% of the wages. The ESI scheme provides access to medical care, sickness benefits, maternity leave and disability support. Recent amendments in 2024 have expanded the coverage to include municipal bodies in Punjab, ensuring broader social security benefits.

## Professional Tax

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Professional tax is a state-imposed tax applicable to salaried individuals, professionals and traders. The applicability, rates and thresholds vary across states. Employers are responsible for deducting and remitting this tax to the respective state government.

## Other Key Employment Laws

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Employers must also comply with various other employment legislation:

- **Payment of Gratuity Act, 1972:** Mandates gratuity payments to employees with at least five years of continuous service, with the maximum gratuity payable capped at ₹20 lakh.
- **Maternity Benefit Act, 1961:** Provides for 26 weeks of paid leave for eligible female employees.
- **Payment of Bonus Act, 1965:** Requires employers to pay an annual bonus to employees earning up to ₹21,000 per month, subject to prescribed limits.

- **Labour Codes:** The government of India has consolidated multiple labour laws into the Labour Codes, including the Code on Wages, Industrial Relations Code and the Occupational Safety, Health and Working Conditions Code. These codes aim to simplify existing laws, regulate wages, working conditions and resolve industrial disputes. They promote better compliance, fairness and transparency in the workplace.

Employers must also ensure compliance with the Shops and Establishments Acts and Standing Orders, based on their location and business type.



# Corporate Laws in India

## **Companies Act, 2013**

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The Companies Act, 2013 is the primary legislation that governs the formation, management, operation and dissolution of companies in India. It replaced the Companies Act, 1956 and introduced significant changes to enhance corporate governance, accountability and transparency.

One of the key objectives of the Act is to ensure a high level of corporate governance and investor protection, which it achieves by mandating strict norms for financial reporting and auditing. The Act also governs significant corporate actions like mergers and acquisitions, share buybacks and shareholder disputes, offering a clear procedure for resolving such matters. Additionally, provisions under the Act mandate that companies meeting certain thresholds contribute towards corporate social responsibility (CSR) initiatives, further promoting their role in the development of society.

## **Corporate Governance**

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Corporate governance is the process by which companies' objectives are established, achieved and monitored. It defines the relationships and responsibilities of the Board, management, shareholders and other relevant stakeholders. It aims to protect shareholder rights, enhance disclosure and transparency, facilitate the effective functioning of the Board and provide an efficient legal and regulatory enforcement framework. The key principles of corporate governance are:

- The responsibility of directors who approve the strategic direction of the organisation within a framework of prudent controls and who employ, monitor and reward management.
- The accountability of the Board to shareholders who have the right to receive information about the financial performance of their investment and exercise their powers to reward or remove the directors entrusted to run the company.
- The transparency of information enabling meaningful analysis of a company's performance. The disclosure of financial and operational information and the internal processes of management oversight and control enable outsiders to better understand the organisation.
- Fairness, in that all shareholders are treated equally and have the opportunity to redress any violation of their rights.

## **Registration Requirements and Filing Procedures for Public Securities**

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Companies whose shares are to be offered to the public may list their shares on recognised stock exchanges in India. Companies wishing to list their shares are required to comply with the listing requirements of the relevant stock exchange and the guidelines stipulated by SEBI.

## **Audit Requirements and Practices**

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**Statutory audit:** All Indian companies are required to have their accounts audited by the statutory auditor of the company appointed by the shareholders.

**Tax audit:** A tax audit is to be conducted under the provisions of the Income Tax Act where the total sales, turnover or gross receipts of the business exceed ₹10 million for the year. For FY 2020-21 onwards, if cash transactions comprise up to 5% of total gross receipts and payments, the turnover threshold for tax audit is ₹100 million. A tax audit is also required where total sales from a profession exceed ₹5 million. A tax audit report must be submitted to the tax authorities before the specified due date.

**Cost audit:** The Companies (Cost Records and Audit) Rules, 2014 prescribe that the following private limited companies must perform a cost audit:

1. Private limited companies engaged in the production of goods or providing services listed in table 3(A) of the Companies (Cost Records and Audit) Rules and having:
  - an annual turnover in the previous financial year of ₹500 million or more from all its services or products; or
  - an aggregate turnover of the individual service or product of ₹250 million or more.
2. Private limited companies engaged in the production of goods or providing services listed in table 3(B) of the Companies (Cost Records and Audit) Rules and having:
  - an annual turnover in the previous financial year of ₹1,000 million or more from all its services or products; or
  - an aggregate turnover of the individual service or product of ₹350 million or more.

**Internal audit:** Internal audit for companies is governed by the Companies Act, 2013 and the Companies (Accounts) Rules, 2014. The internal audit is either undertaken voluntarily as per internal management's direction or mandatorily for companies meeting specific financial thresholds.

As per Rule 13 of the Companies (Accounts) Rules, 2014, the following companies are required to appoint an internal auditor:

## 1. Private limited companies

Mandatory internal audit applies if the company meets **any** of the following criteria during the previous financial year:

- turnover of ₹2 billion or more; or
- outstanding loans or borrowings from banks or public financial institutions exceeding ₹1 billion.

## 2. Unlisted public companies

Mandatory internal audit applies if the company meets **any** of the following criteria:

- paid-up share capital of ₹500 million or more;
- turnover of ₹2 billion or more;
- outstanding loans or borrowings from banks or public financial institutions exceeding ₹1 billion; or
- outstanding deposits of ₹250 million or more at any point during the year.

### 3. Listed companies

All listed companies are mandatorily required to appoint an internal auditor, irrespective of financial thresholds.

## Corporate Social Responsibility

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The primary objective of CSR is to promote responsible and sustainable business philosophy at a broad level and to encourage companies to come up with innovative ideas and robust management systems to address social and environment concerns of the country. Broadly, the CSR mandate is aligned with national priorities such as public health, education, livelihood, water conservation, natural resource management, etc. CSR awareness and CSR consciousness have grown among large and medium-sized companies, which now look at CSR to build a strategic fit with the community and environment in which they operate.

CSR applies to every company with net worth of ₹5 billion or more, turnover of ₹10 billion or more or a net profit of ₹50 million or more during the immediately preceding financial year. Such companies are required to constitute a CSR committee of the Board consisting of three or more directors, at least one of whom must be an independent director.

The company must spend at least 2% of the average net profits made during the three immediately preceding financial years on eligible CSR activities. The CSR amount should be spent within the prescribed timelines, and any unspent amount – except in the case of ongoing projects – must be transferred to a fund specified under Schedule VII.

Companies are also required to disclose their CSR policy and spending details in their Board's report and on their website.

## CARO 2020

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The Ministry of Corporate Affairs (MCA) introduced Companies (Auditor's Report) Order, 2020 (CARO 2020) on 25 February 2020. The CARO 2020 replaces the earlier order, i.e. Companies (Auditor's Report) Order, 2016. CARO 2020 essentially covers certain specific aspects on which auditors have to report in their audit reports in case of statutory audits of companies under Companies Act, 2013. CARO 2020 has included additional reporting requirements after consultations with the National Financial Reporting Authority (NFRA).

## Internal Finance Control Reporting

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Similar to the US Sarbanes-Oxley Act, statutory auditors for companies above certain thresholds are required to report on internal controls over financial reporting in the annual statutory auditors report.

# Forms of Business Enterprises

## Sole Proprietorship

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Sole proprietorships are businesses owned and managed by individuals. A sole proprietorship has the following features:

- profits or losses are borne by the owner solely;
- no separate legal existence; and
- unlimited liability of the proprietor.

