



A COMPREHENSIVE GUIDE TO KEY TAX & REGULATORY CONSIDERATIONS

FOREWORD

I am immensely pleased to release our latest edition of 'Doing Business in India.' With this guide, I hope that the readers find the requisite inputs for operating their businesses in India and that the information provided will be valuable.

Against the backdrop of this century's worst pandemic and geopolitical tensions, most countries' economies risk recession. Various governments are taking steps to address this recessionary trend. Against this backdrop, India remains to be a shining star on a gloomy night as it continues to be the fastest-growing economy. Several initiatives such as Make in India, Digital India, production-linked incentive schemes, and an extension of concessional corporate tax of 15% have been introduced in the statute to support the economy and all sections of society.

To promote the growth of global trade with an emphasis on exports from India and to support the increasing interest of the international trade community, the Reserve Bank of India (RBI) has decided to put in place an additional arrangement for invoicing, payment, and settlement of exports/ imports in the Indian rupee. Looking at the current global economic scenario whereby many economies face a forex crunch, the RBI takes a timely and progressive step.

According to the data presented by the Government in the Parliament session, India received its highest-ever Foreign Direct Investment (FDI) inflow in FY 2021-22, coupled with an increase of 76% equity inflow in the manufacturing sector. In addition, the Government's vision to set up an International Financial Services Centre (IFSC) akin to such centres in Singapore, New York, and London will further augment foreign capital flows in India. Many companies, both Indian and international, are vying to reap the maximum benefits of this initiative which comes with tax breaks, regulatory reforms, and business incentivisation.

Designed to introduce the fundamentals of investing in India, VV Kale has developed this guide to serve as a reference as it contains chapters such as setting up a presence in India, exchange control regulations, mergers and acquisitions, tax and corporate laws, economic and labour laws that would provide insight not only to first-time investors but also to existing businesses.

As your trusted partner, VV Kale always seeks ways to facilitate your business growth. With this guide, I hope you find the right insights for building a successful venture in India, and I wish you a prosperous future in this land of opportunities.



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ECONOMY

The COVID-19 outbreak in 2020 has given rise to significant uncertainties that impacted the global economy. It has been more than two years since the pandemic and countries globally are still recovering from the economic slowdown that resulted from the lockdowns imposed to curb the spread of the virus. In India, while the first and second waves were lethal, the third wave did not impact the growth momentum. The Indian economy noticed a V-shaped recovery, clocking a GDP growth of 8.7% for the Fiscal Year (FY) 2021-2022, the highest in 22 years.

By February 2022, things started to look positive, but Russia's invasion of Ukraine disrupted the global economic situation again. Countries across the world, including India, are witnessing inflationary trends due to rising crude prices. The RBI is steadily increasing the interest rates to fight the increasing inflation. The economic sanctions on Russia could also have an impact on the trade relationship between India and Russia. Considering these events, the World Bank trimmed India's GDP growth target from 8.7% to 7.5% and the RBI predicted 7% GDP growth for FY 2022-2023.

The Government of India on the other hand is taking all possible measures to attract FDI and encourage business houses to make further investments in India. Certain key Government programs such as MGNREGS are yielding the desired results. The Government has also announced PLI Schemes for certain identified sectors to boost domestic manufacturing and make India a global manufacturing hub. The Government has also been taking steps to facilitate ease of doing business in the country. In this direction, it has launched the National Single Window System (NSWS), a web portal for obtaining various registrations and approvals. The NSWS portal will become a one-stop destination for investors for approvals and clearances.

As of today, the portal hosts applications for approvals from 21 Central Departments and 14 State Governments. The NSWS will provide an impetus to other government programs such as Make in India, Start-Up India, PLI Schemes, and so on.

The capital investment scenario is fairly buoyant and India has seen the birth of a large number of start-ups earning the tag of 'Unicorn' - about 100 Unicorns to date.

All in all, with the kind of optimism around the Indian economy and with the Government taking the right steps in the right direction at the right time, India could well be on course to be the fastest-growing economy in the world.



OVERVIEW OF INDIA

India is the world's largest democracy, the fifth largest country in terms of nominal GDP, and one of the most ancient civilisations. Let us look at some of the key facts of the most populous democracy in the world.



GEOGRAPHY

With a total area of 3.3mn sq. km, India occupies a major portion of the South Asian subcontinent and is divided into 28 states and eight union territories. The international land border is shared with Pakistan in the west, Nepal, China and Bhutan in the northeast, Bangladesh in the east and a maritime boundary with Sri Lanka in the south. It is surrounded by the Bay of Bengal, the Arabian Sea and the Indian Ocean. The nation has four seasons: winter (January-February), summer (March), monsoon (June-September) and a post-monsoon period (October-December).

DEMOGRAPHY

India's population of over 1.42bn people constitutes nearly a fifth of the world's population. India has favourable demographics and a competitive advantage over other countries as more than half the population is under the age of 25. As per Women and Men in 2022 released by the Ministry of Statistics and Programme Implementation on 16 March 2023, the sex ratio will be 952 by 2036, up significantly from 943 in 2011. The average literacy rate was 77.7% in 2017¹.

INDIAN CULTURE

With a very rich and diverse culture, the expression 'Unity in diversity' aptly suits the country. Indian languages, religions, dance, music, architecture, food and customs differ from region to region within the country. India is a secular state, and every citizen enjoys an equal right to choose and follow a religion. The country has a great variety of performing arts (dance, theatre, etc.) and visual arts (sculptures and painting).

FEDERAL STRUCTURE

The Indian federal system has a dual government structure - the Central Government and the State Governments. The Indian Constitution defines the structure and powers of the

KEY FACTS

CAPITAL	NEW DELHI
FINANCIAL CAPITAL	MUMBAI
CURRENCY	INR
LEGISLATIVE BRANCH	LOK SABHA & RAJYA SABHA
LANGUAGE	HINDI & ENGLISH

Central and State Governments. A statutory division of powers is enlisted in lists (Central, State and Concurrent) providing power to make laws. The existence of an independent judiciary is one of the important features of the Indian federal system. The Supreme Court, which is the Apex Court in India, acts as a guardian of the Constitution.

LEGAL AND REGULATORY SCENARIO

Legal aspects are an indispensable part of every business enterprise. Recognising and complying with the legal framework is necessary for the efficient and healthy functioning of an organisation. India has a set of legal rules that govern and regulate business entities. Some of the key business laws in India include:

- Competition Act, 2002, which seeks to ensure healthy and fair competition in the market.
- Indian Contract Act, 1872, which legislates principles relating to entering into a contract, performance and enforceability.
- The insolvency and Bankruptcy Code, 2016, was legislated to facilitate a formal and time-bound insolvency resolution process and liquidation.
- Goods & Services Tax Act, 2017, which covers key aspects of the contract of sale and service.

¹ <https://www.mospi.gov.in/publication/women-men-india-2022>

- Securities and Exchange Board of India Act, 1992, legislated for the regulation and development of the securities market in India and to protect the interest of investors.

Indian law is largely based on the English common law because of the long period of British colonial influence. Some important laws such as exchange regulations, tax legislations and corporate laws are covered in detail below in the respective chapters.

INDIAN TAX SYSTEM

The Indian tax structure follows a three-tier system, with the power to levy taxes distributed amongst Central, State and Local Governments. The Government has a right to levy taxes on organisations and individuals. Each tax levied or collected must be backed by an accompanying law. The Central Government formulates the law relating to taxes on income, customs, etc., while State Governments have certain powers to legislate about stamp duty, taxes on professions, electricity tax and tax on alcoholic liquor for human consumption. Some taxes such as water tax, etc., are levied by local authorities.

To remove multiple tax levies and the cascading effects of taxes, the Goods and Services Tax (GST) has been implemented across the country with effect from 1 July 2017, replacing the previous indirect tax system. GST is different from the previous indirect taxation system, marking a shift from 'origin-based' to 'destination-based' tax, uniformly applicable across the country. The law relating to GST is recommended by the GST Council, which has representatives from the Central as well as the State Governments. Such recommendations are implemented by the respective governments.

FOREIGN INVESTMENT

As per the Global Investment Prospects Assessment 2016- 2018, India ranks third among prospective host economies for FDI. The Indian Government's favourable policy regime and robust business environment have ensured that foreign capital keeps flowing into the country. The Government has taken many initiatives such as relaxing FDI norms across sectors and introducing instruments like Masala Bonds for attracting foreign capital, supplemented by flagship programmes such as 'Make in India', 'Skill India' and 'Digital India' which have made India a preferred choice for investors globally.

According to a report from The United Nations Conference on Trade and Development (UNCTAD), India ranked 7th for FDI inflows in 2021 attracting investments worth USD 64bn. According to the DPIIT², the FDI equity inflow in India stood at USD 87.10bn between April 2000 and June 2022. For April 2021-March 22, Singapore was the leading country with FDI worth USD 15.87bn, followed by USA (USD 10.54 bn), Mauritius (USD 9.39bn), Netherlands (4.62bn), Cayman Islands (USD 3.81bn), and UK (USD 1.64bn). As of 9 September 2022, India's forex reserves stand at USD 550.871bn³.

Between April 2000 and June 2022, the cumulative FDI inflows from Mauritius to India reached USD 160.11bn; contributing 26% to the total FDI inflows. Other top investors in the country include developed nations such as Singapore, Japan, the Netherlands, the USA, the UK and Germany.

FOREIGN TRADE POLICY (FTP)

The Government of India, Ministry of Commerce & Industry has introduced the new Foreign Trade Policy, 2023 (FTP-2023) with effect from 1 April 2023. The validity of the Foreign Trade Policy 2015-2020 was extended till 31 March 2023 owing to hurdles of the COVID-19 pandemic and ongoing geo-political situation. The new FTP shifts focus from incentives to a remission & entitlement-based regime, to remain compliant with WTO guidelines. The FTP-2023 focuses on greater trade facilitation through technology & automation, aiming to boost the country's exports to USD 2tn by 2030. The FTP-2023 is also continuing the Duty exemption schemes like Advance Authorisation, Duty-Free Import Authorisation (DFIA), Export Promotion Capital Goods (EPCG), Duty Remission schemes like Duty Drawback (DBK), Rebate on State and Central Taxes and Levies (RoSCTL) and Remission of Duties and Taxes on Exported Products (RoDTEP) scheme. The FTP-2023 also formulates various other schemes namely EOU, STPI, EHTP, BTP, etc., which provide various tax exemption schemes to promote cross-border trade. The policy emphasizes initiatives like 'Make in India' and 'Ease of Doing Business in India'. The Government has recently laid down stringent norms to ensure that concessional customs duty benefits under Foreign Trade Agreements (FTAs) are claimed only by legitimate importers by empowering the authorities to seek additional details/ documents to validate the originating status of the imported goods and to prevent misuse.

EASE OF DOING BUSINESS IN INDIA

According to World Bank Group data, India currently ranks 63rd on the ease of doing business index. In seven years, India's ranking has jumped from 142 to 63.⁵ Working towards this important priority, several steps are being taken by the Central Government, Departments and States to improve the ranking. Considerable progress has been made on indicators of starting a business, dealing with construction permits, protecting minority investors and getting electricity, etc. The latest reforms are aimed at introducing simplified and online processes for starting a business, dealing with construction permits, cross-border trades and resolving insolvency. In addition, the corporate tax rates have also been reduced significantly (25.17% for all companies other than specified manufacturing companies and 17.16% for specified manufacturing companies) to align with the tax rates of developed countries. Additionally, investor and business-friendly measures are in the pipeline, with an emphasis on the simplification and rationalisation of existing rules and the introduction of information technology for efficient governance.

² DPIIT, Quarterly Factsheet on FDI inflow from April 2000 to June 2022

³ Reserve Bank of India, a weekly statistical supplement of Foreign Exchange Reserve, 16 September 2022

⁴ DPIIT, Quarterly Factsheet on FDI inflow from April 2000 to June 2022

⁵ Doing Business 2020 - World Bank Report

SETTING UP PRESENCE IN INDIA

India stands as a great investment destination today, primarily due to it being one of the fastest-growing economies in the world, driven by economic reforms and a large consumption base. 'Make in India' is a major national programme of the Government of India, designed to facilitate investment and innovation and the best manufacturing infrastructure in the country. 'Start-up India' is another initiative to nurture innovation and entrepreneurship. India attracts many global majors for strategic investments owing to the presence of a vast range of industries, investment avenues & a friendly government. FDI has been a major financial resource for the economic development of India. Also, FPIs & FIIs drive Indian financial markets to a great extent. The Indian Government's favourable policy and business environment guarantee the inflow of foreign capital into the country.

Businesses are attempting to de-risk having too much of their supply chain concentration in one geographical area and, post-pandemic, are setting up companies in India. Considering this, business owners need to start planning the process of doing business in India. Apart from market research, a study of the relevant industry and political climate, building a business plan and an insight into the Indian regulatory and tax framework is necessary. In the ensuing pages, we have provided relevant focus factors for you to grasp and take cognisance of while setting up a business

INDIAN BUSINESS

Exchange Control Regulations	Direct Tax Laws	Indirect Tax Laws	Corporate Laws	Other Allied Laws
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FORMS OF BUSINESS

A foreign enterprise setting up operations in India has the following options:

OPERATING AS A FOREIGN COMPANY

LIAISON OFFICE (LO) OR REPRESENTATIVE OFFICE

Setting up an LO or Representative Office is a common practice of foreign companies willing to enter Indian markets. The purpose of an LO is to understand the business climate, promote awareness of the products of the parent entity and explore opportunities for business and investment. Los are the representative entities of a foreign company and have a limited role of:

- Representing the parent company/ group companies in India.
- Promoting export/ import from/ to India.
- Promoting technical/ financial collaborations between the parent/ group companies and the companies in India.
- Acting as a communication channel between the parent company and the Indian companies.
- The LO cannot undertake any business/ commercial activity in India and cannot earn any income in India. The expenses of an LO are mandatorily required to be met out of inward remittance from the HO. Further, an LO can be set up for three years with further extensions, subject to approval by the AD Bank.

BRANCH OFFICE (BO)

A BO is an extension of a foreign enterprise in India. Normally, the BO should be engaged in the same activity as the parent company. A BO can undertake the following permissible activities:

- Export/ Import of goods.
- Rendering professional or consultancy services.
- Carrying out research work, in the areas in which the parent company is engaged.
- Promoting technical or financial collaborations between the Indian companies and the parent or overseas group company.
- Representing the parent company in India and acting as a buying/ selling agent in India.
- Rendering services in information technology and development of software in India.
- Rendering technical support to the products supplied by the parent/ group companies.
- Representing a foreign airline/ shipping company.
- Foreign entities are permitted to set up BO in SEZ to undertake manufacturing and service functions, only in sectors where 100% FDI is permitted.



PROJECT OFFICE (PO)

Foreign enterprises that have secured a contract in India and are planning to execute specific projects through temporary sites/ offices are permitted to set up a PO. A general permission has been granted for setting up a PO subject to either of the following conditions:

- The project is funded directly by inward remittance from abroad
- The project is funded by a bilateral or multilateral International Financing Agency
- The company or entity in India awarding the contract has been granted a term loan by a Public Financial Institution or a bank in India for the project
- The project has been granted the necessary regulatory clearance.

The validity period of a PO depends on the tenure of the project.

GENERAL CRITERIA FOR THE ESTABLISHMENT OF LO/BO/PO IN INDIA

Applications from a foreign company, a body corporate incorporated outside India, including a firm

or other association of individuals for establishing LO/ BO/ PO in India shall be considered by the AD bank as per the guidelines issued by the RBI.

Approval of the RBI is required for opening an LO/ BO/ PO in India in the following cases:

- If the applicant is a citizen of or is registered/ incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau
- If the application is for opening an LO/ BO/ PO in Jammu and Kashmir, the Northeast region, or the Andaman and Nicobar Islands
- If the principal business of the applicant belongs to Defence, Telecom, Private Security or Information and Broadcasting. However, an RBI approval is not separately required in cases where approval by the concerned authority has already been granted
- If the applicant is an NGO, non-profit organisation, body/ agency/ department of a foreign government. However, if such an entity is engaged in any of the activities covered under the FCRA, it shall obtain prior permission or certificate of registration under the FCRA and shall not require approval of the RBI.

OPERATING AS AN INDIAN COMPANY

SUBSIDIARY COMPANY

Setting up a subsidiary company through incorporation or acquisition is a very common form of structure for doing business in India by foreign companies. Such companies are treated as Indian resident companies for Indian laws and regulations, despite being 100% foreign-owned. Foreign enterprises seeking a long-term presence can set up WOS/ JV in India in the form of a private company or an unlisted public limited company, subject to prescribed FDI guidelines. A subsidiary company can be funded either through equity or debt. Companies in India are subject to corporate tax at 15%-30% plus applicable surcharge and education cess, depending on certain defined parameters. Any company formed in India is required to have at least two directors, one of which must be an Indian resident.

INCENTIVES FOR DOING BUSINESS

SPECIAL ECONOMIC ZONES (SEZ)

An SEZ is an area in which business laws are different from the rest of the country. The Indian Government introduced the SEZ policy to instil confidence in investors and showcase the Government's commitment to economic growth supported by quality infrastructure in a hassle-free and competitive environment. Prime objectives and salient features of an SEZ are:

- Generation of additional economic activity.
- Enhancement of foreign & domestic investment.
- Export promotion.
- Creation of employment opportunities.
- Development of infrastructure facilities.

To achieve this, the SEZ scheme offers incentives to exporters under the tax and regulatory framework. SEZs are deemed as foreign territories for trade operations and duties and tariffs. An entity can be set up in an SEZ for manufacturing as well as for providing services. Currently, 378 SEZs are notified in India of which 265 are operational.

Indirect Tax Exemptions

Activities	Customs duties	GST
On procurement.	Import duty exempt.	Zero-rated supply.
Export clearance of goods.	Export duty is not applicable except in the case of specified goods.	Zero-rated supply.
Export clearance of services.	Not relevant.	Taxable or zero-rated depending on the 'Place of Supply' of service.
Domestic clearance of goods or services or both.	Basic Custom Duty (BCD) plus Social Welfare Surcharge applicable for clearance of goods.	IGST is applicable on clearance of goods or services or both.

Along with tax incentives, the SEZ policy also offers relaxation in regulatory compliance requirements.

LIMITED LIABILITY PARTNERSHIP (LLP)

An LLP, a body corporate, is considered as a separate legal entity, distinct from its partners. While an LLP provides benefits like that of a company, LLPs are comparatively easier to manage with fewer compliance requirements. The liability of partners is restricted to their contribution to the LLP. LLP is required to have at least two designated partners who are individuals, of which one must be an Indian resident. 100% FDI has been permitted under the automatic route in LLPs operating in sectors/ activities where 100% FDI is allowed under the automatic route without FDI-linked performance conditions.

JOINT VENTURE (JV) WITH AN INDIAN PARTNER

A JV is a business arrangement entered into by a foreign company with an Indian Partner to undertake a commercial activity. Though the formation of a subsidiary is a preferred option, several foreign companies have also begun operations in India by forging a strategic alliance. In a JV, the partners retain their distinct identities. A JV can be undertaken by forming a new company or LLP or by simply entering into a commercial agreement, and it can be funded either through equity or debt.

Direct Tax Incentives

A deduction is available to SEZ units over 15 years in the following manner:

Years	Deductions
First 5 years	100% of profits derived from exports
Next 5 years	50% of the profits derived from exports
Subsequent 5 years	50% of the profit, subject to additional conditions relating to re-investment

A sunset date of 30 June 2020 has been provided for the commencement of activity of manufacturing or production by an SEZ unit for availing a deduction. Hence, an entity set up on or after 1 July 2020, shall not be entitled to SEZ benefits.



INTERNATIONAL FINANCIAL SERVICE CENTRE (IFSC)

An IFSC is a type of SEZ that deals with flows of finance, financial products and services across borders. It undertakes financial services transactions currently carried on outside India by overseas financial institutions and overseas branches/ subsidiaries of Indian financial institutions. These service centres cater to customers outside India. IFSC in India is situated in GIFT City, Gujarat. It targets the following business segments:

- Offshore Banking.
- Capital Markets.
- Offshore Asset Management.
- Offshore Insurance.
- IT Services, ITES/ BPO and Ancillary Services.
- Bullion Exchange.
- Aircraft Leasing and Financing.
- Ship Leasing and Financing.
- Fintech and Education.

Income derived from a unit of an IFSC set up in an SEZ has the following tax incentives:

Direct Tax Incentives: A deduction of 100% of the income derived from the unit set up in an IFSC for any 10 consecutive years out of 15 years from the start of the business. There are several other incentives such as exemption from STT and CTT, lower MAT rate and capital gains exemption in certain cases, as detailed in Chapter 'TAX LAWS'. With effect from 1 April 2023, Offshore Banking Units (OBUs) in SEZ are entitled to claim a 100% deduction for the first five years and further OBUs in the SEZ are also allowed to claim a 100% deduction in the next five years, i.e., from years 6th to 10th, which were earlier eligible for a 50% deduction.

Indirect Tax Incentives: Import of goods or services for authorised operations shall be 'Zero Rated'. Also, GST shall not apply on the import of services from the head office or other branches located across the globe. Further, custom duties shall not be applicable on the import of goods for setting up IFSC. The local procurement of goods as well as services for carrying out authorised operations are zero-rated.

CUSTOMS FACILITATION - AUTHORIZED ECONOMIC OPERATOR

India has developed a comprehensive unified 3-tier trade facilitation program, viz., the AEO. This is considering the various international developments on trade, customs and international supply chains and the focus of the Government of India on 'Ease of Doing Business'. The AEO program seeks to provide radical tangible benefits in the form of faster customs clearances and simplified customs procedures to those business entities that operate in a highly secure supply chain.

Key benefits of the AEO Scheme

- 24/7 clearance at all customs stations.
- Direct port entry/ delivery [green channel facility].
- Deferred customs duty payment at half monthly rest with T+2 days facility.
- Faster adjudication including, but not limited to, refunds, export duty drawback, etc.
- **Multiple Tiers of Certification**
 - AEO T1 (Basic)
 - AEO T2 (Advanced)
 - AEO T3 (Premium)
 - AEO LO (for logistics providers)
 - Authorized Public Undertakings (APU)

FUNDING OPTIONS

After an entity is set up, it is required to be funded. Different forms of entities provide different levels of flexibility in choosing the funding options. Further, a channel of funding depends upon factors such as the nature of the business, intended capital structure (equity to debt ratio), future financial forecasts, etc. Funding of an Indian company by its foreign parent enterprise is primarily driven by the Exchange Control Regulations that deal with the mode of investment, the manner of receipt of funds, pricing guidelines, etc. An Indian company can be financed by any of the following channels:

EQUITY CAPITAL

Referred to as 'Common Stock' internationally, equity shares represent ownership of a company, providing voting and economic rights to the shareholder. The issue of equity shares by an Indian company to a foreign parent needs to comply with the sectoral cap and valuation norms as prescribed under the regulations. Equity capital can be repatriated on liquidation or the transfer of shares.

Returns from equity investment are received in the form of a dividend.

COMPULSORILY CONVERTIBLE PREFERENCE SHARES (CCPS) AND COMPULSORILY CONVERTIBLE DEBENTURES (CCD)

As the term suggests, CCPS and CCD are compulsorily convertible into equity shares as per the terms of the instrument issued. The conversion formula/ price is required to be decided upfront at the time of issue of these instruments. CCPS and CCD cannot be redeemed or repaid and accordingly, are treated at par with equity shares for regulatory purposes.

WARRANTS

Warrants are instruments carrying a right to convert into equity shares at a future date. A warrant requires 25% of the total consideration to be paid upfront whereas the balance is within a specified period of 18 months from the date of issue of these instruments. The pre-determined price for warrant conversion cannot be lower

than the price of equity shares determined at the time of the issue of warrants.

EXTERNAL COMMERCIAL BORROWING (ECB)

Debts raised by an Indian company from foreign sources fall within the purview of the ECB. It refers to commercial loans in the form of bank loans, buyer's credit, supplier's credit, loans from a foreign shareholder, securitised instruments (such as floating rate notes and fixed rate bonds), Foreign Currency Convertible Bonds (FCCBs), Foreign Currency Exchangeable Bonds (FCEBs), INR denominated bonds or a financial lease from non-resident lenders in any freely convertible foreign currency or Indian Rupee.

An ECB can be either foreign currency denominated, or INR denominated. Further, ECBs can either be availed under the automatic route or the approval route.

An ECB can be raised by an Indian 'Eligible Borrower' from an 'Eligible Lender'.

Borrowers eligible for ECBs include all entities eligible to receive FDI (except LLPs). Eligible lenders should be residents of FATF or IOSCO-compliant countries and include foreign equity holders of Indian borrowing entities holding the prescribed percentage of capital.

The RBI has prescribed the limits up to which ECBs can be availed and its approval is required to raise funds beyond these limits. ECB guidelines also prescribe an 'all-in-cost' ceiling for raising funds through ECBs.

Issue of non-convertible, optionally convertible or partially convertible preference shares and debentures are considered as ECB, and all the relevant ECB regulations are applicable in such cases.

RUPEE-DENOMINATED BONDS/MASALA BONDS

Rupee-denominated bonds or Masala Bonds under the ECB route offer an opportunity for resident entities to borrow from international markets without the need to hedge the exchange rate risk. Any proposal of borrowing by eligible resident entities in the form of these bonds shall be examined by the RBI. Issuance of these bonds is subject to the prescribed conditions such as minimum maturity period and all-in-cost ceiling.

CONVERTIBLE NOTE

To promote investments in start-up companies, the RBI has introduced Convertible Notes as a means of finance to start-up companies. The Note is either repaid on maturity (not exceeding 10 years) or converted into equity shares of the start-up company, at the option of the holder.

AMERICAN DEPOSITORY RECEIPTS (ADR), GLOBAL DEPOSITORY RECEIPTS (GDR) AND FCCB

Qualifying Indian companies are allowed to raise equity capital overseas by the issue of ADRs, GDRs or FCCBs. Such companies are required to seek approval from the Government through the Foreign Investment Facilitation Portal (FIFP) where the issue exceeds the permissible FDI investment thresholds under the automatic route or when an investment is made in a project that requires Government approval.

REPATRIATION OF FUNDS

REPATRIATION OF CAPITAL

The foreign investment together with the profits thereon can be fully repatriated (net of taxes), provided such investment was made on a repatriable basis. Capital can be repatriated either through secondary sale, share buyback or capital reduction (purchase of shares through a tribunal mechanism). The share buyback/ purchase should comply with the corporate regulatory framework in place. Repatriation would be subject to applicable taxes.

REPATRIATION OF EXTERNAL COMMERCIAL BORROWINGS (ECB) AND INTEREST THEREON

An ECB can be repaid by an Indian company, subject to restrictions such as the minimum maturity period contained in the ECB guidelines. The interest paid on such borrowing can be freely repatriated (net of taxes). Conversion of ECB requires compliance with pricing guidelines and FDI sectoral caps.

REPATRIATION BY LLP

The partners of an LLP can withdraw their capital without any restriction. Further, there is no tax incidence, either on partners or LLP on such withdrawal.

REPATRIATION OF DIVIDEND

Payment of dividends by an Indian company is freely repatriable. The Indian company is liable to withhold tax on the distribution of dividends to shareholders.

The taxability of dividends and the tax rate thereon shall depend upon many factors like the residential status of the shareholders and the relevant head of income. In the case of a non-resident shareholder, the provisions of DTAAs and MLI shall also come into play.

ROYALTY AND TECHNICAL KNOW-HOW

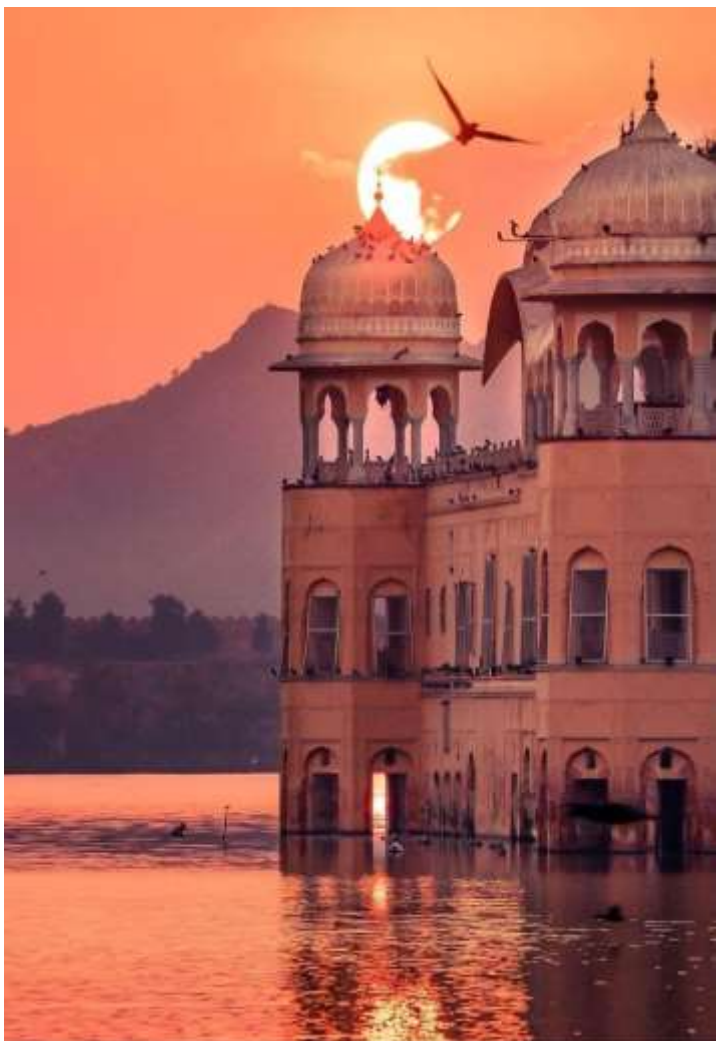
Indian companies are freely permitted to remit payment for know-how and royalties to foreign enterprises subject to applicable tax withholding.

