Start & manage your business in India.

India Incorporation Playbook

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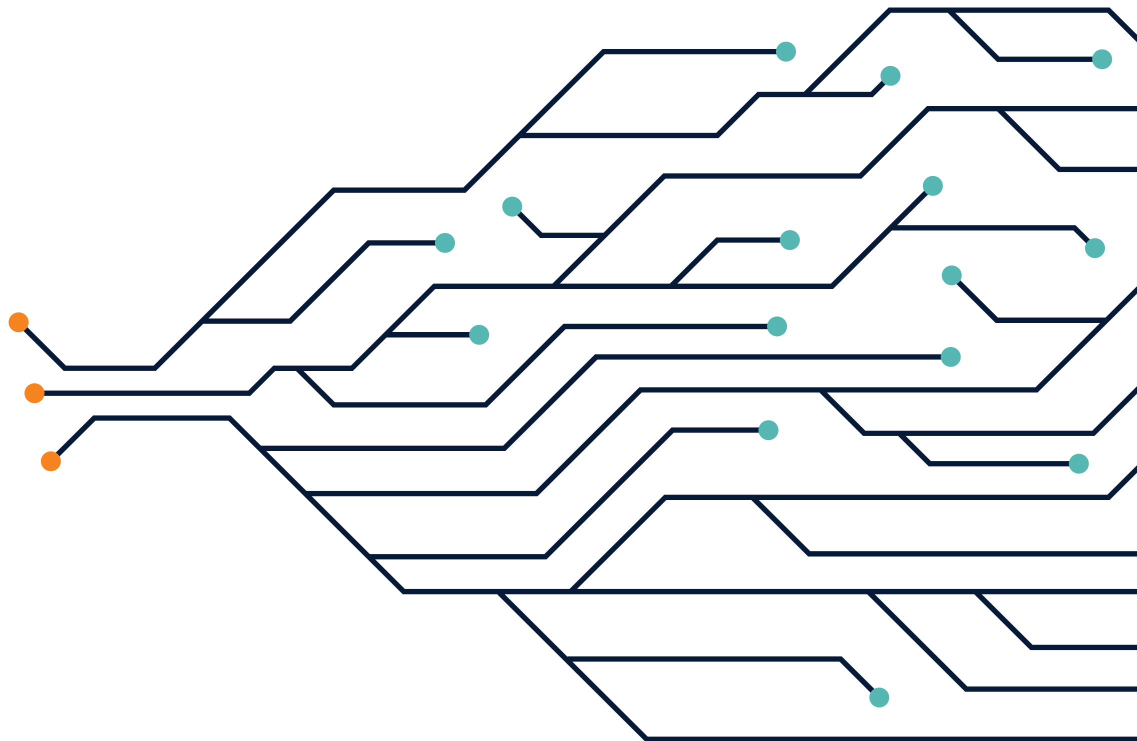

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About India
Country profile

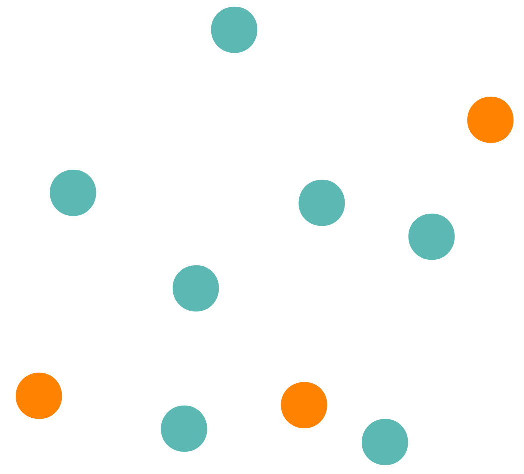
India has cemented its reputation as one of the few bright spots in an otherwise grim global economy. India has been the fastest growing G20 economy since 2014, underpinned by a stable macro-economy with declining inflation and improving fiscal and external balances. It was also one of the few economies enacting major 'structural reforms', that have positioned India as a competitive player in the international market. India now ranks 63 in the World Bank's Ease of Doing Business rankings (2020).

India has become a key player in the global economy, with outstanding export performance in some sectors, including information and technology services and pharmaceuticals. The Goods and Services Tax (GST), introduced in 2017, has replaced several indirect taxes that created internal barriers to trade and weighed on productivity. GST is expected to bring significant benefits over the longer term. A new corporate income tax structure has been introduced with reduced rates and support for new companies, especially in manufacturing.

Infrastructure is improving as the building and modernisation of railways, highways, rural roads and electricity generation capacities increases pace. The government is encouraging digitalisation to support the formalisation of the economy and reduce the scope for corruption. To promote the move from cash to digital payments, the government has introduced incentives and supported the underlying infrastructure. Government formalities can increasingly be completed online.

India is expected to attract foreign direct investments (FDI) of US$ 120-160 billion per year by 2025. India ranks highly as an attractive investment opportunity according to foreign investors surveyed, and the attraction is to both short-term and long-term prospects.

Business entities in India



India is a developing economy providing a range a business prospects for foreign investors. The current Government has initiated a variety of steps to generate business opportunities such as creating incentive schemes such as 'Make in India', and by removing obstacles to business to increase the ease of doing business.

The options available to investors for starting a business in India are wide ranging, and depend on the business strategy, customers to be catered to, location, etc. Among the various options, foreign companies expanding to India need to consider the following:

A. Incorporated entities
B. Unicorporated entities

Incorporated entities

This entity type covers entities which are formed under the provisions of the Companies Act / Limited Liability Partnership Act, 2008.