Where a sole proprietor is a non-resident Indian (NRI) or a person of Indian origin (PIO) residing outside India, they are eligible to carry on business in India. However, NRIs/PIOs cannot invest in proprietary concerns engaged in specified sectors. Investments can be made through inward remittance or out of specified accounts held by an NRI or a PIO.

## Partnership Firms

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A partnership is formed where two or more people have agreed to share the profits/losses of a business conducted by them or any of them on their behalf. Some of the features of this form of business enterprise include:

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

## Limited Liability Partnership

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An LLP is a hybrid entity which combines features of a company and a partnership firm. The following are the features of an LLP:

- It has a perpetual succession.
- It has a legal identity separate from its partners.
- Partners' liability is limited to their contribution.
- FDI into an LLP is permitted under the automatic route subject to investment conditions.

- LLPs with an FDI are eligible to make downstream investments into a company or LLP, subject to satisfying investment conditions.
- Conversion of a company with an FDI into an LLP is permitted under the automatic route, subject to complying with investment conditions.
- There must be a minimum of two designated partners who are individuals with at least one being a resident of India.
- Designated partners responsible for an LLP should comply with the provisions of LLP laws in India.
- Where the LLP has a body corporate (BC) as a partner, then the BC will have to nominate an individual to act as a designated partner.
- An LLP incorporated in India is permitted to make outbound investments, subject to applicable Indian exchange control conditions.

## Companies

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The Companies Act, 2013 (Companies Act) and subordinate rules therein, regulate the incorporation of a company, the manner of conducting its affairs, responsibilities of its directors and the dissolution of a company. The Ministry of Corporate Affairs is responsible for ensuring compliance with the provisions of the Companies Act through the offices of Registrar of Companies and the Regional Directors. SEBI, on the other hand, ensures compliance by listed companies.

### Types of Companies

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

- One person company
  - only one member (should be an Indian citizen and resident); and
  - at least one director.
- Small company
  - not a public company; and
  - paid-up capital not more than ₹5 million and turnover according to latest profit and loss account does not exceed ₹20 million.
- Private limited company
  - between two and 200 company members and a minimum of two directors; and
  - restriction on transfer of shares.
- Public company
  - minimum of seven members and three directors; and
  - limits placed on remuneration paid to the directors.
- Section 8 company
  - company established for charitable purpose; and
  - profits to be used for charitable purpose and not distributed.

## Foreign Companies

A foreign company planning to set up business operations in India may function either through a subsidiary Indian company or as a foreign company (liaison or representative office/project office/branch office). Incorporation of a subsidiary company would have the following additional basic operating abilities compared to a project office or a branch office:

- borrowing and granting of loans on its own account;
- making investments on its own account;
- entering into contracts in its own name;
- limited liability; and
- acquisition and disposal of immovable property.

A foreign company is a company incorporated outside India which conducts business in India. Foreign companies can do business in India through:

- a liaison/representative office;
- a project office; or
- branches.

**Liaison/Representative office:** Approval for establishing a liaison office in India is granted by the RBI. A liaison officer acts as a channel of communication between the principal place of business or head office and entities in India. A liaison office cannot undertake any commercial activity directly or indirectly and cannot, therefore, earn any income in India. Its role is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote exports from or imports into India and also facilitate technical/financial collaboration between its head office and companies in India. Such offices can undertake only permitted activities. Companies have to register themselves with the Registrar of Companies (ROC) within 30 days of setting up a place of business in India.



**Project office:** Foreign companies planning to execute specific projects in India can set up temporary project/site offices in India. The RBI has granted general permission to foreign entities to establish project offices subject to specified conditions. Such offices cannot undertake or carry on any activity other than the activity relating and incidental to the execution of the project. Project offices may remit the surplus from the project on its completion to its head office outside India, to the extent permitted by the RBI.

**Branch office:** Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up branch offices in India for the following purposes:

- export/import of goods;
- rendering of professional or consultancy services;
- carrying out research work, in the business in which the parent company is engaged;
- promoting technical or financial collaboration between Indian companies and parent or other group companies;
- representing the parent company in India and acting as its buying/selling agent;
- rendering services in the field of information technology and the development of software;
- rendering technical support for the products supplied by the parent or group companies; and
- foreign airline/shipping company.

A branch office is not permitted to carry out manufacturing activities on its own but is permitted to subcontract these to an Indian manufacturer. Branch offices established with the approval of the RBI may remit overseas the net profit of the branch, after the deduction of applicable Indian taxes and subject to RBI guidelines. Permission for establishing branch offices is granted by the RBI.

**Branch office on a stand-alone basis:** 'Stand-alone basis' means such branch offices are restricted to the Special Economic Zone (SEZ) alone, and no business activity or transaction will be allowed outside the SEZ, which includes with branches/subsidiaries of its head office in India. No specific RBI approval is necessary for a company to establish a branch in an SEZ to undertake manufacturing and service activities subject to specified conditions.

A foreign company can commence operations in India by incorporating a company under the Companies Act through:

- joint ventures; and
- wholly owned subsidiaries.

Foreign equity in such Indian companies can be up to 100%, depending on the requirements of the investor, subject to equity limits in respect of the area of activities under FDI policy.

# Financial Reporting and Audit Requirements

Companies in India are required to follow specific financial reporting standards depending on their listing status and financial thresholds. Companies with net worth above ₹2.5 billion, including certain related entities, are required to comply with Indian accounting standards. India follows a convergence model with international financial reporting standards (IFRS), and the broader financial reporting framework ensures consistency and transparency through prescribed standards and regulatory oversight.

## Uniform Financial Year

Companies or other body corporates need to uniformly adopt a financial year ending 31 March. However, a company which is a holding or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, may approach the National Company Law Tribunal (NCLT) to allow a different period as its financial year. The NCLT may, if it is satisfied, allow any period as its financial year.

## Audit

All companies need to have their accounts audited by an auditor who is a practising member of the Institute of Chartered Accountants of India. The auditors' report should be attached to every financial statement.

## Financial Reporting

Financial reporting is the communication of financial information of an enterprise to the external world. As per section 2(40) the Companies Act, 2013, the financial statements of the company include:

- a balance sheet at the end of the financial year;
- a profit and loss account, or in the case of a company carrying on a not-for-profit activity, an income and expenditure account for the financial year;
- a cash flow statement for the financial year;
- a statement of changes in equity, if applicable; and
- explanatory notes annexed to, or forming part of, any document referred to above.

The financial statements of sole shareholder companies, and small or dormant companies, are not required to include a cash flow statement.

The financial statements, augmented by footnotes and supplementary data (often referred to as 'Notes on Accounts' or 'Notes to the Accounts' in India) are intended to provide relevant, reliable and timely information essential for making investment, credit and similar decisions. Such financial statements are called general purpose financial statements. The publication of unaudited financial results, news releases, management forecasts and descriptions of future plans are examples of reports that are provided outside the general purpose financial statements.

Listed companies are also required to publish quarterly financial results both on a stand-alone basis and on a consolidated basis as required by the SEBI (Listing Obligations and Disclosure Requirements) Regulations.

## Business Responsibility and Sustainability Reporting

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Business Responsibility and Sustainability Reporting (BRSR) has replaced Business Responsibility Report (BRR) disclosures and incorporated key performance indicators (KPIs) from international frameworks to bring non-financial reporting by Indian companies on a par with global environmental, social and governance (ESG) reporting trends.