TECHNICAL SERVICE FEES AND MANAGEMENT FEES

An Indian company can make payment of fees for services availed from foreign enterprises, subject to certain conditions and applicable tax withholding. An Indian company can also remit cost allocations charged to it (management fees) for group-level finance, accounts, legal and other functions carried out by the foreign enterprise, subject to the applicable tax withholding.

OTHER REMITTANCES

Indian branches of companies incorporated outside India are permitted to remit profits to their head office, net of applicable taxes, on the production of certified financial statements and a certificate from a Chartered Accountant.



EXCHANGE CONTROL AND INVESTMENT-RELATED REGULATIONS

The exchange control regulations for the flow of money into and outside of India have largely been liberalised keeping in mind the needs of the stakeholders and the initiation and growth of the 'Make in India' initiative. Transactions entailing the flow of funds in and out of India are regulated by the RBI under FEMA. The guidelines relating to various aspects of foreign exchange management are issued through Circulars and Notifications by the RBI at regular intervals with Master Directions being suitably updated for the alteration in the rules/ regulations. Broad guidelines to determine the residential status for exchange control regulations are stated as under:

Term	Definition
A person resident in India	- A person residing in India for a period of 182 days during the preceding fiscal year except for the purposes of employment or for carrying on business or for any other purpose indicating an uncertain period of stay. - A person or a corporate body incorporated in India. - Office, branch or agency in India controlled by a person resident outside India. - Office, branch or agency outside India owned or controlled by a person resident in India.
A person resident outside India	A person who is not a resident in India.
Resident Indian citizen	An individual who is a citizen as well as a resident of India.
Non-Resident Indian	An individual who is a citizen of India but residing outside India.
Overseas Citizen of India	An individual who is registered as an OCI cardholder and residing outside of India.

FOREIGN EXCHANGE TRANSACTIONS

Foreign exchange transactions can be categorised into the following types:

CAPITAL ACCOUNT TRANSACTIONS

Transactions that alter assets or liabilities outside India, of a person resident in India or those in India of a person resident outside India. Examples are a subscription to the equity capital of an Indian company by a non-resident, any borrowing or lending between a person resident in India and a person resident outside India, etc. Generally, capital account transactions are prohibited unless specifically permitted. The list of permissible and prohibited capital account transactions (e.g. investment in an entity engaged in specified businesses like real estate) is notified by the RBI from time to time.

CURRENT ACCOUNT TRANSACTIONS

It refers to transactions other than capital account transactions. Current account transactions generally do not require prior approval of the RBI, except in the following cases:

- Consultancy services procured from outside India of over USD 1mn per project (USD 10mn in case of infrastructure projects).
- Reimbursement of pre-incorporation expenses subject to the higher of USD 0.1mn and 5% of investment brought into India.



FOREIGN DIRECT INVESTMENT

Economic liberalisation, accessibility to a cheaper workforce and ease of doing business have been making India a popular investment destination. Foreign investments further enhance the economic development of the country, thereby contributing to its growth.

Foreign investment into equity shares/ CCPS/ CCD/ share- -warrants (equity instruments) of an unlisted Indian company or in 10% or more of the post-issue paid-up equity capital of a listed Indian company on a fully diluted basis is treated as FDI. The investment could be in the form of a fresh subscription or acquisition/ transfer of existing shares. The investment/issue of equity shares can also be made for a consideration other than cash, against swap of equity instruments, imports, and pre-operative expenses, subject to prescribed conditions. FDI can be made either under the approval route or the automatic route. Under the automatic route, foreign investment can be made in specified activities/ sectors without the approval/ permission of either the Government or the RBI. FDI in activities not covered under the automatic route requires prior approval of the Government.

The Indian Government has opened several sectors under the automatic route to attract foreign investment. Under the current framework, FDI is permitted in almost all sectors, except in entities engaged in the business of chit fund, Nidhi company, real estate business⁶ or construction of farmhouses, trading in TDRs, lottery business, gambling and betting, including casinos (including through foreign technology collaborations), manufacturing of cigars,

cigarillos, cheroots and cigarettes of tobacco or tobacco substitutes, etc. In April 2020, the Government revised its policy to state that an entity of a country that shares a land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of such a country can now invest in India only with prior government approval. (A citizen or an entity incorporated in Pakistan is strictly prohibited from making any investment in the sectors like defence, space, atomic energy and such other sectors or activities prohibited for foreign investment).

Approval will also be required in case the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, results in the beneficial ownership falling within the above restriction.

⁶ For this purpose, Real Estate Business does not include development of townships, construction of residential/ commercial premises, roads or bridges and REITs registered under the SEBI (REITs) Regulations, 2014.

PRICING GUIDELINES

The guidelines concerning the price of shares are as follows:

Form of FDI	Listed Indian company	Unlisted Indian company
Fresh issue of shares	The price is worked out in accordance with SEBI guidelines	Not less than the fair value of shares determined by a SEBI registered Merchant Banker/Chartered Accountant/practising Cost Accountant, as per internationally accepted pricing methodology on an arm's length basis
Transfer of shares from resident to non-resident	Not less than the price arrived at as per preferential allotment guidelines prescribed by SEBI	Same as above
Transfer of shares from non-resident to resident	Not exceeding the price worked out in accordance with SEBI guidelines or price as per preferential allotment guidelines prescribed by SEBI	Not exceeding the fair value of shares determined by a SEBI registered Merchant Banker/Chartered Accountant/practising Cost Accountant, as per internationally accepted pricing methodology on an arm's length basis

Exceptions to the pricing norms are as under:

- Investment in equity shares under a subscription to the Memorandum of Association of a company can be made at face value.
- The valuation involved in the swap arrangement must be made by a SEBI registered Merchant Banker or an investment banker outside India registered with the appropriate authority in the host country.
- Pricing guidelines do not apply to an investment in equity instruments by a person resident outside India on a non-repatriation basis.
- The price of shares offered in a rights issue by an Indian company to a person resident outside India should be:
 - At a price determined by the company in case of shares listed on a stock exchange.
 - At a price not less than the price offered to resident shareholders, in the case of unlisted shares.
- A person resident outside India who has acquired a right from a person resident in India (who has renounced it) may acquire equity instruments (other than share warrants) against the said rights as per the general pricing guidelines applicable in the case of rights issue.
- In the case of convertible equity instruments, the price or conversion formula of the instrument should be determined upfront at the time of issue of the instrument. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, by the parameters stated above.

DEFERRED CONSIDERATION

It is permitted to have deferred consideration in case of a transfer of shares between a resident buyer and a non-resident seller. The buyer can pay not more than 25% of the consideration on a deferred basis. Deferred payment needs to be made within 18 months from the date of transfer.

Deferred consideration can also be settled through an escrow arrangement or in the form of an indemnity.

FOREIGN INVESTMENT IN LLP

Foreign investment up to 100% is permitted in LLPs under the automatic route in sectors/ activities eligible for 100% FDI under the automatic route without any performance conditions, by a person resident outside India/ entity incorporated outside India other than an FPI or FVCI. Other provisions for foreign investments in LLP include:

- A company engaged in a sector where foreign investment up to 100% is permitted under the automatic route and there are no FDI-linked performance conditions, can be converted into an LLP under the automatic route and vice-versa.
- Investment in LLP can be either by way of capital contribution or acquisition or transfer of profit share.
- In the case of a transfer of capital contribution or profit share from a person resident in India to a person resident outside India, the transfer shall be for a consideration equal to or more than the fair price of capital contribution or profit share of an LLP. In case of a transfer of capital contribution or profit share from a person resident outside India to a person resident in India, the transfer shall be for a consideration that is less than the fair price of the capital contribution or profit share of an LLP.

The fair value is to be determined as per the internationally accepted valuation method as certified by a Chartered Accountant/practising Cost Accountant/ approved valuer from a panel maintained by the Central Government.

- LLPs not owned/ controlled by resident Indian citizens or LLPs owned/ controlled by persons resident outside India are permitted to make downstream investments in another company in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.
- Each PO can open two foreign currency accounts, usually, one denominated in USD and the other in home currency, provided both are maintained with the same AD bank.

BORROWINGS

Indian companies are currently allowed to access funds from abroad inter-alia by way of the ECB. Start-ups can issue convertible debt instruments to FVCI against receipt of foreign remittance. The ECBs provide an advantage to an Indian company in terms of lower overseas interest rates.

The ECBs are regulated by RBI and can be accessed through two routes - automatic and approval route, and should comply with parameters such as all-in-cost ceiling, minimum average maturity period and end-use restrictions.

FOREIGN PORTFOLIO INVESTORS

An eligible applicant can apply for registration as an FPI either as Category I or Category II FPI with the designated depository participant. An FPI registered with SEBI can invest in shares, debentures and warrants of Indian companies, both listed and unlisted, within the prescribed limits. FPIs are permitted to invest in schemes of mutual funds, collective investment schemes, REITs, InvITs, Category III AIFs, listed derivatives (including exchange-traded commodity derivatives), debt securities (as permitted by RBI) and Indian depository receipts. An FPI is required to appoint a domestic Indian custodian to hold in custody its Indian securities.

START-UP COMPANIES

Start-ups are now eligible to issue equity or equity-linked instruments or debt instruments to FVCI against receipt of foreign remittances. Start-ups can also issue convertible notes to a person resident outside India, subject to the following conditions:

- A person resident outside India (other than an individual who is a citizen of Pakistan or Bangladesh or an entity of such country), may purchase such convertible notes issued by such Indian start-up for an amount of INR 2.5mn or more in a single tranche.

- A startup company that is engaged in a business where foreign investment requires government approval can issue convertible notes only with the approval of the government.
- NRIs/ OCIs can acquire convertible notes on a non-repatriation basis subject to the prescribed conditions.
- A person resident outside India can acquire or sell convertible notes, from or to a person resident in or outside India, provided the transfer takes place by the eligible entry routes and pricing guidelines.

INVESTMENT VEHICLES

Investment Vehicles are regulated by SEBI and include REITs, InvITs, AIFs and mutual funds.

ALTERNATIVE INVESTMENT FUND (AIF)

- AIF means any fund established/ incorporated in India as a trust or a body corporate that collects funds from Indian/ foreign investors by issuing units and investing for the benefit of the investors.
- AIFs can raise funds from any investor, whether Indian, foreign or non-resident Indian through private placement and can seek registration in either of the following categories:
 - 'Category I' invests in start-up or early-stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable and includes venture capital funds, SME Funds, social venture funds and infrastructure funds. Category I AIFs are allowed to engage in hedging, including credit default swaps, subject to conditions as may be specified by the SEBI from time to time.
 - 'Category II' does not fall in either Category I or III.
 - 'Category III' employs diverse or complex trading strategies and may employ leverage, including through investment, in listed or unlisted derivatives. Category II and Category III AIFs are allowed to trade the credit default swaps subject to conditions as may be specified by SEBI from time to time.
- Foreign investors of the AIF must be a resident of the country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding or a signatory to the bilateral Memorandum of Understanding with SEBI. Further, the underlying investor/(s) contributing 25% or more in the corpus, must not be the person mentioned in the sanctions list notified by the United Nations Security Council and is a resident in the country identified in the public statement of Financial Action Task Force, as specified.
- Category I AIF and Category II AIF are to be close-ended while Category III AIF may be open-ended or close-ended funds.

- Each Scheme of AIF is to have a corpus of at least INR 200mn, wherein the minimum investment from an investor shall be INR 10mn. In the case of a scheme relating to a social impact fund, the minimum corpus shall be INR 50.
- Category I and Category II AIF shall invest not more than 25% of investible funds in an Investee Company
- Category III AIF shall invest not more than 10% of the investible fund in an Investee Company, directly or through investment in units of other AIF (This limit is 20% for large value funds for accredited investors of Category III AIF).
- Balance investible funds may be invested in liquid mutual funds bank deposits or other liquid assets, etc. Units of close-ended AIF may be listed on the stock exchange subject to a minimum tradeable lot of INR 10mn.

INFRASTRUCTURE INVESTMENT TRUST

- To invest in prescribed infrastructure assets, a sponsor on behalf of the trust can apply for the registration of a trust as an InvIT.
- SEBI-registered InvIT (unlike REIT) may offer its securities initially through a public offer or a private placement. The value of the InvIT assets is to be at least INR 5,000mn and an offer size of at least INR 2,500. However, the listing of units shall be mandatory even if privately placed with a trading lot INR 10mn.
- At least 80% of the value of InvIT assets are to be invested directly or through holding companies or SPVs in eligible infrastructure projects (completed and revenue-generating project/ pre-commercial operation date project/ project that has received all the requisite approvals and certifications).
- The balance value of InvIT assets may be invested in under-construction infrastructure projects directly or through holding companies or SPVs and certain other permissible instruments.

REAL ESTATE INVESTMENT TRUST

- To invest in real estate assets, a sponsor on behalf of the trust can apply for registration of a trust as a REIT.
The initial issue of REIT units should be in the form of a public issue only. The value of the REIT assets is to be at least INR 5,000mn and the offered size is to be at least INR 2500mn. The subsequent issue of REIT units may be by other modes (such as a follow-on offer, preferential allotment, qualified institutional placement, rights issue, bonus issue or offer for sale).

- At least 80% of the value of REIT assets are to be invested through the holding company and/ or SPVs in completed and rent and/ or income-generating properties.
- The balance value of REIT assets may be invested in under-construction properties, completed but non-rent generating properties, unutilized FSI and TDR concerning existing investments and certain other permissible instruments.

OFFSHORE PARTICIPATION IN INVESTMENT VEHICLES

- A person resident outside India may invest in units of an investment vehicle. The investment vehicle may issue its units to a person resident outside India against a swap of equity instruments of an SPV that the investment vehicle proposes to acquire.
- The investment made by an investment vehicle into an Indian entity shall be reckoned as indirect foreign investment for the Indian entity if the sponsor or manager or investment manager is not owned and controlled by a person resident in India/owned and controlled by persons outside India.
- A Category III AIF that has received foreign investment shall invest in only those securities in which FPI is allowed to invest.



BANKING

With the emergence of an international network of enterprises and globalised markets, interlacing with the banking sector that facilitates and promotes such flow has been pivotal. The Indian banking sector is adequately and efficiently structured to meet the demands of the global economy. In India, RBI plays the role of a regulator of the banking system. The functions include issuing of monetary policy, monitoring key indicators like inflation and controlling and supervising the bank system in India. The Indian banking sector comprises of different types of institutions to cater to the divergent banking needs of various sectors of the economy. A well-regulated Indian banking system broadly consists of public sector banks, private sector banks, foreign banks, regional rural banks and rural and urban co-operative banks. The ever-evolving business dynamics and the aspirations of the Indian economy for the future also require a strong and vibrant banking sector to be in place to adequately support the investment demands of such growth. Keeping this perspective, the RBI has set up an Internal Working Group to examine and review the extant licensing and regulatory guidelines relating to ownership and control, corporate structure and other related issues.

PROJECT OFFICE (PO)

A PO is opened for a limited purpose during the execution of a project and the life of the project office is limited to the tenure of project. An AD bank can open non-interest-bearing foreign currency accounts for POs in India which have to be closed on the completion of the project subject to, inter-alia, the following conditions:

The contract under which the project is sanctioned specifically provides for payment in foreign currency.

- Each PO can open two foreign currency accounts, usually, one denominated in USD and the other in home currency, provided both are maintained with the same AD bank.
- Permissible debits to the account related to the payment of project-related expenditure and credits, being foreign currency receipts from the Project Sanctioning Authority and remittances from parent/ group company abroad or bilateral/ multilateral international financing agency.

BRANCH OFFICE (BO) AND LIAISON OFFICE (LO)

BO and LO provide a window for foreign investors to have an initial understanding of the business environment in India and the activities that can be undertaken by BO and LO are specified. For opening an LO in India, a foreign company needs to obtain registration with the RBI, the route for which is dependent on the sector of operations.

BO and LO are allowed to open a bank account in India. Permissible debits include local expenses incurred by the BO or LO and towards remittance of profit (only in case of BO)/ winding up proceeds. Permissible credits are funds received from the HO for meeting expenses of the office and any other legitimate receivables in the process of business operations, refund of security deposits, taxes, duties, etc., and sale proceeds of assets of the LO. Term deposit account for a period not exceeding six months in favour of a BO/ PO/ LO of a person resident outside India is permitted. This is subject to the bank being satisfied that the term deposit is out of temporary surplus funds, and the BO/ PO/ LO furnishes an undertaking that the maturity proceeds will be utilised for the business in India within three months of maturity.

NRI and PIO

Such persons can open, hold and maintain the following types of accounts with an AD Bank, without the permission of the RBI.

NRO Account

- Any person resident outside India may open an NRO account with an AD Bank for bona fide transactions denominated in Indian Rupees.
- The account may be opened/ maintained in the form of current, savings, recurring or fixed deposit accounts.
- NRI/ PIO can repatriate amounts up to USD 1mn per fiscal year from these accounts.
- Loans against the deposits can be granted in India to the account holder or third party with prescribed end-use restrictions.
- Inward remittances from outside India, legitimate dues in India and transfers from other NRO accounts are permissible credits to this account. Permissible debits to this account are local payments, transfers to other NRO accounts, remittance of current income abroad and transfers to NRE account.

NRE ACCOUNT

- NRIs and PIOs can maintain NRE accounts in the form of savings, current, and recurring/ fixed deposit accounts.
- Loans can be extended against the security of funds held in the NRE account either to the depositors or third parties without any ceiling subject to the usual margin requirements.
- Credits permitted to this account are current income like rent, dividend, pension, interest, etc. (subject to the satisfaction of AB bank), transfer from other NRE/ FCNR (B) and maturity proceeds of the investment made through this account. The debits allowed from this account are local disbursements, transfers to other NRE/ FCNR (B) and investments in India.

FCNR (B) ACCOUNT

- NRIs and PIOs are permitted to maintain FCNR (B) accounts which can be only in the form of fixed deposits in any permissible currency.
- All debits/ credits permissible concerning NRE accounts, including credit of sale proceeds of FDI investments, are permissible in FCNR (B) accounts also.

SNRRACCOUNT

- Any person resident outside India, having business interest in India can open an SNRR account for bona fide INR-denominated transactions.
- Business interest includes making investments in India, import and export of goods and services, trade credit transactions and lending under the ECB framework apart from generic business interests.
- Debits/ credits and the balances in the account shall be incidental and commensurate with the business operations of the account holder.

INR VOSTRO ACCOUNT

- RBI has allowed trade settlement between India and other countries in INR and introduced a Rupee Payment Mechanism. AD banks in India, with the prior permission of RBI, have been permitted to open INR VOSTRO Accounts.
- All exports and imports under the arrangement may be denominated and invoiced in INR and the exchange rate between the currencies of the two trading partner countries may be market-determined.
- Indian importers/ exporters undertaking imports/ exports through this mechanism shall make payment/ be paid in INR which shall be credited into/ paid from the balances in the designated INR VOSTRO account of the correspondent bank of the partner country.
- Receipt of advance payments in INR by Indian exporters against exports is permitted through this mechanism, provided Indian banks ensure that available funds in these accounts are first used towards payment obligations arising out of already executed export orders and payments in the pipeline.
- Issue of bank guarantee for trade transactions undertaken through this arrangement is permitted, subject to adherence to extant FEMA provisions.

INVESTMENT BY AN INDIAN ENTITY IN AN OVERSEAS JURISDICTION

An Indian entity is allowed to invest in foreign jurisdictions. However, such investments are governed by FEMA. Recently, the Central Government and RBI have operationalised a new Overseas Investment regime, whereby Foreign Exchange Management (Overseas Investment) Rules, 2022 (OI Rules) were notified by the Central Government vide Notification No. G.S.R. 646(E) dated 22 August 2022 and Foreign Exchange Management (Overseas Investment) Regulations, 2022 (new OI Regulations) were notified by RBI vide Notification No. FEMA 400/2022-RB dated 22 August 2022. Some of the significant changes in the new ODI

regime are listed below:

- Enhanced clarity concerning various definitions and introduction of the concept of 'strategic sector'.
- Dispensing with the requirement of approval for:
 - Deferred payment of consideration.
 - Investment/ disinvestment by a person resident in India under investigation by a specified investigative agency/ regulatory body.
 - Issuance of corporate guarantees to or on behalf of the second or subsequent level step-down subsidiary.
 - Write-off on account of disinvestment.
- Introduction of late submission fee for reporting delays.

²Duke of Westminster 19 TC 490 2

³WT Ramsay 54 TC 101



KEY COMPLIANCES

Some of the major compliances to be adhered to are:

- **Annual Return on Foreign Liabilities and Assets**

Submission by companies that have received FDI or an LLP that have received investment by way of capital contribution and/ or made overseas investment in the previous year(s), including the current year, on or before 15 July every year on the web-based online reporting portal.

- **Annual Activity Certificate for BO/LO**

Submission along with an audited financial statement on or before 30 September every year.

- **Submission of Charter Documents**

Filing of Form FC-1 (Submission of charter documents and other specified details and documents within 30 days of the establishment of place of business in India), Filing of Form FC-3 (Details of financial statements along with the list of all places of business established by a foreign company in India within six months of the end of the financial year), Filing of Form FC-4 - (Annual return within 60 days of the end of the financial year), etc.

- **Issue of Shares**

Report to RBI within 30 days in Form FC-GPR in Single Master Form (along with Valuation Report from Chartered Accountant/ Merchant Banker).

- **Transfer of Shares**

Report to RBI within 60 days of transfer or receipt of funds, whichever is earlier, in Form FC-TRS in the Single Master Form.

- **LLP receiving an amount of consideration for capital contribution and acquisition of profit shares from a person resident outside India**

To be reported in Form LLP(I) in Single Master Form, within 30 days from the date of receipt of consideration.

- **Disinvestment/ transfer of capital contribution or profit share in case of LLP between resident and non-resident**

To be reported by the resident transferor/ transferee in Form LLP(II) in the Single Master Form within 60 days from the date of receipt of funds.

- **Foreign investment in an investment vehicle**

To be reported by the investment vehicle receiving such foreign investment within 30 days of the date of issue of units in Form InVi in the Single Master Form.

TAX LAWS DIRECT TAX

The laws relating to direct taxes are legislated by the Parliament and administered by the Department of Revenue in the Ministry of Finance through CBDT.

INCOME TAX: The law governing the levy and collection of income tax in India is the Income-tax Act, 1961 (IT Act). Some of the important provisions are discussed below:

TAX YEAR: The tax year in India covers a period from 1 April to 31 March.

RESIDENCY: An Indian company is always treated as a resident in India. Further, a company other than an Indian company is said to be a resident of India for a particular fiscal year if its PoEM (Place of Effective Management) in that year is in India. The PoEM is defined as a place where key management and commercial decisions that are necessary for the conduct of business are, in substance, made. Detailed guidelines have been prescribed to ascertain the PoEM of a company.

A partnership firm (LLP and General Partnerships) is said to be resident in India except in cases where control and management are situated wholly outside India.

Tax residency provisions applicable to individuals with effect from the fiscal year 2020-2021 are given below:

Conditions	Residential Status
Basic Conditions	
Stay in India for ≥ 182 days during the fiscal year, OR ≥ 60 days# during a fiscal year, and ≥ 365 days during the four years preceding the fiscal year.	If any one condition is satisfied: Resident If both conditions are not satisfied: Non-Resident

Additional Conditions for Residents

Stay in India for ≥ 730 days during the seven years preceding the fiscal year.	If both conditions are satisfied: Resident and Ordinarily Resident If any one condition is not satisfied: Resident and Not Ordinarily Resident.
Resident in two out of the 10 preceding fiscal years.	

182 days or more for

- Indian Citizens leaving India during the fiscal year for employment purposes and
- Indian citizens and Persons of Indian origin outside India come on a visit to India having a total income (other than income from foreign sources) $\leq$ INR 1.5mn*.

* For Indian citizens and persons of Indian origin with a total income (other than income from foreign sources) $>$ INR 1.5mn, tax residency would be determined as per the table below:

Conditions	Residential Status
For Indian Citizens or Persons of Indian Origin - Total income (other than income from foreign sources) $>$ INR 1.5mn. - Stay in India ≥ 120 days but < 182 days during the fiscal year; ≥ 365 days in 4 years preceding the fiscal year.	Resident and not Ordinarily Resident
For Indian Citizen - Total income (other than income from foreign sources) $>$ INR 1.5mn. - Not liable to tax in any other country or territory by reason of his domicile/residence/other similar criteria.	Resident and not Ordinarily Resident

SCHEME OF TAXATION

India follows residence as well as source-based taxation. Residents and ordinarily residents are taxable on their worldwide income, whereas non-residents are liable to tax on income sourced in India or income received in India. The scope of taxable income in the case of residents and not ordinarily residents is the same as for non-residents, with the addition that worldwide income would also be taxed if it is derived from a business controlled in or a profession set up in India.

Further, income accruing or arising through or from any business connection in India or through or from any property or asset or source of income or transfer of capital asset situated in India is taxable in India.

The phrase 'business connection' is not defined in the IT Act. However, in general parlance, the meaning of 'business connection' used in the IT Act is similar to the concept of PE. The Indian courts have interpreted 'business connection' to mean a regular and intimate relation between a non-resident and a source of conducting business in India and earning income therefrom. In the present digital era, India is in the phase of including even a significant online presence in India within the ambit of a 'business connection'.

With the introduction of deemed residency concept for Indian citizens, India is moving towards citizenship-based taxation as well.

TAX RATES

Companies

■ Corporate Tax - Domestic Company

In an attempt to boost foreign investments, the Indian Government introduced the concessional tax regime during FY 2019- 2020, slashing corporate tax rates for domestic companies to 22% (15% in the case of new manufacturing companies), subject to certain conditions. The present corporate tax rate structure is as under:

Particulars	Resident Company opting for Concessional Tax Regime		Resident Company not opting for Concessional Tax Regime					
	Any company	New manufacturing company	Company with turnover up to 4,000mn*			Other Companies		
			Up to 10mn	Above 0mn up to 100mn	Above 100mn	Up to 10mn	Above 10mn up to 100mn	Above 100mn
Basic Tax Rate	22%	15%	25%	25%	25%	30%	30%	30%
Surcharge	10%	10%	-	7%	12%	-	7%	12%
Cess	4%	4%	4%	4%	4%	4%	4%	4%
Effective Tax Rate	25.17%	17.16%	26.00%	27.82%	29.12%	31.20%	33.38%	34.94%

[For FY 2023-2024, turnover for FY 2021-2022 is to be considered. A tax rate of 25% (plus applicable surcharge and cess) is also applicable to domestic manufacturing companies set up on or after 1 March 2016].

* A manufacturing company set up and registered on or after 1 October 2019, and has commenced manufacturing of articles and things on or before 31 March 2024, using new plant and machinery.

■ Corporate Tax - Foreign Company

Particulars	Up to 10mn	Above 10mn up to 100mn	Above 100mn
Income Threshold (INR mn)			
Basic Tax Rate	40%	40%	40%
Surcharge	-	2%	5%
Cess	4%	4%	4%
Effective Tax Rate	41.60%	42.43%	43.68%

Firms / LLPs

The applicable tax rate is 30% (plus applicable Surcharge and Cess).

Individuals

Old Tax Rates

Slabs of Taxable Income	Tax Rate*
Up to INR 0.25mn	Nil
INR 0.25mn to INR 0.50mn	5%
INR 0.50mn to INR 01mn	20%
Above INR 01mn	30%

*plus applicable Surcharge and Cess

Concessional Tax Rates

The Indian Government has also introduced concessional tax rates for individuals by reducing the tax rate and phasing out certain deductions and exemptions. From FY 2023-24, the new concessional tax rates will be applicable unless the taxpayer opts for the old taxation regime:

Slabs of Taxable Income	Tax Rate*
Up to INR 0.3mn	NIL
INR 0.3mn to INR 0.6mn	5%
INR 0.6mn to INR 0.9mn	10%
INR 0.9mn to INR 1.2mn	15%
INR 1.2mn to INR 1.5mn	20%
Above INR 1.50mn	30%

*plus applicable surcharge and cess

Under the new tax regime, where the total income does not exceed INR 0.7 mn, a tax rebate is available.

Minimum Alternate Tax (MAT)

MAT provisions envisage a levy of tax on companies at 15% of book profits (plus applicable surcharge and education cess) if tax under normal provisions (at rates mentioned above) is less than the tax on book profits. If taxes paid under MAT provisions exceed the normal tax liability, the excess can be carried forward for up to 15 years and claimed as a credit against future tax liabilities under normal provisions.

The book profits for computing MAT liability are to be computed based on a Statement of Profit and Loss prepared by the provisions of The Companies Act, 2013. A framework for the computation of MAT has been specified for Ind-AS-compliant companies.

MAT provisions do not apply to foreign companies that do not have a PE in India. Indian companies opting for the concessional tax rate of 15% or 22%, as mentioned above, are also not subject to MAT provisions.