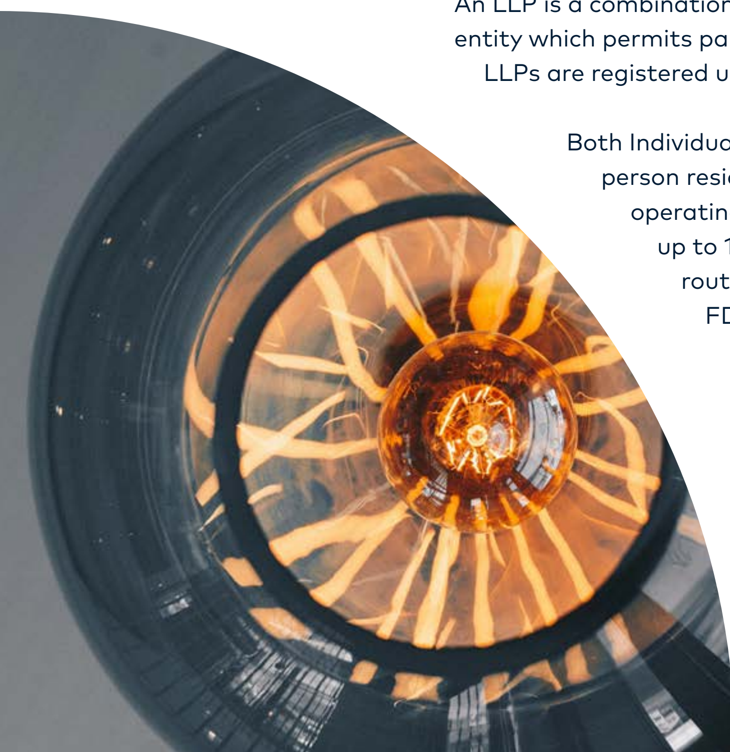
LIMITED LIABILITY PARTNERSHIP (LLP)

An LLP is a combination of both partnership and limited company form of business entity which permits partners to be shielded and enjoy a limited liability for the business. LLPs are registered under the provisions of Limited Liability Partnership Act, 2008.

Both Individuals and companies can be partners in the LLP. Investment by the person resident outside India is permitted under the automatic route in LLPs operating in sectors or activities where Foreign Direct Investment (FDI) up to 100% (i.e. 100% ownership) is allowed through the automatic route (no prior Government approval is required) and there are no FDI linked performance conditions.

COMPANIES UNDER THE COMPANIES ACT

A Company is composed of: (A) Shareholders/Members who own the Company and (B) a Board of Directors that manages the operations of the Company.



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There can be two types of Companies in India (1) private company, or (2) public company. A private limited company is closely held and there is a restriction on the transfer of the shares of the Company. Its members are limited to 50, whereas in a public limited company there is no limit on the number of members or transferability of the shares as its shares are listed on a recognized Indian stock exchange.

Whether the company is private or public, it can be organized with limited liability (by shares or by guarantee) or with unlimited liability. The company can be formed for the purpose of (a) earning profit and (b) not-for-profit, which is called a section 8 company.

The Companies are governed by the provisions of the Companies Act, 2013 which sets out the provisions related to incorporation of a company, covering issuance of shares, roles and responsibilities of directors, dissolution of a company (winding up), etc.

Trusts and societies are other non-profit entity options which are available in India. However, these structures need to be closely evaluated by international non-profit organisations from control and management perspectives.

Unincorporated entities

These entity types cover the following forms of presence which can be set up by foreign organisations/investors to meet their business needs. They are treated as an Indian 'extension' of the foreign organisation.

LIAISON OFFICE (LO)

A liaison office is a representative office of the foreign organisation in India. It can act as a channel of communication for the foreign organisation in India. An LO is not permitted to undertake any commercial activities in India. The funds are remitted by the foreign organisation to manage the expenses incurred by such offices.

The setting up of the LO is approved by the Reserve Bank of India (RBI) for a period of three years and then the registration can be renewed by making an application to RBI. The approval process is relatively simple for a commercial/for-profit organisation and can take as little as a few weeks to set up.

BRANCH OFFICE (BO)

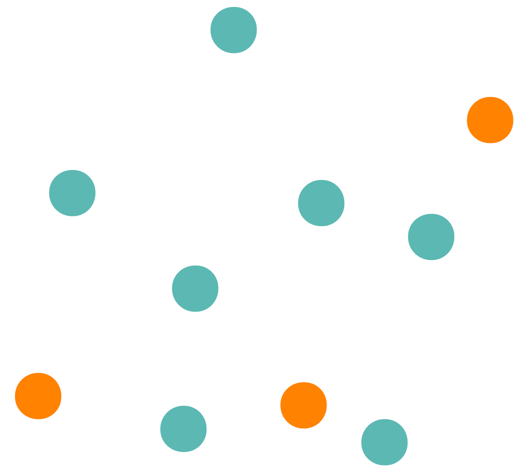
A branch office can undertake commercial activities in India that are permitted under Indian exchange control regulations. Activities permitted include trading, and rendering services, including technical support and agency services. A branch office cannot carry out any retail, manufacturing or processing activities.

Similar to LO, the approval process is relatively simple for a commercial/ for-profit organisation and can take a few weeks.

PROJECT OFFICE (PO)

A project office can be set up for execution of a project secured by the foreign organisation from an Indian company. The project must have received the necessary regulatory clearances. Similar to LO and BO, the approval process is relatively simple for a commercial/for-profit organisation and can take a few weeks. The validity period of the project office is for the tenure of the project.

Incentives for doing business in India



India offers a wide variety of tax incentives. A summary of the major incentives offered by the Indian government is included below.

PRODUCTION LINKED INVESTMENT SCHEMES (PLI)

To boost manufacturing sector, the Government has announced PLI Schemes for 13 key sectors. PLI Schemes give companies incentives on incremental sales from products manufactured in domestic units.

PLI Schemes are proposed for the following sectors – auto components, automobiles, chemicals, electronic systems, food processing, medical devices, metals & mining, pharmaceuticals, renewable energy, telecoms, textiles & apparel and white goods.

TAX INCENTIVES FOR EXPORTS - SPECIAL ECONOMIC ZONE (SEZ)

The Indian Government introduced the SEZ policy to instil confidence in investors. It showcases the Government's commitment to economic growth through support for quality infrastructure in a hassle free and competitive environment. The prime objectives are

- Enhancement of foreign and domestic investment
- Export promotion
- Creation of employment opportunities
- Development of infrastructure facilities

SEZs are deemed as a foreign territory for the purpose of trade operations and duties and tariffs. An entity can be set up in an SEZ for manufacturing as well as for providing services. Currently, there are 354 SEZs in India. Units in SEZs are eligible for income tax benefits in India. In addition, units also enjoy certain additional tax benefits under customs law and GST.