BRSR is to be submitted by the 1,000 largest listed companies (by market capitalisation) as part of the annual reports filed with SEBI, from FY 2022-23 onwards. The top 1,000 listed entities by market capitalisation are required to make disclosures as per the updated BRSR format (which include the disclosure and assurance requirements for BRSR Core, ESG disclosures for value chain and assurance requirements), as follows:

Financial year	Applicability of BRSR Core to top listed entities (by market capitalisation)
2023-24	Top 150 listed entities
2024-25	Top 250 listed entities
2025-26	Top 500 listed entities
2026-27	Top 1,000 listed entities

Being relevant to multiple aspects of a business, sustainability is part of the mandate of multiple Board committees. The ownership of a corporate's sustainability agenda is still evolving and varies across companies. While having a specialised ESG committee is not mandated in India, it was felt that having such committees comprising members with relevant skills and commitment to ESG should be the eventual goal.

## Key Regulatory Framework for Financial Reporting in India

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- Companies Act, 2013:** The Companies Act, 2013 governs the accounting and auditing practices for companies in India. It outlines the rules for the preparation and presentation of financial statements, financial disclosures and the role of auditors. Under this Act:
  - **Financial statements:** Every company is required to prepare a balance sheet, profit and loss account, cash flow statement and statement of changes in equity, adhering to prescribed accounting standards.
  - **Auditors:** The Companies Act specifies the appointment, powers and responsibilities of auditors, ensuring the accuracy and fairness of financial statements.
- Institute of Chartered Accountants of India (ICAI):** The ICAI is the apex professional body for accountants in India. It plays a crucial role in regulating the accounting profession, developing accounting standards and setting ethical guidelines for accountants. The ICAI governs the certification of chartered accountants (CAs).
- Reserve Bank of India (RBI):** The RBI also plays a role in accounting, particularly in relation to the banking sector. It issues guidelines for financial institutions on accounting, reporting and disclosure practices, ensuring consistency and transparency in financial transactions and reporting.
- Securities and Exchange Board of India (SEBI):** SEBI regulates the financial markets and enforces compliance with financial reporting standards, especially for listed companies. It ensures that public companies disclose their financial performance accurately and in a timely manner.

5. **National Financial Reporting Authority (NFRA):** NFRA is a regulatory body set up to oversee accounting and auditing practices in India. It works to improve the quality of financial reporting and enforce compliance with accounting standards. The NFRA's role includes:

- issuing accounting standards applicable to companies;
- monitoring the quality of audits and financial reporting; and
- ensuring adherence to financial reporting standards.

## Tax Reporting

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The framework for tax accounting is governed by the Income Tax Act, 1961, which lays down the legal provisions for income tax, along with the Indian accounting standards and accounting standards, which provide guidance on how to recognise, measure and report taxes in financial statements.

Income computation and disclosure standards (ICDS) notified by the Central Board of Direct Taxation (CBDT) need to be applied by all taxpayers following the mercantile system of accounting for the purpose of computing business income or income from other sources chargeable to income tax in India. ICDS are applicable to all taxpayers, including non-resident taxpayers (corporate or non-corporate), irrespective of the turnover or quantum of income. Presently, 10 ICDSs have been adopted by the central government. Separate maintenance of books is not required for the purpose of ICDS. However, it may necessitate maintenance of memorandum records. Disclosures required under ICDS must be included in the annual tax audit report (TAR) and return of income (RoI). ICDS does not impact minimum alternate tax (MAT) for corporate taxpayers, which can continue to be based on book profit determined on the basis of the applicable accounting standards.

Entities with turnover of more than ₹10 million are required to have their accounts audited for tax purposes. For FY 2020-21 onwards, if cash transactions comprise up to 5% of total gross receipts and payments, the turnover threshold for tax audit is ₹100 million. A tax audit is also required where total sales from a profession exceed ₹5 million.

## Fundamental Financial Accounting Standards

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The primary standards that govern financial reporting are Indian accounting standards (Ind AS) and accounting standards (AS), alongside specific provisions from the Companies Act, 2013. These standards are designed to align financial reporting in India with global best practices while considering local economic and regulatory conditions.

### 1. Indian Accounting Standards

Ind AS is a set of accounting standards that was introduced to bring India closer to IFRS. These standards are applicable primarily to listed companies, public interest entities and large unlisted companies based on their size and nature of operations.

The key features of Ind AS are set out below:

- **Adoption of IFRS principles:** Ind AS closely aligns with IFRS, which makes Indian financial reporting more comparable with global standards.
- **Mandatory application:** Ind AS became mandatory for companies listed on Indian stock exchanges and for large unlisted companies with a certain level of net worth. The transition to Ind AS started in phases

and, from FY 2016-17, it became applicable to all listed companies and large entities, with certain exceptions for a few industries.

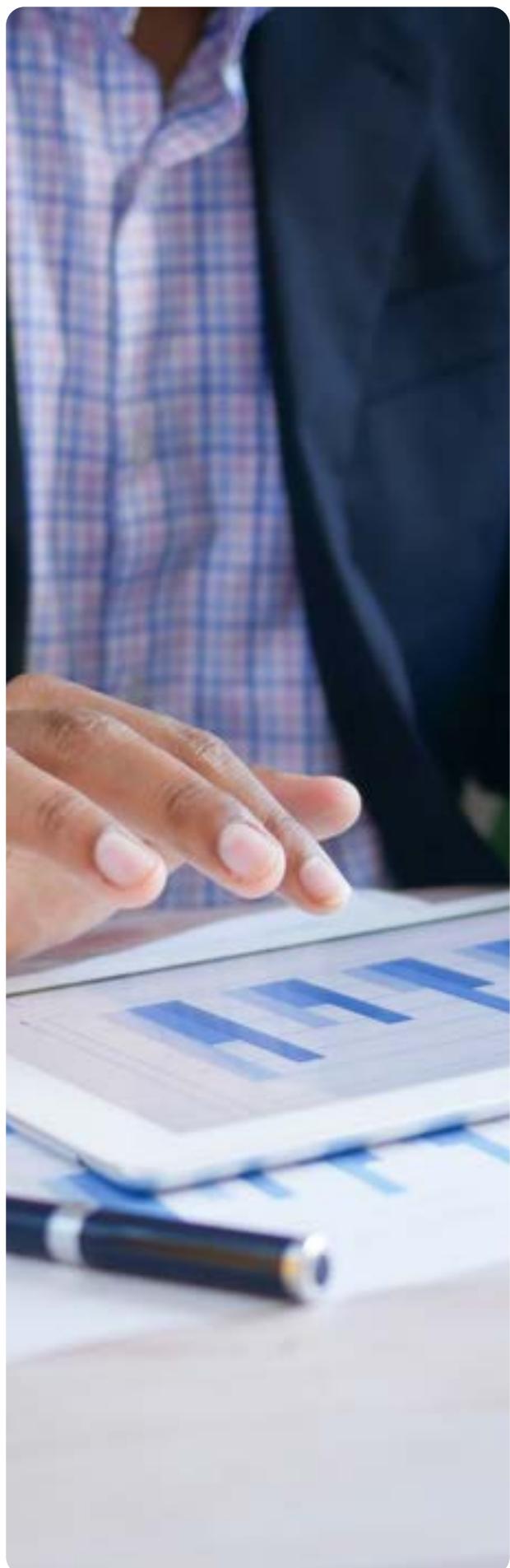
- **Fair value measurement:** Ind AS encourages the use of fair value accounting in various areas, such as financial instruments, investment property and biological assets, which enhances the accuracy of asset and liability reporting.

## 2. Accounting Standards

- Before the adoption of Ind AS, businesses in India followed the AS issued by the ICAI. These standards remain applicable for certain businesses that are not subject to Ind AS, such as smaller companies and private entities, etc.