Alternate Minimum Tax (AMT)

AMT provisions envisage a levy of tax on persons other than companies at 18.5% of adjusted total income (plus

applicable surcharge and education cess) if tax under normal provisions (at rates mentioned above) is less than the tax on adjusted total income. If the taxes paid under AMT provisions exceed the normal tax liability, the excess can be carried forward for up to 15 years and claimed as a credit against future tax liability under normal provisions. Adjusted total income is to be computed by increasing taxable income by certain profit-linked deductions.

Individuals or HUFs opting for concessional tax rates as mentioned above are not subject to AMT provisions.

Dividend Distribution Tax (DDT)

Before 1 April 2020, domestic companies were subject to DDT at an effective rate of 20.56% on dividends declared and distributed to their shareholders. Such dividend income was exempt in the hands of the shareholders, except resident non-corporate shareholders (i.e., individuals, Hindu Undivided Families or a firm/LLP) who were subject to an additional tax of 10% (excluding surcharge and cess) on dividend income more than INR 1mn.

From FY 2020-2021 onwards, the Government has abolished DDT, thereby making dividends taxable in the hands of the shareholders at the applicable rate, and the companies declaring/ distributing dividends would not be required to pay DDT. Further, to prevent the cascading tax impact, the deduction applies to a domestic company in respect of a dividend received by it from any other domestic company, foreign company, or business trust to the extent of the dividend declared or distributed to its shareholders, up to one month before the due date of filing the return of income.

Having abolished DDT, withholding tax has been introduced on dividends distributed by domestic companies at the prescribed rates.

Buy-back Tax

A domestic company (both listed and unlisted) is liable to pay tax at a rate of 20% (plus applicable surcharge and cess) on distributed income on the buy-back of its shares. 'Distributed income' means the consideration paid by the company to its shareholders on the buy-back of shares, as reduced by the amount received by the company for the issue of such shares.

HEADS OF INCOME

For the computation of taxable income, an income of a taxpayer is classified into five different heads viz. income from salary, income from house property, income from profits and gains of business or profession, income from capital gains, and income from other sources.

Under every head of income, there is a charging section that defines the scope of income chargeable under that head.

These heads of income exhaust all possible types of income that can accrue to or be received by the taxpayer. For illustrative purposes, incomes earned by a person may be classified as follows:

- Salary and pension earned are taxable under the head 'Salaries'.
- Rental income from house property is taxable under the head 'Income from house property'.
- Income derived from carrying on any business or profession is taxable under the head 'Profits and gains from business or profession'.
- Profit from the sale of a capital asset (viz., land, shares for investment purposes, building, etc.) is taxable under the head 'Capital Gains'.
- Income that is chargeable to tax but not taxable under the first four heads will be taxed under the head 'Income from other sources', which is the residuary head of income (i.e., dividend, interest, etc.)

Taxpayers must classify their income from different sources under the relevant head of income and compute the income or loss in accordance with the provisions governing a particular head of income. The final amount of income or loss under each head of income, after allowing the deductions, allowances, and other adjustments, is then aggregated, after giving effect to the provisions for clubbing of income and set-off and carry forward of losses, to arrive at the total taxable income. The tax liability on the total taxable income is computed accordingly, based on the residential status of the taxpayer and applicable tax rates. Further, the taxpayer would be eligible to claim a foreign tax credit against their tax liability in India.

LOSSES

Losses may be setoff against the same or other heads of income, subject to specific allowability and other conditions. Business losses can be carried forward for eight years and set off against future business income. In the case of closely held companies, 51% of the shares should be held by the same person in the year of set-off to avail the benefit of carried-forward business losses. This condition has been relaxed for eligible start-ups. Unabsorbed depreciation can be carried forward indefinitely for set-off in future years against any head of income other than salaries.

Short-term capital losses can be set off against both STCG and LTCG, whereas long-term capital losses can be set off only against LTCG. A limit of eight years for carryforward also applies to loss under the head 'Capital Gains'. There is no provision for carry back of losses.



TAX INCENTIVES AND DEDUCTIONS

■ Exemptions/Deductions from Taxable Income

The IT Act encompasses various deductions and incentives that serve as a boost and facilitate the smooth growth of businesses by easing the tax burden for a specified tenure. Incentives and deductions are primarily in the form of expenditures incurred and profits and gains arising from the running of certain businesses specified by the IT Act.

Tax incentives available for certain entities having business income are as under:

Sno	Nature of deduction	Description*
1	Special provisions in respect of newly established units in SEZ	Units established in SEZ after 1 April 2005 but before 1 April 2020 are eligible for the following deduction: 100% of profits for the first five consecutive fiscal years. 50% of profits for the next five consecutive fiscal years. - for the next five consecutive fiscal years, 50% of the profit, subject to additional re-investment conditions.
2	Additional depreciation for a taxpayer engaged in the business of manufacture or production	Additional depreciation of 20% on the actual cost of the new plant and machinery in addition to the normal depreciation in the year of acquisition. Higher additional depreciation at 35% (instead of 20% aforesaid) in respect of the actual cost of eligible new machinery or plant acquired and installed by a manufacturing undertaking or enterprise which is set up in the notified backward area on or after 1 April 2015 and ending before 1 April 2020.
4	Expenditure on scientific research	100% of revenue and capital expenditure (excluding land). 100% of sums paid to approved institutions.
5	Deduction in respect of expenditure on specified businesses, such as cold chain, warehousing, hotel, hospital, etc.	100% of capital expenditure for specified business (excluding land or goodwill or financial instrument).
6	Amortisation of certain preliminary expenses	Subject to conditions and self-certification in a prescribed manner, 1/5th of such preliminary expenditure incurred on the commencement of business, for extension of the existing business or setting up a new unit, can be claimed as a deduction for five successive years from the fiscal year in which such business commences.
7	Special provision in respect of start-ups	100% of profits for three consecutive fiscal years out of 10 years, beginning from the fiscal year in which the business is established.
8	Deductions in respect of profits and gains from housing projects	100% of profits, subject to satisfying certain conditions and where the project is approved after 1 June 2016 but on or before 31 March 2022.
9	Additional deduction in respect of employment of new employees	A taxpayer subject to tax audit can avail of an additional deduction at 30% of 'new employee cost' for three consecutive fiscal years, subject to certain conditions, i.e.,: - Cap of total emoluments. - Participation in provident fund. - A minimum period of service in a financial year. - Mode of payment, etc. Subject to satisfaction of other conditions, if the employee does not satisfy the minimum period of service in the year of joining, then the employee can be considered as a new employee for the subsequent year. Accordingly, the taxpayer can avail the deduction from the subsequent year.
10	Deduction in respect of inter-corporate dividends	An Indian company is allowed to claim the deduction in respect of dividends received on the investment made, subject to a limit of the amount of dividend distributed by it to its shareholders.

* Subject to specified conditions governed by each section

Reduction in corporate tax rates resulted in the phasing out of various profit-linked, investment-linked and area-based deductions. The above incentives/ deductions, except for deduction in respect of new employment and inter-corporate dividends, are not available for taxpayers opting for the Concessional Tax Regime.

▪ Income from Patent

To spur innovation and encourage R&D, a special concessional tax regime is in place for Indian tax residents on income by way of royalty from patents developed and registered in India. The royalty income from such patents is taxed at a flat rate of 10% without allowing any deduction for expenses incurred.

▪ Relaxation from filing a return of income to foreign companies

As per Indian tax law, every company is required to file its Return of Income (ROI) on or before the due dates as may be prescribed. Accordingly, foreign companies who have earned income from a source in India are also required to file their ROI in India. However, the foreign company is not required to furnish ROI if its total income consists of only dividends, interest, royalties or fees for technical services and tax deductible at source on such income has been deducted and paid to the Government of India.

▪ Presumptive Taxation

The business income of non-residents engaged in specified businesses is presumed at a specified percentage of the gross receipts of the business.

Specified Business	Rate
Shipping Business	7.5%
Business of exploration or production of mineral oils	10%
Business of operation of aircraft	5%
Certain businesses in connection with turnkey power projects	10%

The taxpayers availing the benefit of the presumptive taxation scheme are not required to maintain books of accounts or get their accounts audited. However, if income lower than the specified rates above is to be offered to tax, audited accounts are required.

▪ Benefits for Start-Ups

India has undisputedly established itself as a start-up hub. Driven by factors such as massive funding, evolving technology and burgeoning consumer demand, it has attracted a significant amount of FDI in start-ups. To encourage the growth of start-ups, various tax benefits are available in India which are summarised as follows:

▪ Deduction of business income

Start-ups are eligible for income-tax deduction of 100% of profits and gains derived from eligible businesses for three consecutive years out of 10 years, beginning from the year in which the eligible start-up is incorporated. The eligible start-up is required to abide by the prescribed conditions.

▪ Tax exemption to individual/ HUF on investment of long-term capital gain in equity shares of eligible start-ups

The IT Act provides exemption on long-term capital gains from the sale of a residential property if the net consideration is utilised for a subscription of equity shares of eligible start-ups.

Thus, if an individual/ HUF sells a residential property and invests the capital gains to subscribe to 25% or more equity shares of the eligible start-ups, then the tax on long-term capital will be exempt. The start-ups are also required to use the amount invested to purchase new assets within one year from the date of the subscription of equity shares.

▪ Set-off of carry-forward losses allowed in case of a change in the shareholding pattern

As mentioned above, the IT Act restricts the carry forward of loss if the shareholding pattern changes by more than 49%. However, an eligible start-up is allowed to carry forward and set off losses despite a change in the shareholding pattern, provided all the shareholders of such a start-up who held shares carrying voting power on the last day of the fiscal year in which the loss was incurred, continue to hold shares in the year of set-off. Further, such loss has to be incurred for 10 years beginning from the year in which such a start-up company was incorporated.

▪ Tax exemption on excess premium received by eligible start-ups

Any excess share premium received by closely held companies upon the issue of shares (also referred to as 'Angel tax') is taxable under 'Income from other sources', subject to satisfaction of prescribed conditions. However, eligible start-ups can claim exemption from Angel Tax, provided they file a prescribed declaration and do not invest in certain specified assets. Also, the proposed investor needs to meet the required criteria.

OTHER IMPORTANT ASPECTS

Taxation of Super Premium

To discourage the generation and use of unaccounted money, any excess premium received over and above the Fair Market Value (FMV), by a closely held company on the issue of shares is taxable as 'income from other sources'. The FMV of the shares is to be determined as per the prescribed rules, or the value as may be substantiated to the satisfaction of the tax authorities.

The tax on excess premium does not apply to shares issued by start-ups (as explained above) and by a venture capital undertaking to a venture capital company/ fund or funds registered as a Category I or a Category II AIF, regulated by SEBI.

Further, income from insurance policies (other than ULIP and other than on death of the insured) issued on or after 1 April 2023 shall be taxable if the premium or aggregate of premiums is above INR 0.5mn per year.

Taxation of Transfers Without/ For Inadequate Consideration

This is an anti-abuse provision that taxes the receipt of money or any property (including shares) by any person without consideration or for inadequate consideration (i.e. receipt less than the aggregate FMV of property by an amount exceeding INR 0.05mn). The IT Act provides certain exemptions such as a receipt from a relative or under a will, receipts under transfers exempt from the capital gains tax, etc.

Deemed Consideration on sale of equity shares

To curb evasion of tax on the sale of unquoted equity shares, the IT Act provides that in case of transfer of unquoted shares of a company, the FMV of such shares determined in the prescribed manner shall be deemed to be the full value of consideration for computing income chargeable to tax as capital gains.

KEY PROVISIONS ON TAXATION OF NON-RESIDENTS

International Agreements

▪ Tax Treaties

The Indian Government has entered into Tax Treaties (comprehensive) with approximately 95 countries. The objective of a Tax Treaty is to grant relief from double taxation of the same income in two countries and to exchange information between these countries. The provisions of the IT Act or Tax Treaty, whichever is more beneficial to the taxpayer, are to be applied. The beneficial treatment could be in respect of the scope of taxable income or tax rates.

India is also a signatory to the Multilateral Instrument (MLI) notified under Action Plan 15 of BEPS Action Plans, which will be applied alongside existing Tax Treaties. The Indian Government announced its ratification of the MLI on 12 June 2019 and deposited the instrument of ratification along with the list of reservations to the MLI provisions and the list of Covered Tax Agreements (CTA) with OECD on 25 June 2019. As such, MLI came into force in India on 1 October 2019 and came into effect in India on 1 April 2020. For specifics of positions taken by India on MLI clauses with various countries, please refer to Appendix 1.

▪ Exchange of Information

The exchange of information is a step towards achieving global tax cooperation through the implementation of international tax standards and other instruments to put an end to bank secrecy and tackle tax evasion.

The Indian Government has entered into 20 Tax Information. Exchange Agreements with various countries. India is also one of the early adopters of the Common Reporting Standard on Automatic Exchange of Information, which is an initiative of the G20 and OECD countries to combat the problem of offshore tax evasion and avoidance and stashing of unaccounted money abroad.

Tax Regime

▪ Significant Economic Presence (SEP)

The concept of SEP was introduced in line with Action Plan 1 of BEPS Action Plans, wherein a non-resident constitutes a business connection in India due to SEP and accordingly, any income attributable to such SEP is considered taxable in India.

SEP is constituted when transactions in respect of any goods, services or property are carried out by a non-resident in India (including the provision of data or software to be downloaded in India) and these transactions exceed the threshold of INR 20mn. It also includes any systematic and continuous soliciting of business activities or engaging with 0.3mn or more users in India through digital means. The provision was proposed to be effective from FY 2020-2021. However, the Finance Act, 2020, deferred the applicability of SEP tax rules to FY 2021-2022.

The Finance Act, 2020, has further enhanced the scope of SEP to include in its ambit income of non-residents from advertisements targeted at Indian customers or accessed through Indian internet protocol addresses, or income from the sale of data/ goods/ services collected from an Indian resident or a person using an Indian internet protocol address.

▪ Place of Effective Management

The test of residency for foreign companies under the IT Act was amended in 2015. As per the amended rules, a foreign company is treated as a resident of India if its PoEM, during a given fiscal year, is in India. The term PoEM is defined to mean a place where key management and commercial decisions that are necessary for the conduct of business are, in substance, made. Detailed guidelines have been prescribed to ascertain the PoEM of a foreign company in India. The PoEM would not apply to a foreign company having turnover or gross receipts less than INR 500mn.

▪ Equalisation Levy

In line with Action Plan 1 of the BEPS Action Plans, Equalisation Levy has been introduced as a separate Chapter of the Finance Act, 2016. Equalisation Levy is chargeable at 6% on consideration for specified services paid to a non-resident (not having the PE in India) by an Indian resident carrying on business or profession or by the Indian PE of a non-resident. The specified services include online advertisement, any provision for digital advertising space or any other facility or service for online advertisement.

The Finance Act, 2020 has further enhanced the scope of the Equalisation Levy w.e.f. 1 April 2020 to levy a 2% tax on consideration exceeding INR 20mn, received by non-resident e-commerce operators (not having PE in India) for providing or facilitating 'e-commerce supply or service' to certain specified persons.

The expression 'e-commerce supply or service', inter alia, includes the online sale of goods or online provision of services or facilitation of the online sale of goods or provision of services. The Finance Act, 2021, has further clarified the terms 'online sale of goods' or 'online provision of service' to include one or more of the following online activities:

- Acceptance of the offer for sale,
- Placing the purchase order,
- Acceptance of the purchase order,
- Payment of consideration,
- Supply of goods or provision of services, partly or wholly.
- Sale or provision for service may qualify as an online sale or service if any of the above-mentioned activities take place online. This has significantly increased the scope of the equalisation levy. The income which is subject to the equalisation levy is exempt from income tax liability.

■ Withholding Tax on E-commerce Transactions

There will be a withholding tax obligation at 1% (5% if PAN or Aadhar number not submitted) on payments made by e-commerce operators to e-commerce participants resident in India, for the sale of goods or services facilitated through such e-commerce operators, in case of an individual or HUF the gross receipts are above INR 0.5mn in an FY.

■ Gift Tax on Non-residents

Any sum of money paid without consideration by a resident to a non-resident is considered as income 'deemed to accrue or arise' to such non-resident in India & thereby liable to income tax, subject to specified exemptions. These provisions have been introduced to curb the round-tripping of funds and are applicable on transactions carried out after 5 July 2019. The provisions of the applicable Tax Treaties with India continue to apply in such cases.

■ Interest, Royalty, Fees for Technical Services Dividend

These categories of payments by a resident to a non-resident are taxable in India, except where it is payable in respect of a business or profession carried on outside India or for making or earning any income from any source outside India.

These incomes are taxed on a gross basis. The rates of taxation as per the IT Act are as below.

Particulars	Tax Rate*
Interest Income	
■ Interest on money borrowed or debt incurred in foreign currency (other than interest from sources specified below) by Indian residents from non-residents.	20%
■ Interest from an Indian company or business trust (REIT/InvIT):	
- On borrowings made in foreign currency under a loan agreement or by way of the issue of long-term infrastructure bonds before 1 July 2023.	5%
- On Rupee denominated bonds before 1 July 2023.	5%
- On long-term bond or Rupee-denominated bond on or after 1 April 2020 but before 1 July 2023 which is listed on a recognised stock exchange in IFSC.	4%
- Long-term bond or rupee-denominated bond issued by an Indian company and listed on a recognised stock exchange in the IFSC on or after 1 July 2023.	9%
■ Interest earned by FPI	5%
- From Rupee-denominated Bonds or Government securities before 1 July 2023.	5%
- From Municipal debt securities before 1 July 2023.	
■ Other Interest Income	40%
- For companies.	As per slab rates
- For individuals.	
Royalty and Fees for Technical Services	20%
Dividend	20%

**plus applicable surcharge and education cess*

▪ Change in taxation of Dividend

Before 1 April 2020, income distributed as dividends by domestic companies/- mutual funds was chargeable to a DDT in the hands of the companies/ mutual funds. Such dividend income was exempt in the hands of the shareholders and unitholders. In the case of non-resident shareholders, no credit for DDT could be claimed in their home country.

The Finance Act, 2020, has made a landmark amendment by abolishing the DDT and resorting to the classical system of taxation of dividend income, with an intent to eliminate a dual level of taxation.

Dividend income received by a domestic company from any other company (including a foreign company) or business trust shall be allowed as a deduction, to the extent such dividend income is distributed by the company as a dividend to its shareholders at least one month before the due date of furnishing of an income tax return. This is done to avoid a cascading effect of tax on shareholders who themselves are companies.

Having abolished DDT, withholding tax has been introduced on dividends distributed by domestic companies at the prescribed rates. Non-resident shareholders can apply lower Tax Treaty rates, if any, for taxation of dividends.

With effect from 1 April 2022, the dividend received by the domestic company from a foreign subsidiary holding a minimum shareholding of 26% in the foreign subsidiary, would be taxed as per the corporate tax rate. This amendment was to bring tax treatment on dividends received from foreign subsidiaries on par with dividends received from Indian subsidiaries.

▪ Capital Gains

Capital gains are classified as Long Term Capital Gains (LTCG) and Short Term Capital Gains (STCG) depending upon the period for which capital assets (shares, securities, etc.) are held by the taxpayer. Assets held for a holding period more than as provided below qualify as long-term capital assets, whereas assets held for a holding period less than as provided below qualify as short-term capital assets:

- Listed securities and units of an equity-oriented fund - 12 months.
- Unlisted shares - 24 months.
- Immovable property (land or building or both) - 24 months.
- Other assets - 36 months.
- Market Linked Debenture or Specified mutual fund - STCG irrespective of the period of holding.

The nature of capital gains (long-term vs. short-term) basis the above has an impact on the tax rate applicable.

Non-residents are eligible for indexation of cost (to account for price inflation) adjustments for foreign exchange fluctuations or a lower rate of capital gains tax, in respect of certain transactions.

The tax rates on capital gains for non-residents are tabulated below:

Capital Asset	Tax Rates	
	STCG	LTCG
Listed equity shares or units of an equity-oriented fund, chargeable to STT	20%	12.5%
Market Linked Debenture(MLD)	Applicable rate*	
Unlisted securities or shares or debt mutual funds, in case of:		
Companies	40%	12.5%
Firms	30%	12.5%
Individuals	Slab rates	12.5%
Other Assets, in case of:		
Companies	40%	12.5%
Firms	30%	12.5%
Individuals	Slab rates	12.5%

* MLDs are hybrid instruments having combined features of plain vanilla debt securities and exchange-traded derivatives. To align the tax treatment of MLD with derivatives, the newly inserted section 50AA of the Act provides that irrespective of the holding period, gains from MLD shall be taxable as short-term capital gains (STCG) at applicable rates.

Notes:

STT is to be paid at the time of acquisition and transfer as well, subject to certain exceptions such as acquisition through an initial public offering, investment as per FDI guidelines, etc.

The computation of capital gain would be without giving effect to indexation and foreign exchange fluctuation.

Long-term capital gains up to INR 0.1mn are not taxable.

Cost step-up available for listed equity shares acquired before 1 February 2018, in line with the FMV of the shares as on 31 January 2018.

▪ Indirect Transfer

The indirect transfer provisions have been enacted in the backdrop of a landmark decision of the Indian Apex Court in the case of Vodafone International Holding BV, wherein the indirect transfer of assets located in India was ruled as not taxable in India. The scope of taxable income has thereafter been widened to cover within its ambit transfer of share or interest in a foreign entity, where such share or interest derives its value substantially from assets located in India. The share or interest is said to 'derive its value substantially from assets located in India' if the value of assets located in India, as of the specified date exceeds INR 100mn and represents at least 50% of the value of all assets owned by a foreign company or entity. Further, an exception is carved out for small investors holding no right of management or control of such foreign entity and holding less than 5% of the voting power/ share capital/ interest of the foreign entity that directly or indirectly owns the assets situated in India. Investment in Category-I FPI under the SEBI (FPI) Regulations, 2019 [erstwhile Category I and II FPIs under the SEBI (FPI) Regulations, 2014] is outside the scope of these provisions. For the operation of the above provisions, separate valuation rules for the valuation of assets and determination of income attributable to assets in India have been prescribed. Certain compliances have been specified (filing of prescribed forms and detailed documentation) for the non-resident transferor and the Indian concern about indirect transfer provisions.

▪ Non-withholding tax on non-resident payments

Payment to a non-resident or to a foreign company, on which withholding tax is applicable, is not treated as tax-deductible expenditure for the FY, if tax is not withheld or after withholding is not paid by the Indian payer within the due date of filing the Income-tax return for such an FY. Such expenditure is tax deductible only in the fiscal year in which the WHT is paid. This provision aims to discourage non-withholding on payments to non-residents. Subject to fulfilment of certain conditions, expenditure on which tax is not withheld can be claimed as an allowable expenditure if the payee has paid tax on the corresponding income.

TAX COMPLIANCES

Permanent Account Number (PAN)

Business entities and individual taxpayers are required to obtain a tax registration number called PAN in India. This is a unique identification number allotted to each taxpayer. Further, taxpayers who hold a PAN and are also eligible to obtain an Aadhaar number and are required to link the Aadhaar number with a PAN.⁷

Withholding Tax (WHT)

The IT Act casts a responsibility on payers of certain sums (exceeding prescribed thresholds) to withhold tax at a specified rate at the time of credit or payment, whichever

is earlier. The WHT provisions cover within its ambit various payments to resident taxpayers, such as fees for professional or technical services, royalties, rent, etc.

The liability to withhold tax on payments to non-residents depends upon whether the corresponding income is chargeable to tax in India. In case the non-resident payee is liable to tax on the sums to be received from the Indian payer, the WHT rate is determined based on the rate provided in the IT Act or the Tax Treaty, whichever is beneficial.

The applicability of the above WHT rates was earlier subject to the furnishing of PAN by the payee. However, this requirement of furnishing PAN to the payer has been relaxed for non-residents in respect of payments like interest, royalty, fees for technical services and transfer of any capital asset, subject to furnishing of certain prescribed details and documents.

A payer who is liable to withhold tax is required to obtain a TAN, subject to certain exceptions. The tax withheld by the payer is required to be deposited to the credit of the Government within specified due dates. Further, the payer is required to file periodical WHT returns and furnish WHT certificates to the payees, due dates respect of which are as under:

Quarter	Due Date for filing WHT returns
April – June	31 July
July – September	31 October
October – December	31 January
January – March	31 May

In case of failure to withhold tax either in whole or part, interest at 1% per month from the date on which tax was required to be withheld to the date on which tax is withheld, is charged. If WHT is not deposited within the prescribed date, then interest is charged at 1.5% per month from the date of withholding to the date of payment.

Advance Tax

The IT Act requires each taxpayer to estimate taxable income for the fiscal year. Based on such estimation, the taxpayers are required to pay advance tax at 15%, 45%, 75% and 100% of tax liability (net of WHT) by 15 June, 15 September, 15 December and 15 March respectively of a fiscal year. In case the advance tax paid falls short of actual tax liability, the differential amount is liable for interest.

⁷ Aadhaar-PAN linking due date has been extended to 30 June 2023 subject to payment of additional fees. In case the PAN-Aadhaar linking is not completed by the extended due date, the PAN will become inoperative

Tax Audit

If sales, turnover or gross receipts of a business exceed INR 10mn, the taxpayer is required to get its accounts audited under the IT Act, by a Chartered Accountant in India. In the case of taxpayers carrying a profession, an audit is mandatory in case gross receipts exceed INR 5mn. The calendar of due dates for furnishing tax audit report is as under:

Type of Taxpayer	Due Date
Taxpayers are liable for a tax audit but not liable to furnish TP Certificate.	30 September
Taxpayers are liable for tax audit and liable to furnish TP Certificate.	31 October

The above due dates are also applicable to any certifications required to be obtained by the taxpayer concerning taxability/ exemptions/ allowance/ deductions.

The Finance Act, 2021, has increased the turnover threshold for tax audits for taxpayers carrying on business from INR 50mn to INR 100mn if cash receipts and payments do not exceed 5% of the total receipts and payments, respectively.

Income Computation and Disclosure Standards (ICDS)

ICDS is to be followed by all taxpayers, except certain specified taxpayers, for computation of income taxable under the head 'Profits and gains of business or profession' or 'Income from other sources'. The ICDS lays down various principles to be followed for items like provisions and contingent liabilities, inventories, fixed assets, revenue from contracts, financial securities, etc.

Income-tax Return Filing

After the end of an FY, a tax return is to be filed in a prescribed form by each taxpayer. The calendar of due dates is as under:

Type of Taxpayer	Due Date
Individuals, LLP/ Partnership Firms not liable for tax audit and TP Certificate.	31 July
Companies, taxpayers liable for a tax audit, working partners of LLP/ Partnership Firms liable for tax audit.	31 October
Taxpayers liable to furnish TP Certificate.	30 November

A foreign company needs to mandatorily file a return of income in India (subject to certain exceptions). If a tax return is filed after the due date, interest at 1% per month and a certain prescribed late filing fee are payable. Belated tax returns and revised returns (to rectify any mistake) can be filed within nine months from the end of the FY or completion of the assessment, whichever is earlier.

Vide Finance Act, 2022, the updated tax return can be filed within 36 months from the end of the FY or completion of the assessment, whichever is earlier. An updated return can be filed irrespective of whether the original return, belated return or revised return has been filed. An updated return can be filed only if it is not an income tax return of loss, increasing tax liability or a decrease in a refund due.

Foreign Account Tax Compliance Act/ Common Reporting Standard

The IT Act mandates every reporting financial institution as prescribed under the IT Rules, to report to the tax authorities the investment value of its investors who are non-resident and/ or US citizens/ green-card holders, annually (for the period 1 Jan to 31 Dec) in the prescribed return format. The due date for compliance with such reporting requirements is 31 May.



AUDIT BY TAX AUTHORITIES AND LITIGATION

Income reported by the taxpayer is assessed by tax authorities basis various selected criteria. Timelines for undertaking and completion of assessments are as under:

Particulars	Timelines
The due date for completing the assessment for FY 2019-2020.	30 months from the end of the fiscal year - 42 months from the end of the FY (in case reference is made to the transfer pricing officer).
The due date for completing the assessment for FY 2020-2021.	21 months from the end of the FY. 33 months from the end of the FY (in case reference is made to the transfer pricing officer).
The due date for completing the assessment for FY 2021-22 and onwards.	24 months from the end of the FY. 36 months from the end of the FY (in case reference is made to the transfer pricing officer).
The due date for filing an appeal before the First-Appellate Authority*.	Within 30 days from the receipt of the final assessment order.
The due date for filing objections before the Dispute Resolution Panel.	Within 30 days from the receipt of the draft assessment order.
The time limit for issuing directions and passing an order by the Dispute Resolution Panel ⁸ .	Within 9 months from the end of the month in which the draft assessment order is received.
The due date for filing an appeal before the Income Tax Appellate Tribunal*.	Within 60 days from the receipt of the order passed by the First-Appellate Authority.
The due date for filing an appeal before the jurisdictional High Court*.	Within 120 days from the receipt of the order passed by the Income Tax Appellate Tribunal.
The time limit for filing an application for the Mutual Agreement Procedure.	The time limitation for filing an application for Mutual Agreement Procedure is governed by the respective Tax Treaty entered into between the countries. Generally, the time limit ranges between 2 – 3 years from the date of the notice giving rise to double taxation.

The Finance Act, 2021, has replaced the Authority of Advance Ruling (AAR) with the Board of Advance Ruling. Accordingly, the AAR shall cease to operate with effect from 1 September 2021. Further, the Central Government has notified the 'e-Advance Rulings Scheme, 2022' in this regard.