INTERNATIONAL FINANCIAL SERVICE CENTRE (IFSC)

In 2015, the Government of India announced the establishment of Gujarat International Financial Tec-City (GIFT City), as India's first International Financial Service Center (IFSC). The purpose of setting up the GIFT City is to develop a world class smart city that becomes a global financial hub through the development of an IFSC. The IFSC in GIFT City seeks to bring to Indian shores those financial services transactions that are currently carried on outside India by overseas financial institutions and overseas branches and subsidiaries of Indian financial institutions. The GIFT City is an emerging clean and transparent offshore finance jurisdiction for international financial service.

Various direct and indirect tax benefits are available to units set up in the IFSC.

INCENTIVES FOR START-UPS

Tax incentives are granted to start-ups that are considered eligible under the Government's 'Start-up India' plan. New businesses that meet the prescribed criteria are eligible for income tax benefits including 100% tax rebate for 3 years within a block of 10 years, exemption from capital gains tax and investment related tax exemptions.

TAX INCENTIVE ON CAPITAL EXPENDITURE ON CERTAIN SPECIFIED BUSINESSES

Deduction of capital expenditure is allowed at 100 percent in the year when the commercial operations begin in respect to the following specified businesses:

- Setting up and operating cold chain facilities
- Setting up and operating warehousing facilities for storage of agriculture produce
- Setting up and operating an inland container depot, freight station, or warehousing facility for storage of sugar, beekeeping, and honey and beeswax production
- Laying and operating a cross-country natural gas or crude or petroleum oil pipeline
- Network for distribution, including storage facilities being an integral part of such a network
- Building and operating a hotel of two-star category or above in India
- Building and operating a hospital with at least 100 beds
- Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the government
- Developing and building specified housing projects under an affordable scheme of the central and state government
- Investing in a new plant or newly installed capacity in an existing plant for production of fertilizer

TAX INCENTIVES TO BOOST MANUFACTURING SECTOR

The government has introduced a favourable tax regime for new manufacturing companies in order to promote start-ups in the sector. Such companies are eligible for a lower corporate tax rate of 15%.

There are several additional location and industry based benefits including subsidies, rebates, exemptions available under Indian direct and indirect tax laws.

Capital and foreign currency regulations

Cross-border/foreign investment is governed by the provisions of the Foreign Exchange Management Act (FEMA), 1999. Sector-wise regulations and restrictions are outlined in the Annual Consolidated Foreign Direct Investment Policy Circular ("FDI Policy") issued by the Department for Promotion of Industry and Internal Trade ("DPIIT"), Ministry of Commerce and Industry. FDI policy also outlines the maximum % of foreign ownership that is permitted in various sectors. The central bank of India i.e., Reserve Bank of India ("RBI") regulates cross-border transactions including investments and monitors the reporting for these transactions.

Broadly, foreign investors invest in India under two routes. One is the 'automatic route' where government approval is not needed altogether or up to prescribed thresholds for the relevant sector, subject to applicable laws/sectoral laws or regulations of the relevant industry regulator. The other route is the 'government route' where government approval is required prior to the investment. Such approvals are considered by the respective administrative Ministry or Department.

FDI has been defined under Indian exchange control regulations as – "*investment through capital instruments by a person resident outside India (a) in an unlisted Indian company; or (b) in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.*" Capital instruments means equity shares, debentures, preference shares and share warrants. The general rule under Indian exchange control regulations is that capital account transactions (i.e. transactions that alter the assets or liabilities of an entity) are not freely permitted and require prior approval of Reserve Bank of India ('RBI') unless specifically permitted under FEMA. The vice-versa is true for current account transactions.

FDI IS PROHIBITED IN THE FOLLOWING SECTORS IN INDIA

1. Lottery businesses including Government/private lottery and online lotteries
2. Gambling and betting including casinos
3. Chit funds (except for investment made by NRIs and OCIs on a non-repatriation basis)
4. Nidhi companies
5. Trading in Transferable Development Rights (TDRs)
6. Real estate business or construction of Farm Houses

7. Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes. The prohibition is on manufacturing of these products and foreign investment in other activities relating to these products including: wholesale cash and carry, retail trading etc. They are governed by the sectoral restrictions laid down in Regulation 16 of FEMA 20(R)
8. Activities/sectors not open to private sector investment viz., (i) atomic energy and (ii) railway operations

The following are examples of sectors where FDI up to 100% is allowed under automatic route:

- Information technology
- Business process management
- E-commerce
- Automobile

Following are the examples of sectors where FDI up to 100% is permitted under approval route:

- Food product retail and trading
- Pharmaceuticals
- Biotechnology
- Digital media

On account of the market disruptions caused by the recent COVID-19 pandemic, the Government of India has revised its regulatory laws to check "opportunistic takeovers/ acquisitions" of Indian companies. Under these revisions, effective from April 22, 2020, any investment being made from any of the neighbouring countries – Bangladesh, China, Pakistan, Nepal, Myanmar, Bhutan and Afghanistan – or where the beneficial owner of an investment into India is situated in or is a citizen of any of these countries, the investment shall require prior approval of the Government regardless of the sector/ activities in which investment is being made.

To illustrate the various controls on foreign investment, we have listed below some examples of regulations and requirements in several key industry sectors:

- **Banking in private sector -** Up to 74% foreign investment is permitted, in which up to 49% is under the automatic route and foreign investment beyond 49% and up to 74% is under government approval route.

- **Civil aviation –** 100% FDI is permitted under automatic route for both greenfield and existing projects for "Airports" and for Non-Scheduled Air Transport Service. 100 % FDI in "Air Transport Services" being Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline and Regional Air Transport Service is permitted where up to 49% is under automatic route and beyond 49% requires government approval (Automatic upto 100% for Non-Resident Indians ("NRIs") and Overseas Citizenship of India Card Holders).