The key features of AS are set out below:

- **Simpler framework:** AS are relatively simpler and do not have the same level of complexity as Ind AS, particularly in areas like fair value measurement and revenue recognition.
- **Applicability:** AS continue to be applicable to companies that do not meet the criteria for Ind AS adoption. Typically, this includes small and medium-sized enterprises (SMEs) that do not meet the prescribed thresholds for turnover or net worth.
- **Recognition of transactions:** AS focus on the recognition and measurement of basic transactions such as revenue, expenses and assets, with clear guidelines on the treatment of depreciation, inventory and provisions.



# Taxation

## Introduction

India has two types of taxes, direct taxes and indirect taxes. Direct taxes include income tax, corporate tax, etc. on individuals, corporations, etc. Indirect taxes include goods and service tax, customs duty, securities transaction tax, etc.

## Direct Tax

Direct taxes in India refer to taxes that are directly levied on individuals and entities by the government and cannot be shifted to others. They are administered by the Central Board of Direct Taxes (CBDT) under the Department of Revenue, Ministry of Finance. Direct taxes form a significant part of the government's revenue and are designed to promote equity by ensuring that individuals and entities contribute based on their income or profits.

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

Categories	RoI filing date
A company/LLP that is required to submit a transfer pricing certificate in Form 3CEB with respect to international transactions with associated entities	30 November
Other companies/LLPs	31 October
Individuals	31 July (unless an audit is required, in which case, 31 October)

In India, the basis of taxation is closely linked to the residential status of the taxpayer, which applies to both individuals and entities. The Income Tax Act, 1961 outlines specific criteria to determine this status, which directly influences the scope of income subject to tax in the country.

### 1. Residence status of company

- Domestic company – Indian companies are always classified as residents in India, irrespective of where their operations or decision-making processes are carried out.
- Foreign companies – For a company incorporated outside India, its residency is determined by its place of effective management (PoEM, being the location where the company's significant management and commercial decisions are made in substance). If the PoEM is found to be in India during a fiscal year, the foreign company is deemed a resident for tax purposes.

### 2. Residence status of individual

- 182-day criterion – An individual qualifies as a resident if they are physically present in India for 182 days or more during the relevant fiscal year.

- Alternate 60-day criterion: An individual can also be considered a resident if they:
  - are present in India for 60 days or more during the fiscal year; and
  - have stayed in India for at least 365 days in the preceding four fiscal years.

## Corporate Tax Structure

Domestic and foreign corporations operating in India are subject to taxation at a specified basic tax rate. The applicable tax rate varies based on the total income and corporate category. In addition to the basic tax rate, a surcharge is levied depending on the income bracket, increasing the overall tax liability for higher income groups. Furthermore, a health and education cess at a rate of 4% is applied to the total tax payable (inclusive of the surcharge). This cess is directed towards funding essential health and educational initiatives in the country.

Particulars	Base tax rate
Companies with turnover up to ₹4 billion (based on turnover for one year preceding the previous year)	25%
Companies with turnover more than ₹4 billion (based on turnover for one year preceding the previous year)	30%
Resident company opting for concessional tax regime – Any company (most of the incentives in direct taxes are foregone)	22%
Resident company opting for concessional tax regime – New manufacturing company	15%
Foreign company	40%

## Surcharge Rates for the Financial Year 2024-25

Particulars	Income from ₹10 million to ₹100 million	Income above ₹100 million
Domestic company opting for concessional tax regimes	10%	10%
Domestic company (other than above)	7%	12%
Foreign company	2%	5%

## Securities Transaction Tax

Securities transaction tax (STT) is a direct tax levied on the purchase and sale of securities listed on recognised stock exchanges in India. It applies to transactions involving equity shares, derivatives, equity-oriented mutual funds and other eligible securities. STT is charged at the time of execution of the transaction and is collected by the stock exchanges, which in turn deposit it with the government. The rate of STT varies depending on the type of security and whether the transaction is a purchase or a sale.

## Capital Gains Tax

Capital gains tax is a tax imposed on the profits realised from the sale of assets such as stocks, bonds, real estate and other investments. It is the tax applied to the difference between an asset's purchase price (or 'cost basis') and its selling price. Capital gains are divided into short-term capital gains and long-term capital gains.

### What are Capital Assets?

Capital assets are the property you own and can be transferred, like land, buildings, shares, patents, trademarks, jewellery, leasehold rights, machinery, vehicles, etc.

The following assets do not fall under the category of capital assets:

- the stock of consumables or raw materials held for use in a business or profession;
- personal belongings meant for personal use like clothes and furniture;
- a piece of agricultural land located in a rural area;
- special bearer bonds, 6.5% gold bonds (1977), 7% gold bonds (1980) or national defence gold bonds (1980) which the central government has issued;
- gold deposit bonds (1999), issued under the gold deposit scheme or deposit certificate issued under the Gold Monetisation Scheme, 2015, introduced by the central government.

Tax rates for long-term capital gains and short-term capital gains are set out below:

Particulars	Condition	Rates applicable	Revised rates applicable from 23 July 2024
Long-term capital gains tax (LTCG)	Sale of: <ul style="list-style-type: none"><li>listed equity shares (if STT has been paid on purchase and sale of such shares)</li><li>units of equity-oriented mutual fund (if STT has been paid on sale of such units)</li></ul>	10% over and above ₹0.1 million	12.5% over and above ₹0.125 million
	Others	20%	12.5%
Short-term capital gains tax (STCG)	When STT is not applicable	Normal slab rates	Normal slab rates
	When STT is applicable	15%	20%

## Tax Rates on Certain Specified Income

Nature of income	Rate
Dividend income	20%
Royalties/fees for technical services	20%
Interest income	5–20%

All these rates are subject to conditions as specified in section 115A.

## Indirect Tax

In India, indirect taxes are primarily categorised into two major types: a) goods and service tax; and b) customs duty.

### Goods and Service Tax

Goods and service tax (GST) is a unified tax system in India that replaces numerous taxes, such as value added tax, excise duty and service tax. The GST system has been implemented with the aim of streamlining the taxation system in India and making it more efficient.

In India, the GST system categorises goods and services into several tax slabs to ensure uniformity and transparency in taxation, as per GST law. These slabs include 0% (nil rated), 5%, 12%, 18% and 28%, with some items attracting additional cess.

Currently, alcohol for human consumption, petroleum products such as petroleum crude, motor spirit (petrol), high-speed diesel, natural gas, aviation turbine fuel and electricity are excluded from the purview of GST. These items continue to be taxed under state excise, VAT or other existing frameworks. GST, however, is levied at each stage of the value chain, from manufacturing and distribution to final consumption. A significant feature of the GST system is the availability of input tax credit (ITC), which allows the GST paid at one stage of the transaction by the supplier to be credited to the recipient while computing their GST liability in the subsequent stage. This mechanism reduces the overall GST outflow by eliminating the cascading effect of taxes and ensures a seamless flow of credit across the supply chain.



## Customs Duty

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Customs duty is payable on goods imported into India. The normal rate of customs duty is 10%. However, in some cases, such as liquor and tobacco, special rates in excess of 10% are also charged.

In addition to basic customs duty, an additional duty (equivalent to GST of 0–28%) is also levied on imports. Further, anti-dumping and safeguard duties are also levied on imports of certain specified products.

## Stamp Duty

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Stamp duty is payable at the prescribed rates on instruments recording certain transactions, including transfers of immovable property and shares. Generally, stamp duty is levied by the respective states as per the applicable state Act. In the absence of such a state enactment, the provisions of the central Act (i.e. Indian Stamp Act 1899) apply.