There has been a shift to faceless assessments/ e-assessments, wherein the interface between the taxpayer and the tax authorities is substantially eliminated. In case a taxpayer does not agree with the conclusion of a tax assessment, the same can be challenged before the appellate authorities and courts. Further, the Central Government has notified the Faceless Appeal Scheme, 2021, on similar lines as that of faceless assessments. Additionally, the Central Government has issued directions to give effect to the Faceless Penalty Scheme, 2021.

⁸ Finance Act, 2021 has introduced a new scheme for preventing new disputes and settling the issues at the initial stage to provide early tax certainty to small and medium taxpayers. The Central Government shall constitute one or more Dispute Resolution Committees (DRC). The scheme and conditions for such scheme have been notified by the Central Government recently.

OTHER IMPORTANT ASPECTS

Tax Residency Certificate

To claim the benefit of favourable provisions of Tax Treaties with India, the IT Act mandates obtaining of Tax Residency Certificate (TRC) from tax authorities of taxpayers' home countries. The taxpayer is also required to furnish certain additional details such as the status of the taxpayer, Tax Identification Number, etc., in Form 10F if the same does not form part of TRC. Form 10F is to be submitted online.

Foreign Tax Credit

A tax resident of India is entitled to claim credit for taxes paid in any country outside India against the Indian tax payable on such income. The foreign tax credit rules lay down the procedure for relief or deduction of income paid outside India.

Anti-Avoidance Provisions

The IT Act has built-in specific anti-avoidance provisions to prevent tax avoidance or counter specific abusive behaviour on the part of the taxpayer. These include provisions related to excessive related party payments, deemed dividends in the hands of the shareholder, transactions involving movable/ not transferring immovable property at fair market value, Transfer Pricing (TP) provisions, etc.

▪ General Anti-Avoidance Rules (GAAR)

To check tax avoidance through transactions structured in a way to deliberately avoid tax, GAAR has been implemented from 1 April 2017. The GAAR provisions empower the tax authorities to declare an arrangement entered into by a taxpayer as an Impermissible Avoidance Agreement (IAA). There are wide-ranging consequences if a transaction is declared as IAA, including denial of tax benefits as per the provisions of the IT Act or Tax Treaty. Various rules have been stipulated by the tax authorities concerning the applicability of GAAR.

GAAR does not apply to any income arising from the transfer of investments made before 1 April 2017. However, GAAR shall apply to any arrangement, irrespective of the date it is entered into, if the tax benefit is obtained from the arrangement on or after 1 April 2017. Further, GAAR provisions do not apply if tax benefit (to all the parties in aggregate) from an arrangement in a relevant fiscal year does not exceed INR 30mn.

▪ Thin Capitalisation Rule

In line with the principles laid down in Action Plan 4 of BEPS Action Plans, the IT Act contains provisions for interest limitation. As per these provisions, deduction of interest (or similar expenditure) exceeding INR 10mn, in respect of debt issued by non-resident Associated Enterprise (AE) is restricted to 30% of earnings before interest, depreciation and taxes of the enterprise. The excess interest is allowed to be carried forward to eight years

Scheme for Taxation of the Virtual Digital Asset (VDA)

VDAs have gained tremendous popularity in recent times and the volumes of trading in such digital assets have increased substantially. To bring such assets under the purview of tax, a new tax regime for virtual digital assets has been introduced:

- Transfer of VDA to be taxed at 30%.
- No expenses are to be allowed as a deduction other than the cost of acquisition.
- Withholding is to be done at 1% of the sum credited to a resident.
- Any loss arising out of the transfer of such assets would not be allowed against any other income, nor the same would be carried forward to future years.
- Receipt of such assets by way of gift shall be taxable in the hands of the recipient.

Withholding Tax on Income from Online Gaming

There will be a withholding tax obligation in the hands of a taxpayer (being a user/ player) at 30% on net winnings from online games during the FY with effect from 1 April 2023.



TAX LAWS

TRANSFER PRICING (TP)

The Indian TP Regulations have been in force since 2001. These regulations are broadly on the lines of the OECD TP Guidelines, although the latter are comparatively more exhaustive and specific. The Indian TP Regulations prescribe the 'arm's length' principle for the computation of income or allowance of an expenditure arising from transactions between AEs.

ASSOCIATED ENTERPRISE(AE)

AE in the context of international transactions covers any enterprise that participates directly or indirectly or through one or more intermediaries in the management or control or capital of another enterprise. The enterprises subjected to common participation in management or control or capital are also covered. Further, two enterprises are deemed to be AEs in specific circumstances/ conditions which include ownership in the voting power of an enterprise exceeding the stipulated limit and the right to appoint more than half of the directors, interdependent enterprises by borrowing, guarantees, etc.

INTERNATIONAL TRANSACTION

International Transaction is defined to mean a transaction entered into between two or more AEs, either or both of whom are non-residents, which has a bearing on the profits, income, losses or assets of an enterprise. These include:

- Purchase, sale, transfer, lease or use of tangible and intangible property.
- Capital Financing.
- Provision of services.
- Business restructuring or reorganization.

Transactions of cost allocations, cost contribution agreements and reimbursements also come under the purview of international transactions. TP provisions are also attracted for transactions between non-AEs, in case there exists a prior agreement concerning the relevant transaction or the terms of the relevant transaction are determined, in substance, between the resident or non- resident unrelated party and the AE.

SPECIFIED DOMESTIC TRANSACTION

Certain transactions between two related parties within India are subject to TP regulations, where an aggregate of all such transactions exceeds INR 200mn in an FY. Specified domestic transactions cover the following:

- Transfer of goods or services between a tax holiday unit and a non-tax holiday unit of the same enterprise.
- Any business transacted between an enterprise claiming tax holiday benefits with another closely linked enterprise.
- Any business transacted between new manufacturing companies set up and registered on or after 1 October 2019 and commenced manufacturing of articles and things on or before 31 March 2023/ 31 March 2024 (w.e.f. 1 April 2022) using new plant and machinery.

ARM'S LENGTH PRICE (ALP)

ALP has been defined to be a price that is applied in a transaction between persons other than AEs in uncontrolled conditions. The Indian TP Regulations require computation of ALP based on prescribed TP methods, namely Comparable Uncontrolled Price Method, Cost Plus Method, Resale Price Method, Profit Split Method, Transactional Net Margin Method and Other Methods.



COMPLIANCE REQUIREMENTS

REPORTING OF INTERNATIONAL TRANSACTIONS

Taxpayers entering into international transactions and/ or specified domestic transactions need to furnish a certificate in Form 3CEB obtained from a Chartered Accountant by 31 October following the end of an FY.

TRANSFER PRICING DOCUMENTATION

▪ Local File

Local file: Taxpayers are required to maintain comprehensive documentation to substantiate the ALP determined for international transactions (value exceeding INR 10mn) and for specified domestic transactions (value exceeding INR 200mn) in an FY. Some of the documentation requirements include:

- Description of the business of the taxpayer, AE and description of the industry.
- Nature and terms of transactions with each AE.
- Analysis of functions performed, risks assumed and assets employed by the taxpayer and by AE.
- Record and analysis of uncontrolled transactions taken into account for comparability.
- Description of the method selected as the most appropriate method along with explanations as to why such method was so selected, and how such method was applied in each case.
- Record of the actual work carried out for determining the ALP, including details of any comparability adjustments.
- In line with Action Plan 13 of the BEPS Action Plans, the Indian TP Regulations also mandate the maintenance of three-tier documentation, including Master File and CbCR.

▪ Master File

Master File provides a high-level overview of the business operations of the multinational groups. The information to be included in a master file is more comprehensive than regular TP documentation and provides an overview of an MNE's global operations, besides the basic information relating to the international groups and the constituent entities of the international group operating in India.

The master file is required to be furnished by each constituent entity of the international group operating in India to the Indian tax authority in Form No. 3CEAA. International groups with multiple constituent entities can designate any one constituent entity to file the Master File in India, provided an intimation to this effect is made in Form No. 3CEAB, 30 days before the due date for filing the Master File in India. The master file applies to entities satisfying the following conditions:

- Consolidated group turnover for an FY is more than INR 5000mn; and
- The value of international transactions of an Indian constituent entity during an FY is more than INR 500mn or transactions relating to intangibles of the Indian constituent entity during an FY are more than INR 100mn.

The due date for filing the master file is 30 November following the end of FY.

▪ Country-by-Country Reporting (CbCR)

CbCR was introduced in the Indian transfer pricing legislation with effect from FY 2016-17 which contains information regarding the residential status, nature and details of the main business activity, revenue, profit and loss before income-tax, amount of income-tax paid and accrued, stated capital, accumulated earnings, number of employees, tangible assets other than cash or cash equivalent in respect of entity in each country or territory, details of each constituent entity of the group including the country or territory in which such constituent entity is incorporated or organised or established and the country or territory where it is resident, nature and details of the main business activity or activities of each constituent entity, and other information as may be prescribed.

An Indian parent entity of an MNE group is required to maintain and furnish the CbCR if the consolidated revenue of a group exceeds INR 64bn [UPE or ARE jurisdiction] as reflected in the consolidated financial statement of the preceding accounting year. Further, an Indian constituent entity of a foreign- headquartered MNE group that has consolidated revenue of INR 64bn reflected in the consolidated financial statement of the preceding accounting year will be required to maintain and furnish CbCR in the following circumstances:

The due date for filing CbCR is as follows:

- Parent entity or alternate reporting entity resident in India - 31 March of the following FY.
- Any entity other than the above - 12 months from the end of the FY of the international group.

CbCR Notification:

- CbCR notification in Form 3CEAC should be filed within 10 months from end of the accounting year followed by the parent company for filing the CbCR compliances.

■ Penalties for non-compliance of CbCR

The Indian TP Regulations provide for penalties for various defaults, inter-alia, failure to furnish the TP Certificate, failure to furnish CbCR within the due date, intentionally furnishing inaccurate particulars in CbCR, failure to keep or maintain required documentation, failure to report required transactions and furnishing incorrect information or documentation.

ASSESSMENT AND DISPUTE RESOLUTION TP

ASSESSMENT/SCRUTINY

Transfer pricing assessment/ scrutiny is a quasi-legal procedure wherein tax authorities determine the arm's length price of an international transaction/ specified domestic transaction. Cases are selected for transfer pricing assessment/ scrutiny based on certain criteria and procedures.

During the assessment proceedings, tax authorities call for the transfer pricing documentation required to be maintained by taxpayers, along with other information and supporting documents.

DISPUTE RESOLUTION PANEL (DRP)

The DRP is an alternative dispute resolution mechanism for the speedy disposal of disputes related to transfer pricing in international transactions.

Foreign companies and taxpayers against whom an unfavourable order has been passed by the tax authority can opt for the resolution of transfer pricing disputes before the DRP.

An eligible taxpayer can apply to the DRP within 30 days of the unfavourable order passed against it by the first-level tax authority. The DRP is required to issue directions to the tax authority within nine months from the end of the month in which the taxpayer received the draft order and these directions are binding on the tax authority.

SECONDARY ADJUSTMENT

The concept of secondary adjustment refers to an adjustment in the books of accounts of the taxpayer and its AE to reflect the actual allocation of cash profits that are consistent with the transfer price determined as a result of the primary adjustment. A secondary adjustment is to be carried out in a case where a primary adjustment (in specified cases) results in an increase in taxable income (or reduction in loss) of a taxpayer and the excess money available with the AE is not repatriated into India within the prescribed time limit. In such a case, the excess money is deemed as advance to the AE and interest is imputed on such amount. Such Secondary Adjustment, however, is not required to be made and interest need not be imputed thereon if the taxpayer pays an additional income tax of 18% (as increased by applicable surcharge and education cess) of the excess amount of money.

SAFE HARBOUR RULES

Safe Harbour Rules is a special regime for taxpayers under which the tax authorities shall accept the transfer price declared by the taxpayer in case of defined circumstances if the regime is opted for by a taxpayer. Safe Harbour Rules offer benefits to taxpayers by way of eliminating the possibility of litigation with the tax authorities.

Safe Harbour rules have been made applicable to transactions and industries that witnessed significant TP litigation, like software and ITeS industry, financial transactions. The Safe Harbour provisions have prescribed arm's length prices/ margins for small and medium-sized transaction amounts (INR 1,000/2,000mn) for specified categories of transactions like contract R&D, software development and IT-enabled services, low value-adding intra-group services, etc. The attribution of income in the case of a non-resident person to the PE in India is also covered under Safe Harbour Rules from FY 2020-2021.

Taxpayers opting for Safe Harbour will continue to be governed by the existing TP documentation and certification requirements, however, the existing tolerance range will not be available. Safe Harbour rates have been prescribed so far for up to FY 2022-2023

ADVANCE PRICING AGREEMENT (APA)

Amidst increasing TP litigation, the APA regime was introduced to provide certainty to the taxpayer. APA refers to an agreement between the taxpayer and tax authority concerning an international transaction entered between the taxpayer and its AEs to determine ALP. Income deemed to accrue or arise in India or specifying how ALP and such income is to be determined about PE in India is also covered in the purview of APA from FY 2020- 2021. An APA could be unilateral, bilateral or multilateral under the Mutual Agreement Procedure (MAP) of a Tax Treaty entered into by India with the jurisdiction of AEs.

The process of bilateral APA takes place through discussions between the competent authorities of two countries. APA can be entered into for a maximum period of five consecutive years, with a rollback provision for four years.

TAX LAWS INDIRECT TAX

In India, indirect taxes are levied under a three-tier federal tax structure by which taxes are jointly/ severally levied by the Central Government, State Governments and Local/ Municipal bodies. The taxes levied by the Local/ Municipal bodies mainly include Professional tax, Municipal tax, Property tax, etc. Broadly, the most important indirect taxes are comprised of the following:

- Customs duty
- GST

The levy of indirect tax is on the occurrence of the taxable event, which is defined in the charging provisions of the respective indirect tax regulations. A particular transaction may have multiple aspects and could constitute a separate taxable event under different indirect tax regulations and accordingly, could attract multiple indirect taxes. However, most of these overlapping levies stand unified with the introduction of uniform GST across India.

The brief nature of indirect taxes is discussed below:

CUSTOMS DUTY

The levy of customs duty is governed by the Customs Act whereby the import of goods into India and export of specified goods from India attract customs duty. The rate of duty depends on its classification in the Customs Tariff, which is broadly aligned with the international HSN. While the import duty is levied on almost all goods imported into India, export duties are levied on a limited number of goods. The levy of import duty includes Basic Customs duty, Social Welfare Surcharge and IGST. Additionally, some specified goods from specified countries would also attract Anti-dumping duty which is imposed as a measure to protect the local trade/ industries to counter unfair trade practices adopted by the exporters in the originating country.

The general rate of customs duty on imports is in the range of 0% to 28% of the transaction value. However, in certain specific cases, a higher rate of up to 200% has also been prescribed for the import of certain goods, depending upon the nature of the goods. Further, there are certain exemptions and lower customs duty rates provided in respect of specified products. India has also entered into free trade agreements with some countries/ blocs across the globe, under which imports from such jurisdictions attract lower Basic Customs Duties.

Import from 'related' parties is scrutinised by the Indian customs authorities referred to as the 'Special Valuation Branch' (SVB). An Indian importer of goods is required to substantiate that the relationship with the overseas, related exporter has not influenced the price/ value on which customs duties are payable.

MANUFACTURING & OTHER OPERATION IN WAREHOUSE REGULATION (MOOWR)

The Union Government, with the object of encouraging local manufacturing, revamped the earlier MOOWR introduced in 1966 by altering certain key administrative/ compliance requirements. The main features of this regulation include -

- **Deferred duty on import of raw material and capital goods:** The import duty on raw material and capital goods used in the bonded warehouse, is deferred until clearance of finished goods for home, consumption, or waived if processed goods are exported. An amendment has been carried out in the law to levy IGST and Compensation on imports by the MooWR unit, but this amendment has not been implemented.
- **Seamless transfer between Warehouses:** A licensee is allowed to transfer warehoused goods from one facility to another without payment of customs duty.
- **No Export Obligation:** An entity is allowed to sell 100% of manufactured goods from a Bonded Warehouse into the domestic market, subject to payment of duty on imports.



GOODS AND SERVICES TAX (GST)

GST is a destination-based, consumption tax levied on the supply of goods and/ or services. The GST regime came into effect on 1 July 2017. GST is levied at all stages, right from manufacture to final consumption of goods and also on all the services provided. The overall tax outflow is reduced due to the credit of input taxes paid at the intervening stages available as a set-off against output taxes payable. In a nutshell, only value addition is taxed, and the burden of tax is ultimately borne by the final consumer.

GST has shrunk the mushrooming indirect tax laws in India and helped to create a single national market with a uniform levy. GST is levied on the taxable event 'Supply' as against different taxable events that existed in the legacy laws. While Basic Customs Duty (BCD) and Social Welfare surcharge is kept out of the GST credit mechanism, IGST levied on imported goods is available as a tax credit.

Considering India's federal structure, GST is levied by the Centre as well as the State. The structure of GST at a broad level would be:

- Intra-state supply of goods and/ or services - CGST and SGST/ UTGST.
- Interstate supply of goods and/ or services - IGST, equivalent to a total of CGST and SGST(UTGST).

Petroleum products (Petroleum crude, High-Speed Diesel, Motor Spirit (petrol), Natural gas and Aviation Turbine Fuel are currently not included within the purview of GST. These are liable to Central Excise duty), Central Sales Tax or State specific VAT.

The real estate sector (i.e., completed or ready-for-sale buildings and land) and alcohol for human consumption are also outside the GST regime and are liable to State taxes, Stamp duty and State Excise, respectively.

KEY ELEMENTS OF GST LEGISLATION

Supply: Supply includes the following:

- Supply of goods or services or both i.e., sale, transfer, barter, exchange, license, rental, lease or disposal in the course of the business.
- Import of services in the course of business or otherwise.
- Specific activities (transactions between related parties, disposal of tax-credit-availed business assets, transactions between Principal and Agent, etc.) made without consideration.

Scope of levy

Particulars	Levy*
Intra-state supply of goods or services or both (Within the same state/ Union Territory).	CGST + SGST or UTGST
Inter-state supply of goods or services or both.	IGST
Import of services.	IGST
Export of goods or services or both.	Zero-rated
Supplies to SEZ.	Zero-rated

*A branch of the same entity in a different state is considered as a distinct person for levy of GST.

Registration

Most of the GST compliances and procedures are automated. Similarly, the application, scrutiny and sanction of the registration largely take place electronically through the 'Common GST Electronic Portal' developed by the GSTN.

GST Identification Number (GSTIN), i.e., the GST registration number granted to a taxpayer is a unique 15-digit PAN-based alphanumeric number. Currently, all taxpayers whose aggregate turnover exceeds INR 2mn are required to obtain registration under GST. The threshold for North-Eastern states is lower at INR 1mn. However, the threshold limit for a taxpayer engaged in the exclusive supply of goods is INR 4mn. Separate GST registration is required for every state where the taxpayer has business operations. Taxpayers also have the option to obtain separate registrations for a separate place of business within the same state. It is pertinent to note that the threshold of INR 2mn (or INR 1mn, as applicable) does not apply in certain cases such as 'Reverse Charge' and Interstate supplies of goods. In such cases, registration is required to be obtained irrespective of the aggregate turnover.

Input tax credit

The GST regime seeks to weed out the cascading of taxes through a seamless flow of credits on most of the inputs across the value chain. While the conditions attached to claim the credit of tax paid on inputs/ input services are comparatively liberal under GST, certain restrictions may be a cause of concern, e.g., the admissibility of credit subject to supplier remitting the tax and filing return.

While the GST model provides a seamless chain of credits, it also lays down certain order and manner of utilisation as follows:

Order	Credit of*	Can be utilised against	Cannot be utilised against
1	IGST	IGST, CGST, SGST/ UTGST	Not applicable
2	CGST	CGST, IGST	SGST/ UTGST
3	SGST/ UTGST	SGST/ UTGST, IGST	CGST

*ITC on account of IGST shall first be utilised towards the payment of IGST, and the amount remaining, if any, may be utilised towards payment of CGST and SGST/ UTGST in any manner as per the specified rules. In case of deficiency in IGST credit in meeting IGST liability, CGST credit can be utilised to the extent available, thereafter SGST/ UTGST credit can be utilised.

Place of Supply - Where to Tax

The GST legislation has specified certain provisions for the determination of 'Place of Supply' to specifically ascertain 'where to tax' (or jurisdiction which retains the tax). GST will be applicable if the 'Place of Supply' is in India.

The 'Place of Supply' of goods in most cases is the destination where the goods are made available or delivered. However, the 'Place of Supply' in the case of the 'bill-to, ship-to' model is the location of the party on whom the bill is raised.

Similarly, in the case of services, the 'Place of Supply' is mostly the location of the recipient of the service. Only in the case of certain specific services, such as those related to immovable property or performance-based services, etc., the 'Place of Supply' is the location of the immovable property or the place where the service is performed or where the supplier is located.

Broadly these rules can be dissected into two major streams:

1. **Destination Principle:** This covers B2B transactions, where both the supplier and recipient are registered dealers, and the destination of the recipient is considered as the 'Place of Supply'.
2. **Source Principle:** This includes the B2C transactions, where the recipient is not a registered person, and specified transactions whereby the state where the supply originates would be the 'Place of Supply'.

Time of Supply - When to Tax

As a matter of general rule, the time of supply can be classified as follows:

Time of supply of goods
Earlier of the following events: ▪ Date of removal of goods or goods made available to the recipient. ▪ Date of issuance of an invoice. ▪ Date of payment on which supplier receives the payment.
Time of supply of services
Earlier of the following events: ▪ Date of issuance of the invoice, if an invoice is issued within 30/45 days as prescribed after the provision of service. ▪ Date of provision of service, if an invoice is not issued within a prescribed time limit. ▪ Date of receipt of consideration.

Time of supply in case of 'Reverse charge' is typically the date of payment or 30 days from the date of invoice in case of goods, and 60 days from the date of invoice in case of services, whichever is earlier.

Reverse charge Mechanism

Under 'Reverse Charge', the general rule of supplier discharging tax liability, stands shifted to the recipient of goods/services.

A reverse charge is applicable in the case of a certain notified supply of goods or services or where certain notified goods or services are purchased from a specified class of unregistered dealers. Typically, a reverse charge applies to import services from overseas entities.

Refunds

GST law provides for a refund of tax paid on certain prescribed transactions like 'Zero-rated' supplies and deemed exports. A refund of ITC is allowed if the inward supplies have been used for making zero-rated supplies/ deemed exports, or if it is a case of an inverted duty structure (tax rate on input goods is higher than the rate of output goods) which would result in accumulation of credit.

Refund must be claimed within two years of the relevant date and generally, it takes around 60 days for processing of refund application. The law mandates provisional refund to the extent of 90% within seven days of acknowledgement of application, in case the refund is on account of zero-rated supplies/ deemed exports.

Input Service Distributor (ISD)

ISD mechanism eases the administration and distribution of ITC of input services that are centrally received under one

registration, to other registrations under the same PAN. Key features are as under:

ISD means an office (say Head office, Registered office or Administrative office) that receives tax invoices towards receipt of input services and issues prescribed documents to distribute the credit of CGST, SGST/ UTGST or IGST to its offices/ factories. The ISD mechanism is meant for distributing the credit on common input services and this is not available for input credit of goods purchased (including capital goods).

An ISD will have to compulsorily take a separate registration and there is no threshold limit for registration. The ITC on account of CGST and SGST or UTGST shall be transferred under the same heads for offices located within the same state and as IGST in case the recipient office/ factory is located outside the state. If input services are attributable to more than one location, the distribution shall be on the pro-rata basis of turnover in each of the state/ union territories.

Compliances

A summary of the timeline and due dates for GST compliance is mentioned below:

Reporting	Applicability	Frequency	Prescribed Form	Due Date ⁹
Outward Supplies*	Every registered person	Monthly	GSTR – 1	11 th of next month.
Monthly return*			GSTR – 3B	20 th /22 nd /24 th of next month depending on Jurisdiction and turnover.
Return by an ISD	Input Service Distributor	Monthly	GSTR – 6	13 th of the next month.
Annual Return	Every registered person with aggregate turnover exceeding INR 20 Mn.	Annually	GSTR – 9	By 31 December following the FY.
Self-certified reconciliation statement (from FY 2020-2021)	Every registered person with aggregate turnover exceeding INR 50mn.	Annually	GSTR – 9C	By 31 December following the FY, along with return in GSTR 9.
Tax payments	Every registered person other than the composition dealer.	Monthly	GST PMT Form	20 th /22 nd /24 th of next month basis Jurisdiction and turnover.
E-Waybill	E-Way bill mandatory for all supplies exceeding INR 0.05mn.	Every time where consignment value exceeds INR 0.05mn.	Form EWB 01	On commencement of the movement of goods.

* The Taxpayers having an aggregate turnover of less than INR 50mn can file their GSTR-1 quarterly under the Quarterly Return Filing and Monthly Payment of Taxes (QRMP) scheme. An optional Invoice Furnishing Facility (IFF) is made operational from 1 January 2021, where these taxpayers can choose to upload their Business-to-business (B2B) invoices every month. However, payments shall be made for the first two months of the quarter in Form PMT-06 on or before the 25th of the next month.

⁹ GSTR-3B due date for taxpayers having annual turnover less than INR 50mn and opted for QRMP scheme varies from 22nd to 24th of the succeeding month based on the states in which they are registered.

Advance Ruling

The GST law provides for an Authority for Advance Ruling in every state of India. Taxpayers can apply for advance rulings to attain clarity and certainty, and reduce tax disputes about future activities. Applicants can seek Advance Ruling for the following questions:

- Classification of any goods and/ or services.
- Applicability of a notification that affects the rate of tax.
- Determination of time and value of supply of goods and/or services.
- Whether input tax credit paid (or deemed to be paid) will be allowed.
- Determination of the liability to pay tax on any goods and/ or services.
- Whether the applicant is required to be registered under GST.
- Whether any act to be performed by the applicant regarding goods and/ or services will result in a supply.

Anti-Profiteering

GST law seeks to ensure that benefits accruing to entities by way of reduction in output taxes or by the availability of ITC are passed on to consumers. Thus, an enabling provision has been inserted in the law to create a National Anti-profiteering Authority by the Central Government to monitor the prices that businesses charge for goods and services. The authority has been empowered to determine whether a reduction in the rate of tax on the supply of goods or services or benefit of ITC has been passed on by the registered person to the recipient by way of a commensurate reduction in prices. This Authority is relevant in a transitional phase of four years from the date of implementation of GST. As per Anti-Profiteering Rules, if a registered person has not passed on the benefit, the authority may order the following:

- Reduction in prices.
- Return of the commensurate amount challenged for reduction along with 18% interest to the recipient, or deposit of the amount in the Consumer Welfare Fund if the recipient does not claim the amount or cannot be identified.
- Imposition of penalty.
- Cancellation of registration.

Electronic Way Bill (E-Way Bill)

E-Way bills have been introduced to ensure that the goods transported are GST compliant and there is the monitoring of the movement of goods to check tax

evasion. Each physical consignment of goods, whether moving intra-state or inter-state should be accompanied by an E-Way bill that is cross-referenced to a GST document, i.e., tax invoice, delivery challan or bill of supply. E-Way bill is mandatory for consignments of almost all goods having value (including tax amount) exceeding INR 0.05mn

Respective State Governments have also specified different thresholds of invoice value below which an E-Way bill is not required for the intra-state movement of goods. GST officers have been authorised to intercept any vehicle carrying goods and verify the corresponding E-Way bill.

E-Invoicing

The Government has implemented 'E-Invoicing' for specified categories of taxpayers, whose aggregate turnover exceeds INR 5bn with effect from 1 October 2020, which was subsequently reduced to INR 1bn from 1 January 2021 and to INR 0.5bn from 1 April 2021 and to INR 0.20bn from 1 April 2022 and eventually to INR 0.10bn from 1 October 2022.

Previously, the transactions between buyers and sellers were not authenticated by the Government. Under the E- Invoicing system, business transactions will be authenticated electronically by the portals maintained by the Government. The system seeks to create a complete trail of B2B transactions, eliminate fake invoices, control fictitious ITC claims, provide real-time data access by tax authorities and ultimately, reduce tax evasion. Another objective is to enable interoperability across the entire GST eco-system, to make invoice reporting an integral part of a business process and simplify the tedious task of invoice compilation at the end of the compliance period and multiple reporting to the GST portal.

Presently, separate reporting of invoice data for GST returns and E-Waybills is required as both carry different sets of information and varied formats, which the taxpayers have to report through repetitive processes. The new system is a significant step towards digitisation, efficient management of voluminous business transactions and elimination of non-standardised formats used in invoice generation.

Dynamic QR code

The taxpayers whose aggregate turnover exceeds INR 5bn must inscribe a dynamic QR code in an invoice for B2C transactions with effect from 1 December 2020. Later, it was notified to waive the penalty for non-compliance with dynamic QR code provisions from December 2020 to September 2021 if they comply with these provisions from 1 October 2021.

TAX LAWS

INVESTORS AND FUNDS

FDI, FPI, AIF and Business Trusts are the most popular structures in India for pooled investments. The regulatory aspects of each of such structures are discussed in Chapter 'Exchange Control and Investment Related Regulations'.

Direct Tax

The IT Act provides for special regimes for FPI, AIF and Business Trusts.