- **Defence -** 100% FDI into defence sector (subject to the industrial license under Industries (Development and Regulation) Act, 1951) and manufacturing of small arms and ammunition under Arms Act, 1959 has been permitted where up to 49% is under the automatic route. For investment above 49% approval of government will be required wherever it is likely to result in access to modern technology or for other reasons to be recorded.

- **Infrastructure company in securities market (stock exchanges, commodity exchanges, depositories and clearing corporations), power exchanges and commodities spot exchange –** 49% foreign investment is permitted under automatic route, which should be in compliance with the applicable SEBI Regulations, Central Electricity Regulatory Commission (Power Market) Regulations, 2010 and guidelines prescribed by Central Government.

- **Insurance –** Under the recent amendments announced in 2021, FDI cap into the insurance sector (insurance companies, insurance brokers, etc.) was increased from 49% to 74% under the automatic route subject to approval/verification by Insurance Regulatory and Development Authority of India ("IRDAI") and compliance of other prescribed conditions.

- **Multi brand retail trading –** 51% foreign investment is permitted under the government approval route.

- **Digital media –** 26% FDI is permitted under the Government approval route in companies uploading/streaming of News and Current Affairs through Digital Media.

- **Print media –** (i) Print media, specifically publishing of newspaper and periodicals dealing with news and current affairs and publication of Indian editions of foreign magazines dealing with news and current affairs is allowed up to 26% FDI under the government approval route (ii) Print media, specifically publishing/ printing of scientific and technical magazines/ specialty journals/ periodicals (subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting) and publication of facsimile edition of foreign newspapers is allowed to have 100% foreign investment with prior approval of government.

- **Railways –** While 100% FDI is allowed in the railways infrastructure sector under the automatic route, proposals involving FDI beyond 49% in sensitive areas are required to be brought before the CCS for consideration by the Ministry of Railways from a security point of view.

- **Single brand product retail trading –** Foreign investment is allowed up to 100% under the automatic route subject to conditions prescribed. Retail trading through e-commerce is now allowed prior to opening of brick-and-mortar stores, subject to the condition that the entity opens brick and mortar stores within 2 years from date of start of online retail.

- **B2B E-commerce -** 100% FDI permitted in companies engaged in the activity of buying and selling through the e-commerce platform only in the Business-to-Business segment.

FDI IN LIMITED LIABILITY PARTNERSHIPS

Foreign investment in Limited Liability Partnerships ("**LLPs**") is permitted under the automatic route only for LLPs operating in sectors/activities where 100% foreign investment is allowed, through the automatic route and there are no foreign investment linked performance conditions.

While companies with foreign investment are permitted to raise External Commercial Borrowings (ECB) from eligible foreign sources (including holding company) for permitted end-uses, LLP is not permitted to raise ECB. Companies can raise ECB in INR or any foreign currency.

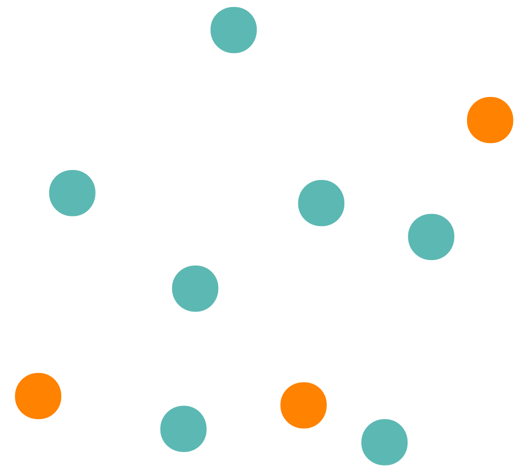
Required governance positions

A company in India has a two-tier governance structure i.e. Board of Directors that manage the operations of the Company and shareholders/members who own the company through shares/voting rights. A private limited company must have at least two directors and two shareholders whereas a public limited company must have at least three directors and seven shareholders. It is mandatory to have at least one director who is resident in India for at least 182 days during the financial year. In case of newly incorporated companies, the number of days shall be calculated proportionately at the end of the financial year in which the company is incorporated.

A shareholder/member can be a person, body corporate, company or an organization that holds a stake in the company. Being the owner of the company, they are entitled to receive dividends from profits. They have certain duties and responsibilities toward the functioning of the company.

The Board of Directors has a collective responsibility for conducting and regulating the affairs of the company. The Act empowers the board to do all such activities as the company is authorized to exercise under the Act and declared in its Memorandum of Association (MoA) and Articles of Association (AoA). Directors always have fiduciary duties towards the company and its various stakeholders. This means that a director must act honestly, without negligence and in good faith, in a bona fide manner, which is in the best interest of the company. Only natural persons can be appointed as directors. India does not have a concept of corporate directors.

LLP has a similar structure – Partners as shareholders and Designated Partners as management body. Partnership Deed governs the LLP and roles, responsibilities and liabilities of Partners and Designated Partners are prescribed in the LLP Act.



Corporate compliance requirements

The corporate compliances for a company in India are governed by the Companies Act, 2013. Regular corporate governance matters and filings consist of the following:

BOARD MEETINGS

The company must, within 30 days from incorporation, hold its first board meeting and thereafter hold at least four board meetings in a calendar year with a gap not exceeding 120 days. The board meeting shall be held either by physical presence of directors or via audio and video conferencing mode.

ANNUAL GENERAL MEETING (AGM)

Every Company is required to hold at least one meeting of the members/shareholders known as the annual general meeting. The first AGM needs to be held within nine months before the end of first financial year. Thereafter, every AGM meeting shall be held every year within six months before the end of the financial year. The ordinary businesses transacted at the AGM shall be (i) consideration and adoption of annual financial statements along with the reports of the board of directors and auditors of the Company; (ii) declaration of dividends; (iii) appointment of directors in place of those retiring; (iv) appointment of auditors.

ANNUAL DISCLOSURES OF INTEREST AND DECLARATION OF DISQUALIFICATION

Every director is required to disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the disclosures already made, then at the first board meeting held after such change. Additionally, the declaration of disqualification is required from every proposed/appointed director before being appointed/re-appointed.