## Land and Property Tax

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Land and property tax is levied by each state separately.

## Determination of Taxable Income

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In the case of non-resident taxpayers engaged in certain businesses, income is assessed on a presumptive (deemed income) basis as follows:

Nature	Business income as a percentage of gross receipts
Services in connection with exploration of mineral oils	10%
Operation of aircrafts	5%
Civil construction or erection of plant and machinery or testing/ commissioning in connection with turnkey power projects (for companies only)	10%
Operation of ships	7.5%

## Deductions/Allowances

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Certain deductions are allowed when computing business income, including the following.

### Capital Allowances

Certain capital expenditure is eligible for deduction. For instance, capital expenditure incurred on scientific research (excluding land) qualifies for a 100% deduction, subject to specified conditions. Expenditure incurred on the merger or demerger of an undertaking is allowed as a deduction in five equal instalments beginning with the year in which the merger or demerger takes place.

## Depreciation

A depreciation allowance is available at the following rates depending on the nature of the asset and its classification into specified groups:

Asset class	Asset type	Rate
Buildings	Residential buildings (excluding boarding houses and hotels)	5%
	Boarding houses and hotels	10%
	Purely temporary constructions like wooden structures	40%
Furniture	Any fittings/furniture including electrical fittings	10%
Plant and machinery	Motor cars (excluding those used in a business of vehicle rental)	15%
	Motor cars (excluding those used in a business of vehicle rental) purchased on/after 23 August 2019 but before 1 April 2020 and put to use before 1 April 2020	30%
	Lorries/taxis/motor buses used in a business of vehicle rental	30%
	Lorries/taxis/motor buses used in a business of vehicle rental purchased on/after 23 August 2019 but before 1 April 2020 and put to use before 1 April 2020	45%
	Computers and computer software	40%
	Books owned by assessee carrying on a profession (being annual publications)	100%
	Books owned by assessee carrying on a profession (not being annual publications)	60%
Intangible assets	Books owned by assessee carrying on a business of running lending libraries	100%
	Franchises, trademarks, patents, licences, copyright, know-how or other commercial or business rights of a similar nature	25%

With effect from 1 April 2020, 'goodwill of business or profession' is specifically excluded from the definition of assets and depreciation can therefore not be claimed.

## Additional Depreciation

Additional depreciation of 20% of the cost of new plant and machinery (other than ships or aircraft) is allowable only in the year of commissioning for manufacture. Assets used for fewer than 180 days in the year of acquisition are entitled to half of the normal depreciation allowance (including additional/ enhanced depreciation). Depreciation not set off against current year income can be carried forward for set-off against any future income for an unlimited period.

## Stock/Inventory

The valuation of closing stock is normally on the basis of cost or market value, whichever is lower. Accepted valuation methods include FIFO and the weighted average cost method. The valuation basis must be consistently followed.

## Interest Deductions

Interest paid on borrowings used for business purposes is generally tax deductible under the Income Tax Act. However, the interest barrier rule under section 94B limits the deductibility of interest paid to foreign associated enterprises, restricting it to 30% of EBITDA when the total interest exceeds ₹1 crore in a financial year.

Additionally, interest on borrowings used for investments that generate exempt income (such as tax-free bonds or dividends) is disallowed under section 14A. This means that any interest related to borrowings for such investments is not deductible. The disallowance is subject to apportionment rules, and taxpayers must follow rule 8D for calculating the disallowed portion based on the proportion of exempt income generated.

## Expenditure Incurred for Exempt Income

Expenditure incurred in earning income that is exempt from income tax is not allowed as a deduction.

## Losses

The table below explains how losses may be carried forward:

Type of loss to be carried forward to subsequent years	Profit against which carried forward loss can be set off in subsequent years	Number of years loss can be carried forward
House property loss	Income from house property	8 years
Speculative loss	Speculative profits	4 years
<b>Non-speculative business loss:</b>		
▪ Loss due to unabsorbed depreciation, capital expenditure on scientific research	Any income apart from salary income	No time limit
▪ Loss from a specified business under section 35 AD	Income from a specified business under section 35 AD	No time limit
▪ Other remaining business loss	Any business profit, whether from speculation or otherwise	8 years
Short-term capital loss	Any income under the heading of capital gains	8 years
Long-term capital loss	Long-term capital gains	8 years

There are no provisions for carrying losses back.

## Minimum Alternate Tax (MAT)

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In the case of companies, if tax payable on taxable income for any year is less than 18.5% of the company's 'book profit', then tax payable on the total income will have to be computed at 18.5% on the book profit of the company. The applicable surcharge and cess would also have to be calculated using the book profit. MAT is also applicable to foreign companies.

The MAT paid can be carried forward and set off against the normal tax (in excess of MAT for that year) of future years for up to 15 years. With effect from the financial year 2011-12, carried forward MAT shall also apply to a limited liability partnership which has been converted from a private company or unlisted public company.

'Book profit' means net profit as per the profit and loss account as adjusted (increased or reduced) by certain specified items, which includes income tax paid or payable and the provisions made for unascertained liabilities, amounts carried to any reserves, provisions for diminution in the value of assets, losses brought forward or unabsorbed depreciation, deferred tax, interest on tax, surcharge, education cess, income exempt from tax and non-taxable profits from export of goods and computer software.

However, the following are included within book profits, despite being exempted from normal income tax:

- profits of undertakings located in free trade zones, software and hardware technology parks; and
- long-term capital gains arising from the transfer of listed equity shares/units.

MAT is also applicable in respect of SEZ units as well as developers.

MAT is not applicable to companies which have opted for the lower tax regime, foregoing some of the incentives provided under the Income Tax Act.

## Foreign Tax Relief

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### Unilateral Relief

Where a resident of India has paid tax in any country with which India does not have a tax treaty, credit is available in India for such tax payments.

### Tax Credit under Tax Treaties

India has entered into tax treaties (double tax avoidance agreements, DTAA) with several partner countries. Under these treaties, Indian residents paying taxes in other countries can claim a credit in India for foreign tax payments.

The Finance Act 2012 states that the provisions of a DTAA will not be applicable if general anti-avoidance rules (GAAR) are invoked.

As per the amendment to sections 90 and 90A of Finance Act 2012, any term which is not defined, either in the Act, or in the DTAA, can be assigned a meaning by the central government through a notification. The meaning assigned will be generally in line with the intent and objective as understood during the course of negotiations leading to the formalisation of the treaty. The meaning assigned through the notification shall be effective from the date the DTAA comes into force.

Previously, a tax residency certificate (TRC) issued by the partner country was considered sufficient proof of residence for the purpose of applying DTAA provisions. With effect from 1 April 2013, the submission of a TRC is considered a necessary but not sufficient condition, as the taxpayer must also provide prescribed documents and information to claim the DTAA benefits referred to under sections 90 and 90A of Finance Act 2012.

## Corporate Groups

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There are no provisions in India for the consolidation of accounts for tax purposes or provisions for group taxation.

## Transfer Pricing and Related Party Transactions

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Related party transactions with non-residents are required to be reported separately and the tax authorities are given the power to consider whether transactions are at arm's length. Where prices paid for the purchase of goods or services are excessive or unreasonable, the assessing officer can disallow that portion of the expenditure which they consider excessive.

A detailed set of transfer pricing regulations are contained within the Indian domestic tax laws addressing the computation of income from international transactions between associated enterprises on an 'arm's-length basis'.