▪ Foreign Portfolio Investors

The IT Act provides for a beneficial treatment for FPI trading in derivatives, by classifying such securities as capital assets and not as business income, thereby levying reduced tax rates for FPIs having a corporate structure. The IT Act specifically states that income from FPI investments can only be treated as a 'Capital Asset' and therefore taxable under the head of Capital Gains. This treatment also allows FPI to invoke Tax treaties for further beneficial rates specified for capital gains taxation. The IT Act has also been amended to provide tax treaty benefits to any sum payable to FPIs like dividend income received on securities, which earlier required withholding of taxes at 20%. Further, the IT Act lays down certain conditions to be fulfilled, subject to which an offshore fund shall not be considered as constituting a taxable presence in India on account of the activities of its Indian fund manager. As discussed under 'Key Provisions on Taxation of Non-residents', the IT Act also provides for the exclusion of Category I FPI from indirect transfer provisions. Further, the IT Act specifically provides for the exclusion of FPI fulfilling certain conditions and non-resident investors investing in offshore derivative instruments issued by the FPI from the ambit of GAAR¹⁰ provisions.

▪ Alternative Investment Funds (AIF)

Category I and Category II AIFs have been accorded pass-through status under the IT Act. Accordingly, the income of such AIFs is taxable directly in the hands of the investors on a proportionate basis (other than the business income of such fund). Taxability of income arises as soon as the income is earned, irrespective of the fact whether the income is distributed or not. Further, tax in the hands of investors depends on the nature of income earned by the AIF and is taxable in the same and like manner. As aforesaid, incomes of these AIFs characterised as 'Profits and Gains of Business or Profession' do not pass through to investors and are taxed at the AIF level, depending upon the legal status of the AIF.

The Pass-through of tax losses incurred by Category I and Category II AIF to the investors (except for losses under the head 'Profits and Gains of Business or Profession') is also allowed, w.e.f. 1 April 2020, in case the investor has held units in such AIFs for at least 12 months. The losses shall be allowed to be carried forward and set off from the year in which it was first incurred, subject to the satisfaction of certain conditions.

Category I and Category II AIFs, while distributing income, are required to withhold tax at 10% in the case of resident investors and at the rates in force in the case of non-resident investors. Thus, the non-resident investors can take benefit of a relevant treaty from the country in which he/ she is domiciled, subject to the satisfaction of conditions as stipulated in the provisions of the IT Act.

On the contrary, Category III AIF has not been accorded pass-through status (except for Category III AIF located in the IFSC) and hence, an income of such Category III AIF is taxable in the hands of the AIF itself.

Tax incentives related to AIFs set-up in the IFSC are discussed in the subsequent heading 'Tax Benefits For Entities Setup In IFSC'.

▪ Special Regime for Sovereign Wealth Fund (SWF) and Pension Fund (PF)

The IT Act provides for exemption on any income earned by SWF and PF which is like dividend, interest or long-term capital gains arising from investments made in India in the form of share capital or debt or units. The investments should be made on or after 1 April 2020 but on or before 31 March 2024 and should be held for at least three years in the specified investment as per the provisions of the IT Act.

Further, the IT Act lays down certain procedures and conditions to be fulfilled subject to which SWF and PF can claim an exemption under the provisions of the IT Act.

▪ Business Trusts (REITs and InvITs)

REITs and InvITs are classified as 'Business Trusts' under the IT Act. Interest and dividend income received by a Business Trust from a Special Purpose Vehicle (SPV), and any rental income earned by an REIT directly from real estate assets owned by it have been accorded the pass-through status. Accordingly, these incomes are exempt from tax in the hands of the Business Trust and are taxable in the hands of the investors.

Based on the residential status of investors, different tax rates and withholding tax rates are prescribed under the IT Act for the above income earned. A concessional rate of 5% is prescribed under the IT Act for interest income earned by a non-resident investor from Business Trusts.

Other income received by a Business Trust is taxable at a maximum marginal rate of tax and exempt in the hands of the investors. Such income is taxable on an accrual basis, irrespective of its distribution to the investors.

Indirect Tax

GST is not applicable on incomes such as dividends, capital gains, and interest (except rental income) earned by the above entities. Expenses such as management fees, custodian fees, advisory fees, etc., incurred by the above funds would be taxable, subject to the applicability of the 'Place of Supply Rules' prescribed under the GST law.

However, divergent views exist on the applicability of the GST on carried interest and certain expenses.

¹⁰ GAAR refers to General Anti-Avoidance Rules framed to bring into ambit the transactions which are structured primarily to avail/ exploit beneficial tax provisions under the domestic law and/ or tax treaty.

TAX BENEFITS FOR ENTITIES SET UP IN IFSC BACKGROUND

In line with the global trends and recognising the potential of the financial service industry and how it will impact the development of the economy, the Central Government, in cooperation with the State Government of Gujarat, has set up an International Financial Service Centre (IFSC). The IFSC in India, known as Gujarat International Finance Tec-City (GIFT City), has been notified as India's maiden IFSC and exclusive Domestic Tariff Area (DTA). Also, International Financial Services Centres Authority (IFSCA) has been established as a unified financial regulator by the Government of India under the IFSCA Act, 2019.

IFSCA has a statutory mandate to develop and regulate Financial Institutions, Financial Services and Financial Products within IFSC in India. To develop and regulate IFSCs in India, IFSCA acts as a single window and has been vested with powers of four sectoral regulators namely - The Reserve Bank of India (RBI), Securities & Exchange Board of India (SEBI), Insurance and Regulatory Development Authority of India (IRDAI) and Pension Fund Regulatory and Development Authority (PFRDA).

For a brief understanding of who can participate, a brief synopsis of key activities in the IFSC is tabulated below:

Capital Markets	Offshore Banking	Offshore Asset Management	Offshore Insurance	Ancillary Services	Recent and Upcoming
Stock Exchanges	Corporate Banking	Alternative Investment Funds	General/Life Insurance	Global Inhouse Centre (GIC)	Aircraft Leasing and Financing
Trading Members	ECB Lending	Mutual Funds	Reinsurance	Fund Accounting	Ship Leasing, Financing
Segregated Nominee Account Providers	Servicing JV/ WOS of Indian Companies Registered Abroad	Portfolio Management Services	Co-Insurance	Legal, Accounting & Audit	Fintech
Clearing Corporations	Factoring/ Forfaiting of Export Receivables	Investment Advisors	Captive Insurance	Risk Management	Education Universities
Depositories				Research & Analytics	Bullion Exchange
Other Intermediaries					

TAX REGIME - CONCESSIONS GRANTED IN IFSC

Direct Taxes

- Tax Holiday - Deduction under section 80LA of the IT Act.

100% profit-linked deduction for 10 consecutive years, at the option of the taxpayer, out of 15 years commencing from the year in which the regulatory approval is received.

- Lower base MAT rate of 9% (plus applicable surcharge and education cess) for units set up on or after 1 April 2016 and earning income in foreign currency.
- No STT and CTT on transactions in securities/ commodities undertaken on the IFSC stock exchange.
- Transactions in the following assets, entered on or after 1 April 2018, on a recognised stock exchange in the IFSC, by a non-resident would not be regarded as a transfer and hence not taxable, provided the consideration is paid or payable in foreign currency:
 - Bond or specified GDRs.
 - RDB of an Indian company.
 - Derivatives.

- Securities notified by the Central Government [Central Board of Direct Taxes (CBDT) has issued a Notification dated 5 March 2020] to include - Foreign currency-denominated bonds, Units of a Mutual Fund/ AIFs/ Business Trust and Foreign Currency denominated equity shares of a company.
- Concessional tax (and withholding tax) rate of 4% on interest payments made to non-residents by an Indian company on the issue of long-term bonds or Rupee-denominated Bonds on or after 1 April 2020 but before 30 June 2023 listed on a recognised stock exchange in the IFSC. Further, w.e.f 1 April 2023 Income tax law provides for a 9% tax rate on interest income for the long-term bond or Rupee-denominated bond issued by an Indian Company and listed on a recognised stock exchange in IFSC on or after 1 July 2023.
- Non-Applicability of surcharge and cess on income from securities earned by category III AIFs and Investment banking division of an offshore banking unit (OBU) i.e. 'Specified Fund' as per section 10(4D) of the Income Tax Act 1961.

- Income by way of interest payable to a non-resident by a company/ unit located in IFSC in respect of monies borrowed on or after 1 September 2019 to be exempt from tax.
- Income of a non-resident from the transfer of a non-deliverable forward contract (entered with the IFSC Banking Unit) exempt from tax in India.
- A special tax regime is in place for the following income sources of Category 3 IFSC AIF:
 - Transfer of securities (other than shares in an Indian company) to be exempt from tax under section 10(4D) of the Act.
 - Dividend/ interest income is taxable at 10%.
 - Any income from a securitisation trust is taxable as 'profits and gains of business' to be exempt from tax.
- Tax exemption on the relocation of an offshore fund to IFSC (i.e., relocation of 'Original fund' to the 'Resultant fund'). The definition of 'Original Fund' under the Income Tax Law has expanded. It includes an investment vehicle, in which Abu Dhabi Investment Authority (ADIA) is the direct or indirect sole shareholder or unit holder or beneficiary or interest holder and such investment vehicle is wholly owned and controlled, directly or indirectly, by ADIA or the Government of Abu Dhabi, or a Fund notified by the Central Government in the Official Gazette (subject to such conditions as may be specified).
- To encourage investments in IFSC w.e.f. 1 April 2023 tax rate on dividend income received by non-resident from unit of IFSC will be at a concessional rate of 10% against the earlier tax rate of 20%.
- With effect from 1 April 2023 shares issued by the private company to a specified fund located in IFSC will not be subject to angel taxation.
- Exemption from Stamp Duty for instruments on a transaction in stock exchanges and depositories established in an IFSC.
- The Government of Gujarat has also exempted Stamp Duty for entities having a registered office in the GIFT City for capital market activities.
- Exemption to non-residents on the following:
 - Any income from a portfolio of securities/ financial products/ funds managed by a portfolio manager on behalf of a non-resident in an account maintained in OBU (Offshore Banking Unit) in any IFSC.
 - Any income from royalty and interest income on the lease of a ship, paid by a unit in IFSC.
 - Income from the offshore derivative instrument and over-the-counter derivatives entered with OBU in an IFSC unit.
- Income arising from the transfer of a ship, which was leased by a unit of the IFSC to any person shall be eligible for deduction while computing the income of OBU in an IFSC unit, subject to certain conditions.

- AIFs in IFSC are to be considered for an exception under section 56(2)(vii b) of the IT Act.

The Budget 2022 opened a new route for foreign universities to set up campuses in India through GIFT IFSC where they will not be encumbered by domestic regulations. Such institutions will be permitted to offer courses in financial management, fintech, science, technology, engineering and mathematics. The Government is yet to guide the implementation of such a set-up.

- No customs duty for goods imported and used for authorised operations.
- No CST on inter-state procurement of goods.
- No Excise Duty or GST on domestic procurement.
- Drawbacks & similar benefits on goods brought allowed.
- Other benefits as available to SEZ units.

FUND MANAGEMENT REGULATIONS

A Committee of Experts on Investment Funds was set up by the IFSCA to review global best practices and make recommendations to the IFSCA on the roadmap for the investment funds industry. After receiving public comments on the draft IFSCA (Fund Management) Regulations, 2022 (FME Regulations), IFSCA issued final FME Regulations vide notification dated 19 April 2022 which became effective from 19 May 2022.

We have summarised the framework for different types of entities and schemes in Appendix 3.

Further, the said regulations also prescribed Portfolio Management Services, Family Investments Funds and Exchange Traded Funds.

CORPORATE LAWS

The two forms of body corporates most used in India are Company and LLP. Both the Company and LLP are governed by the Ministry of Corporate Affairs (MCA) and subject to maximum corporate regulations.

COMPANY

CoA governs the provisions relating to the incorporation of a company, responsibilities of a company, directors, appointment of auditors, financial statement disclosure, class action suit, related party transactions and other related regulations and compliances. Amongst others, the CoA also provides for enhanced corporate governance norms, accountability on the part of corporates and auditors and increased transparency to protect the interests of investors.

An overview of relevant concepts and key provisions are as follows:

TYPES OF COMPANIES

Private Company

It refers to a company which cannot make a public offer of its securities. The right to transfer shares is restricted for a private company. A private company is required to have at least two members and except in the case of a one-person company, limits the number of its members to 200.

Note 1: For a Private Company to be known as a 'Small Company', the paid-up share capital and turnover of the Small Company shall not exceed INR 40mn and INR 400mn respectively. Also, a Small Company cannot be a public company or holding/ subsidiary of another company or a Section 8 company or a company governed by a Special Act.

Note 2: For a Private Company to be known as a 'Start-Up Company', it must be recognised under notification number

G.S.R. 127(E) dated 19 February 2019 issued by the Department for Promotion of Industry and Internal Trade.

Public Company

It refers to a company which can invite the public to subscribe to its securities. Its shares are freely transferrable. It can list its securities on a recognised stock exchange by way of an IPO. A public company is required to have at least seven members. A private company which is a subsidiary of a public company is deemed to be a public company.

Note: A company or a body corporate which is incorporated outside India but has its place of business in India is required to register itself either as a private or a public company with the ROC.

One Person Company

OPC is a company which has only one person as a member (such sole member must provide the nomination details). A natural person who is a citizen of India, irrespective of residency, is now eligible to incorporate an OPC or be a nominee for the sole member of an OPC. An OPC is not permitted to carry out NBFI activities, including investment in securities of body corporate.

OPC may be converted into a private or public company after increasing the required number of members. Other than the threshold on the number of members, there are no thresholds such as paid-up capital and turnover required to be considered for the conversion of OPC into any other type of company.



IMPORTANT CONSIDERATIONS

A streamlined process for new incorporations

As part of ease of doing business initiatives, the MCA has deployed a comprehensive web form offering various incorporation-related services thereby saving cumbersome procedures, time, and cost for starting a business in India.

Commencement of business

Every company incorporated in India and having share capital can commence its business only after filing a declaration regarding the completion of subscription to shares and verification regarding the registered office in the prescribed form within 180 days from the date of incorporation.

No Minimum paid-up capital

To facilitate ease of doing business in India, the CoA has removed the minimum paid-up capital requirement for private as well as public limited companies.

Memorandum of Association (MOA) and Articles of Association (AOA)

The MOA of a company is required to state the name, registered office address, objects, liabilities of the members, share capital and details of subscribers to the MOA. The AOA of a company specifies the rules and regulations or bylaws of the company, related to the internal working or management of the company.

Financial Year

Every company or body corporate incorporated in India is required to follow 12 months ending 31 March as a financial year. Companies or body corporates that are a holding/ subsidiary/ associate of a company incorporated outside India and required to follow a different financial year for consolidation of accounts can follow a different financial year by seeking prior approval from the Central Government.

Significant Beneficial Owner (SBO)

Every company incorporated in India is mandated to report information about its significant beneficial ownership. An individual is considered an SBO if he/ she (alone or together or through one or more persons or trust) holds a beneficial interest of 10% or more of the company's shares/ voting rights/ right to receive a dividend. An individual can also be considered an SBO if he/ she has a right to exercise significant influence or control over the company. SBOs are required to provide a declaration to the company specifying the nature of their interest in the prescribed manner and within a prescribed timeframe. Further, every company shall maintain a register of interest declared by individuals which shall be open for inspection by any member of the company and file return of SBOs of the company.

TYPES OF SECURITIES

Companies in India can issue various types of securities. The primary securities used are as under:

- **Equity shares** (common stock) are ordinary shares entitled to voting and/ or dividend rights.
- **Preference shares** (preferred stock) carry a preferential right to receive dividends and have preference over equity shares during liquidation.
- **Debentures** are debt securities (secured or unsecured) issued by a company and typically represent a loan taken by the issuer company with an agreed rate of interest.

ISSUE OF SECURITIES

The issue of equity shares (including equity shares with differential voting rights) is subject to prescribed conditions. Preference shares issued are required to be redeemed or converted into equity shares within 20 years of allotment, except in the case of infrastructure companies where conversion is allowed within 30 years, subject to prescribed conditions.

A company can issue securities in the following manner:

- Rights issue or Bonus issue.
- Private placement of securities.
- Public offer (Includes IPO, Further Public Offer, or an Offer for sale of securities through prospectus).

Only public companies can issue securities through the public offer route and are mandatorily required to issue securities only in dematerialised form.

Post issue of securities, allotment must happen within 60 days of receipt of application money, failing which money is required to be refunded within the following 15 days.

A company is prohibited from making an offer or invitation of securities to a body corporate incorporated in or a national of a country, sharing a land border with India unless prior approval of the Government of India under applicable FEMA provisions is taken.

BOARD OF DIRECTORS

The directors are responsible for the day-to-day management of a company. Every individual before being appointed as a director must have a DIN. For a national of a country that shares a land border with India, seeking an appointment as a director or applying for DIN, a security clearance from the Ministry of Home Affairs, Government of India, is a must. An OPC is required to have only one director, whereas a private company and a public company are required to have at least two and three directors, respectively. Any company can have a maximum of 15 directors beyond which, approval of shareholders by way of special resolution is required. Every company is required to have at least one director who has stayed in India for at least 182 days.

All listed companies and certain public companies exceeding prescribed thresholds are compulsorily required to appoint a woman director, a specified number of independent directors and key managerial personnel.

A person to be appointed as Independent Director, must have his name included in the Data Bank of Independent Director and pass an online proficiency self-assessment test (although, certain exemptions are provided).

BOARD MEETINGS

A company must hold its first Board meeting within 30 days of incorporation. Subsequently, a minimum of four meetings are to be conducted in a financial year with a gap maximum of 120 days between two Board meetings. Further, the Board meeting may be conducted either in person or through video-conferencing or other audio-visual means for all/ any matter related to the company complying given procedure under the Act.

ANNUAL GENERAL MEETING

Every company (other than OPC) must hold one AGM every year. The first AGM can be held within nine months from the end of the first financial year of the company and in any other case, within six months, from the date of closing of the financial year. If a company holds its first AGM as aforesaid, it does not need to hold any AGM in the year of its incorporation. The gap between two AGMs cannot be more than 15 months.

DIVIDEND PAY-OUT

A company can declare dividend out of profits for current year (after providing for depreciation) or out of profits of earlier years (arrived at after providing for depreciation and subject to certain conditions) or both or out of money provided by the Government. Dividend is to be deposited in a scheduled bank within five days of declaration. In case of inadequacy or absence of profits in any financial year, companies can also declare dividends out of profits of previous years, which have been accumulated & transferred to free reserves, subject to the prescribed conditions.

Further, a company may declare an interim dividend during any financial year or any time till the holding of AGM out of surplus or out of profits of that particular financial year or out of profits generated till the quarter preceding the date of declaration of the interim dividend. However, in case of loss up to the end of such quarter, an interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding two financial years.

INTERNAL FINANCIAL CONTROLS

The term 'Internal Financial Controls' means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business. This includes adherence to the company's policies, safeguarding of its assets, prevention and detection of frauds and errors, accuracy and completeness of the accounting records and timely preparation of reliable financial information.

The Board of Directors of a listed company must confirm in its responsibility statement that the IFC laid down are followed by the company and that they are adequate and

operate effectively. Auditors are also required to opine on the adequacy of the IFC system and their operating effectiveness, except in the case of OPC and certain exempted private companies.

ACCOUNTS AND AUDIT

The companies must maintain books of accounts as per the accounting standards prescribed by the ICAI and notified under the CoA. Certain companies now follow Indian Accounting Standards notified under CoA, which are converged with International Financial Reporting Standards, for standalone and consolidated financial statements.

All the companies must have their accounts audited by an auditor who is a practising member of the ICAI. A company must appoint its first auditor within 30 days from the date of incorporation and such auditor shall hold the office till the conclusion of the first AGM. The auditor appointed in the AGM shall hold office from the conclusion of that meeting till the conclusion of the sixth AGM. All listed companies and other companies exceeding prescribed thresholds cannot appoint or re-appoint an individual as auditor for more than one term of five consecutive years and an audit firm as auditor for more than two terms of five consecutive years.

Further, an individual auditor and an audit firm, after having completed the term as aforementioned, become ineligible to be appointed as auditor in the same company for five years from the end of their term.

Every auditor is required to comply with the auditing standards prescribed by the ICAI.

To provide for matters relating to accounting and auditing standards under the CoA, the Government of India constituted the NFRA on 1 October 2018. The NFRA has the power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service or investigate the auditors of the listed companies and certain other specified classes of companies.

MCA in consultation with NFRA has notified rules for accounting standards which shall apply to all those companies (and their auditors) which do not have to apply Ind AS. It is effective from 23 June 2021 and in respect of financial statements for accounting periods commencing on or after 1 April 2021.

FINANCIAL REPORTING

Every company is required to file its audited financial statements and annual return with ROC within 30 days and 60 days respectively, from the conclusion of the Annual General Meeting. An OPC is required to file its audited financial statements within 180 days from the closure of the financial year.

SECRETARIAL AUDIT - RELAXATION TO SMALL COMPANIES

All listed companies or companies exceeding certain prescribed thresholds are liable to audit secretarial and certain other compliances of the company.

CORPORATE SOCIAL RESPONSIBILITY

Every company having a net worth > INR 5,000mn or turnover > INR 10,000mn or net profit > INR 50mn during

the immediately preceding financial year is required to constitute a CSR committee comprising at least three directors. The CSR committee is required to formulate & recommend to the Board of Directors, a CSR policy & an annual action plan of CSR policy which shall indicate aspects like activities to be undertaken by the company and the amount of expenditure. Every company is required to spend at least 2% of its average net profits earned during 3 immediately preceding financial years in pursuance of its CSR policy ('CSR Obligation amount'). "The company having average CSR obligation amount of INR 100 mn & above must undertake an impact assessment of their specified CSR Projects". The CoA provides activities that would constitute CSR, which include activities relating to philanthropy, improving operational efficiency, and transforming the business model.

A surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account & spent in pursuance of CSR policy/ annual action plan of the company or transferred to a prescribed fund. In case the CSR obligation amount remains unspent, the same needs to be transferred to a special fund or special bank account based on whether the CSR Obligation amount pertains to an ongoing project or not.

COMPLIANCE REQUIREMENTS OF A COMPANY

Depending upon the type of entity, the CoA mandates, inter-alia, the following compliances:

- Annual Filing - Financial statements with directors' report, notice and annual return.
- Maintenance of statutory registers - Register of members, directors, directors' shareholding, contracts with related parties, etc.
- Disclosure of interest in other entities by the director
- Periodical disclosures to stock exchanges, SEBI, ROC, etc.
- Forms for appointment and resignation of independent director, women director, auditor, etc.
- KYC Compliances of Director holding DIN.
- KYC Compliances in respect of the registered office of the company.
- Reporting of deposit or particulars of transaction not considered as deposit or both.
- Reporting of interest by SBO and the company.
- Minutes of the board meeting, audit committee, CSR committee, AGM, etc.

RELIEFS TO COMPANIES IN IFSC

The CoA has provided various relaxations for companies' set-up in an IFSC, some of which have been listed below:

- Restrictions laid on the investment layers will not apply.
- Relaxation on certain dates for complying with various regulatory procedures.
- Deferment in the constitution of the CSR Committee and incurring CSR expenses.
- Internal audit is applicable only if the articles of the company provide for it.
- EGM can be convened at any place within or outside India.

LIMITED LIABILITY PARTNERSHIP (LLP)

The Limited Liability Partnership Act, 2008 (LLP Act) governs the provisions relating to the incorporation of an LLP, the responsibilities of the LLP, partners, designated partners, financial statement disclosure and other related regulations and compliances.

An LLP is a partnership in which the liability of every partner is limited. An LLP is a legal entity separate from its partners. Every partner of an LLP, for business, is an agent of the LLP but not of other partners. LLP is not responsible for any actions of a partner in which he/she has no authority to act. This is an important difference from an unlimited partnership.

An overview of relevant concepts and key provisions are as follows:

MINIMUM NUMBER OF PARTNERS

An LLP shall have at least two partners. If at any time the number of partners is reduced below two and the LLP continues to carry business for more than six months, the person who is the only partner of the LLP during such time shall be liable personally for the obligations of the LLP incurred during that period.

DESIGNATED PARTNERS

An LLP is required to have at least two designated partners who are individuals and at least one of them is required to be a resident of India. Designated partners are responsible for doing all the acts of an LLP in respect of compliance with the provisions of the LLP Act. All designated partners are required to hold a valid DIN.

FORM OF CONTRIBUTION

The contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefits to the LLP, including money, promissory notes, and other agreements to contribute cash or property, and contracts for services to be performed.

MAINTENANCE OF BOOKS OF ACCOUNTS, OTHER RECORDS, AND AUDIT

An LLP is required to maintain books of accounts as prescribed for each year according to a double-entry system of accounting on a cash basis or accrual basis, at its registered office. LLPs exceeding the prescribed turnover or contribution are required to get their books of accounts audited.

COMPLIANCE REQUIREMENTS OF LLPs

Every LLP is required to file (i) an annual return and (ii) a statement of accounts and solvency for each financial year.

CONVERSION

A private company, firm or an unlisted public company can convert itself into an LLP, subject to prescribed conditions provided in the LLP Act.

SMALL LLP & START-UP LLP

The LLP (Amendment) Act, 2021, has recognised the concept of a Small LLP which means an LLP where the contribution from partners is up to INR 2.5mn (may be increased up to INR 50mn) or the turnover of the preceding financial year is up to INR 4mn (may be increased up to INR 500mn).

The LLP (Amendment) Act, 2021, has also recognised the concept of a Start-up LLP and the Central Government has been accorded the power to recognise certain LLPs as Start-up LLPs.

The introduction of the concepts of Small LLPs and Start-Up LLPs is like that of Small Companies under the CoA, primarily to aid ease of doing business and encourage smaller businesses to take a formalised approach. The LLP (Amendment) Act 2021, benefits Small LLP or Start-Up LLP in case of non-compliance, where the firm or its partners have the advantage of being subjected to only one-half of the penalty that is specified in the LLP Act, maximum up to INR 0.1mn (for LLPs) and up to INR 0.05mn (for Partners).

MERGERS AND ACQUISITIONS

Lately, India with its huge potential has emerged as one of the leading contenders towards becoming a global superpower. With the present Government, India is reaping the benefits of a stable policy particularly focussed on making India a 'manufacturing hub' and a 'start-up hub'. Both highlight a special focus on the ease of setting up and carrying on business in India. This, along with a host of liberalisation measures, has resulted in a lot of traction on Merger & Acquisitions (M&A) deals.

Corporate, tax and other allied laws together have a clear framework for facilitating domestic as well as cross-border mergers and acquisitions.

M&A could be divided into two categories: Internal restructuring and external deals. M&A (whether internal or external) is typically undertaken by one of the following modes:

MERGER

A merger may be undertaken either:

- Amongst two or more Indian companies (domestic merger); or
- Between an Indian company and a foreign company (cross-border merger).

Merger provisions are contained in the Cost of Acquisition (CoA), which involves a process to obtain approval by the requisite majority of shareholders and creditors and a sanction by the jurisdictional NCLT. These NCLTs effectively act as a single window for the settlement of all disputes, matters and sanctioning of schemes relating to mergers, amalgamations, reduction of capital, demergers, liquidation process, etc.

The FEMA also permits cross-border mergers and the issue of shares to non-residents upon the merger of Indian entities. A cross-border merger is permitted only with companies incorporated in notified jurisdictions outside India. An arrangement involving a merger or demerger between an Indian company and a company incorporated in a country that shares its land border with India is required to submit a declaration confirming the prior approval taken from RBI under the FEMA provisions.

It generally takes about six to nine months to complete a merger in India that requires the sanction of the NCLT.

The CoA now allows the merger or amalgamation between two or more start-up companies or one or more start-up companies with one or more small companies.

Further, the CoA also has simplified provisions in case of a merger of:

- Wholly owned subsidiary with its holding company; and
- A merger of two small companies (small company means a private company whose turnover and paid-up share capital does not exceed the threshold limits prescribed under CoA).

In such cases, an application for a merger needs to be made only to the Central Government (powers delegated to the respective Regional Directors) without requiring the sanction of the jurisdictional NCLT. However, the Regional Director has the power to refer the matter to the jurisdictional NCLT in the case where the Regional Director thinks that the scheme is not in the public interest or the interest of the creditors of the company. Companies whose securities are listed on stock exchanges in India are additionally required to comply with the conditions prescribed by SEBI and obtain its approval for a merger.

The IT Act prescribes specific conditions for allowing tax neutrality to mergers and demergers and the carrying forward/ utilisation of tax losses by the transferee company.

DEMERGER

Unlike a merger, where one company ceases to exist (transferor company), a demerger involves the transfer of a business undertaking from one entity to another. In other words, the transferring entity survives and continues to operate the remaining business activities. The process for approval of a demerger is like that of a merger. As in the case of a merger, the IT Act contains specific conditions for tax-exempt demergers.

SLUMP SALE

A slump sale involves the transfer of a business undertaking from one company to another on a going concern basis for a lump sum consideration, i.e., without assigning values to individual assets and liabilities. Any gains arising out of a slump sale are taxable as capital gains under the IT Act. Further, no GST is payable on a slump sale transaction, while the same is applicable on a piecemeal sale of assets and/ or liabilities, that do not constitute a business undertaking.

Slump sale does not require the approval of the NCLT and can be in effect by obtaining relevant corporate authorisations as per the CoA.

ACQUISITION

An acquisition typically entails gaining voting rights through share acquisition. This can result in a joint venture (significant minority or majority) or a full buy-out. In the case of listed companies, acquisition beyond certain thresholds, or in case of a change in control, a mandatory offer needs to be made to the public as per SEBI Takeover Code Regulations.