DIRECTOR KYC REQUIREMENT

The directors holding a Director Identification Number (DIN) shall ensure that their DINs are active at all times. For this, annual Know your customer ("KYC") information needs to be updated with the requisite authorities every year.

FILING OF ANNUAL FINANCIAL STATEMENT ANNUAL RETURN

As a part of annual filing, every company is required to prepare and file annual return with the regulatory authorities within 60 days from the date of annual general meeting. This includes details of a company's share capital, indebtedness, directors, shareholders, changes in dictatorships, corporate governance disclosures.

RETURN OF FOREIGN LIABILITIES AND ASSETS (UNDER FEMA)

Every Company and LLP which has received FDI and/or made overseas investments in any of the previous years including the current year, is required to file an Annual Return on Foreign Liabilities and Assets with the Reserve Bank of India within the prescribed timelines.

Licenses & registrations required to operate

Once a company is registered in India, there are certain licenses and registrations required for smooth operation of the business. A few licenses and registrations are required from the date of registration of the company and others may be required after a certain threshold of turnover or employees is reached. Further, certain registrations and licenses are industry specific and may be required on the basis of the type of business.

A list of the basic registrations and licenses is as follows:

PAN & TAN REGISTRATION

Permanent Account Number (PAN) and Tax Deduction Account Number (TAN) are primary income tax registrations. Under the new company incorporation process, these registrations are issued automatically at the time of company incorporation. Other forms of entities (including LLP) are required to apply for these registrations post formation/ incorporation.

SHOPS & ESTABLISHMENT REGISTRATION

Shops & Establishment Registration is a state specific registration issued by the state government in which the entity has set up an office/presence. The compliance requirements, documents and information to obtain such registration may differ from state to state. The objective of the registration is to govern and improve the working conditions and rights of the workers; like wage payments, leave, holidays & work hours.

The registered office of the entity is also required to be registered under the state's Shops & Establishment Act.

GOODS AND SERVICE TAX (GST) REGISTRATION

Every company dealing with goods and services is required to obtain GST registration in India, subject to the turnover threshold requirements. The registration is mandatory for intra-sale supply of goods and services, irrespective of turnover threshold.

EMPLOYEE PROVIDENT FUND ORGANISATION (EPFO) REGISTRATION

Registration under Provident Fund is applicable for all establishments which employ 20 or more persons. Some establishments having less than 20 employees may also be required to obtain PF registration. Under the new company incorporation process, this registration is issued automatically at the time of company incorporation. Other forms of entity (including LLP) are required to apply for this registration once they meet the required registration criteria.

EMPLOYEE STATE INSURANCE CORPORATION (ESIC) REGISTRATION

This is a mandatory registration once an entity employs 10 or more employees. Under the new company incorporation process, this registration is issued automatically at the time of company incorporation. Other forms of presence (including LLP) are required to apply for this registration once they meet the required registration criteria.

PROFESSIONAL TAX REGISTRATION

Professional Tax is governed by the State Profession Tax law (if enacted). Most of the states in India have this regulation in place. Some of the states that have Profession Tax regulation are: Maharashtra, Gujarat, Karnataka, West Bengal, and Tamil Nadu. This registration obligates the Company to deduct professional tax from salary or fee payable to employees, practicing professionals such as Chartered Accountants, Company Secretaries, lawyers, doctors etc. Since this is a state specific registration, the applicability varies depending on the state in which the entity has its employees personnel.

IMPORT EXPORT CODE (IEC)

Import Export Code is a mandatory prerequisite to start a business of import or export of goods or services in India. The IEC is a permanent identification number and there is no requirement of renewal. However, the recent notification means every company is required to verify and update its details on the IEC portal on an annual basis.

Other registrations, licenses and approvals may be required depending upon location, employee strength and business activity. Approvals under municipal laws also need to be evaluated.

SUMMARY

In India, accounting, reporting and auditing requirements of business entities are primarily governed by the regulations issued by the Institute of Chartered Accountants of India (ICAI), the Securities and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA) and the Central Board of Direct Taxes (CBDT).

The ICAI has issued accounting standards that are applicable to all entities engaged in commercial, industrial or business activities. The legal recognition to these standards has been given by the central government under the Companies Act, 2013, which governs the incorporation of a company, manner of conducting the affairs of a company, responsibilities of its board of directors and other provisions including winding up. It also prescribes the financial reporting and auditing requirements to be followed by all companies including foreign companies as defined in the Companies Act, 2013.

The companies listed on a recognised stock exchange in India are governed by rules and regulations issued by the SEBI from time to time. In addition, there is industry-specific guidance relating to financial reporting issued by the relevant authorities such as the RBI.

The following sub-sections discuss some of the common requirements:

Records to be maintained

Every company should follow accrual basis of accounting. The Companies Act, 2013 requires that the records can also be maintained in electronic mode in the prescribed manner and are required to be retained for a minimum period of eight years. Further, the central government has the power to direct the company to retain the statutory books for longer periods, in certain cases.

Preparation of financial statements

Every company is required to prepare both separate and consolidated financial statements on an annual basis in accordance with the accounting framework applicable to the company. Further, a listed company is also required to publish quarterly or half yearly interim financial information in the formats prescribed by SEBI. These reports are subject to review and must be submitted within the prescribed timelines.

Contents of financial statements

The Companies Act, 2013 lays down the format for presentation of financial statements of companies, with the exception of insurance, banking and electricity companies, and other classes of companies for which the format of the financial statements is specified by a separate governing act. Financial statements are comprised of balance sheet, statement of profit and loss, cash flow statement, a statement of changes in equity (if applicable) and related notes.

Audit of financial statements

Every company in India, irrespective of its size, must have its financial statements audited by a Chartered Accountant (member of the ICAI). The audits are required to be conducted in accordance with the auditing standards issued by the ICAI and notified by the central government under the Companies Act, 2013. In addition, the Income-tax Act, 1961 mandates audits of taxpayers meeting certain specified thresholds to be conducted by a Chartered Accountant (member of the ICAI).