In order to justify the pricing of international transactions, an arm's-length price has to be determined using the most appropriate method. Where more than one price is determined, the arm's-length price shall be the arithmetic mean of such prices. Previously, in determining the arm's-length price, no adjustment was required to be made if the arithmetic mean of the prices was within 3% of the transfer price (central government had the power to notify the tolerance range for the determination of an arm's-length price).

If a person enters into a transaction where one of the parties to the transaction is a 'person located in a notified jurisdictional area', then:

- all the parties to the transaction shall be deemed to be associated enterprises; and
- the transaction shall be deemed to be an international transaction.

The central government of India has the power to classify any country or territory outside India as a 'notified jurisdictional area', having regard to the lack of effective exchange of information by it with India. There are tax consequences in India with respect to certain transactions undertaken with 'notified jurisdictional areas'.

Transactions covered by these rules are those in the nature of a purchase, sale or lease of tangible or intangible property, or the provision of services, or the lending or borrowing of money, or any other transaction having a bearing on the profits, income, losses or assets of the taxpayer, including a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided by or to the taxpayer.

A person located in a notified jurisdictional area includes:

- an individual who is a resident of the notified jurisdictional area;
- a person (not being an individual) which is established in the notified jurisdictional area; and

- a permanent establishment (including a fixed place of business through which the business of an enterprise is wholly or partly carried on) of a person in the notified jurisdictional area.

From year of assessment 2015-16, section 92B has been amended to clarify that the residence status of an unrelated person with whom an enterprise enters into a transaction does not determine whether the transaction carried out will be classified as an international transaction or not. As long as the transaction is influenced by a prior agreement between the unrelated person and an associate of the enterprise, it will be classified as an international transaction between two associated enterprises.

### **Advance Pricing Agreement (APA) and Roll-back Mechanism**

The APA scheme, introduced under section 92CC of the Income Tax Act, allows taxpayers to agree on transfer pricing methods with tax authorities for future international transactions. From 1 October 2014, a roll-back mechanism was added, enabling taxpayers to apply the APA to up to four previous years, resolving past transfer pricing issues. Under the amendment, the APA for an international transaction can now be rolled back for a period not exceeding four years preceding the period for which the APA applies.

### **General Anti-avoidance Rules (GAAR)**

GAAR is a set of provisions in the Indian Income Tax Act, 1961 (chapter X-A, sections 95 to 102), introduced to tackle aggressive tax planning and impermissible avoidance arrangements that lack commercial substance. GAAR empowers the Indian tax authorities to deny tax benefits arising from transactions or arrangements whose main purpose is to obtain a tax advantage, even if such arrangements comply with the literal wording of the law.

GAAR provisions came into effect from 1 April 2017, and apply to any arrangement where the tax benefit exceeds ₹3 crore in a financial year. Key indicators of impermissible avoidance include round-tripping, misuse or abuse of tax provisions, lack of commercial substance and use of entities or transactions that are not ordinarily employed for bona fide purposes.

Taxpayers are advised to ensure that all transactions have valid commercial justifications and are not structured solely for tax avoidance. GAAR provisions override tax treaties (DTAAs) where applicable.

### **Transfer Pricing Safe Harbour Provisions in India**

The safe harbour rules (SHRs) under section 92CB of the Income Tax Act, 1961, provide a framework whereby eligible taxpayers undertaking specified international transactions can opt for prescribed margins or rates, ensuring certainty in transfer pricing assessments.

### **Eligible Transactions for Safe Harbour**

Safe harbour provisions apply to specified categories of international transactions, including:

- software development services;
- information technology enabled services (ITeS);
- knowledge process outsourcing (KPO) services;
- contract research and development (R&D) services;
- manufacture and export of auto components;

- intra-group loans;
- provision of corporate guarantees; and
- low value-adding intra-group services.

Taxpayers may exercise the safe harbour option on a transaction-by-transaction basis by submitting the required declaration.

### Prescribed Margins and Rates for Eligible Transactions

Category of transaction	Threshold	Prescribed margin or rate
Software development services	Up to ₹300 crore	Operating profit margin of 18%
IT-enabled services (business process outsourcing)	Up to ₹300 crore	Operating profit margin of 18%
Knowledge process outsourcing (KPO) services	Up to ₹300 crore	Operating profit margin of 18–24%
Contract R&D services for software development	Up to ₹300 crore	Operating profit margin of 24%
Contract R&D services for generic pharmaceuticals	Up to ₹300 crore	Operating profit margin of 24%
Manufacture and export of core auto components	Up to ₹300 crore	Operating profit margin of 12%
Intra-group loans in Indian currency	No specific limit	SBI base rate + 150 basis points
Intra-group loans in foreign currency	No specific limit	6-month LIBOR + 300 basis points
Provision of corporate guarantees (up to ₹100 crore)	Guarantee amount $\leq$ ₹100 crore	Minimum commission of 1%
Provision of corporate guarantees (above ₹100 crore)	Guarantee amount $>$ ₹100 crore	Minimum commission of 1.5%
Low value-adding intra-group services	Up to ₹10 crore	Cost plus 5%

**Note:**

Taxpayers opting for safe harbour must file Form 3CEFA with the Income Tax Department before the prescribed due date to avail the benefit, along with the required transfer pricing documentation.

### Domestic Transfer Pricing

Transfer pricing provisions have been extended to certain specified domestic transactions between related parties as specified under section 92BA. If the aggregate of such transactions entered into by the taxpayer in the previous year exceeds the sum of ₹200 million, those transactions will be considered specified domestic transactions.



## Treaty and Non-treaty Withholding Tax Rates

For transactions entered into with residents of the countries with whom India has a tax treaty, tax should be withheld as per the beneficial rates under the applicable treaty or under Indian domestic tax laws, whichever is lower. However, in most of those cases, a non-resident needs to obtain local tax registration and file its tax returns in India.

### Non-treaty Countries

For transactions entered into with residents of countries with whom India does not have a tax treaty, tax needs to be withheld as per the rates specified under Indian domestic tax law.

### Compliance and Reporting

For companies which need to submit a transfer pricing report, the income tax return needs to be filed by 30 November of that year of assessment. For other companies, the income tax return needs to be filed by 31 October of the relevant year of assessment.

# Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)

India's rapid urbanisation and infrastructure development have necessitated innovative financing mechanisms. REITs and InvITs have emerged as pivotal instruments, enabling investors to participate in the real estate and infrastructure sectors without direct ownership. These trusts pool resources to invest in income-generating assets, offering a blend of regular income and potential capital appreciation.

- **REITs:** These are investment vehicles that own and operate income-producing real estate assets, such as commercial properties, shopping malls and office spaces. REITs generate revenue primarily through rental income and are mandated to distribute a significant portion of their earnings to investors.
- **InvITs:** Focused on infrastructure projects, InvITs invest in assets like toll roads, power transmission lines and pipelines. They provide a platform for investors to gain exposure to infrastructure investments, which traditionally require substantial capital and expertise.
- Both REITs and InvITs generally do not hold assets directly. Instead, they hold a controlling interest in one or more special purpose vehicles (SPVs), which are companies specifically incorporated to own and operate these underlying assets.
- SEBI introduced regulations for REITs in 2014 and for InvITs in 2016, establishing a structured framework for their operation.

## Benefits of Investing in REITs and InvITs

- **Accessibility:** Allows individual investors to participate in large-scale real estate and infrastructure projects with relatively low capital.