BUY-BACK OF SHARES

A buy-back refers to a company purchasing its shares from its shareholders. The buy-back may be necessitated for various objectives such as the return of excess cash to shareholders, capital structuring, etc. A company can buy back up to 25% of its share capital and free reserves (constituents of free reserves defined in the CoA) and up to 25% of its fully paid-up equity shares. This is subject to compliance with prescribed conditions such as shareholder's approval, maintenance of a minimum debt-equity ratio, restriction on issuance of further capital, etc. A company is liable to pay a buy-back tax if the buy-back price of shares is higher than the issue price.

CAPITAL REDUCTION

Capital reduction is akin to a buy-back wherein a company reduces its share capital by either cancelling the outstanding shares or a portion of their paid-up value. Capital reduction is an NCLT-driven process and requires the approval of the jurisdictional NCLT along with the approval of the stakeholders.

OTHER CONSIDERATIONS

An M&A transaction would typically also require analysis of specific laws, exchange control regulations and policies governing the industry. The transactions undertaken by listed entities are governed by rules and regulations framed by SEBI. Certain transactions also require approval from the competition regulator (Competition Commission of India). Due consideration needs to be given to anti-abuse provisions related to the issue and transfer of shares under the IT Act.



INBOUND INDIVIDUALS

Taxation of inbound individuals in India is governed by tax residency and the scope of income. Other laws may impact individuals while being in India, especially for employment purposes. These primarily include income tax, immigration and social security aspects.

INCOMES CHARGEABLE TO TAX

As discussed under 'Tax Laws', income in India is bifurcated into five different heads:

- Salaries
- Income from house property
- Profit and gains of business or profession
- Capital gains and
- Income from other sources.

The heads of income are mutually exclusive. Income that is specifically chargeable under one head cannot be charged under another head. The elements of the above incomes most relevant to individuals are discussed below.

SALARY

Taxable salary includes wages, annuities, pensions, gratuities, advance salary, perquisites and profits instead of or in addition to salary and wages.

Withholding tax is applicable on salary income due or paid by the employer or a former employer. Taxes are withheld by the employer on the employee's estimated annual salary income as per the progressive slab rates applicable to the individual. The tax is withheld monthly on a proportionate basis and deposited with the Indian Tax authorities.

PERQUISITES

Perquisites are a part of salary and are referred to as benefits in kind or cash provided by an employer to the employee.

Below is an inclusive list of perquisites as defined in the IT Act:

- Providing rent-free, concessional rent, unfurnished, furnished, hotel accommodation.
- Providing furniture and fittings for such accommodation.
- Any sum paid by the employer in respect of any employee's obligation.
- Employer's contribution towards Employee Provident Fund, Approved Superannuation Fund and National Pension Scheme over INR 0.75mn and accretion in the form of interest/ dividend towards such excess contribution.

- The value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at a concessional rate to the employee.
- The value of any other fringe benefit or amenity as may be prescribed.
- Any expenditure incurred by the employer on medical treatment of the employee or any member of the family of such employee.
- Profits instead of salary.
- Credit card, club membership fees, motor car, etc., provided by the employer.
- Perquisites are valued for tax purposes as per prescribed IT Rules.

DIRECTORS' REMUNERATION

Generally, directors' sitting fees are taxed as income from business or profession. Directors' remuneration like salary, fees, commission, etc., is taxed either under the head 'Salaries' or 'Profit and gains of business or profession' depending on the terms of the arrangement between the company and the directors.

DEDUCTIONS

Income chargeable under the head 'Salaries' is computed after providing certain deductions as below:

- Standard deduction of up to INR 0.05mn.
- Deduction in respect of any sum paid towards an employment tax.
- The deduction in respect of entertainment allowance (eligible for a government employee).

Some of the elements of salary such as House Rent Allowance, Leave Travel Allowance, etc., enjoy certain deductions as per the prescribed limits and are valued as per the IT Rules.

In the case of inbound individuals contributing to the overseas social security schemes during their stay in India, the deduction may be available from salary income. The availability of deduction would also depend on the nature of the contribution (mandatory/ voluntary), vesting of benefits at the time of contribution, etc.

Similarly, the deduction for hypothetical tax withheld by the employer during the assignment in India shall be available from the salary income.

Deductions are also allowed for specified contributions including contributions to recognised provident funds, pension contributions, life insurance premiums, etc. Such deduction is limited to INR 0.15mn annually.

Additionally, other specified deductions are also provided, subject to specified limits. These include payment towards medical insurance premiums, including preventive health check-ups; donations to certain funds and charitable institutions; interest on loans for higher education; contribution to National Pension System; subscription to long-term infrastructure bonds, etc.

TAXABILITY BASIS RESIDENTIAL STATUS IN INDIA

The residential status of inbound individuals will be determined based on the conditions specified for individuals. Refer to 'Tax Laws' for the residential status of individuals.

SCOPE OF TAXABLE INCOME

This is determined based on the individual's residential status and is stated below:

Residential status	Scope of taxable income in India
NR	Income earned and/or received in India.
RNOR	Income sourced in India.
ROR	Worldwide income is subject to any benefits available under the relevant Tax Treaty.

In general, income from services rendered in India is subject to tax in India. Hence, inbound individuals working in India shall be subject to tax in India on the remuneration related to the Indian assignment.

BENEFITS UNDER TAX TREATY AND DOMESTIC TAX LAWS

A taxpayer can opt to be governed either by the provisions of the applicable Tax Treaty or the IT Act, whichever is more beneficial. Accordingly, benefits such as split residency, exemption of employment income, short-stay exemption, foreign tax credits, etc., under the relevant Tax Treaty can be taken into consideration while computing the total taxable income in India.

In case of an NR availing benefit under the Tax Treaty, a TRC would need to be obtained from the country of residence.

TAX RATES

Refer to 'Tax Laws' for tax rates applicable to individuals.

From FY 2020-2021 onwards, a new concessional tax regime has been introduced in the IT Act for individuals which has been further amended and become the default tax regime from FY 2023-24 onwards. An individual could make an election of the tax regime, default vs. old, subject to certain conditions laid down in the IT Act. In the case of individuals who do not have business income, an election needs to be made at the time of filing the annual individual tax return. In the case of an individual and HUF having income from a business, the option can be exercised in form and manner as may be prescribed, on or before the due date for the furnishing of a tax return.

However, employees will need to inform their choice of their employer at the beginning of the FY since this would affect the quantum of tax to be deducted every month from the salary income.

Election of the New Simplified Tax Regime (NSTR) is to be informed to jurisdiction tax officer vide Form No. 10-IE. This is applicable in the case of individuals having a business income.

PAYROLL TAX

Employment incomes are taxed under the head 'Salaries'. It is subject to withholding tax with the onus on the employer to complete the WHT obligations, i.e., deduction, deposit and reporting compliances.

WHT DEPOSIT

Payroll taxes need to be withheld at the time of the payment of salary. The employer is required to deposit the WHT with the Indian Government as below:

Salary for the month	Due date for deposit of payroll taxes
April to February	7 th of the month following the month in which the salary was paid
March	30 th April

Any delay in withholding taxes could attract interest and penalties.

WHT RETURN AND WHT CERTIFICATE

The employer is required to file quarterly corporate tax withholding returns mentioning the salary, perquisites and tax details in prescribed Form 24Q within the due dates as tabulated below:

Quarter ended on	Due date for filing payroll return
30 th June	31 st July
30 th September	31 st October
31 st December	31 st January
31 st March	31 st May

The employer must also issue a salary certificate/WHT certificate in Form 16 and Form 12BA to the employee for the concerned fiscal year by the due date of 15 June in the subsequent FY.

EMPLOYEE STOCK OPTION PLAN (ESOP)

As per the IT Act, 'perquisite' includes the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer or former employer, free of cost or at a concessional rate to the employee. Accordingly, the benefit arising under an employee share benefit plan is a perquisite in the hands of the employee and would be taxed as part of salary income.

The value of the ESOP benefit is FMV of the specified security/sweat equity shares, on the date on which the option is exercised by the employee as reduced by the amount paid by the employee in respect of such security or shares.

The employer is required to undertake WHT obligations when the underlying asset, i.e., securities are allotted/transferred to the employee.

For inbound employees who qualify as an NR or RNOR, the ESOP benefit which is attributable to the period of services rendered in India during the grant period (i.e., from the date of grant to the date of vest) is taxable. Such ESOP income is taxable in the year when such securities are transferred by the employer or former employer.

On the sale of ESOP, an employee would be subject to capital gains tax on the difference between the sale consideration and the FMV.

OTHER TAX

CONSIDERATIONS

INDIVIDUAL TAX RETURN

An inbound individual would need to obtain a PAN to make tax payments and file an individual annual income tax return.

Depending upon the specifics of the income tax return form released for each year, an individual would need to disclose income and other details at the time of filing the tax return. Apart from the income and deduction details, it may include reporting of all bank accounts held in India, assets and corresponding liabilities in India. For RORs, the foreign assets are also to be reported in the tax return. To claim any tax refund or any beneficial position/ exemption under the Act or the Tax Treaty, a tax return needs to be filed.

INCOME TAX CLEARANCE CERTIFICATE

Before a final exit from India, an Income Tax Clearance Certificate/No Objection Certificate needs to be obtained from the income tax authorities. The application would be accompanied by income-tax payments, departure travel dates, etc.

PERMANENT ESTABLISHMENT EXPOSURE RISK

An inbound employee's presence in India may also create PE exposure in India for the foreign employer entity. Hence, it is essential to evaluate any PE risk under the relevant Tax Treaty and concerning corporate tax and transfer pricing matters.

- Employees' Provident Fund (EPF).
- Employees' Pension Scheme (EPS).
- Employers' Deposit Linked Insurance (EDLI) Scheme.

SOCIAL SECURITY

COVERAGE

The Indian social security regime covers the following schemes:

APPLICABILITY

The EPF Act applies to establishments in India employing 20 or more persons at any time during the year. Establishments employing less than 20 persons may voluntarily register with the Employee Provident Fund Organisation (EPFO) or any private Fund/ Trust created for EPF purposes. Upon voluntary registration, the EPF Act applies as if the registration was mandatory.

An International Worker (IW) is also required to contribute to the EPF scheme. An IW is defined as:

- An Indian employee has worked or going to work in a foreign country with which India has a Social Security Agreement (SSA).
- An employee, other than an Indian employee and not holding an Indian passport, who is working for an establishment in India to which the EPF Act applies.

CONTRIBUTION

Contribution is payable by employer and employee on the employee's 'basic wages' as defined in the EPF Act. An employee is required to contribute 12% of basic wages towards the EPF. The employer is required to make a matching contribution of 12% (3.67% towards EPF and 8.33% towards EPS).

For IWs who have joined the EPF after 1 September 2014 and have monthly wages exceeding INR 0.015mn, the employer's contribution of 12% is towards EPF only and no allocation is made towards EPS. Further, there is no salary ceiling limit for IWs. The contribution shall apply to the total wages earned for the Indian assignment.

Employer contribution and annual accretion to such accounts during an FY is taxable from FY 2020-2021 as a perquisite in the hands of the employee. Contributions towards the Employee Provident Fund, Approved Superannuation Fund and National Pension Scheme over INR 0.75mn and annual accretion towards such contribution would be taxable as a perquisite in the hands of the employee.

Similarly, the interest income accrued during the fiscal year to such funds shall be taxable to the extent it relates to the employee contribution exceeding INR 0.25mn made in an FY on or after 1 April 2021. However, the above limit shall be enhanced to INR 0.5mn, subject to a condition where an employer does not make any contribution to such fund. Such income shall be subject to tax as income from other sources in the hands of the employee. It shall not be treated as part of the salary income of the employee.

SOCIAL SECURITY AGREEMENTS (SSAs)

The Indian Government has entered into SSAs with several countries mainly for three benefits: detachment from the host country's social security scheme, totalisation of periods and exportability of pensions. India has signed SSAs with 20 countries.

Detachment is obtained by inbound by applying to the social security authorities of the country from where the individual is coming from. This application is made to obtain the detachment certificate or Certificate of Coverage (COC). The COC is valid for a specified period and needs to be submitted to the Indian EPF authorities to detach/ exclude the employee from the applicability of the EPF Act.

EPF withdrawal is permitted to inbounds as per the provisions of SSA. In case of an inbound from a non-SSA country, the EPF withdrawal is only permitted after attaining the age of 58 years.



IMMIGRATION

The Bureau of Immigration undertakes immigration functions in India. It is assisted by Foreigner Regional Registration Offices for immigration facilitation services at airports and work relating to the registration of foreigners under various Acts and Rules. Immigration check is conducted for all passengers, Indian or foreigners, both at the time of arrival and departure.

Foreign nationals coming to India are required to possess a valid national passport along with a valid visa obtained from the Indian Mission or Post.

TYPES OF VISAS

Different categories of visas are issued depending upon the purpose of the visit to India like employment, business, study, etc. The Indian Embassy/ High Commission located in various countries issues the correct type of visa to foreign nationals. Any foreign national can enter India by applying and obtaining, inter-alia, any of the following visas (only an illustrative list):

Employment Visa

- Generally granted for employment in an organisation registered in India or for employment in a foreign company/firm/organisation engaged for execution of a project in India, as a consultant, etc.
- Applicant should be a highly skilled and/ or qualified professional drawing remuneration over USD 0.025mn per annum. It is not granted for routine, ordinary or secretarial/ clerical jobs.

Business Visa

- Generally **granted** for technical meetings/ discussions, attending board meetings for providing business services support, monitoring progress on ongoing work, etc.
- The foreign national should be a person of assured financial standing and appropriate proof shall be checked at the time of processing of the visa.



Project visa

- For executing projects in the power and steel sectors.

Tourist visa

- Visiting India on tourism, an e-Visa facility is also available.

Student visa

- Pursuing studies/ academic courses.

RESIDENTIAL PERMIT

Foreign nationals visiting India on a visa that is valid for more than 180 days must register with the concerned Foreigner's Regional Registration Office (FRRO) within two weeks from the date of arrival. The FRRO certificate (residential permit) needs to be kept in possession during the stay in India. The application process has become online in recent years.

If there are any changes in details during the stay in India, the same needs to be notified to the FRRO. In case of an extension of the visa, the FRRO renewal/ extension needs to be applied too.

At the time of exit from India, the residential permit needs to be surrendered to the immigration authorities at the airport or with the FRRO.

Persons holding an OCI card or PIO are not required to apply for a residential permit.

FOREIGN EXCHANGE REGULATION

Capital and current account transactions as well as remittances into and from India are governed by FEMA and the rules and regulations made thereunder. The treatment of transactions would depend upon the residential status of an individual. The definition of the residential status of individuals under FEMA differs from the definition under the IT Act.

RESIDENCY

An inbound individual shall be treated as a Resident in India if he resides in India for more than 182 days during the previous fiscal year and has come to India for employment, business or any other purpose indicating an uncertain period of stay. An individual, other than a Resident, shall qualify as a non-resident or a Person Resident Outside India.

BANKING

An inbound individual coming to India for an assignment or temporary employment is likely to qualify as a Non-resident under FEMA. The individual needs to open an NRO account (denominated in INR) with a bank in India to receive their salary. On becoming a Resident, the NRO account needs to be converted into a Resident Rupee account.

At the time of leaving India, the Resident Rupee account needs to be re-designated to the NRO account. Any claims outstanding in India will be received in the NRO account. The balance funds in the NRO Account can be repatriated abroad up to USD 1mn per Financial Year. The account can be closed after dues are received and repatriated

REMUNERATION - RECEIPT AND REMITTANCE ABROAD

Credit of remuneration directly into a foreign currency account with a bank outside India is permissible, provided the income tax has been paid on such remuneration. This is permissible in the below cases:

- A foreign national being a Resident in India under FEMA
 - On deputation to the office/branch/subsidiary/joint venture/group company in India.
 - Underemployment directly with an Indian entity.
- An Indian citizen employed by a foreign entity outside India and on deputation to India.

Additionally, a resident individual may remit up to USD 0.25mn during each Financial Year for various prescribed transactions under the LRS as per FEMA regulations, subject to the prescribed conditions.

ECONOMIC LAWS AND OTHER IMPORTANT LAWS

NEW LABOUR CODE (PROPOSED)

The Central Government on recommendations of The Second National Commission on Labour proposed to replace 29 existing Labour Laws with four Codes to simplify and modernise labour regulation. The major challenge was to facilitate employment growth while protecting workers' rights. The Labour Codes which were passed in both the Houses of the Parliament and received Presidential Assent are as follows:

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

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

The code aims to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto. It subsumes 13 existing Laws. [(a) The Factories Act, 1948 (b) The Mines Act, 1952 (c) The Dock Workers (Safety, Health and Welfare) Act, 1986 (d) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (e) The Plantations Labour Act, 1951 (f) The Contract Labour (Regulation and Abolition) Act, 1970 (g) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 Page | 4 (h) The Working Journalist and other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (i) The Working Journalists (Fixation of rates of wages) Act, 1958 (j) The Motor **Transport** Workers Act, 1961 (k) The Sales Promotion Employees (Condition of Service) Act, 1976 (l) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (m) The Cine-Workers and Cinema Theatre Workers Act, 1981.]. The Code aims at replacing multiple registrations under various enactments to one common registration, one license and one return which will ultimately create a consolidated database centrally and will be helpful under ease of doing business.

THE CODE ON SOCIAL SECURITY, 2020

The Act was introduced in the Lok Sabha on 19 September 2020 and was passed on 22 September 2020. The Bill was passed in the Rajya Sabha on 23 September 2020.



It received Presidential assent on 28 September 2020. It aims to extend social security to all the employees and workers either in the organised, unorganised or any other sectors. Laws Replaced: The Code on Social Security, 2020 subsumes nine existing laws: (a) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (b) the Payment of Gratuity Act, 1972 (c) Employees' Compensation Act, 1923 (d) Maternity Benefit Act, 1961 (e) Employees' State Insurance Act, 1948 (f) Workers Cess Act, 1996 (g) Cine Workers Welfare Fund Act, 1981 (h) Building and Other Construction and Unorganised Workers' Social Security Act, 2008 (i) Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

THE INDUSTRIAL RELATIONS CODE, 2020

The Industrial Relations Code, 2020 was introduced in the Lok Sabha on 19 September 2020 and was passed on 22 September 2020. The Bill was passed in the Rajya Sabha on 23 September 2020. It received Presidential assent on 28 September 2020. It aims to consolidate and amend the laws relating to Trade Unions and conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes. Laws Replaced: The Industrial Relations Code, 2020 subsumes three existing laws: (a) the Trade Unions Act, 1926 (b) The Industrial Employment (Standing Orders) Act, 1946 (c) The Industrial Disputes Act, 1947.

THE CODE ON WAGES, 2019

The Code on Wages, 2019 was introduced in the Lok Sabha on 23 July 2019 and was passed on 30 July 2019. The Bill was passed in the Rajya Sabha on 2 August 2019. It received Presidential assent on 8 August 2019. It aims to regulate wage and bonus payments in all employments (industry, business, trade and manufacture). Laws Replaced: The Code on Wages subsumes 4 existing Laws: (a) Minimum Wages Act, 1948 (b) Payment of Wages Act, 1936 (c) Payment of Bonus Act, 1965 (d) Equal Remuneration Act, 1976. The Code of Wages provides the definition of 'Wages', which will be Universally applicable.



CURRENT LABOUR LAWS

India has several labour laws that govern almost all aspects of employment such as payment of wages, minimum wages, payment of bonuses, payment of gratuity, contributions to provident fund and pension fund, working conditions, accident compensations, etc. The Government has enacted certain central legislations, viz, the Employees Provident Fund and Miscellaneous Provisions Act, Employees State Insurance Act, Payment of Wages Act, Minimum Wages Act, Equal Remuneration Act, Maternity Benefits Act, etc.

In addition, at the state level, the State Governments usually have a separate Labour Ministry, which seeks to ensure compliance with State labour laws (viz, State Shops and Establishments Act, Labour Welfare Fund Act, professional tax, etc.) through its Labour Department, which is generally operational at the district level.

The various labour legislations enacted by the Central Government can be classified into the following different broad categories:

- Laws relating to Wages.
- Laws relating to Social Security.
- Laws relating to Working Hours, Conditions of Services and Employment.
- Laws relating to Equality and Empowerment of Women.
- Prohibitive Labour Laws.
- Laws relating to Employment and Training.

LAWS RELATING TO WAGES

The Minimum Wages Act, 1948

This Act empowers the Government to fix minimum rates of wages for employees working in various scheduled employments. The Act applies to every employer employing one or more employees. This Act makes it mandatory on the part of every employer to pay the minimum rates of wages which are fixed by the State Governments. The wage rates are usually fixed and modified by way of a notification issued by the State Governments every six months. The Act mandates the payment of wages during the wage periods as

specified by the state legislation. The rules in general mandate the employer to display a notice on a conspicuous place of the premises showcasing the dates on which wages will be paid to the employees in English and vernacular language/s which is understood by a majority of persons. The employer shall maintain registers in the forms as prescribed under the state-specific rules.

The Payment of Wages Act, 1936

This Act regulates the payment of wages to certain classes of employed persons. It seeks to ensure that the employers make timely payments of wages to the employees working in the establishments and to prevent unauthorised deductions from the wages.

All wages shall be in current coin or currency notes or in both. It is, however, provided that the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account. As per notification S.O. No.2806(E) Published in the Gazette of India (extraordinary) part II, Section 3, Sub-section (ii), dated 29 August 2017, the Payment of Wages Act, the wages averaging less than INR 0.024mn per month are covered and protected by the Act.

The Payment of Bonus Act, 1965

This Act ensures the provision of an annual bonus to the employees who draw a salary or wage which shall not exceed INR 0.021mn per month. The PB Act applies to every establishment which employs 20 or more persons on any day during a particular accounting year. Every employee is eligible for a bonus if he has worked in an establishment for not less than 30 days in that particular year. A minimum bonus of 8.33% and a maximum of 20% of the salary of the employee shall be payable as a bonus to an employee. An employer shall be entitled to pay the bonus to an employee within eight months from the close of the accounting year. Every employer shall maintain a register and submit annual returns per the state-specific rules.

SOCIAL SECURITY LAWS

Employees Provident Funds and Miscellaneous Provisions Act, 1952

This Act is a central legislation, which applies to every factory/ establishment which has 20 or more employees and to every employee drawing wages below INR 0.015mn per month. The act provides for the constitution of a provident fund, a deposit-linked insurance fund and a pension fund for employees. An employee under this act is any person who has been employed either directly or through a contractor. Every employer shall get the establishments registered with the appropriate authority under the act. Both the employer and employee contribute towards the provident fund at the rate of 12% of the basic wage, retaining allowance, dearness allowance and other allowances that are payable to the employee. An employer shall be required to pay the employee provident fund contribution within 15 days of the next month.

Employees' State Insurance Act, 1948

This Act is a central legislation & applies to factories/ shops and commercial establishments employing 10 or more persons. It provides for sickness, maternity, employment injury and other related benefits to the employees. Both the employer and employee are required to make contributions to the Employees State Insurance Corporation in accordance with the act. An employer shall contribute to its employees drawing wages up to INR 0.021mn per month. An employer shall contribute 3.25% of the wages of the employee and the employee shall contribute 0.75% of his/her wages. Such contributions shall be made by the employer before the 15th of the following month.

Labour Welfare Fund Act (of respective States)

This Act provides for the constitution of the Labour Welfare Fund to promote and carry out various activities conducive to the welfare of labour in the State to ensure full and appropriate utilisation of the Fund.

Payment of Gratuity Act, 1972

This Act provides for a monetary retirement benefit that is payable to an employee upon his or her retirement. It applies to all establishments wherein 10 or more persons are employed or were employed in the preceding 12 months. Gratuity becomes payable to employees who have rendered continuous service of five years (There is also a judgment by the Madras High Court which says that there is eligibility for gratuity of an employee who completes 4 years & 240 days of service. But it is advisable to follow what has been prescribed in the law.) in the establishment by provisions of the Gratuity Act. However, completion of a continuous period of 5 years is not necessary if termination of employment is due to death/ disablement for payment of gratuity. It is payable upon resignation, death, retirement, or termination on account of death or disablement due to an accident or disease. A notice shall be submitted by the employer to the Controlling Authority (Labour Officer) of a particular area in a form as prescribed under state rules and the same shall be displayed in the conspicuous part of the establishment in English and vernacular language, displaying the name of the person who is authorised to receive communications under the Gratuity Act and its rules.

Employee's Compensation Act, 1923

This is one of the important social security legislations. The Act aims to provide financial protection to employees and their dependents through compensation in case of any accidental injury that occurs during employment which results in either death or disablement of the worker.

The Act does not apply to the members of the armed forces of the Union & Workmen who are covered under the ESI (Employee State Insurance) Act.

Profession Tax (of respective States)

Respective State Governments levy 'Professional Tax' on income from profession or employment. The professionals

earning an income from salary or other practices such as lawyers, teachers, doctors, chartered accountants, etc., are required to pay professional tax. In the case of salaried and wage earners, the professional tax is liable to be deducted by the employer from the salary/ wages and the same is to be deposited to the State Government. In the case of other classes of individuals, this tax is liable to be paid by the employee himself. The tax calculation and amount collected may vary from one state to another, but it has a maximum limit of INR 0.0025mn per year.

LAWS RELATING TO WORKING HOURS, CONDITIONS OF SERVICE AND EMPLOYMENT

The Factories Act, 1948

This Act extends to the whole of India including Jammu and Kashmir. The Act applies to every premise that has 10 or more workers in the manufacturing process that operates with the aid of power; and premises with 20 or more workers in the manufacturing process operating without the aid of power. (A few states like Himachal Pradesh, Gujarat, Assam, Maharashtra, Bihar, etc. have increased the threshold limit for applicability of the Factories Act, 1948 from 10 or more workers to 20 or more workers for factories operating with the aid of power and from 20 or more workers to 40 or more workers for factories operating without the aid of power for 3 months.). This Act does not apply to a mine or mobile unit belonging to the armed forces of the union, restaurants, or hotels or eating places or railway running sheds.

Industrial Employment (Standing Orders) Act, 1946

This Act applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day of the preceding 12 months. It aims to bring uniform terms and conditions of service to various industrial establishments. The Act requires every employer in an industrial establishment to clearly define and publish standing orders concerning conditions of employment/ service rules and to make them known to the workmen employed by it. The Act further specifies that every employer is required to submit to the Certifying Officer five draft copies of the standing orders that he intends to adopt for his establishment. Further, it requires a display of standing orders in a prominent place for the knowledge of workers.

Shops & Commercial Establishments Act (of respective States)

The Shops and Commercial Establishments Act(s) of the respective States generally contain provisions relating to registration of an establishment, working hours, overtime, leave, privilege leave, notice pay, working conditions for women employees, etc. The provisions of the Shops and Commercial Establishments Act apply to both white-collar and blue-collar employees. IT and IT-enabled services have been given relaxations by various State Governments in respect of the observance of certain provisions of their respective Shops and Commercial Establishments Act.

Contract Labour (Regulation & Abolition) Act, 1970 (of respective States)

The Contract Labour (Regulation & Abolition) Act, 1970, has been enforced with the main object of regulation of employment of contract labour. It applies to every establishment in which and every contractor with whom, 50 (state-wise eligibility may differ) or more workmen are employed or were employed in the preceding 12 months. It does not apply to establishments in which work of a casual and intermittent nature is performed. Work performed in an establishment shall not be deemed to be intermittent if it was, performed for more than 120 days in the preceding 12 months. Every principal employer shall make an application to the registering officer for the registration of the establishment in the prescribed form and pay applicable fees as specified under the state-specific enactments and rules. The principal employer shall nominate a representative who shall be present at the time of disbursement of wages by the contractor, and the amounts paid to the contract labour shall be certified by the representative.

Weekly Holiday Act, 1942

The Weekly Holiday Act, 1942, provides for the grant of weekly holidays to persons employed in shops, restaurants and theatres. The Act provides that every shop shall remain entirely closed on one day of the week, which day shall be specified by the shopkeeper in a notice permanently exhibited in a conspicuous place in the shop. Further, the State Governments may require in respect of shops or any specified class of shops that they shall be closed at such hour in the afternoon of one weekday in every week in addition to a weekly day off.

National and Festival Holidays Act (of respective States) 1963

The National and Festival Holidays Act (of respective States) 1963, applies to all establishments in the country.

Irrespective of the statute applicable to an establishment, it is mandatory to grant leave on 26 January (Republic Day), 15 August (Independence Day) and 2 October (Gandhi Jayanti). For the remaining festival holidays, it is at the discretion of the concerned states and establishments.

EQUALITY AND EMPOWERMENT OF WOMEN, DISABILITIES AND TRANSGENDER PERSONS

Equal Remuneration Act, 1976

The Equal Remuneration Act, 1976, provides for the payment of equal remuneration to men and women workers for the same work and prevents discrimination, on the grounds of sex, against women in the matter of employment, recruitment and matters connected therewith or incidental thereto. This Act applies to virtually every kind of establishment.

Maternity Benefit Act, 1961

The Maternity Benefit Act, of 1961, provides benefits to pregnant women and lays down provisions for the protection of employed pregnant women. It applies to every establishment and factory. Every employer shall grant maternity benefits to every woman employee who has been working in the establishment for not less than 160 days in 12 months which would be immediately preceding her date of delivery. The period of maternity leave has been extended from 12 weeks to 26 weeks. The woman shall be entitled to two nursing breaks until the child attains the age of 15 months in addition to the interval of rest provided to her. A crèche facility shall be provided in case the number of employees exceeds 50 or more in an establishment.