Inspection of records

The books of accounts and other records are open to inspection by any director, Registrar of Companies and other government authorities such as those involved with excise and sales tax.

Accounting year

Under the Companies Act, 2013, companies are required to adopt a uniform financial year ending on 31 March unless specifically permitted by the authorities. Similarly, the accounting year must end on 31 March every year for income-tax purposes.

Mandatory firm rotation

To reduce the risks of excessive long-term familiarity, the Companies Act, 2013 prohibits auditor appointment for a period of more than five consecutive years (in the case of individual as an auditor) or 10 consecutive years (in the case of an audit firm as an auditor) by listed and certain other class of companies. An individual or audit firm that has reached the limit of appointment is once more eligible after a period of five years has passed.

Accounting framework

The Companies Act, 2013 prescribes two accounting frameworks: 1) Indian Accounting Standards (Ind AS) which are based on International Financial Reporting Standards (IFRS) but with certain carve-outs. The Ind AS is mandatory for certain classes of companies, and 2) standards that are substantially different from Ind AS.

Companies are required to determine the relevant accounting framework as per the applicable law according to business activity and entity type. The company may irrevocably opt to prepare Ind AS compliant financial statements for the accounting periods beginning on or after 01 April 2015.

ROC filing

The MCA requires filing of financial statements with the Registrar of Companies, using the eXtensible Business Reporting Language (XBRL) taxonomy, for the following companies:

- All companies listed in India and their Indian subsidiaries
- All companies having a paid up capital of INR 50 mn and above
- All companies having a turnover of INR 1 bn and above

All other companies are required to submit using the prescribed formsats. The XBRL documents of financial statements are required to be certified by a Chartered Accountant or Company Secretary or Cost Accountant.

Income Computation and Disclosure Standards (ICDS)

In view of the significant developments in convergence with IFRS, ICDS were notified under the Income-tax Act, which are, in principle, closer to the existing Indian GAAP than the IFRS based Ind AS. These standards are required to be followed by all taxpayers following the mercantile system of accounting for the purpose of computation of income from business and 'other income' subject to tax.

Taxation in India

DIRECT TAXATION

Administration

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

CATEGORIES	DATE OF FILING RETURN OF INCOME (ROI)
An LLP or company that is required to submit a transfer pricing certificate in Form 3CEB with respect to international transactions	30 November following the end of the financial year for which ROI to be filed
Other companies or LLPs	31 October following the end of the financial year for which ROI to be filed

Non-resident corporations are also required to file ROI in India if they earn income in India or have a physical presence or economic nexus with India. However, RoI is not required to be filed in India in case the income earned from India consists of only interest, dividend, royalty or fee for technical services subject to fulfilment of certain conditions. Corporate tax liability needs to be estimated and discharged by way of advance tax on a quarterly basis. Late filing of an ROI and delay in payment or shortfall in taxes is subject to penalties and interest.

Corporate Income Tax

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

- Income from house property
- Income from business
- Capital gains on disposition of capital assets
- Residual income arising from non-business activities (i.e. income from other sources). Corporations resident in India are taxed on their worldwide income arising from all sources.

Non-resident corporations are taxed on the income earned through a business connection in India or any source in India or transfer of a capital asset situated in India. The term business connection is used in Indian IT Act instead of a PE, as in tax treaties, to tax profits from business. The term business connection is considered wider in its scope than PE. Double Taxation Avoidance Agreement (DTAA) - Provisions of the IT Act or the DTAA, whichever is more beneficial are applicable to a nonresident taxpayer. Accordingly, the taxability is likely to be restricted or modified.

Rates of Corporate Income Tax

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

Base tax rates for tax year 2020- 2021:

PARTICULARS	BASE TAX RATE
Domestic company	
New manufacturing companies established and registered on or after 1 October 2019 and commencing manufacturing up to 31 March 2023 without availing specified deductions or incentives (optional regime)	15%
Domestic companies may opt for concessional tax rate provided they do not avail specified deductions or incentives	22%
Foreign company	40%
LLP	30%

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Surcharge rates for tax year 2020-2021

STATUS	INCOME FROM INR 10 MILLION TO INR 100 MILLION	ABOVE INR 100 MILLION
Domestic company opting for concessional tax rate of 15% or 22%	10%	10%
Domestic company (other than above)	7%	12%
Foreign company	2%	5%
LLP	12%	12%

Withholding tax rates

WITHHOLDING TAX RATES	TAX RATES IN % (CORRESPONDING NOTE)	
	Paid to a domestic company	Paid to a foreign company
Dividends	10 (d)(g) 20 (a)	10 (d)(g) 20 (a)
Interest	10 (d)(g) 20/5 (a) (b)(d)	10 (d)(g) 20/5 (a) (b) (d)
Royalty from patents, know-how, etc.	10/2 (d) (e)(g) 10 (a)(c)(d)	10/2 (d) (e)(g) 10 (a) (c)(d)
Fee for technical services (FTS)	10/2 (d) (f)(g) 10 (a)(c)(d)	10/2 (d) (f)(g) 10 (a) (c)(d)

Notes:

a. The rates for withholding tax must be increased by the applicable surcharge in accordance with the income slabs as indicated in this surcharge table, and a health and education cess of 4%.
b. This rate of 5% only applies to interest on foreign currency loans. Any other interest is subject to tax at a normal applicable rate of 20% to foreign corporations.
c. Royalty or FTS: foreign corporations are taxed with respect to royalties or FTS at the rate of 10% on a gross basis.
d. (d) If PAN of the payee (PAN or other specified details/documents in case of a non-resident payee) is not available, tax will be withheld at an applicable rate or at a penal rate of 20%, whichever is higher.
e. (e) Reduced withholding tax rate of 2% to apply on royalty paid to residents in consideration for sale, distribution or exhibition of cinematographic films.

f. Withholding tax rate of 2% will apply in case of fees for technical services (not being a professional service) and 10% in other cases.
g. Withholding tax rates applicable for tax year 2020-21 for payment to domestic company has been reduced by 25% w.e.f. 14 May 2020 in the wake of COVID-19 pandemic.