- **Liquidity:** Units are traded on stock exchanges, providing investors with the flexibility to enter or exit positions with ease.
- **Regular income:** Mandated distribution of a significant portion of earnings ensures a steady income stream for investors.
- **Diversification:** Offers exposure to a diversified portfolio of assets, reducing the risk associated with single-asset investments.
- **Professional management:** Managed by experienced professionals, ensuring efficient operation and maintenance of assets.
- **Tax efficiency:** The pass-through mechanism ensures that certain incomes are taxed only at the investor level, avoiding double taxation.

## Taxation Overview

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REITs and InvITs enjoy a 'pass-through' status under section 115UA for certain income streams, meaning that specific incomes are taxed directly in the hands of the investors/unit holders, avoiding double taxation.

Income	Tax treatment
Interest from SPVs	Taxed only in the hands of unit holders and not REITs/InvITs.
Dividends from SPVs	Exempt in the hands of unit holders if the SPV hasn't opted for the lower tax regime under section 115BAA; otherwise, taxable.
Rental income (REITs only)	Exempt at the REIT level; taxable in the hands of unit holders.



# Business by Foreign Individuals in India

## Entry into India, Visas and Permits

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### Migration into India

Entry into India, length of stay and departure are all regulated by the Acts passed by the Indian Parliament and rules framed by the central government.

People seeking to visit India should have a valid passport, all accredited travel documents and a valid visa granted by the Indian mission in the country of their residence. Military installations and research organisations are considered protected areas. Foreigners can visit restricted/protected areas only after obtaining a valid permit along with a visa for such a purpose.

### Permanent Residence

**Citizenship by registration:** The central government of India may, on application, register any person (not being an illegal migrant) as a citizen of India under section 5 of the Citizenship Act 1955 if he or she belongs to any of the following categories:

- a person of Indian origin who has been ordinarily resident in India for seven years before making an application for registration;
- a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- a person who is married to a citizen of India and has been ordinarily resident in India for seven years before making an application for registration;
- minor children of persons who are citizens of India;
- a person of full age and capacity whose parents are registered as citizens of India by ordinary residence in India for seven years;
- a person of full age and capacity who, or either of their parents, was previously a citizen of independent India, and has been residing in India for one year immediately before making an application for registration; or
- a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.

### Temporary Residence

A business visa for a period of one year or more can be obtained by submitting a letter from the sponsoring organisation indicating the nature of the applicant's business, the probable duration of stay, validity of visa, places and organisations to be visited and also a guarantee to meet living expenses, etc. Visas can be applied for in person or by post at the high commission of India or embassy based in the country from where the candidate intends to depart.

The visa duration starts on the day of issuance and not on the day of entry to India.

In addition to the existing provisions under the Citizenship Act, 1955, the Citizenship (Amendment) Act, 2019 (CAA) introduced a specific pathway to Indian citizenship for certain persecuted religious minorities – namely Hindus, Sikhs, Buddhists, Jains, Parsis and Christians – from Afghanistan, Bangladesh and Pakistan. Under this amendment, individuals belonging to these communities who entered India on or before 31 December 2014 and have been residing in India are eligible to apply for citizenship, even if they are deemed illegal migrants under previous definitions. This amendment aims to offer humanitarian relief and has added a new dimension to the process of acquiring Indian citizenship by registration.

## Visitors

A visa for tourism, business, work, study or for any other purpose is required without exception for all foreign nationals. All candidates who wish to relocate to India for any length of time will need to apply for an Indian visa. A visitor who comes to India for the purpose of tourism can be granted a multi-entry visa valid for a period of 180 days. The visa is valid from the date of issue. As a rule, no extension of stay is granted on a tourist visa.

Upon entering India, there are registration requirements for foreign nationals, as described below:

- All foreigners, including foreigners of Indian origin visiting India on long-term visits (more than 180 days), holders of a student visa (S), research visa (R), employment visa (E) etc., are required to register themselves with the concerned registration officer within 14 days of first arrival, irrespective of the duration of their stay.
- Foreigners visiting India on other categories of long-term visa, including business/entry (X) visas, do not require registration with the concerned officer if the duration of stay does not exceed 180 days on a single visit. Where a foreigner intends to stay for more than 180 days on a single visit, they should register themselves well before the expiry of 180 days.
- Children below 16 years of age do not require registration on any type of visa.

## Visa-on-arrival and Exemptions

India does offer visa-on-arrival (VoA) and e-visa facilities to citizens of specific countries for purposes such as tourism, business, medical treatment and short-term courses. Currently, VoA is available for nationals of Japan and South Korea, while e-visa facilities are available to citizens of over 160 countries, including the US, UK, Australia and most EU nations.

However, visa exemption is limited and applies mostly to citizens of Nepal, Bhutan and, under certain conditions, the Maldives. These exemptions are typically for short stays or specific categories.

- **Provisional business visa:** This visa is intended for individuals who need to visit India for business purposes, but the stay is limited to a cumulative 180 days per year, even though the visa is valid for up to five years. It is often used for people who need periodic visits to India, but the stay is restricted to shorter durations. It allows multiple entries, but the total stay within the year cannot exceed 180 days.
- **Permanent business visa:** This visa is for individuals who need a long-term business presence in India and can stay for up to five years. It is called 'permanent' in the sense that it allows multiple entries over a long duration, but it does not provide permanent residency status. It is designed for those who need to stay longer for business-related activities, without the need for a job offer from an Indian company or a skills assessment. However, like the provisional visa, it does not permit the holder to take up employment in India.

- **Business visitor visa:** This is a short-term visa for individuals visiting India to engage in specific business-related activities such as attending conferences, meetings, negotiations or fact-finding missions. The duration of this visa is usually shorter, ranging from a few weeks to a few months, and it is meant for those who are not staying long-term in India for business. This visa is also not intended for individuals who plan to engage in full-time employment or long-term business activities in India.

## Work Permits

A work permit or employment visa is required if a foreigner wants to take up employment in India. Work permits and employment visas are issued by Indian missions abroad and can be issued either to skilled professionals or to people immigrating to India to fill a specific position for a named company. Initially, a visa or permit is granted for a period of one year and this can be extended in India up to the period of contract. Usually, the employer who offers an employment opportunity initiates the visa application process in India. Alternatively, the applicant may apply to the Indian embassy or high commission in their country of residence.

## Personal Income Tax

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Liability to income tax depends upon the residence status of the individual. Resident taxpayers are classified into two categories:

- ordinarily resident; and
- not ordinarily resident.

Residence status depends upon the number of days spent in India. An individual is resident in India if they spend:

- at least 182 days in India during the tax year; or
- 60 days in India during the year and at least 365 days in the preceding four years.

Residents are taxed on worldwide income. Non-residents are taxed only on income received, or deemed to have been received, in India or deemed to have arisen in India. An individual who is not ordinarily resident is taxed in the same way as a non-resident, except that they are also liable to tax on income received abroad if this is derived from a business controlled in India, or a profession established in India.

The year of assessment is the period of 12 months from 1 April to 31 March. Income earned in the period of 12 months or less immediately preceding the year of assessment is taxed in the year of assessment.

In certain cases, income is taxed on a presumptive basis, wherein the income under each head is computed separately and aggregated to arrive at the gross total income, after allowing permissible deductions under each head.

The rate of income tax for any resident individual (below the age of 60 years) and any non-resident individual is given below.

The Income Tax Act provides taxpayers with the option of selecting from two regimes: the old tax regime and the new tax regime. The old regime allows for various exemptions and deductions. On the other hand, the new regime offers lower tax rates but eliminates most of these deductions, aiming for simplicity and ease of filing.