The Transgender Persons (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019, requires that every establishment shall implement all measures for providing a safe working environment and to ensure that no transgender person is discriminated against in any matter relating to employment including, but not limited to, infrastructure adjustments, recruitment, employment benefits, promotion, and other related issues, compliance requirements clear in terms of the law. However, several establishments are not aware of how an equal opportunity policy should be created.

Rights of Persons with Disabilities Act, 2016

The Rights of Persons with Disabilities Act, 2016, is in line with the principles of the United Nations Convention on the Rights of Persons with Disabilities and aims at encouraging establishments to have a disabled-friendly workplace. It prohibits discrimination against persons with disabilities unless it can be shown that such an act is a proportionate means of achieving a legitimate aim. The Act specifies every establishment to display an equal opportunity policy preferably on their website or at least at conspicuous places in their premises.

PROHIBITIVE LABOUR LAWS

The Child and Adolescent Labour (Prohibition And Regulation) Act, 1986

The Constitution of India incorporates provisions to secure labour protection for children. It expressly prohibits the employment of a child below the age of 14 years in work in any factory or mine or engagement in any other hazardous employment. 'Adolescent' means a person who has completed 14 years of age but is below 18 years. The policy of the Government is to ban the employment of children below the age of 14 years in factories, mines and hazardous employment and to regulate the working conditions for children in other industries.

Sexual Harassment at Workplace (Prohibition, Prevention and Redressal) Act, 2013

This Act applies to all workplaces and organisations in India. The most important aspect of this legislation is that every employer shall formulate a sexual harassment policy to address the concerns about sexual harassment at a workplace of women and the employer shall communicate the policy to all the employees. Every workplace/organization that employs 10 or more employees shall constitute an internal complaints committee, as per the provisions laid down under this Act. Every employer must file an annual report detailing the number of cases filed, if any, with the District Officer every year.

However, if there are no cases that have been registered, the same shall also be intimated to the District Officer through the annual report.

LAWS RELATING TO EMPLOYMENT AND TRAINING

Apprentices Act, 1961

Acknowledging that training imparted in institutions is not sufficient for the acquisition of employable skills and needs to be supplemented by training at the workplace, the Apprentices Act, 1961, and Apprenticeship Rules, 1962, were enacted with the prime objective to utilise fully the facilities available in industries for imparting practical training and thus developing skilled manpower for industries. Initially, the Act covered the apprenticeship training for trade Apprentices. Subsequently, the Act was amended in 1973, 1986 and 2014 to bring the Graduates, Technicians, Technicians (Vocational) and Optional Trade Apprentices respectively under its purview and the Apprenticeship Rules, 1992, were revised in the year 2015.

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, applies in case of 25 or more employees and extends to the whole of India. Every employer in a public sector establishment shall furnish such prescribed information or return about vacancies that have occurred or are about to occur in that establishment to such employment exchanges. The Act does not apply about certain vacancies in any employment: a) In agriculture and horticulture in any establishment in the private sector, b) In domestic companies, c) Where the employment period is less than three months, d) To do unskilled office work, e) Connected with the staff of parliament, f) Proposed to fill through promotion or by absorption of surplus staff, g) Carries a remuneration of less than INR 60 a month, h) Quarterly return is to be filled in Form ER1 within 30 days of the due dates, i.e., 31 March, 30 June, 30 September and 31 December.

BANKING AND INSURANCE REGULATIONS

Banking Regulation Act, 1949

The Banking Regulation Act, 1949, regulates all banks in India. The key objective is to safeguard the interest of depositors and avoid competition among banks.

Insurance Regulatory & Development Authority Act, 1999

IRDA regulates the business of insurance and reinsurance in India. The objective of IRDA is to protect the interest of policyholders and promote, regulate and ensure orderly growth of the insurance industry.

INTELLECTUAL PROPERTY LAWS

Laws relating to intellectual property are still in the process of transition in India and are becoming harmonised with corresponding laws in developed countries. As a signatory to the GATT and TRIPS agreements and as a member of WTO, India is required to enact statutes governing copyrights, trademarks, patents, industrial designs, etc.

Indian Copyright Act, 1957

As per the Copyright Act, copyright subsists in original, literary, dramatic, musical and artistic work, a cinematographic film or a sound recording. The Copyright Act provides for both civil and criminal remedies for an infringement of copyright.

Trademarks Act, 1999

The Trademarks Act, 1999, provides for the registration of trademarks for services and goods. It grants the holder of a foreign trademark, a right to register a trademark in India. The law of trademark deals with the mechanism of registration, protection of trademarks and prevention of fraudulent trademarks.

Indian Patents Act, 1970

The Indian Patents Act, 1970, provides for the grant, revocation, registration, license, assignment and infringement of patents in India. Any infringement of a patent is punishable under the terms of this Act. India also recognises the concept of 'compulsory licensing' of patents, under which the Controller of Patents can permit an interested party to commercially exploit the patent for three years.

Designs Act, 2000

The Designs Act, 2000, seeks to protect all features of shapes, configurations, patterns or ornaments in a design that appeals to the eyes in the finished article. The purpose of this Act is to protect novel designs formulated with the object of applying them to specific articles, to be manufactured and marketed commercially for a specified period from the date of registration.

INSOLVENCY AND BANKRUPTCY CODE, 2016

The IBC Code offers uniform, comprehensive insolvency legislation, covering all companies, partnerships, and individuals (other than financial firms). The Government has designed a separate framework for bankruptcy resolution in failing banks and financial sector entities.

One of the fundamental features of the IBC Code is it allows creditors to assess the viability of a debtor as a business decision and agree upon a plan for its revival or speed.

liquidation. The IBC creates a new institutional framework, consisting of a regulator, insolvency professionals, information utilities and adjudicatory mechanisms, that will facilitate a formal and time-bound insolvency resolution process and liquidation. The IBC Code overrides all other laws on matters about insolvency and bankruptcy.

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 (RERA)

The RERA Act seeks to regularise and boost investments in the real estate industry, protect home buyers and enable speedy redressal of disputes. The establishment of an adjudicating mechanism for speedy grievance redressal is a noteworthy feature of this Act. RERA has made registration of every real estate project mandatory, subject to exemptions. It ensures transparency and efficiency in the real estate sector about sale of plots, apartments, buildings/ real estate projects.

RERA has made developers, real estate agents and other such stakeholders on supply side more accountable, thereby protecting the interests of consumers. It has enhanced the efficiency of the sale process and ensures the timely completion of real estate projects. The implementation of RERA has created a conducive environment for attracting FDI inflows.

INDIAN CONTRACT ACT, 1872

The Indian Contract Act, of 1872, seeks to ensure reasonable fulfilment of expectations created by promises of the parties and also enforcement of obligations prescribed by an agreement between the parties.

NEGOTIABLE INSTRUMENTS ACT, 1881

The Negotiable Instruments Act, of 1881, governs the use of cheques, promissory notes and bills of exchange.

SALE OF GOODS ACT, 1930

The contracts for the sale of goods are subject to the general principles of the law relating to contracts, i.e., the Contract Act. The Sale of Goods Act deals with certain peculiar features such as transfer of ownership of the goods, delivery of goods rights and duties of the buyer and seller, remedies for breach of contract, conditions and warranties implied under a contract for the sale of goods, etc.

ARBITRATION AND CONCILIATION ACT, 1996

The Arbitration And Conciliation Act, of 1996, governs the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards in India. Further, it governs the law relating to conciliation.

COMPETITION ACT, 2002

The Competition Act, of 2002, seeks to prevent monopolistic market practices and adverse effects on competition; protect the interests of consumers; and ensure freedom of trade carried on by all the market participants.

It also provides for the procedure to be followed in case of businesses being combined, merges, demergers; and control by one entity in cases where qualitative and quantitative thresholds are breached.

THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

The SCRA governs the working of the stock exchanges in India and aims to prevent undesirable transactions in securities.

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITIES INTEREST ACT, 2002

The SARFAESI regulates securitisation and reconstruction of financial assets (broadly debts and receivables, beneficial interest in the property) and enforcement of security interest. It empowers banks and other financial institutions to auction residential or commercial properties of a defaulter to recover loans. The secured creditors also have many rights for the enforcement of security interests from the defaulter.

CONSUMER PROTECTION ACT, 2019

The objective of the Consumer Protection Act, 2019, is to protect consumer interest against manufacturers or service providers providing defective goods or deficient services. It provides for a redressal forum wherein the consumers can file complaints in relation to defects in goods and deficiencies in services.

INFORMATION TECHNOLOGY ACT, 2000

The ITA provides legal framework maintenance and authentication of electronic records, as well as the legal mechanisms for dealing with cybercrime.

BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015

The Black Money Act, 2015, lays down the mechanism to tax undisclosed foreign assets (including financial interest in any entity) located outside India and the undisclosed income from a source located outside India.

PREVENTION OF MONEY LAUNDERING ACT, 2002

The PMLA is enacted to prevent and control money laundering in India, to confiscate and seize the property obtained from laundered money, and deal with related issues. It provides for detailed procedure for the search and seizure of confiscated property, adjudication mechanism, penalty, etc.

KEY GOVERNMENT WEBSITES

Particulars	Website
Reserve Bank of India	https://www.rbi.org.in/
Ministry of Corporate Affair	http://www.mca.gov.in/
Securities and Exchange Board of India	http://www.sebi.gov.in/
Ministry of Finance	http://finmin.nic.in/
Income-tax Department	http://www.incometaxindia.gov.in/
Foreign Investment Facilitation Portal	http://www.fifp.gov.in/
Central Board of Indirect Taxes and Customs	http://www.cbic.gov.in
Goods & Services Tax Network	http://www.gstn.org/
Goods & Services Tax Portal	https://www.gst.gov.in/
Directorate General of Foreign Trade	http://dgft.gov.in/
Start-up India	https://www.startupindia.gov.in/
Department for Promotion of Industry and Internal Trade	https://dpiit.gov.in/
Invest India	https://www.investindia.gov.in/
Government of India website portal	https://www.india.gov.in/
Government of India Web Directory	http://goidirectory.nic.in/

GLOSSARY

Abbreviation	Meaning
AAR	Authority for Advance Ruling
AGM	Annual General Meeting
AD Bank	Authorised Dealer Bank
AE	Associated Enterprise
AEO	Authorised Economic Operator
AIF	Alternative Investment Fund
ALP	Arm's Length Price
AMT	Alternate Minimum Tax
AOA	Articles of Association
APA	Advance Pricing Agreement
Arbitration & Conciliation Act	Arbitration and Conciliation Act, 1996
B2B	Business-to-business
B2C	Business-to-consumer
BCD	Basic Customs Duty
BEPS	Base Erosion and Profit Shifting
Black Money Act	Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
BRA	Banking Regulation Act, 1949
BTP	Biotechnology Parks
Bn	Billion
BO	Branch Office
Bonus Act	Payment of Bonus Act, 1965
CbCR	Country-by-Country Report
CBDT	Central Board of Direct Taxes
CCD	Compulsorily Convertible Debentures
CCPS	Compulsorily Convertible Preference Shares
Contract Act	Indian Contract Act, 1872
Copyright Act	Indian Copyright Act, 1957
CGST	Central Goods and Services Tax
CoA	Companies Act, 2013
COC	Certificate of Coverage

Abbreviation	Meaning
COR	Country of Residence
COS	Country of Source
CSR	Corporate Social Responsibility
CTA	Covered Tax Agreement
CTT	Commodities Transaction Tax
Customs Act	Customs Act, 1962
DDT	Dividend Distribution Tax
Designs Act	Designs Act, 2000
DIN	Director Identification Number
DPIIT	The Department for Promotion of Industry and Internal Trade
DRE	Dual Resident Entities
DRP	Dispute Resolution Panel
E-invoicing	Electronic Invoicing
ECB	External Commercial Borrowings
ELDI	Employers' Deposit Linked Insurance Scheme
EOU	Export Oriented Unit
ESI Act	Employees State Insurance Act, 1948
ESOP	Employee Stock Option Plan
EHTP	Export Hardware Technology Park, Software Technology Park and biotechnology Park
EPF	Employees' Provident Fund
EPF Act	Employees' Provident Funds and Miscellaneous Provisions Act, 1952
EPS	Employees' Pension Scheme
E-way bill	Electronic Waybill
FATF	Financial Action Task Force
FCNR(B)	Foreign Currency (Non-resident) Account (Banks) Scheme
FCRA	Foreign Contribution (Regulation) Act, 2010
FDI	Foreign Direct Investment

GLOSSARY

Abbreviation	Meaning
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investors
FIFP	Foreign Investment Facilitation Portal
FMV	Fair Market Value
FPI	Foreign Portfolio Investor
FSI	Floor Space Index
FTP	Foreign Trade Policy
FVCI	Foreign Venture Capital Investor
GAAR	General Anti-Avoidance Rules
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GIFT City	Gujarat International Finance Tec City
Gratuity Act	Payment of Gratuity Act, 1972
GST	Goods and Services Tax
GSTN	Goods and Service Tax Network
HSN	Harmonized System Nomenclature
HO	Head Office
HUF	Hindu Undivided Family
IAA	Impermissible Avoidance Agreement
IBC	Insolvency & Bankruptcy Code, 2016
ICAI	The Institute of Chartered Accountant of India
IRC	Industrial Relations Code, 2020
ICDS	Income Computation and Disclosure Standards
IFSC	International Financial Services Centre
IGST	Integrated Goods and Services Tax
INR	Indian National Rupee
IFC	Internal Financial Controls
IGST	Integrated Goods and Services Tax
INR	Indian National Rupee
IFC	Internal Financial Controls

Abbreviation	Meaning
IGST	Integrated Goods and Services Tax
InvIT	Infrastructure Investment Trusts
IOSCO	International Organisation of Securities Commissions
IPO	Initial Public Offering
IRDA	Insurance Regulatory and Development Authority Act, 1999
IRDAI	Insurance Regulatory and Development Authority of India
IRP	Interim Resolution Professional
ISD	Input Service Distributor
IT	Information Technology
ITA	Information Technology Act, 2000
IT Act	Income Tax Act, 1961
ITeS	Information Technology Enabled Services
IT Rules	Income Tax Rules, 1962
ITC	Input Tax Credit
IW	International Worker
JV	Joint Venture
KYC	Know Your Customer
LLP	Limited Liability Partnership
LO	Liaison Office
LRS	Liberalized Remittance Scheme
LTCG	Long Term Capital Gain
M&A	Mergers & Acquisitions
MAP	Mutual Agreement Procedure
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MEIS	Merchandise Export Incentive Scheme
MGNREGS	Mahatma Gandhi National Rural Employment Guarantee Scheme
MLI	Multilateral Instrument
MOA	Memorandum of Association
Mn	Million

GLOSSARY

Abbreviation	Meaning
NSWS	National Single Window System
NBFI	Non-Banking Financial Investment
NCLT	National Company Law Tribunal
NFRA	National Financial Reporting Authority
NGO	Non-Government Organization
NIA	Negotiable Instruments Act, 1881
NR	Non-resident
NRI	Non-resident Indian
NRE	Non-Resident (External) Rupee Account
NRI	Non-resident Indian
NRO	Non-Resident (Ordinary) Account
OECD	Organisation for Economic Co-operation and Development
OCI	Overseas Citizen of India
PAN	Permanent Account Number
PE	Permanent Establishment
PIO	Persons of Indian Origin
PLI	Performance Linked Incentive Scheme
PMLA	Prevention of Money Laundering Act, 2002
PO	Project Office
POEM	Place of Effective Management
PPT	Principle Purpose Test
R&D	Research and Development
RBI	Reserve Bank of India
REIT	Real Estate Investment Trusts
RERA	Real Estate (Regulation and Development) Act, 2016
ROC	Registrar of Companies
ROR	Resident and Ordinary Resident
RNOR	Resident but Not Ordinarily Resident
RP	Resolution Professional
SAD	Special additional duty of customs

Abbreviation	Meaning
Sale of Goods Act	Sale of Goods Act, 1930
SARFAESI	Securitization and Reconstruction Financial Assets and Enforcement of Securities Interest Act, 2002
SBO	Significant Beneficial Owner
SCRA	The Securities Contracts (Regulation) Act, 1956
SEBI	Securities & Exchange Board of India
SEIS	Service Exports from India Scheme
SGST	State Goods and Services Tax
SEP	Significant Economic Presence
SEZ	Special Economic Zone
SFT	Specified Financial Transaction
SLOB	Simplified Limitation of Benefits
SME	Small and Medium Enterprise
SNRR	Special Non-Resident Rupee Account
SPV	Special Purpose Vehicle
SSA	Social Security Agreement
STCG	Short Term Capital Gain
STPI	Software Technology Park of India
STT	Securities Transaction Tax
Takeover Code	Substantial Acquisition of Shares and Takeovers
TAN	Tax Deduction and Collection Account Number
Tax Treaty	Double Taxation Avoidance Agreement
TDR	Transferable Development Rights
TP	Transfer Pricing
TMA	Trade Marks Act, 1999
TRC	Tax Residency Certificate
TRIPS	The Agreement on Trade-Related Aspects of Intellectual Property Rights
USD	US Dollar
UTGST	Union Territory Goods and Services Tax
VAT	Value Added Tax
VCF	Venture Capital Funds
w.e.f.	with effect from
WHT	With Holding Tax
WOS	Wholly Owned Subsidiary
WTO	World Trade Organization

APPENDIX 1: INDIA'S POSITIONS ON ARTICLES OF THE MULTI LATERAL INSTRUMENT

Article of MLI	Brief Description of Article	India's position	Tax Treaties Impacted as on June 1, 2022	
Article 1 - Scope of the Convention	Defines the scope of MLI convention which includes modification of CTAs specified in Article 2.	General clause. No position is required to be taken.	NA	
Article 2 - Interpretation of terms	Defines various terms and notifies the tax treaties covered by MLI convention.	India has notified 93 tax treaties. Treaties not notified by India/counterparty include: 1. China 2. Germany 3. Mauritius	- Albania - Australia - Austria - Belgium - Cyprus - Czech Republic - Egypt - Finland - France - Georgia - Greece - Hungary - Hong Kong (China) - Indonesia - Ireland - Israel - Japan - Jordan - Kazakhstan - Korea	- Lithuania - Luxembourg - Malaysia - Malta - Netherlands - New Zealand - Poland - Portugal - Romania - Russia - Saudi Arabia - Serbia - Singapore - Slovakia - Slovenia - Sweden - Thailand - UAE - UK - Uruguay
Article 3- Transparent Entities	Specifies that in case of income earned by fiscally transparent entities, treaty benefits shall be available to the extent that such income is taxed in the COR.	India has reserved its right for the application of this article. Accordingly, the same will not apply to its CTAs.	NA	
Article 4- Dual resident entities	Residential status of a DRE shall be determined by Competent Authorities of Contracting jurisdictions mutually after considering the Place of Effective Management, place of incorporation or constitution and any other relevant factors. In absence of an agreement between jurisdictions, a DRE shall not be entitled to treaty benefits except as is agreed upon by the Contracting Jurisdictions.	India has opted to apply the said provision. The said article shall apply to all its CTAs unless the other contracting jurisdiction has made a reservation for application of this article.	- Australia - Egypt - Indonesia - Ireland - Israel - Japan - Kazakhstan - Netherlands - New Zealand	- Poland - Romania - Russia - Serbia - Slovakia - Slovenia - United Kingdom - Uruguay

Article 5- Application of methods to eliminate double taxation	Provides three options for elimination of double taxation: Option A- If the COR exempts income derived in COS, the COR shall not exempt such income if: 1) such income is also exempt in the COS or 2) the COS taxes such income at a lower rate. Instead, a deduction from tax i.e. credit will be provided for the same subject to certain conditions. Option B- If the COR exempts dividend income derived from COS, then such exemption shall not be available if a deduction for such income is available in the COS. Instead, a deduction from tax i.e. credit will be provided for the same subject to certain conditions. Option C- Credit method of taxation to be followed for elimination of double taxation.	India has opted for Option C. Asymmetrical application is possible under this article.	▪ Austria ▪ Egypt ▪ Netherlands ▪ Slovakia		
Article 6- Purpose of a CTA	This is a minimum standard introduced for elimination of double taxation without creating opportunities for non- taxation, reduced taxation through tax evasion or tax avoidance including treaty shopping arrangements.	Applicable to all CTAs including India since this is a minimum standard requiring mandatory adoption.	▪ Albania ▪ Australia ▪ Austria ▪ Belgium ▪ Croatia ▪ Cyprus ▪ Czech Republic ▪ Egypt ▪ Finland ▪ France ▪ Georgia ▪ Greece ▪ Hungary ▪ Hong Kong (China)	▪ Indonesia ▪ Ireland ▪ Israel ▪ Japan ▪ Jordan ▪ Kazakhstan ▪ Korea ▪ Lithuania ▪ Luxembourg ▪ Malaysia ▪ Malta ▪ Netherlands ▪ New Zealand ▪ Poland ▪ Portugal	▪ Romania ▪ Russia ▪ Saudi Arabia ▪ Serbia ▪ Singapore ▪ Slovakia ▪ Slovenia ▪ Sweden ▪ Thailand ▪ UAE ▪ UK ▪ Uruguay
Article 7- Prevention of treaty Abuse	This is a minimum standard introduced which covers anti-abuse measures. The options available are: ▪ PPT. ▪ PPT+SLOB. ▪ A LOB clause with additional rules to address conduit financing agreements.	PPT being a minimum standard has been adopted by India as an interim measure along with applicability of SLOB provisions. SLOB will only apply if: CTA partner has opted for the same; or Allowed India to apply SLOB asymmetrically	PPT Applicable ▪ Albania ▪ Australia ▪ Austria ▪ Belgium ▪ Croatia ▪ Cyprus ▪ Czech Republic ▪ Egypt ▪ Finland ▪ France ▪ Georgia ▪ Greece ▪ Hungary ▪ Hong Kong (China) ▪ Indonesia	▪ Ireland ▪ Israel ▪ Japan ▪ Jordan ▪ Kazakhstan ▪ Korea ▪ Lithuania ▪ Luxembourg ▪ Malaysia ▪ Malta ▪ Netherlands ▪ New Zealand ▪ Poland ▪ Portugal ▪ Russia ▪ Saudi Arabia ▪ Romania	▪ Serbia ▪ Singapore ▪ Slovakia ▪ Slovenia ▪ Sweden ▪ Thailand ▪ UAE ▪ UK ▪ Uruguay SLOB Applicable ▪ Greece ▪ Kazakhstan ▪ Russia ▪ Slovakia ▪ Uruguay

Article 8- Dividend transfer Transactions	It is an anti-abuse measure which introduces an additional condition of a 365-day holding period (including the day of payment of dividend) for the purpose of availing treaty benefits in the form of lower rate of tax for taxing dividend income. This provision should not be considered if the minimum holding period specified in the treaty is more than 365 days e.g. Portugal.	India has opted to apply this article. The said article shall apply to all its CTAs unless the other contracting jurisdiction has made a reservation for application of this article.	- Serbia - Slovakia - Slovenia - Spain	
Article 9- Capital gains from alienation of shares or interest of entities deriving their value principally from immovable property	Capital Gains tax arising on account of sale of shares in companies or comparable interest in other entities shall be taxed in the source state if a specified percentage of their value (i.e. threshold) is derived from immovable property located in the source state. Two alternatives that have been provided are : Alternative 1- If the specified threshold value has been met at any time during 365 days prior to the alienation of shares in a company/comparable interest in case of any other entity then capital gains in this case shall be taxed in the source state. Alternative 2- In addition to Alternative 1, this alternative fixes a threshold value of more than 50%. Hence, if 50% of the value of shares of a company or 50% of comparable interest in other entities have been derived directly or indirectly from the immovable property located in the source state then capital gains shall be taxed in the source state.	India has opted for Alternative 2. However, this article shall apply only if the other contracting jurisdiction has chosen to apply this article.	- Australia - Belgium - Croatia - France - Greece - Hungary - Indonesia - Ireland - Israel - Japan - Kazakhstan - Malaysia	- Malta - Netherlands - New Zealand - Poland - Portugal - Russia - Serbia - Slovakia - Slovenia - Uruguay
Article 10- Anti-abuse rule for PEs situated in third jurisdictions	Denies treaty benefits in case of income derived from a permanent establishment located in a third jurisdiction.	Silent; article to apply to all CTAs (unless reservation is made by any other CTA partner).	- Albania - Austria - Egypt - Israel - Japan - Kazakhstan - Netherlands	- New Zealand - Russia - Slovakia - Slovenia - Uruguay

Article 11- Application of tax agreements to restrict a party's right to tax its own residents	Preserves the right of jurisdiction to tax its own residents.	Neither made any reservation nor notified any CTAs; Article to apply to all CTAs unless specific reservations have been made by other Jurisdiction.	- Australia - Belgium - Croatia - New Zealand - Poland - Portugal - Russia - Slovakia - United Kingdom		
Article 12- Artificial avoidance of PE status through commissionaire arrangements and similar strategies	Addresses artificial avoidance of PE status through widening the definition of PE. Intends to cover within its ambit, transactions which are in substance made by a foreign enterprise by a person habitually concluding contracts or playing principal role in conclusion of contracts on behalf of foreign entity. Threshold to constitute independent agent also lowered to exclude a case where the agent acts exclusively or almost exclusively for one or more enterprises to which the agent is closely related.	Opted to apply; article to apply to CTA only if another CTA partner has chosen to apply.	- Albania - Belgium - Croatia - Egypt - France - Indonesia	- Israel - Japan - Lithuania - New Zealand - Russia - Jordan - Kazakhstan	- Malaysia - Saudi Arabia - Slovakia - Slovenia - Thailand - Uruguay
Article 13- Artificial avoidance of PE status through the specific activity exemptions	Addresses cases where the exemption of preparatory and auxiliary activities is abused and activities are fragmented to avoid PE constitution. Provides contracting jurisdictions with two options (A or B) to counter such abuse along with anti-fragmentation rule. Option A - Specific activity exemption (for preparatory and auxiliary activities) narrowed by stating that all such activities shall fall within the specific activity exemption only if each activity and the overall activity of the business is of a preparatory and auxiliary character. Option B - Provides flexibility it does not require all activities to be of a preparatory or auxiliary in nature.	Chosen to apply Option A; the said option to apply to CTA only if other CTA partner has chosen same option India has not made any reservation (to not to apply) antifragmentation rule; the said rule to apply to a CTA only if other partner has chosen to apply.	Countries opted for Article 13 including Anti-fragmentation: - Australia - Croatia - Egypt - Indonesia - Israel - Japan - Jordan - Kazakhstan - Malaysia - Netherlands - New Zealand - Russia - Saudi Arabia - Slovakia - Slovenia - Thailand - Uruguay	List of countries opted for only Anti-fragmentation clause: - France - Ireland - Lithuania - Portugal - UK	

Article 14- Splitting-up of contracts	Addresses 'avoidance of PE situations' undertaken by splitting the contracts between related enterprises in order to fall / come below the threshold period for PE creation.	India is silent on its position; article to apply to all CTAs (unless reservation is made by any other CTA partner).	- Australia - Egypt - Indonesia - Ireland - Israel - Jordan - Kazakhstan - Lithuania	- Netherlands - New Zealand - Russia - Saudi Arabia - Slovakia - Thailand - Uruguay
Article 15: Definition of a person "closely related to an enterprise"	Defines the term 'person closely related', in the context of Articles 12, 13, and 14 of the MLI.	Silent; article to apply to all CTAs (unless reservation is made by any other CTA partner).	- Albania - Australia - Belgium - Croatia - Egypt - France - Indonesia - Ireland - Israel - Japan - Jordan - Kazakhstan	- Lithuania - Malaysia - Netherlands - New Zealand - Portugal - Russia - Saudi Arabia - Slovakia - Slovenia - Thailand - United Kingdom - Uruguay
Article 16- Mutual Agreement Procedure	Requires MAP request to be made to either state, or implement a bilateral notification or consultation process.	Reserved its right not to apply article to its present treaties. India will however allow a non- resident to apply for MAP only to Competent Authority of country to which such person is a resident. Such authority should consult with competent authority of other country before deciding on MAP application.	- Australia - Belgium - Greece - United Arab Emirates - United Kingdom	
Article 17- Corresponding adjustments	Provides corresponding / compensatory adjustment to income when there is double taxation arising from transfer pricing adjustments.	Chosen to apply article except for CTAs where the provisions already exist.	- Australia - Austria - Belgium - France - Greece - Israel - Japan - Lithuania - Luxembourg - Malaysia - Malta	- Netherlands - New Zealand - Russia - Singapore - Slovakia - Sweden - United Arab Emirates - United Kingdom
Article 18-26: Mandatory binding arbitration	Provides mandatory binding arbitration in cases where competent authorities are unable to reach an agreement to resolve a case under MAP.	India has not opted for mandatory arbitration.	-	
Article 27: Signature and Ratification	Provides that the convention is open to ratification, acceptance or approval.	-	-	