Advance tax

Every taxpayer is required to pay the tax liability for the year during the previous year itself, but these can be made in instalments as prescribed. The tax liability is to be worked out on the basis of an estimate of current year income, and the income tax thereon shall be calculated at the rates in force during the relevant previous year. Interest is levied for non-compliance with advance tax provisions.

Relief for losses

Business losses, other than from speculation businesses, are permitted to be set off against income from any other source (except income from employment, i.e., salary income) in the same year. Business losses, which cannot be so set off, are permitted to be carried forward for setting off against business profits arising in the eight subsequent years. Unabsorbed depreciation is permitted to be carried forward for an unlimited period.

Equalization levy

In line with OECD's BEPS project Action Plan 1 (digital economy), India has introduced an equalization levy on the following transactions:

- Equalization levy of 6% is chargeable on the payment made by a resident carrying on a business or profession or the Indian PE of a non-resident to a non-resident providing specified services. Specified service has been defined as an online advertisement, or provision for digital advertising space or any other facility or service for the purpose of online advertisement, and also includes any other service notified by the central government.
- From 1 April 2020, equalization levy of 2% is chargeable on the amount of consideration received/receivable by a non-resident (NR) e-commerce operator from e-commerce supply or services made, provided or facilitated by such an NR beyond threshold of INR20 million during a tax year to:
- A person resident in India or
- An NR which entails sale of advertisement targeted at a customer resident in India or accessing such advertisement through an Indian IP address or
- An NR which entails sale of data collected from a person resident in India or from a

person who uses Indian IP address or
- A person who buys goods or services using an Indian IP address

Foreign tax relief

DTAAs entered into by India with several other countries govern foreign tax relief to avoid double taxation. If there is no such agreement, resident corporations can claim a foreign tax credit for the tax paid by them in other countries subject to fulfilment of certain requirements. The credit amount is the lower of Indian effective rate of tax or the tax rate of the said country on the doubly taxed income.

INDIRECT TAXATION

GST legislation

Goods and Services Tax (GST) was introduced in India from 1 July 2017. It is considered as the biggest indirect tax reform in India and has been a major development in the Indian tax framework. It is a destination-based tax that replaces the earlier central taxes and duties such as central excise and a multitude of state levies like VAT/CST on majority of goods, entry tax, purchase tax, octroi, etc. It is described as a more efficient tax system, neutral in its application and attractive in distribution.

The GST is based on a dual levy model. Both Central and State are empowered to levy equal amounts of tax (in the form of Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST)) on the same taxable base (supply of goods and services). In case of inter-state transitions, Central has the authority to levy Integrated Goods and Service Tax (IGST), a part of which is transferred by the central government to the destination state.

Further, imports would be subject to IGST, while exports would continue to be zero rated.

Applicable GST rate varies from 5% to 28% depending on the goods or services. Most goods and services fall under the 18% rate bracket.

TRANSFER PICKING

Transfer pricing (TP) provisions in India are in line with the TP guidelines for multinational companies and tax administrators issued by the OECD, except with certain noteworthy differences. Under transfer pricing regulations (TPRs), any international transaction and specified domestic transaction between two or more associated enterprises (AEs) (including PEs) must be conducted at arm's length price (ALP).

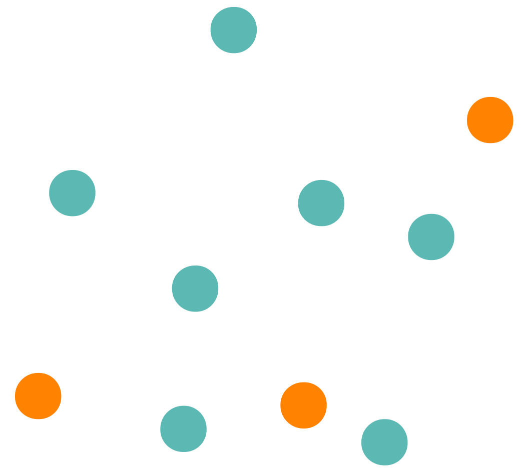
Country-by-country (CbC) reporting

In order to meet the commitment to Base Erosion and Profit Shifting (BEPS) initiative of G-20 and the OECD, a new section has been inserted in the Act which mandates

the requirement of CbC reporting in line with Action 13 of the BEPS action plans. These regulations require an Indian entity which is part of a Multinational Enterprise (MNE) group to maintain the following group information by way of three files (in addition to the information already required in relation to international transactions):

- Master file (MF)
- Local file
- CbC reporting (CbCR) is required to be filed by the parent entity of an MNE group with annual consolidated group revenue in the immediately preceding accounting year of more than € 750 mn (INR 55 bn, USD 830.50 mn approx.) The MF and CbCR (as applicable) are required to be filed by 31 March each year.

Employment of foreigners



HUMAN RESOURCES IN INDIA

Indian labour laws have traditionally been governed by multifarious fragmented legislations and are deemed as highly regulated and rigid as compared to those of other countries in the world. This has been an outcome of India's history during its colonial era, India's experiments with socialism, important human rights and the conventions and standards it has joined. This has been debated widely and hence the Indian Government has been working on a complete refurbishment of the dated labour regulations to consolidate 44 labour laws under 4 categories of Codes; namely: Wage Code; Social Security Code; Occupational Safety, Health & Working Conditions Code; and the Industrial Relations Code. This move is primarily to promote ease of business, and thereby promote investments. The government is aiming to implement all four Codes in one go from the current financial year (2021-22) in completing the final stretch of labour sector reforms. These reform measures by the central government have already raised India's Ease of Doing Business ranking from 130 in 2016 to 63 in 2020.

The central and state governments both have an equal responsibility of enforcing enacting and implementing the labor laws, with some duplication and overlap.

EMPLOYMENT LEGISLATION

The employment laws in India cover the freedom of the right to work, rights against discrimination, prohibition of child labour, fair and humane working conditions, social security, protection of wages and redress of grievances. They are arduous for organizations to follow, but tilted to protect the interests of the employees. In India, the applicability of each labour law (for the employer as well as its employees) has several determinants with an interplay of factors including (i) the exact nature of activities/work performed, (ii) nature of establishment, (iii) number of employees, (iv) role and responsibilities of the employees, (v) salary and compensation, (vi) duration of employment, etc. There are a few important statutes that form the basis for the employee benefits and compensation and these are widely applicable to organisations, and these are presented in the following table.