Tax rates under the old regime:

Income (₹)	Tax rates
Up to 250,000	Nil
250,001–500,000	5% of (total income minus ₹250,000)
500,001–1,000,000	₹12,500 plus 20% of (total income minus ₹500,000)
1,000,000–10,000,000	₹112,500 plus 30% of (total income minus ₹1,000,000)

Additional benefits are available for senior citizens.

Tax rates under the new regime (option to be exercised at the time of filing return of income):

Income (₹)	Tax rates
Up to 300,000	Nil
300,001–700,000	5% on income exceeding ₹300,000
700,001–1,000,000	₹20,000 plus 10% on income exceeding ₹700,000
1,000,001–1,200,000	₹50,000 plus 15% on income exceeding ₹1,000,000
1,200,001–1,500,000	₹80,000 plus 20% on income exceeding ₹1,200,000
Above 1,500,000	₹140,000 plus 30% on income exceeding ₹1,500,000

It should be noted that most of the incentives in direct taxes are foregone if an individual opts for the new regime.

The surcharge as a percentage of the tax amount would have to be computed if the individual's income exceeds certain thresholds. The rate of surcharge which would be calculated on the income tax amount is tabulated below:

Income (₹)	Surcharge rates
5,000,000–10,000,000	10%
10,000,001–20,000,000	15%
20,000,001–50,000,000	25%
Above 50,000,000*	37%*

\*The surcharge rate for this slab under the new tax regime is 25%.

The tax and surcharge computed above is increased by cess which is 4% on the tax and surcharge amount.

## Advance Tax

Under this scheme, each taxpayer is required to pay tax on an estimated basis in four instalments throughout the tax year, by 15 June, 15 September, 15 December and 15 March. Advance tax payments are not required where the estimated tax liability is less than ₹10,000. Similarly, advance tax payments are not required for individuals aged 60 years or over provided they don't have any business or professional income. The due dates for payment of advance tax are as follows:

For individuals	
On or before 15 June	15% of estimated liability
On or before 15 September	45% of estimated liability
On or before 15 December	75% of estimated liability
On or before 15 March	100% of estimated liability

Any default or deferment will attract interest at 1% per month or part thereof.

A resident individual who has net income below the applicable threshold limit is eligible for a rebate under section 87A. This rebate is deductible from income tax before calculating the education cess. The amount of rebate is the lower of 100% of income tax or ₹12,500.

## Tax Deducted at Source (TDS) / Tax Collected at Source (TCS)

TDS and TCS are integral components of India's tax collection framework.

TDS is a system where tax is deducted by the payer at the time of making specific payments, such as salaries, interest, professional fees and rent. This deducted amount is then deposited with the government.

TCS, on the other hand, is applicable in situations where the seller collects tax from the buyer at the time of sale of certain goods or services, like scrap, timber and overseas tour packages.

These mechanisms ensure that taxes are collected at the source of income or transaction, thereby improving compliance and minimising tax evasion.

The amount deducted or collected is reflected in the taxpayer's Form 26AS and can be adjusted against their total tax liability when filing their return.

## Totalisation Agreements on Social Security

India does not have a totalisation agreement with the US on social security.

## Employees' rights

In India there are a number of labour laws addressing various issues such as the resolution of industrial disputes, working conditions, labour compensation, insurance, child labour, equal remuneration, etc. Both central and state governments have enacted laws on labour issues.

In 2019 and 2020, the government of India undertook a major reform by consolidating 29 existing central labour laws into four comprehensive labour codes. These are:

- Code on Wages, 2019;
- Industrial Relations Code, 2020;
- Occupational Safety, Health and Working Conditions Code, 2020; and
- Code on Social Security, 2020.

These codes aim to simplify compliance, ensure uniformity and improve protection for workers across sectors. Some of the laws listed below have been subsumed under these new codes. However, the full implementation of these codes is still pending in some states.

The major existing labour-related legislation includes:

- Factories Act, 1948;
- Workmen's Compensation Act, 1923;
- Minimum Wages Act, 1948;
- Payment of Wages Act, 1936;
- Industrial Disputes Act, 1947;
- Employees' Provident Fund Act, 1952;
- Payment of Bonus Act, 1965 and Payment of Gratuity Act, 1972;
- Employees' State Insurance Act, 1948;
- Maternity Benefit Act, 1961; and
- Industrial Employment (Standing Orders) Act, 1946.

## Indian Taxation of Resident Aliens

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Each taxpayer, whether expatriate (resident alien) or local, is allocated a unique identifying number called a permanent account number (PAN).

All taxpayers, including non-residents, must apply for a PAN if their taxable income exceeds the maximum amount not chargeable to tax, as must any person carrying on a business or profession whose total sales, turnover or gross receipts exceed or are likely to exceed ₹500,000 in any previous year.

Every person who is required to deduct tax at source must apply for a tax deduction at source number (TAN), and quote this number on all certificates issued for tax deducted and remitted to the government, and also on all returns relating to withholding tax.

## Reporting Requirements for Resident and Non-resident Aliens

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- a) Residents and non-resident individuals are required to electronically file their return of income (RoI) by 31 July each year.
- b) Where the return is not filed by the due date, interest is charged on the tax due at 1% per month of delay, and where the return is not filed by the end of the year of assessment, a penalty of ₹5,000 will be levied.

c) Where income is earned or received in India, or the individual has sustained a loss and wishes to carry it forward to future years, the RoI must be filed before the due date to avoid interest, penalties and the forfeit of the right to carry forward the loss to future years.

## Estate and Gift Tax

**Estate tax:** Estate tax, also called inheritance tax or death tax, is a tax levied on the wealth inherited on the death of a person. India imposed estate tax from 1953 to 1985, but currently there is no estate tax in India.

**Gift tax:** Any sum of money or property, the aggregate value of which exceeds ₹50,000, received without consideration by an individual on or after 1 October 2009, is taxable except for amounts received:

- a) from relatives;
- b) on the occasion of marriage;
- c) under a will/inheritance;
- d) in contemplation of death of the payer;
- e) from any local authority;
- f) from any fund, foundation, university or other educational institution, hospital or other medical institution, or other prescribed institutions; and
- g) from trusts or institutions registered with the Indian revenue authorities.

In respect of movable property, the value is the fair market value on the date of receipt in accordance with the method prescribed. In respect of immovable property, the value is the stamp duty value.



# Appendix

## Useful Links and Reference Websites

Ministry of External Affairs	<a href="http://www.meaindia.gov.in">www.meaindia.gov.in</a>
Government of India	<a href="http://www.india.gov.in">www.india.gov.in</a>
Business Portal of India	<a href="http://www.india.gov.in/india-business-portal">www.india.gov.in/india-business-portal</a>
Make in India	<a href="http://www.makeinindia.com">www.makeinindia.com</a>
Ministry of Corporate Affairs	<a href="http://www.mca.gov.in">www.mca.gov.in</a>
Reserve Bank of India	<a href="http://www.rbi.org.in">www.rbi.org.in</a>
Securities and Exchange Board of India (SEBI)	<a href="http://www.sebi.gov.in">www.sebi.gov.in</a>
Export Import Bank of India	<a href="http://www.eximbankindia.in">www.eximbankindia.in</a>
Confederation of Indian Industry	<a href="http://www.cii.in">www.cii.in</a>
Institute of Chartered Accountants of India	<a href="http://www.icai.org">www.icai.org</a>
Institute of Cost and Management Accountants of India	<a href="https://icmai.in/icmai/">https://icmai.in/icmai/</a>
Institute of Company Secretaries of India	<a href="http://www.icsi.edu/home/">www.icsi.edu/home/</a>

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