Article 28: Reservations	Expressly provides under which articles reservations can be made by the contracting jurisdictions.	-	-
Article 29: Notifications	Provides for notifications pursuant to the specified provisions to be made at the time of signature or when depositing the instrument of ratification, acceptance or approval.	-	-
Article 30 - Subsequent Modifications of CTA	Provides that the provisions of the MLI Convention are without prejudice to subsequent modifications to a CTA which may be agreed between the contracting jurisdictions of the CTA.	-	-
Article 31 - Conference of the Parties	Provides for the procedure to convene a conference of the countries for the purpose of taking any decision or exercising any functions under the Convention.		
Article 32 - Interpretation and Implementation	Aims to resolve issues of interpretation and implementation of any of the provisions of the CTA either by MAP or by convening a conference of the parties.		
Article 33 - Amendment	Enables amendment of any provisions of the MLI Convention by submitting to depositary and convening a conference of parties.		
Article 34 - Entry into force	Provides that the convention shall enter into force on first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the fifth instrument of ratification, acceptance or approval.		
Article 35 - Entry into Effect	Provides for the effective date of entry into effect for withholding taxes and other taxes levied.	India has chosen to substitute "calendar year" with "taxable period" If other CTA partner opts for calendar year, date of applicability of MLI provision for such other CTA partner will differ via-a-vis as for India	In the following countries (included above), MLI is to enter into effect from 01 April'21 for withholding taxes and 01 April'22 other taxes: Albania Indonesia Egypt Jordan For the following countries (included above), MLI is to enter into effect from 01 April 2022 for withholding taxes and other taxes: Croatia Hungary Greece Malaysia Following countries have ratified MLI as on June 1, 2022, however not into effect as on date subject pending notification: Estonia Romania Thailand Spain (Notification Mismatch)

Article of MLI	Brief Description of Article	India's position	Tax Treaties Impacted as on September 30, 2021	
Article 1 - Scope of the Convention	Defines the scope of MLI convention which includes modification of CTAs specified in Article 2.	General clause. No position is required to be taken.	NA	
Article 2 - Interpretation of terms	Defines various terms and notifies the tax treaties covered by MLI convention.	India has notified 93 tax treaties. Treaties not notified by India/counterparty include: - China - Germany - Mauritius	- Albania - Australia - Austria - Belgium - Cyprus - Czech Republic - Egypt - Finland - France - Georgia - Greece - Hungary - Indonesia - Ireland - Israel - Japan - Jordan - Kazakhstan - Korea	- Lithuania - Luxembourg - Malaysia - Malta - Netherlands - New Zealand - Poland - Portugal - Russia - Saudi Arabia - Serbia - Singapore - Slovakia - Slovenia - Sweden - UAE - UK - Uruguay
Article 3- Transparent Entities	Specifies that in case of income earned by fiscally transparent entities, treaty benefits shall be available to the extent that such income is taxed in the COR.	India has reserved its right for the application of this article. Accordingly, the same will not apply to its CTAs.	NA	
Article 4- Dual resident entities	Residential status of a DRE shall be determined by Competent Authorities of Contracting jurisdictions mutually after considering the Place of Effective Management, place of incorporation or constitution and any other relevant factors. In absence of an agreement between jurisdictions, a DRE shall not be entitled to treaty benefits except as is agreed upon by the Contracting Jurisdictions.	India has opted to apply the said provision. The said article shall apply to all its CTAs unless the other contracting jurisdiction has made a reservation for application of this article.	- Australia - Egypt - Indonesia - Ireland - Israel - Japan - Kazakhstan - Netherlands	- New Zealand - Poland - Russia - Serbia - Slovakia - Slovenia - United Kingdom - Uruguay

Article 5- Application of methods to eliminate double taxation	Provides options for elimination of double taxation: Option A- If the COR exempts income derived in COS, the COR shall not exempt such income if: 1) such income is also exempt in the COS or 2) the COS taxes such income at a lower rate. Instead, a deduction from tax i.e. credit will be provided for the same subject to certain conditions. Option B- If the COR exempts dividend income derived from COS, then such exemption shall not be available if a deduction for such income is available in the COS. Instead, a deduction from tax i.e. credit will be provided for the same subject to certain conditions. Option C- Credit method of taxation to be followed for elimination of double taxation.	India has opted for Option C. Asymmetrical application is possible under this article.	▪ Austria ▪ Egypt ▪ Netherlands ▪ Slovakia		
Article 6- Purpose of a CTA	This is a minimum standard introduced for elimination of double taxation without creating opportunities for non- taxation, reduced taxation through tax evasion or tax avoidance including treaty shopping arrangements.	Applicable to all CTAs including India since this is a minimum standard requiring mandatory adoption.	▪ Albania ▪ Australia ▪ Austria ▪ Belgium ▪ Croatia ▪ Cyprus ▪ Czech Republic ▪ Egypt ▪ Finland ▪ France ▪ Georgia ▪ Greece ▪ Hungary	▪ Indonesia ▪ Ireland ▪ Israel ▪ Japan ▪ Jordan ▪ Kazakhstan ▪ Korea ▪ Lithuania ▪ Luxembourg ▪ Malaysia ▪ Malta ▪ Netherlands ▪ New Zealand ▪ Poland	▪ Portugal ▪ Russia ▪ Saudi Arabia ▪ Serbia ▪ Singapore ▪ Slovakia ▪ Slovenia ▪ Sweden ▪ UAE ▪ UK ▪ Uruguay
Article 7- Prevention of treaty Abuse	This is a minimum standard introduced which covers anti-abuse measures. The options available are: ▪ PPT. ▪ PPT+SLOB. ▪ A LOB clause with additional rules to address conduit financing agreements.	PPT being a minimum standard has been adopted by India as an interim measure along with applicability of SLOB provisions. SLOB will only apply if: ▪ CTA partner has opted for the same; or ▪ Allowed India to apply SLOB asymmetrically	PPT Applicable ▪ Albania ▪ Australia ▪ Austria ▪ Belgium ▪ Croatia ▪ Cyprus ▪ Czech Republic ▪ Egypt ▪ Finland ▪ France ▪ Georgia ▪ Greece ▪ Hungary ▪ Indonesia ▪ Ireland	▪ Israel ▪ Japan ▪ Jordan ▪ Kazakhstan ▪ Korea ▪ Lithuania ▪ Luxembourg ▪ Malaysia ▪ Malta ▪ Netherlands ▪ New Zealand ▪ Poland ▪ Portugal ▪ Russia ▪ Saudi Arabia	▪ Serbia ▪ Singapore ▪ Slovakia ▪ Slovenia ▪ Sweden ▪ UAE ▪ UK ▪ Uruguay SLOB Applicable ▪ Greece ▪ Kazakhstan ▪ Russia ▪ Slovakia ▪ Uruguay

Article 8- Dividend transfer Transactions	It is an anti-abuse measure which introduces an additional condition of a 365- day holding period (including the day of payment of dividend) for the purpose of availing treaty benefits in the form of lower rate of tax for taxing dividend income. This provision should not be considered if the minimum holding period specified in the treaty is more than 365 days e.g. Portugal.	India has opted to apply this article. The said article shall apply to all its CTAs unless the other contracting jurisdiction has made a reservation for application of this article.	- Serbia - Slovakia - Slovenia - Spain .	
Article 9- Capital gains from alienation of shares or interest of entities deriving their value principally from immovable property	Capital Gains tax arising on account of sale of shares in companies or comparable interest in other entities shall be taxed in the source state if a specified percentage of their value (i.e. threshold) is derived from immovable property located in the source state. Two alternatives that have been provided are : Alternative 1- If the specified threshold value has been met at any time during 365 days prior to the alienation of shares in a company/comparable interest in case of any other entity then capital gains in this case shall be taxed in the source state. Alternative 2- In addition to Alternative 1, this alternative fixes a threshold value of more than 50%. Hence, if 50% of the value of shares of a company or 50% of comparable interest in other entities have been derived directly or indirectly from the immovable property located in the source state then capital gains shall be taxed in the source state.	India has opted for Alternative 2. However, this article shall apply only if the other contracting jurisdiction has chosen to apply this article.	- Australia - Belgium - Croatia - France - Greece - Hungary - Indonesia - Ireland - Israel - Japan	- Kazakhstan - Malaysia - Malta - Netherlands - New Zealand - Poland - Portugal - Russia - Serbia - Slovakia - Slovenia - Uruguay
Article 10- Anti-abuse rule for PEs situated in third jurisdictions	Denies treaty benefits in case of income derived from a permanent establishment located in a third jurisdiction.	Silent; article to apply to all CTAs (unless reservation is made by any other CTA partner).	- Albania - Austria - Egypt - Israel - Japan - Kazakhstan - Netherlands - New Zealand	- Russia - Slovakia - Slovenia - Uruguay
Article 11- Application of tax agreements to restrict a party's right to tax its own residents	Preserves the right of jurisdiction to tax its own residents.	Neither made any reservation nor notified any CTAs; Article to apply to all CTAs unless specific reservations have been made by other Jurisdiction.	- Australia - Belgium - Croatia - New Zealand - Poland	- Portugal - Russia - Slovakia - United Kingdom

Article 12- Artificial avoidance of PE status through commissionaire arrangements and similar strategies	Addresses artificial avoidance of PE status through widening the definition of PE. Intends to cover within its ambit, transactions which are in substance made by a foreign enterprise by a person habitually concluding contracts or playing principal role in conclusion of contracts on behalf of foreign entity. Threshold to constitute independent agent also lowered to exclude a case where the agent acts exclusively or almost exclusively for one or more enterprises to which the agent is closely related.	Opted to apply; article to apply to CTA only if another CTA partner has chosen to apply.	- Albania - Belgium - Croatia - Egypt - France - Indonesia - Israel - Japan - Lithuania	- New Zealand - Russia - Jordan - Kazakhstan - Malaysia - Saudi Arabia - Slovakia - Slovenia - Uruguay
Article 13- Artificial avoidance of PE status through the specific activity exemptions	Addresses cases where the exemption of preparatory and auxiliary activities is abused and activities are fragmented to avoid PE constitution. Provides contracting jurisdictions with two options (A or B) to counter such abuse along with anti-fragmentation rule. Option A - Specific activity exemption (for preparatory and auxiliary activities) narrowed by stating that all such activities shall fall within the specific activity exemption only if each activity and the overall activity of the business is of a preparatory and auxiliary character. Option B - Provides flexibility it does not require all activities to be of a preparatory or auxiliary in nature.	Chosen to apply Option A; the said option to apply to CTA only if other CTA partner has chosen same option India has not made any reservation (to not to apply) antifragmentation rule; the said rule to apply to a CTA only if other partner has chosen to apply.	Countries opted for Article 13 including Anti-fragmentation: - Australia - Croatia - Egypt - Indonesia - Israel - Japan - Jordan - Kazakhstan - Malaysia - Netherlands - New Zealand - Russia - Saudi Arabia - Slovakia - Slovenia - Uruguay	List of countries opted for only Anti-fragmentation clause: - France - Ireland - Lithuania - Portugal - UK
Article 14- Splitting-up of contracts	Addresses 'avoidance of PE situations' undertaken by splitting the contracts between related enterprises in order to fall / come below the threshold period for PE creation.	India is silent on its position; article to apply to all CTAs (unless reservation is made by any other CTA partner).	- Australia - Egypt - Indonesia - Ireland - Israel - Jordan - Kazakhstan	- Lithuania - Netherlands - New Zealand - Russia - Saudi Arabia - Slovakia - Uruguay
Article 15: Definition of a person "closely related to an enterprise"	Defines the term 'person closely related', in the context of Articles 12, 13, and 14 of the MLI.	Silent; article to apply to all CTAs (unless reservation is made by any other CTA partner).	- Albania - Australia - Belgium - Croatia - Egypt - France - Indonesia - Ireland - Israel - Japan	- Jordan - Kazakhstan - Lithuania - Malaysia - Netherlands - New Zealand - Portugal - Russia - Saudi Arabia - Slovakia - Slovenia - United Kingdom - Uruguay

Article 16- Mutual Agreement Procedure	Requires MAP request to be made to either state, or implement a bilateral notification or consultation process.	Reserved its right not to apply article to its present treaties. India will however allow a non-resident to apply for MAP only to Competent Authority of country to which such person is a resident. Such authority should consult with competent authority of other country before deciding on MAP application.	▪ Australia ▪ Belgium ▪ Greece ▪ United Arab Emirates ▪ United Kingdom	
Article 17- Corresponding adjustments	Provides corresponding / compensatory adjustment to income when there is double taxation arising from transfer pricing adjustments.	Chosen to apply article except for CTAs where the provisions already exist.	▪ Australia ▪ Austria ▪ Belgium ▪ France ▪ Greece ▪ Israel ▪ Japan ▪ Lithuania ▪ Luxembourg ▪ Malaysia ▪ Malta	▪ Netherlands ▪ New Zealand ▪ Russia ▪ Singapore ▪ Slovakia ▪ Sweden ▪ United Arab Emirates ▪ United Kingdom
Article 18-26: Mandatory binding arbitration	Provides mandatory binding arbitration in cases where competent authorities are unable to reach an agreement to resolve a case under MAP.	India has not opted for mandatory arbitration.	-	
Article 27: Signature and Ratification	Provides that the convention is open to ratification, acceptance or approval.	-	-	
Article 28: Reservations	Expressly provides under which articles reservations can be made by the contracting jurisdictions.	-	-	
Article 29: Notifications	Provides for notifications pursuant to the specified provisions to be made at the time of signature or when depositing the instrument of ratification, acceptance or approval.	-	-	
Article 30 - Subsequent Modifications of CTA	Provides that the provisions of the MLI Convention are without prejudice to subsequent modifications to a CTA which may be agreed between the contracting jurisdictions of the CTA.	-	-	
Article 31 - Conference of the Parties	Provides for the procedure to convene a conference of the countries for the purpose of taking any decision or exercising any functions under the Convention.	-	-	

Article 32 - Interpretation and Implementation	Aims to resolve issues of interpretation and implementation of any of the provisions of the CTA either by MAP or by convening a conference of the parties.	-	-
Article 33 - Amendment	Enables amendment of any provisions of the MLI Convention by submitting to depositary and convening a conference of parties.	-	
Article 34 - Entry into force	Provides that the convention shall enter into force on first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the fifth instrument of ratification, acceptance or approval.	-	-
Article 35 - Entry into Effect	Provides for the effective date of entry into effect for withholding taxes and other taxes levied.	India has chosen to substitute "calendar year" with "taxable period" If other CTA partner opts for calendar year, date of applicability of MLI provision for such other CTA partner will differ via-a-vis as for India -	For the following countries (included above), MLI is to enter into effect from 01 April 2022 for withholding taxes and other taxes: ▪ Croatia ▪ Greece ▪ Hungary ▪ Malaysia Following countries have ratified MLI as on September 30, 2021, however not into effect as on date subject pending notification ▪ Estonia ▪ Spain For the following countries (included above), MLI is to enter into effect from 01 April 2021 for withholding taxes and 01 April 2022 other taxes: ▪ Albania ▪ Egypt ▪ Indonesia ▪ Jordan

APPENDIX 2: WITHHOLDING TAX RATES CHART

The following chart contains the withholding tax rates that are applicable to dividend, interest and royalty payments from India to non-residents under the tax treaties in force as at the date of review. The Tax Authorities have removed the DDT and have reintroduced the WHT on dividend paid to its shareholders under domestic law. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable. If the treaty provides for a rate lower than the domestic rate, the reduced treaty rate may be applied at source, provided the appropriate residence certificate has been presented to the withholding agent making the payment. Presumptive taxation does not apply if a treaty provides protection. Further, the provisions of multilateral instruments have become applicable from 01 April 2020 and consequently MLI text should be read along with DTAA to determine the applicability of withholding tax.

Particulars	Dividends		Interest ¹	Royalties ²
	Individuals, Companies	Qualifying companies		
	(%)	(%)	(%)	(%)
Domestic Rates*				
Foreign Companies:	20	20	5/20	20
Non-Resident Individuals:	20	20	5/20	20
Tax Treaty Rates				
Treaty With:				
Albania	10	10	10	10
Armenia	10	10	10	10
Australia	15	15	15	10/15 ³
Austria	10	10	10	10
Bangladesh	15	10 ⁴	10	10
Belarus	15	10 ⁵	10	15
Belgium	15	15	10/15 ⁶	10
Bhutan ⁷	10	10	10	10
Botswana	10	7.5 ⁵	10	10
Brazil	15	15	15	15/25 ⁸
Bulgaria	15	15	15	15/20 ⁹
Canada	25	15 ⁴	15	10/20 ¹⁰
China (People's Rep.)	10	10	10	10
Colombia	5	5	10	10
Croatia	15	5 ⁴	10	10
Cyprus	10	10	10	10
Czech Republic	10	10	10	10
Denmark	25	15 ⁵	10/15 ⁶	20
Egypt (UAR) ¹¹	-	-	-	-
Estonia	10	10	10	10
Ethiopia	7.5	7.5	10	10
Faroe Islands ¹²	25	15 ⁵	10/15 ⁶	20

Particulars	Dividends		Interest ¹	Royalties ²
	Individuals, Companies	Qualifying companies		
	(%)	(%)	(%)	(%)
Fiji	5	5	10	10
Finland	10 ¹³	10 ¹³	10 ¹³	10 ¹³
France	10	10 ¹⁴	10 ¹⁴	10 ¹⁴
Georgia	10	10	10	10
Germany	10	10	10	10
Greece ¹¹	20	20	20	10
Hong Kong	5	5	10	10
Hungary	10 ¹⁴	10 ¹⁴	10 ¹⁴	10 ¹⁴
Iceland ¹⁵	10	10	10	10
Indonesia	10	10	10	10
Ireland	10	10	10	10
Israel	10	10	10	10
Italy	25	15 ⁴	15	20
Japan	10	10	10	10
Jordan	10	10	10	20
Kazakhstan	10	10	10	10
Kenya	10	10	10	10
Korea (Rep.)	15	15	10	10
Kuwait	10	0 ¹⁶	10	10
Kyrgyzstan	10	10	10	15
Latvia	10	10	10	10
Libya ¹¹	10	10	20	20
Lithuania	15	5 ⁴	10	10
Luxembourg	10	10	10	10
Macedonia (FYR)	10	10	10	10
Malaysia	5	5	10	10
Malta ¹⁷	10	10	10	10
Mauritius	15	5 ⁴	7.5 ¹⁸	15
Mexico	10	10	10	10
Mongolia	15	15	15	15
Montenegro ¹⁹	15	5 ⁵	10	10
Morocco	10	10	10	10
Mozambique	7.5	7.5	10	10
Myanmar ⁷	5	5	10	10
Namibia	10	10	10	10
Nepal	10	5 ⁴	10	15 ²⁰
Netherlands	10	10 ¹⁴	10 ¹⁴	10 ¹⁴
New Zealand	15	15	10	10
Norway	10	10	10	10

Particulars	Dividends		Interest ¹	Royalties ²
	Individuals, Companies	Qualifying companies		
	(%)	(%)	(%)	(%)
Oman	12.5	10 ⁴	10	15
Philippines	20	15 ⁴	10/15 ²¹	15 ²²
Poland	15	15	15	22.5
Portuguese Republic	15	10 ²³	10	10
Qatar	10	5 ⁴	10	10
Romania	10	10	10	10
Russia	10	10	10	10
Saudi Arabia	5	5	10	10
Serbia	15	5 ⁵	10	10
Singapore	15	10 ⁵	10/15 ²⁴	10
Slovak Republic	25	15 ⁵	15	30
Slovenia	15	5 ⁴	10	10
South Africa	10	10	10	10
Spain	15	15	15	10/20 ¹⁰
Sri Lanka	7.5 ²⁵	7.5 ²⁵	10	10
Sudan	10	10	10	10
Sweden	10 ¹⁴	10 ¹⁴	10 ¹⁴	10 ¹⁴
Switzerland	10	10	10	10
Syria	10	5 ⁴	10	10
Taiwan (under a specified territory agreement with Taiwan)	12.5	12.5	10	10
Tajikistan	10	5 ⁵	10	10
Tanzania	10	5 ⁵	10	10
Thailand	10	10	10	10
Trinidad and Tobago	10	10	10	10
Turkey	15	15	10/15 ²⁶	15
Turkmenistan	10	10	10	10
Uganda	10	10	10	10
Ukraine	15	10 ⁵	10	10
United Arab Emirates	10	10	5/12.5 ²⁶	10
United Kingdom	10/15 ²⁷	10/15 ²⁷	10/15 ⁶	10/15 ²⁸
United States	25	15 ⁴	10/15 ²⁴	10/15 ²⁸
Uruguay	5	5	10	10
Uzbekistan	10	10	10	10
Vietnam	10	10	10	10
Zambia	15	5 ²⁹	10	10

** plus applicable surcharge and cess*

Notes to Withholding Tax Rate Chart:

- Many of the treaties provide for an exemption for certain types of interest, e.g. interest paid to public bodies and institutions or financial institutions, or in relation to sales on credit. Such exemptions are not considered in this column.
- Some treaties include technical services in the definition of royalties, which are not considered in this column.
- The lower rate applies to payments for the use of or right to use, any industrial, commercial or scientific equipment, the rendering of any ancillary technical or consultancy services.

4. The rate generally applies to company participation with beneficial ownership of at least 10% of capital in the company paying dividends.
5. The rate generally applies to company participation with beneficial ownership of at least 25% of capital in the company paying dividend.
6. The lower rate applies to interest paid to a bank.
7. The treaty provides that the provisions of the domestic law of a contracting state will prevail over the provisions of the treaty if they are more beneficial to a resident of the other contracting state.
8. The higher rate applies to royalties from the use or right to use trademarks.
9. The lower rate applies to royalties relating to copyrights of literary, artistic or scientific works, other than cinematograph film or films or tapes used for radio or television broadcasting.
10. The lower rate applies to payments for the use of, or the right to use, any industrial, commercial or scientific equipment.
11. The domestic tax rate applies; there is no tax rate mentioned under the treaty.
12. The provisions of India-Denmark DTAA have been extended to apply in its entirety to the territory of Faroe Islands vide Protocol dated 08 March 1989.
13. The most favoured nation clause given concerning interest, dividend and royalties in the protocol to the treaty is not yet activated.
14. A most favoured nation clause may be applicable concerning dividends, interest and royalties.
15. The benefits under the articles for dividends, interest and royalties do not apply if:
 - Because of special measures the tax imposed by Iceland on the recipient corporation, concerning the dividends, interest and royalties, is substantially less than the tax generally imposed on corporate profits; and
 - 25% or more of the capital of the recipient corporation is owned directly or indirectly by one or more persons who are not individual residents of Iceland.
16. Dividends are not subject to withholding tax if the beneficial owner is a government/ political sub-division/ local authority/ Central Bank/other government agencies or governmental financial institution.
17. The treaty states that the provisions of Articles 6 to 22 (i.e. including provisions on maximum withholding rates for dividends, interest and royalties) of the tax treaty do not apply to persons or companies enjoying special fiscal treatments or exemptions under specific Maltese laws.
18. The rate of 7.5% will apply from 01 April 2017 (01 July 2017 in Mauritius) under the 2016 protocol to the treaty. Interest derived and beneficially owned by any bank resident of the other Contracting State carrying on bona fide banking business is exempt, provided such interest arises from debt claims existing on or before 31 March 2017.
19. This treaty was concluded by Serbia and Montenegro and remains applicable in relations between Serbia and India. Montenegro has declared that it will honour all tax treaties that have been concluded by Serbia and Montenegro.
20. A most favoured nation clause may be applicable concerning royalties.
21. The lower rate applies to interest paid to a financial institution (including insurance companies).
22. The rate of 15% applies where royalties are payable by an enterprise in pursuance of any collaboration agreement approved by the government of India; otherwise, the domestic rate applies.
23. 10% rate applies if the beneficial owner is a company that, for an uninterrupted period of two fiscal years before the payment of the dividend, owns directly at least 25% of the capital stock of the company paying the dividends.
24. The lower rate applies to interest paid to a bank or financial institution, including an insurance company.
25. The rate of withholding tax on dividends will be subject to review after three years from the date the treaty entered into force (22 October 2013). In case this rate is not reviewed after three years, the agreed rate of 7.5% will continue.
26. The lower rate applies to interest paid to a bank or financial institution.
27. 15% applies to dividends paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 of the treaty by an investment vehicle that distributes most of this income annually and whose income from such immovable property is exempted from tax; 10% applies in all other cases.
28. The lower rate applied to payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, other than income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic.

APPENDIX 3: GIST FROM IFSCA (FUND MANAGEMENT) REGULATIONS, 2022 (FME REGULATIONS)

Categories of Entities

Basis	Authorized FME	Registered FME (Non-Retail)	Registered FME (Retail)
Net worth Requirements	USD 75,000	USD 5,00,000	USD 10,00,000
Mode of Establishment	Company, LLP, Branch	Company, LLP, Branch	Company, Branch(Co.) already registered or regulated by financial sector regulator in India or foreign jurisdiction for conducting similar activities subject to certain additional conditions.
Schemes	Venture Capital Schemes	- Restricted Schemes - Venture Capital Schemes	- Retail Schemes - Restricted Schemes - Venture Capital Schemes
Permissible Activities and Investments	- Start-ups or early-stage ventures investments - Family Investment Fund investing in securities, financial products and such other permitted asset classes.	- Restricted schemes - Portfolio Management Services - Investment Trust - All activities permitted to Authorized FMEs.	- Retail Or Restricted Schemes - Investment Trusts - Launch Exchange Traded Funds - All activities permitted to authorized FMEs and Registered FMEs (Non-retail)
Minimum no. Directors	---	---	- Minimum four directors - Out of which at least 50% should be independent directors.
Permissible investors	- Accredited Investors - Investors investing above USD 2,50,000 (USD 60,000 for employees/ directors/ designated partners/ partners of the FME)	- Accredited Investors - Investors investing above USD 1,50,000 (USD 40,000) for employees/ directors/ designated partners/ partners of the FME	Retail as well as non-retail investors
Minimum Experience	Employees who shall have relevant experience	Employees who shall have relevant experience	FME or its holding shall not have less than five years of experience in managing Assets under Management of at least USD 200mn with more than 25,000 investors OR At least one person in control of the FME holding over 25% shareholding in the FME be carrying on business in financial services for a period of not less than five years.
Required Key Managerial Personnel	Principal officer	- Principal officer - Risk and Compliance Officer	- Principal officer - Risk and Compliance Officer - Responsible Officer

Schemes for FME

Basis	Venture Capital Schemes	Restricted Schemes (Non-retail)	Retail Schemes
Permissible Activities/ Investments	Investment in listed and unlisted entities; money market instruments; debt securities; securitized debt instruments, other venture capital schemes; units of mutual funds and AIFs; investment in LLP or such other securities or instruments as specified.	All investments permitted to Venture Capital Schemes and derivatives (including commodity derivatives). In addition, close ended scheme may invest up to 20% of corpus in specified physical assets.	All investments permitted to Venture Capital Schemes and derivatives (including commodity derivatives).
Corpus	Min USD 5mn Max USD 200mn	Min USD 5mn	Min USD 5mn
Investment in associates of the FME	Prior approval of 75% investors in the scheme by value	Permissible, subject to Prior approval of 75% investors in the scheme by value	Not more than 25% of the AU
Investment restrictions	Invest at least 80 percent of the AUM in investee companies incorporated for less than 10 years or other venture capital schemes.		- Maximum investment in a single investee company: 10% of AUM (15% with prior approval of fiduciaries), no restriction for Index schemes. - Maximum investment in a sector: 25% of AUM (50% in case of financial services sector), no restriction for sectoral, thematic or Index Scheme.
Contribution by the FME in the scheme	- At least 2.5% but not more than 10% of the targeted corpus [targeted corpus of < USD 30mn] - At least USD 750,000 but not more than 10% of the targeted corpus [targeted corpus > USD 30mn]	Close ended scheme: 2.5% to 10% of the targeted corpus [targeted corpus < USD 30mn] - At least USD 7,50,000 and not exceeding 10% of the targeted corpus [targeted corpus > USD 30 mn] Open ended scheme: 5% to 10% of the targeted corpus [targeted corpus < USD 30mn] - At least USD 15,00,000 and not exceeding 10% of the targeted corpus [targeted corpus > USD 30mn]	Lower of 1% of the corpus or USD 200,000 (for both open and close ended scheme).
Investment in Unlisted Entities	No restriction.	Open-ended schemes: Maximum 25% of the corpus. Close-ended schemes: No restriction.	Open-ended schemes: Maximum 15% of AUM. Close-ended schemes: Maximum 50% of AUM.

Basis	Venture Capital Schemes	Restricted Schemes (Non-retail)	Retail Schemes
Tenure	Minimum of three years Extension up to two years [approval of 2/3 investors].	Minimum of one year Extension up to two years [approval of 2/3 investors]	Minimum of three years Extension up to two years [approval of 2/3 investors].
Investor contribution	- Accredited Investors - Investors investing above USD 2,50,000. - USD 60,000 for employees/ directors/ designated partners/ partners of the FME.	- Accredited Investors - Investors investing above USD 1,50,000 - USD 40,000 for employees or directors or designated partners/ partners of the FME.	Open ended scheme: Nil. Close ended scheme: Nil (USD 10,000 in case investment in unlisted exceeds 15% of the AUM).
Investors	Minimum: N.A. Maximum: 50	Minimum: N.A. Maximum: 1,000	Minimum: 20, with no single investor investing > 25% Maximum: N.A.
Disclosure of NAV	Annually	Open-ended : Monthly Close-ended : Half yearly	Open-ended : Daily Close-ended : Weekly
Co-Investment	Permitted *	Permitted *	N.A.
Borrowing	Permitted *	Permitted *	Only for meeting temporary liquidity needs, subject to not more than 20% of AUM; for duration <= six months.

*Subject to condition.