KEY LABOUR LAW STATUTES IN INDIA		
S1 NO	STATUTORY LAWS	APPLICABILITY OF THE ACT
1	Employees' Provident Fund and Miscellaneous Provisions Act, 1952	20 or more employees
2	The Employees State Insurance Act or ESI Act of 1948	Not based on quantity of employees, but on the gross salary of each employee
3	The Payment of Gratuity Act, 1972	10 or more employees
4	Maternity Benefit Act, 1961 and amendment at 2017	10 or more employees
5	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	10 or more employees
6	The Shops & Commercial Establishment Act 1953	Not based on numbers but on the type of industry
7	Factories Act,1948	10 or more employees employed in a manufacturing process

SOCIAL SECURITY BENEFITS

Indian labour law mandates contribution and participation of organisations under the social security laws set up. The laws cover the larger segments of the working population by securing them for their retirement and health benefits. Key social security legislation:

Employees' Provident Fund (PF) is regulated by The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (PF Act), which is a pension and welfare scheme like most of the labour legislation. This PF Act is applicable to all businesses that employ 20 or more employees. The primary objective of this scheme is to provide social security and to encourage the spirit of 'mandatory savings' by the employees while they are employed and to make provision for their benefit after they retire from service and for their family members after their death. However, where an organization employs less than 20 persons but also receives a request from a majority of its employees for voluntarily contribution to the Provident Fund scheme, the company may be allowed to join the scheme on the approval of the Provident Fund (PF) department.

The following list explains the workings of the PF scheme:

- Employer (Company) and employee need each to contribute 12% of the employee's monthly basic salary towards PF accumulation
- Every month the employer is responsible for deducting the contribution, submitting payment to the authorities and maintaining records of the contribution
- The account can be accessed by the employees via government websites to view and manage their account
- This is a retirement pension scheme and the employee can make a claim for a pension payment post-retirement or if voluntarily quiting work before the retirement age

Employee State Insurance Scheme (ESI) is offered by the ESIC (Employee's State Insurance Corporation) under the provisions of The Employee State Insurance Act, 1948. It is a scheme run by the state government that allows employees earning below INR 21,000 per month to utilize health related benefits by accessing ESI hospitals and several government run hospitals; the employees in this category enjoy free treatment.

Gratuity - this benefit scheme is prescribed through a specific statutory provision (The Payment of Gratuity Act, 1972) that provides a minimum payment of 15 days for each year of service under the stipulated conditions. Employers employing 10 or more employees come under the ambit of this Act. The payment awarded under this scheme up to INR 2,000,000 is non-taxable. Gratuity shall be payable to an employee on termination of the employment after rendering continuous service for not less than five years and:

- On actualising superannuation
- On retirement/resignation
- Upon death or disablement due to accident or illness

EMPLOYEE WELLBEING

Leave benefit rules

Organizations in India allow time off from work for various reasons and these are categorized as Earned Leave, Sick Leave, Casual Leave and Maternity Leave. National and state laws may vary marginally in the allowance of the leave under each of these categories, with the exception of the Maternity Benefit which is a standard across the country. Apart from the statutory leave, some organizations do make additional provision for leave for paternity, marriage or bereavement in the family, Covid and also leave without pay for extended periods.

Payroll

Payroll processing is a critical function impacting employees. Payroll processing typically includes gathering employee timesheet information for the selected time period, managing benefits and deductions, and distributing employee pay for that time period. Most companies in India outsource payroll to a third-party payroll service provider.

Payroll involves numerous activities among multiple teams, so the payroll staff need to be on top of all issues every single day; monitoring the employee count, making changes to statutory policies, implementing new deduction rules, and more. When it comes to administration, paying employees is possibly the number one task, but additionally, filing payroll taxes is also an extremely important measure that must be accurate and on time, otherwise an employer can incur expensive penalties.

Establishing a solid payroll process helps employers avoid penalties for flouting statutory laws or policies (minimum wage, unpaid leave time, etc.).

EMPLOYEE INFORMATION

Details like designation, department, date of joining, salary components, reimbursements, etc. are all critical details to input at the start of a payroll cycle.

LEAVE POLICY

Every employee is entitled to leave in various categories such as sick leave, casual leave, and annual or privilege leave, as per applicable laws. Setting a leave policy is of paramount importance to allow for the accurate recording of leave available and leave carried forward when calculating paychecks.

ATTENDANCE SYSTEM

An attendance system is crucial for any organization. It allows the business to track employees working hours are and provides both employee and employer with an accurate account of leave accrued and used. Attendance input is one of the important data points for paying the employees accurately.

STATUTORY DEDUCTIONS

Adherence to Indian payroll laws is necessary to keep organizations compliant with all of the statutory components including:

Employee Provident Fund (EPF) The employee and the employer contribute to the EPF scheme on a monthly basis in equal proportions of 12% of the basic salary and 'dearness' allowance.

Labour Welfare Fund (LWF) The LWF is a statutory contribution managed by individual state authorities. It is an aid in the form of money or necessities for those in need. It provides facilities to the 'workmen' category in order to improve their working conditions, provide social security, and raise their standard of living

Employee State Insurance (ESI) Based on the gross salary, contributions are to be made by employer & employee.

Professional Tax Professional tax in India varies from state to state. The maximum amount of professional tax cannot exceed Rs. 2,500 annually (Governed by State Laws)

Income Tax (IT) Indian Income tax is levied on individuals on the basis of a slab system. A slab system applies different tax rates for different ranges of income. It means the tax rates keep increasing as salary increase in the income of the taxpayer. Based on annual income, the income tax deductions range from 5% to 30%.

PAYDAY

It is important to decide and communicate the payday and pay schedule so that employees can plan their finances accordingly. This is expected from and employer in India. The wage period should be in accordance with the applicable laws.

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